

STATEMENT OF
HONORABLE STEPHEN L. LEMONS
ACTING UNDER SECRETARY FOR BENEFITS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JULY 25, 1997

Mr. Chairman and Members of the Committee:

I am pleased to be here this morning to discuss those items on your agenda that would impact the Veterans Benefits Administration, the National Cemetery System, and the Board of Veterans' Appeals. Your letter of invitation asked that we address each of the following bills and draft proposals: S. 987 (VA requested draft legislation proposing a compensation cost-of-living-adjustment and other program improvements); S. 464; S. 623; S. 714; S. 730; Committee Print (to increase the Medal of Honor pension); S. 813; S. 986 (VA requested draft legislation proposing home loan program improvements); Committee Print (to make technical amendments to Public Law 104-275); and Committee Print (codification of FY 1997 cost-of-living adjustment legislation, Pub. L. No. 104-263).

S. 987 (Compensation COLA and Program Improvements)

S. 987, which the Chairman introduced at VA's request, would authorize a cost-of-living adjustment (COLA) for fiscal year (FY) 1998 in the rates of disability compensation and dependency and indemnity compensation (DIC), and would revise and improve certain veterans compensation, pension, and memorial affairs programs. We thank the Chairman for introducing this bill, and urge its favorable consideration.

Section 101 of S. 987 would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 1997. The rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 2.7 percent. This proposed COLA is necessary and appropriate in order to protect the benefits of these most deserving recipients from the eroding effects of inflation. We estimate that enactment of this section, in conjunction with section 102 of this bill, would result in benefit costs of \$330.7 million during FY 1998 and \$1.94 billion over the five-year period from FYs 1998 to 2002. The costs associated with the compensation COLA are considered to be part of the compensation baseline and not subject to the pay-as-you-go provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1990.

Section 102 would require the Secretary, in computing new rates of (or limitations affecting) disability compensation and DIC pursuant to the enactment of any legislation requiring the Secretary to increase such rates to provide a COLA for fiscal year 1998 and thereafter, to round down to the next lower whole dollar any rate that is not evenly divisible by one dollar. This proposal is consistent with the congressionally-mandated calculation methods applied to COLA's for fiscal years 1994, 1995, and 1996. We acknowledge the Committee's favorable consideration of a similar proposal in its recommendations regarding budget reconciliation. We estimate that section 102 would reduce the FY 1998 benefits costs associated with the COLA proposed in section 101 of this bill by \$17 million and reduce the five-year benefit cost for FYs 1998 through 2002 by \$287 million, as compared to the cost of that COLA and future COLAs based on rounding odd dollar amounts to the nearest whole dollar. These savings would be subject to the pay-as-you-go provisions of OBRA 1990.

Section 103 would amend titles 26 and 38 of the United States Code to make permanent the authority of the Department of Veterans Affairs (VA) to access unearned income information from the Internal Revenue Service (IRS) and wage, self-employment, and retirement income information from the Social Security Administration (SSA) for purposes of income verification in determining eligibility for VA means-tested benefits such as pension and medical care for certain non-service-related illnesses or conditions.

Experience has shown that authority to match unearned income information from IRS and wage, self-employment, and retirement income information from SSA with VA data for purposes of income verification in determining eligibility for or the proper amount of VA means-tested benefits has been an effective savings measure and has had a significant program-abuse deterrent effect. We acknowledge the Committee's favorable consideration of a similar provision as part of its budget reconciliation recommendations. The savings resulting from the enactment of this proposal are estimated to be \$10 million in FY 1999 and \$120 million over the four-year period from FYs 1999 to 2002. These savings would be subject to the pay-as-you-go provisions of OBRA 1990.

Section 104 would amend section 5503(f) of title 38, United States Code, to make permanent the \$90 limitation on monthly VA pension payments that may be made to beneficiaries, without dependents, who are receiving Medicaid-covered nursing-home care. The current payment limitation, which is due to expire at the end of fiscal year 1998, works to the advantage of these nursing-home residents because it permits them to keep the \$90 to apply toward personal expenses rather than have it "pass through" to the Medicaid program. This section would simply remove the existing September 30, 1998, expiration date for section 5503(f). Again, we acknowledge the Committee's approval of a similar proposal as part of its budget reconciliation recommendations. The government-wide savings resulting from the enactment of this proposal are

estimated to be \$206 million in FY 1999 and \$893 million over the four-year period from FYs 1999 to 2002. These savings would be subject to the pay-as-you-go provisions of OBRA 1990.

Mr. Chairman, under current law, direct service connection of a disability or death may be established if the evidence establishes that injury or disease resulted from tobacco use in line of duty in the active military, naval, or air service, notwithstanding that the disability or death did not occur until after service and expiration of any applicable presumptive period. VA has approximately 4,250 claims pending adjudication under current law, some involving contentions that smoking in service was the cause of post-service disease, and others in which it is contended a veteran became nicotine dependent in service and, therefore, the Government bears responsibility for the adverse health effects of even the veteran's post-service smoking.

Section 105 would amend title 38, United States Code, by adding a new section that would have the effect of prohibiting service connection of a death or disability on the basis that it resulted from injury or disease attributable, in whole or in part, to the use of tobacco products by the veteran during the veteran's service. This amendment is consistent with the 1990 budget reconciliation act, in which Congress prohibited compensation for disabilities which are the result of veterans' abuse of alcohol and drugs. This was fiscally responsible action which enhanced the integrity of our compensation program, and our proposal regarding

tobacco use is offered in that same spirit. In addition, claims based upon tobacco-related disorders present medical and legal issues which could impede ongoing efforts to speed claim processing by placing significant additional demands on the adjudicative system. This provision would not preclude establishment of service connection for disability or death from a disease or injury which became manifest or was aggravated during active service or became manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of title 38, United States Code. This amendment would apply to claims filed after the date of its enactment.

Mr. Chairman, this provision would result in some level of benefit cost avoidance and would avoid potential delays in claim processing resulting from increased workload. Currently, we do not have a formal estimate of the cost-saving effect enactment of this proposal would produce. We are in the process of formulating this estimate in consultation with the Office of Management and Budget. We hope to complete this action in the near future.

Section 106 would authorize the Veterans Benefits Administration (VBA) to reimburse, from the general operating expenses account, the Veterans Health Administration (VHA) for the cost of medical examinations conducted with respect to veterans' claims for compensation or pension. Currently, such examinations are paid for out of VA's medical-care fund.

In order to assure that funding for compensation and pension medical examinations is available throughout FY 1998, appropriate language would need to be included in both the "Medical care" and "General operating expenses" appropriations. It is contemplated that VBA will enter into a memorandum of understanding with VHA to provide that, should funds budgeted under general operating expenses for the purpose of "purchasing" compensation and pension medical examinations prove insufficient, alternate funding under "Medical care" would be available to permit VHA to continue to provide these examinations. Medical care funds would be used for this purpose only in the event of a shortfall in general operating expenses.

Section 201(a) of S. 987 would amend section 2408(b) of title 38, United States Code, to make state cemetery grants more attractive to States. Section 2408 authorizes the Secretary of Veterans Affairs to make grants to States to assist them in establishing, expanding, or improving State veterans' cemeteries. Currently, the amount of a State cemetery grant is limited to 50 percent of the total of the value of the land to be acquired or dedicated for a cemetery and the cost of improvements to be made on the land. The remaining amount must be contributed by the State receiving the grant. Pursuant to the amendments proposed in this section, the amount of a State cemetery grant could not exceed, in the case of the establishment of a new cemetery, the total of the cost of improvements to be made on land to be converted into a cemetery and the initial

cost of equipment necessary to operate the cemetery. In the case of the expansion or improvement of an existing cemetery, the amount of the grant could not exceed the total of the cost of improvements to be made on any land to be added to the cemetery combined with the cost of improvements to be made to the existing cemetery. If the amount of a grant should, for any reason, be less than the amount of those costs, the State receiving the grant would be required to contribute the remaining amount, in addition to providing any land necessary for the cemetery project.

Also, under current law, if at the time of a grant the State receiving the grant dedicates for the cemetery land which it already owns, the value of the land may constitute up to 50 percent of the State's contribution. Once that land value is so used, it may not constitute part of the State's contribution for any subsequent grant under section 2408. Under the amendments proposed in section 201(a) of this draft bill, a State would be responsible for providing any land required for a cemetery project, since the grant amount would no longer be based partly on the value of land to be acquired or dedicated for a cemetery.

We believe that excluding the value of land to be acquired for a cemetery from the basis of a grant would encourage states to be active partners in the cemetery grants program. In our experience, no State has acquired land for a cemetery in connection with a grant under section 2408. In every case, the State has dedicated land that was donated or transferred for that purpose, or land that it already owned. Further, any reduction of the basis from which a grant is

calculated may be offset by an increase from 50 percent to up to 100 percent in the proportion of the amount of a project's cost that could be assumed by the Federal Government. Moreover, since, under the proposal, a grant may cover the entire cost of improvements (and initial cost of equipment in certain cases), a State may not have to contribute cash toward the initial cost of a project.

Another feature that would make grants more attractive to States is the inclusion in the basis of a grant of the initial cost of equipment necessary to operate the cemetery. Providing funds to acquire the equipment necessary to operate a cemetery will, we believe, be a critical financial incentive to encourage States to establish new cemeteries. Such equipment is as essential to the establishment of an operational cemetery as are the land and the improvements made on it. However, because our proposed amendment includes only the *initial* cost of equipment for the *establishment* of a cemetery, the State would retain the responsibility for long-term maintenance and operation of the cemetery, including costs associated with the acquisition of replacement equipment. Each Federal grant would assist in the establishment and activation of new veterans' cemeteries, or in the expansion or improvement of existing cemeteries, but the States would bear the costs of continuing operation and long-term maintenance.

Section 201(b) of S.987 would authorize "no-year" appropriations for the State cemetery grants program. Under current 38 U.S.C. § 2408(d), funds appropriated for State cemetery grants remain available only until the end of the second fiscal year following the fiscal year for which they are appropriated. However, in Public Law No. 104-204, 110 Stat. 2874 (1996), Congress

appropriated funds for State cemetery grants, “to remain available until expended.” Section 201(b) would amend section 2408(d) to reflect this no-year-funding policy.

S. 464 - Revision of BVA Decisions Based on Clear and Unmistakable Error

Mr. Chairman, S. 464 would amend title 38, United States Code to allow the revision of veterans benefits decisions by the Board of Veterans' Appeals based on clear and unmistakable error. A substantively identical bill, H.R. 1090, was passed by the House of Representatives on April 16, 1997. We oppose each of these bills because they fail the most important test for sound veterans legislation: they would not be good for veterans.

Section 1(a) of both bills would provide by statute what VA already provides for in regulations governing our claims-adjudication process: that claim decisions by agencies of original jurisdiction (primarily, VA regional offices) are subject to revision at any time on the grounds of clear and unmistakable error, and that reversal or revision of a prior decision on these grounds would have the same effect as if the reversal or revision had been made on the date of the corrected decision. Although we have no particular objections to codifying in statute what is already provided for in regulations (38 C.F.R. §§ 3.105(a)), section 1(a) of these bills is, as a matter of law, unnecessary.

Our opposition to these bills is based on sections 1(b) and 1(c) of each, which would drastically change current law regarding review of decisions by the Board of Veterans Appeals. These provisions would require the Board to review and adjudicate, on demand, petitions alleging clear and unmistakable error in any

Board decisions ever made -- regardless how long ago, and regardless of the petitions' lack of merit. Board decisions on any such petitions pending before it or a reviewing court on the date of enactment of either bill, or filed with the Board thereafter, would be subject to review by the Court of Veterans Appeals.

The bills' potential for deluging the Board -- already struggling to achieve acceptable response times -- with cases lacking merit is patently obvious. And, of course, Board decisions are already subject to review for error in two ways: on motions to the Chairman for reconsideration (at any time) and, for decisions in administrative appeals initiated on or after November 18, 1988, by judicial review. In past Congresses, the Senate has carefully considered and rejected legislation such as S. 464 and H.R. 1090. With each passing year, the percentage of past Board decisions which have been subject to judicial review increases, making the legislation even less compelling. However, our opposition is based primarily on the adequacy of the current administrative remedy for curing error -- reconsideration by the Board -- and the bills' great potential for clogging the Board's stream of regular appellate casework, delaying resolution of appeals filed by deserving veterans whose cases have yet to be even initially addressed by the Board.

Section 7103 of title 38 authorizes the Chairman of the Board to order reconsideration of any Board decision on either the Chairman's own initiative or on motion of the claimant. Under departmental regulations (38 C.F.R.

§ 20.1000), the Board may accord reconsideration based on allegations that its challenged prior decisions resulted from “obvious error of fact or law” -- a standard the U.S Court of Appeals for the Federal Circuit has equated with clear and unmistakable error. *Smith v. Brown*, 35 F.3d 1516, 1526 (Fed. Cir. 1994).

Reconsideration is not a hollow remedy. For FY's 1991 through 1996, the Board granted 907 motions for reconsideration -- 19% of the motions filed -- and its decisions on reconsideration resulted in 328 outright benefit allowances and 334 remands of cases to the originating agencies for further consideration. The combined allowance and remand rate for cases reconsidered was 73%. The Board does reconsider prior decisions and does not hesitate to rectify problems in them as they are identified. We believe it is telling that proponents of this legislation have not, in the five years it has been under consideration by the Congress, been able to identify even a single instance involving true “clear and unmistakable error” in a prior Board decision the Board has declined to correct.

These bills are, frankly, a solution without a problem.

Given the remedies already available for correcting these errors, enactment of this legislation would be unlikely to benefit claimants and would carry the very real risk of increasing considerably the time all appellants must wait for Board decisions. No one knows how many additional Board decisions

these bills would generate. Nevertheless, additional cases necessarily increase the time it takes for the Board to respond. Unless no appellants availed themselves of the proposed procedure, enactment of either bill would perforce degrade the Board's ability to decide appeals in a timely manner.

In reporting favorably on H.R. 1090, the House Committee on Veterans' Affairs stated as follows:

Finally, the Committee notes that an appellate system which does not allow a claimant to argue that a clear and unmistakable error has occurred in a prior decision would be unique. This bill addresses errors similar to the kinds which are grounds for reopening Social Security claims.

Under the Social Security system, a claim may be reopened at any time to correct an error which appears on the face of the evidence used when making the prior decision.

H.R. Rep. 105-52 (April 18, 1997). In addition to the fact that VA's appellate system already allows claimants "to argue that a clear and unmistakable error has occurred in a prior decision", the report is inaccurate in suggesting the Social

Security system is more amenable to correction of clear and unmistakable error.

It is true that, under

20 C.F.R. § 404.988(c)(8), a claimant can request at any time that Social Security reopen a disability determination to correct either a clerical error or an error that appears on the face of the evidence considered when the determination was made. What is not stated in the Committee report is that Social Security decisions not to reopen a case are not subject to judicial review. *Califano v. Sanders*, 430 U.S. 99, 107-09 (1977); *accord, e.g., King v. Chater*, 90 F. 3d 323, 325 (8th Cir. 1996). Indeed, such determinations are not even subject to further administrative review within the Social Security Administration. 20 C.F.R. § 404.903(l). At the same time, Social Security claimants have only four years to reopen a claim based on “new and material evidence.” 20 C.F.R. § 404.988(b). There is, of course, no such time limit for VA claimants.

In other words, these bills would not, contrary to the implication of the House report, make VA’s system like Social Security’s or, indeed, like any American claims-adjudication system with which we are familiar. Instead, it would compel the Board to reopen and readjudicate settled cases regardless of their merit.

Because of this legislation’s very low potential for actually benefiting anyone, we cannot countenance the diminution of service to veterans -- longer

waits for resolution of their appeals -- that would be its inevitable consequence.

Accordingly, the Department opposes enactment of

S. 464 and H.R. 1090.

S.623 - Filipino Veterans Equity Act of 1997

S. 623 would provide that the service of individuals in the organized forces of the Philippines during World War II, or in the “new” Philippine Scouts, constituted service in the Armed Forces of the United States for purposes of all VA benefits. In terms of VA-benefit eligibility, it would place these veterans, their dependents and survivors on an equal footing with veterans of the U.S. Armed Forces proper, their dependents and survivors.

Its enactment would upset decades-old policies which have authorized some, but not all, VA benefits based on this service. Former members of the Commonwealth Army and recognized guerrilla units may qualify for disability compensation (and their survivors for DIC) and some burial benefits, although at one-half the benefit rates for veterans of the U.S. Armed Forces, and for National Service Life Insurance. The same is true with respect to veterans of the “new” Scouts, except they are not eligible for the burial benefits. These individuals do not qualify for other VA benefits, including pension payments, health-care benefits (except on a space-available basis, in this country, for service-connected disabilities), burial in a national cemetery or readjustment benefits.

History shows that the limitations on eligibility for U.S. benefits based on service in these Philippine forces were based on a carefully considered determination of the two governments' responsibilities toward them. The Philippines became a sovereign nation on July 4, 1946, and the current limitations on VA benefits for veterans of its forces resulted from the First Supplemental Appropriations Act of 1946, Pub. L. No. 79-301. That law, which provided \$200 million to the Philippine Army to help pay benefits to its soldiers, was part of a comprehensive economic and political plan for allocating financial assistance to the Philippines. Other acts passed by Congress in 1947 (Pub. L. No. 80-241) and 1948 (Pub. L. No. 80-865) provided additional monetary assistance. Within months of gaining its independence, the Republic of the Philippines enacted a GI bill of rights that provided a broad range of benefits to its veterans, including compensation for service-connected death and disability, educational benefits, reemployment rights, preference in public employment, home loans, hospitalization, tax exemptions and more. Republic Act No. 65 (Oct. 18, 1946). The array of benefits offered under current Philippine law for veterans of its armed forces is nearly as comprehensive as that authorized by U.S. law for veterans of service in the American armed forces.

Mr. Chairman, there is no question that Filipino forces, fighting to preserve the independence of their homeland, contributed greatly to the allied victory in the Pacific. In October 1996, they were honored for their heroics by proclamation of President Clinton. Our opposition to

S. 623 in no way denigrates the value and extent of their sacrifices. However, current law appropriately recognizes our two nations' shared responsibility for their well being, and should not be changed as proposed by this bill. The non-health-related benefit costs associated with the enactment of this proposal are estimated to be \$1.6 billion in FY 1998 and \$7.5 billion over the five-year period from FYs 1998 to 2002. The great bulk of this additional benefit cost would result from the addition to VA's non-service-connected disability pension rolls of many new potential recipients. These costs would be subject to the pay-as-you-go provisions of OBRA 1990.

S. 714 - Permanently Authorize the Native American Housing Loan Program

S. 714 would make permanent VA's pilot program for making direct housing loans to Native American veterans living on trust land. These are loans which VA makes directly to the veteran.

Pub. L. No. 102-547 requires that a Memorandum of Understanding be entered into between VA and a Tribal entity before VA may make loans to Native Americans who are subject to the jurisdiction of that Tribe. These loans may not exceed \$80,000 each unless the Secretary determines a higher limit is necessary due to the significantly higher housing costs. Higher loan limits have been approved in Hawaii and the Pacific Islands. Under an amendment made last

year by Pub. L. No. 104-275, a veteran may refinance a loan made under this Act if the new loan bears an interest rate at least one percentage point less than the interest rate on the loan being refinanced.

Due to the time-consuming groundwork necessary to start making loans under this program, the first loans were not made until February, 1994. Currently, VA has entered into a total of 50 MOUs - 46 with Indian Tribes, and 4 with Pacific Islanders. When the Native American Veteran Direct Loan Program was established, we received appropriations of \$5 million. Budget forecasts estimated that this would support direct loans totaling \$58.4 million. A total of 164 loans totaling approximately \$16 million have been made to native Americans for the purchase, construction or improvement of dwellings on trust land. Further, seven Native Americans, representing 100 percent of those eligible, have been able to refinance existing loans made under this program.

Clearly, this pilot program has been underutilized to date and, although we support its continuation, we believe that making the program permanent now would be premature. Although we have not formally estimated the costs of a permanent extension, those costs would be subject to the pay-as-you-go provisions of OBRA 1990. Rather, as reflected in S. 986, which you introduced at our request, VA would support a 2-year extension of the Native American Veteran Direct Loan Pilot Program. This extension would allow us additional

time to observe the performance of the loans already made as they mature, as well as to make more loans for Native American veterans whose personal situations may not have permitted a home buying decision earlier. Further, it would give us more time to maximize the use of the valuable experience we have gained to this point, as well as demonstrate to private lenders that there is a market for private mortgages on trust lands. Finally, based on the activity to date, a 2-year extension would not require any additional appropriations. For all these reasons, we believe it is more appropriate to extend the pilot program and observe its progress rather than to make it permanent at this time.

S. 730 - Retroactive Award of Medal of Honor Pension

Mr. Chairman, S. 730 would authorize retroactive payment of the special Medal of Honor pension provided under section 1562 of title 38, United States Code (and antecedent provisions of law), to three named individuals, Mr. Vernon J. Baker, effective for months that begin after April 1945; Mr. Edward A. Carter, Junior, for months that begin after March 1945; and Mr. Charles L. Thomas, for months that begin after December 1944; or to certain survivors of these individuals. Each of these individuals was awarded the Medal of Honor by the President on January 13, 1997. In addition, four individuals who were killed in action during World War II were also awarded the Medal of Honor. Of the three individuals covered by S. 730, only Mr. Vernon J. Baker is living. Mr. Carter died in 1963; Mr. Thomas died in 1980.

S. 730 would provide for the payment of benefits beginning from the dates on which the actions upon which the awards of the Medal of Honor were based rather than for periods of time after which the individuals' names were recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, subject to any existing age requirements, as required under applicable law.

Under the law as it has existed in its various forms since 1916, the earliest date any of these three individuals could, in theory, have been eligible for the special pension, would have been November 1, 1964, even if each had been

awarded the Medal of Honor during World War II or soon thereafter. Mr. Carter died in 1963 at age 46. At the time of his death, the law required an individual to have attained age 55 in order to be eligible for the special pension. In 1964 the age requirement was reduced to age 40 by Pub. L. No. 88-651, effective October 13, 1964. Mr. Thomas survived until 1980. Thus, at the time of the enactment of Pub. L. No. 88-651, he would have met the minimum age requirement.

Therefore, but for the fact that the Medal of Honor was not awarded until January 13 of this year,

Mr. Thomas apparently would have been eligible for the special pension beginning on November 1, 1964, until his death on February 15, 1980. Had his medal been timely awarded, Mr. Baker, too, would have become eligible for the special pension on November 1, 1964. In no case, however, would any of the three named individuals have been eligible for the special pension prior to that date. For this reason, VA cannot support enactment of S. 730, as introduced.

However, simple fairness demands that those who have been deprived of their special pensions for a time due to an unjustifiable delay in recognizing their acts of valor be made whole. For that reason, the Department would favor retroactive payment to Mr. Baker in an amount equal to the Medal of Honor pension foregone during the period November 1, 1964, to September 30, 1996, after which he began receiving this benefit, and to the surviving spouse or children, if any, of Mr. Thomas for the period November 1, 1964, to the date of his death in 1980, during which he would have

been entitled to the special pension but for the delay in the issuance of his medal. The costs associated with the enactment of either S. 730, as introduced, or this modified proposal, would be less than \$500,000 annually. These costs would be subject to the pay-as-you go provisions of OBRA 1990.

Committee Print - Increase the Medal of Honor Pension

This draft bill would amend section 5312 of title 38, United States Code, to provide for automatic cost-of-living adjustments in the rate of the special pension paid to recipients of the Medal of Honor under section 1562 of title 38, United States Code, by linking future increases to annual cost-of-living adjustments in Social Security in the same fashion as non-service-connected disability pension.

The Medal of Honor pension was last increased in 1993 by Pub. L. No. 103-161 from \$200 per month to \$400 per month. The rate had been increased to \$200 from \$100 in 1978, effective January 1, 1979, by Pub. L. No. 95-479. In 1961, the rate of pension was increased by Pub. L. No. 87-139 to \$100 from its original rate of \$10 per month, as established by the Act of April 27, 1916.

VA opposes the enactment of this proposal on the basis that linkage of this special pension to cost-of-living adjustments in Social Security implies that this benefit is intended in some fashion as a subsistence benefit. That is not the purpose of this honorarium. Rather, the special pension was intended by Congress to serve as a “recognition of superior claims on the gratitude of the country.” and to “reward . . . in a modest way startling deeds of individual daring and audacious heroism in the face of mortal danger when war is on.” S. Rep. No. 240, 64th Cong., 1st Sess. 2, 8 (1916). It is a benefit that is payable “in addition to all other payments under laws of the United States.” 38 U.S.C. § 1562(b). Furthermore, as evinced by the rate increases enacted in 1978 and 1993, the periodic increases Congress has deemed to be appropriate for this benefit have not been limited by, or directly linked to, cost-of-living adjustments in other Government benefits which are intended as income-maintenance benefits. The costs associated with the enactment of this proposal would be less than \$500,000 annually. These costs would be subject to the pay-as-you-go provisions of OBRA 1990.

S. 813

Mr. Chairman, S. 813 would amend title 18, United States Code, to create criminal penalties for willful vandalism and theft at national cemeteries. In particular, section 2 of the bill would amend chapter 91 of title 18 by adding a new section 1865 which specifies certain crimes, and penalties therefor, involving

incidents at national cemeteries. For purposes of this new section, the term “national cemetery” would be defined to mean a cemetery in the National Cemetery System established under section 2400 of title 38 and a cemetery under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

We understand that, on June 23rd, the House passed an amended version of a similar measure, H.R. 1532. Rather than establishing a new section specifying certain crimes and penalties relating to vandalism and theft at national cemeteries in title 28, United States Code, the House-passed bill would instead direct the United States Sentencing Commission, pursuant to its authority under 28 U.S.C. § 994, to review and amend sentencing guidelines to provide a sentencing enhancement for offenses against any property of a national cemetery. House-passed H.R. 1532 would require an enhancement by at least 4 levels if the offense involves the willful injury to or depredation against such property and by at least 6 levels if the offense involves the knowing theft, conversion, or unlawful sale or disposition of such property. It would direct the Sentencing Commission, in carrying out its review, to ensure that the sentences, guidelines, and policy statements for offenders convicted of the types of offenses concerned are appropriately severe and reasonably consistent with other relevant directives and guidelines.

VA supports the principle behind S. 813 and H.R. 1532, but defers to the Department of Justice with regard to the respective merits of each bill.

Recent criminal incidents at several national cemeteries have resulted in heightened awareness of the need for appropriate criminal penalties for persons who violate the sanctity of our national shrines. Much attention has been focused on recent incidents at the National Memorial Cemetery of the Pacific in Hawaii (vandalism), Beverly National Cemetery in New Jersey (destruction of property), and Riverside National Cemetery in California (theft of markers). However, these incidents are not isolated. Between January 1, 1995, and May 31, 1997, some seventy-seven incidents involving vandalism, arson, theft of vehicles and equipment, and other crimes occurred at cemeteries within the National Cemetery System. Twenty-one of these incidents involved damage or loss in excess of \$1,000, and damage or loss throughout the System totaled over \$110,000.

In the case of less significant incidents involving matters such as flagpole vandalism, graffiti, and stolen vehicles, VA officials work with State and local law enforcement personnel to resolve the matters. More serious incidents require involvement by the United States Attorney's offices and the Federal Bureau of Investigation.

S. 986 (VA Draft Legislation proposing improvements in the home loan programs)

Mr. Chairman, you also requested that we comment on S. 986, a bill that you introduced at VA's request, which would make certain improvements in VA's housing loan

programs to save costs, provide management efficiencies, and extend the sunset on certain expiring authorities.

More particularly, you asked that we focus our testimony on those provisions of S. 986 that have not already been approved by the Committee as part of budget reconciliation legislation. Thus, the following discussion is confined to sections 2,6,7, and 8 of the bill that would permanently extend several cost-saving measures originally enacted by the Omnibus Budget Reconciliation Act (OBRA) of 1993, increase the funding fee for “vendee” loans available to the general public, consolidate the funding for the housing loan program into one new account, extend for 2 years the pilot program for direct loans to Native American veterans, and make conforming and technical amendments.

Section 2 of S. 986 would restate the existing fee provisions for persons obtaining or assuming a loan guaranteed or made by VA by using an easy to read chart format, which was not included as part of reconciliation.

Substantively, this section would make permanent the OBRA 1993 provisions that increased fees for most VA guaranteed housing loans by 75 basis points (0.75 percent of the loan amount) and imposed a 3 percent fee on loans for most veterans who previously had a VA housing loan. Those provisions are due to expire on September 30, 1998.

In addition, the fee on loans made by VA in connection with the sale of VA-owned properties (vendee loans) would be increased from 1.00 to 2.25 percent. This new fee, which would apply to all vendee loans closed on or after October 1, 1997, would be set at the maximum initial mortgage insurance premium that the Federal Housing Administration is permitted to charge for most single family mortgages. However, VA would have discretion to change the fee charged to be consistent with fees charged by other departments on similar loans or when necessitated by market considerations.

Except as noted above, the current fee structure would remain unchanged, including the fee exception given to certain disabled veterans and surviving spouses.

The provisions of S. 986 would result in savings of \$156 million in FY 1998 and \$1.0 billion over the five-year period from FYs 1998 to 2002. These savings would be subject to the pay-as-you-go provisions of OBRA 1990.

Section 6 of the bill would consolidate the funding sources for the VA housing loan programs (except the pilot program for direct loans to Native American veterans) into a new fund in the Treasury. The consolidation would include the Direct Loan Revolving Fund (DLRF), the Loan Guaranty Revolving fund (LGRF), and the Guaranty and Indemnity Fund (GIF). Consistent with the

Federal Credit Reform Act of 1990 (FCRA), the new Treasury fund, to be known as the “Veterans Housing Benefit Program Fund,” would be available, without fiscal year limitation, for all VA housing loan operations (except the pilot program for direct loans to Native American veterans). This section would be effective October 1, 1997.

While having separate funds may have had some merit at one time, the enactment of the FCRA rendered the need for the separate LGRF, GIF, and DLRF unnecessary. Having three separate funds makes VA’s accounting and budget records and procedures unnecessarily complex without any apparent benefit. In fact, the current system of breaking down costs by three funds makes it more difficult to determine the true cost of VA loan program operations. Accordingly, VA urges enactment of this provision.

Section 7 of S. 986 would extend for 2 years the Native American Housing Loan Guarantee program. As previously mentioned in our comments on S. 714, we fully support this pilot program but believe it appropriate at this time to extend it for 2 years to enable VA to further evaluate its effectiveness. Based on current loan activity, there is no additional appropriation required for extending this program for 2 years.

Section 8 of the bill contains conforming amendments related to the consolidation of home loan funds and the elimination of obsolete language, such

as references to participation certificates under section 3720 which have not been sold since the 1960s and to provisions repealed by implication by the FCRA. VA believes these amendments to be necessary for the maintenance of a current title 38.

Committee Print - technical amendments to Pub. L. No. 104-275

This draft bill would make technical amendments to several provisions of title 38, United States Code. Our General Counsel has reviewed each of these for technical accuracy and we support their enactment.

**Committee Print - Codification of 1997 cost-of-living adjustment enacted by
Pub. L. No. 104-263**

This draft bill would amend pertinent provisions of title 38, United States Code, to reflect the current rates of disability compensation and dependency and indemnity compensation (DIC) which became effective on December 1, 1996. These rates reflect the most recent cost-of-living adjustment in these rates as authorized by Pub. L. No. 104-263. We support the enactment of this proposal.

Other VA Draft Proposals

Finally, Mr. Chairman, I would like to take this opportunity to mention three other VA draft proposals that recently were transmitted to Congress. In a letter dated June 18, 1997, Secretary Brown transmitted draft legislation to clarify recently enacted provisions of law relating to the provision of benefits and services for certain children of Vietnam veterans who suffer from spina bifida. This draft bill (S. 1018) was introduced by the Chairman at our request on July 15, 1997. On June 16, 1997, VA transmitted draft legislation to establish a presumption of permanent and total disability in the case of a person who is age 65 or older and who is a patient in a nursing home, for purposes of establishing basic eligibility under the Department of Veterans Affairs' (VA) nonservice-connected disability pension program. The Chairman introduced this bill

(S. 1017) at our request on July 15, 1997. Lastly, on June 24, 1997, VA transmitted draft legislation to redesignate the National Cemetery System (NCS) as the “National Cemetery Administration” and the Director of the NCS as the “Assistant Secretary for Memorial Affairs.” We urge favorable consideration of these proposals by the Committee as well.

Thank you, again, Mr. Chairman, for seeking our views on each of the measures on today’s agenda. We will be pleased to respond to questions you or other Members of the Committee may have regarding this testimony.