STATEMENT OF

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VETERANS BENEFITS ADMINISTRATION

DEPARTMENT OF VETERANS AFFAIRS

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 and present the views of the Department of Veterans Affairs on several bills of great interest to our Nation's veterans.

MAXIMUM HOME LOAN GUARANTY

Mr. Chairman, you requested our views on two bills, H.R. 1735 and H.R. 4065, which would increase the maximum VA housing loan guaranty.

The first bill, H.R. 1735, would increase the maximum guaranty from $60,000 to $81,000. The other bill, H.R. 4065, would index the maximum

guaranty to 22.5 percent of the Federal Home Loan Mortgage Corporation (also known as “Freddie Mac”) single family conforming loan limit.

Neither the law nor regulations set a maximum principal amount for a VA guaranteed home loan, so long as the total loan amount does not exceed the reasonable value of the property securing the loan, and the veteran’s present and anticipated income is sufficient to afford the loan payments. As a practical matter, Mr. Chairman, requirements set by secondary market institutions limit the maximum VA loan to four times the guaranty. The current maximum guaranty of $60,000 effectively limits VA housing loans to $240,000.

Increasing the maximum guaranty to $81,000, as proposed by H.R. 1735, would have the effect of increasing the maximum amount lenders are willing to finance to $324,000. If the guaranty were indexed as proposed by H.R. 4065, the VA guaranty would increase to $75,082.50, which is 22.5 percent of the current Freddie Mac conforming loan limit of $333,700. That would increase the effective VA loan limit to $300,330. Thereafter, the VA guaranty would be automatically adjusted annually in tandem with the Freddie Mac loan limit.

VA estimates enactment of H.R. 4065 would produce a loan-subsidy savings to the Veterans Housing Benefit Program Fund of approximately $20.5 million in FY 2005, and a 10-year savings of approximately $71.3 million. Enactment of H.R. 1735 would produce loan-subsidy savings of approximately $22.7 million in FY 2005, and a 10-year savings of approximately $82.6 million.

VA is currently reviewing the results of an independent program evaluation of the VA Home Loan program. The maximum home loan guaranty was an element of this evaluation. We support the concept but reserve our opinion on these two bills until we can complete our analysis of the contractor’s final report.

H.R. 348

You also requested our views, Mr. Chairman, on H.R. 348, the "Prisoner of War Benefits Act of 2003."

Section 2(a) and (b) of H.R. 348 would eliminate the requirement that a former prisoner of war (POW) be detained or interned for at least thirty days in order to be eligible for a presumption of service connection for certain diseases and at least ninety days in order to be eligible to receive VA care and treatment for a dental condition or disability. Congress dealt with the issues covered by subsections 2(a) and (b) during the First Session of the 108th Congress. Section 201 of the Veterans Benefits Act of 2003, Public Law 108-183, eliminated the thirty-day detention requirement in order for a former POW to be eligible for a presumption of service connection for psychosis, any of the anxiety states, dysthymic disorder (or depressive neurosis), organic residuals of frostbite, and post-traumatic osteoarthritis. Section 101 of the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003, Public Law 108-170, eliminated the ninety-day detention requirement in order for a former POW to be eligible for VA care and treatment for a dental condition or disability.

Section 2(c) of H.R. 348 would add heart disease, stroke, liver disease, type 2 diabetes, and osteoporosis to the list of diseases for which a presumption of service connection is available pursuant to 38 U.S.C. § 1112(b). Section 2(c) would also authorize the Secretary to promulgate regulations creating a presumption of service connection for any other disease which the Secretary determines has a "positive association with the experience of being a [POW]." A "positive association" would exist "if the credible evidence for the association is equal to or outweighs the credible evidence against the association." In deciding whether to promulgate such a regulation, the Secretary would be required to consider the recommendations of the Advisory Committee on Former POWs and any other available sound medical and scientific information and analyses. VA

would have sixty days from receipt of an Advisory Committee recommendation to make a determination as to whether a presumption of service connection is warranted, and then another sixty days to publish in the Federal Register either proposed regulations, if VA determines that a presumption is warranted, or a notice explaining the scientific basis for a determination that a presumption is not warranted.

VA strongly supports enactment of section 2(c) of H.R. 348, provided that the Congress can find offsetting savings. No one can reasonably doubt that the stresses and privations endured by prisoners of war take heavy tolls on their health in ways that may never be fully understood. The majority of former POWs are aging veterans of World War II who are unable to wait for science to provide definitive answers. Moreover, former POWs as a group do not benefit from relatively relaxed statutory standards — such as the positive-association standard applied in the case of all Vietnam veterans because of their potential for exposure to defoliants used there — for weighing the scientific evidence regarding associations between their service experience and later occurring diseases. There is some scientific evidence suggesting an association between the POW experience and each of the illnesses covered by the bill, and because these veterans are particularly deserving of special consideration they too should be accorded the benefit of the doubt.

VA is also working administratively to address the needs of former POWs for full and fair compensation. In December 2003 the Secretary tasked a work group of Veterans Health Administration, Veterans Benefits Administration and Office of General Counsel officials to 1) develop a methodology for the fair and balanced assessment of medical conditions associated with detention as a POW, and 2) recommend to him any conditions that, when this methodology is applied, warrant designation as presumptively service connected.

The work group has met several times and will shortly be recommending to the Secretary a proposed methodology for consideration of additional diseases. In developing its recommendations, the group has been mindful of the standards Congress has adopted for application in other contexts; i.e., for herbicide-exposed Vietnam veterans and veterans of the Gulf War. We pledge to work through these difficult issues as quickly as possible and to keep this Committee informed of our progress.

We estimate that enactment of section 2(a) and (c) of H.R. 348 would have mandatory costs of $33.8 million in fiscal year 2005 and a 10-year cost of $588.8 million.

H.R. 843

H.R. 843, the "Injured Veterans Benefits Eligibility Act of 2003," would amend 38 U.S.C. § 1151 to provide that a qualifying additional disability or qualifying death shall be considered a service-connected disability or death for purposes of all laws administered by VA. If enacted, the bill would create eligibility for each of VA's many service-connected benefit programs for veterans with non-service-connected injuries incurred as a result of VA training, hospitalization, or medical treatment. Thus, under the bill, section 1151 beneficiaries would attain the same benefit status as veterans who were disabled or died in line of duty during their military service.

The current law places veterans who suffer injuries caused by VA in the same position, for the purposes of monthly disability compensation, dependency and indemnity compensation, and certain other benefits (for example, Specially Adapted Housing) only, as they would be in if the disability or death actually resulted from their military service. At the same time, however, the Federal Tort Claims Act provides these injured veterans a tort remedy against the government for injuries incurred as a result of the negligence of a federal employee. Under

the Act, a claimant who establishes negligence by the government is entitled to receive damages as authorized by the law of the State in which the tort occurred, except for punitive damages or interest prior to judgment. Current law provides that no benefits shall be paid under section 1151 to any individual who receives a tort judgment against the government or who settles a tort claim against the government until the aggregate amount of the compensation that would be paid under section 1151 equals the total amount of the tort award.

H.R. 843 would create eligibility for section 1151 beneficiaries under various title 38 benefit programs, including hospital, nursing home, and outpatient care; service-disabled veterans' insurance; burial benefits for death from service-connected disability; survivors' and dependents' educational assistance; and automobiles and adaptive equipment. Each of these benefits might correspond to an element of the damages constituting a tort award against the government under the Federal Tort Claims Act. Therefore, the bill might create an anomalous dual remedy for veterans with non-service-connected disabilities that is more advantageous than the remedy provided for veterans injured during their military service. For example, compensatory tort damages awarded to a veteran in a judgment against the government might include the value of a specially adapted automobile. Under the bill, that veteran could simply wait until he has satisfied the tort offset provisions to file an initial claim for VA automobile benefits under chapter 39 of title 38, United States Code. The veteran would receive government assistance in the purchase of an automobile twice, initially through the tort award and later under VA's program. Meanwhile, a veteran with similar injuries incurred in service would be entitled only to the benefits provided under VA's program.

VA estimates that enactment of H.R. 843 would result in benefit costs of approximately $755 thousand for Fiscal Year 2005 and $3.9 million over ten years. We cannot, however, estimate the costs of hospital, nursing home, outpatient and domiciliary care that would result from enactment of H.R. 843.

The universe of potential beneficiaries under the bill would not be large because only 2,491 persons are currently receiving compensation or dependency and indemnity compensation under section 1151. Nevertheless, given the panoply of damages available to claimants under the Federal Tort Claims Act, we do not believe it is necessary to provide section 1151 beneficiaries with additional benefits equal to or in excess of those designed to fulfill in some measure the high obligation the government owes to those who were disabled or died as a result of their service to our Nation.

Therefore, we do not support enactment of H.R. 843.

H.R. 2206

H.R. 2206 is also known as the "Prisoner of War/Missing in Action National Memorial Act." Section 2(b) of this bill would designate the memorial to former POWs and members of the Armed Forces listed as missing in action to be constructed at the Riverside National Cemetery in Riverside, California, as the Prisoners of War/Missing in Action National Memorial. Section 2(c) of the bill would prescribe that the memorial is not a unit of the National Park System and that the designation of the national memorial shall not be construed to require or permit Federal funds, other than any funds provided for as of the date of enactment of the bill, to be expended for any purpose related to the national memorial.

The memorial will be comprised of a circular plaza located on the east side of the upper lake just inside the entrance to the national cemetery. The centerpiece of the memorial will be a figurative bronze statue of a Vietnam POW. Black granite panels standing on end will be placed to the rear of the circular plaza. The names of all known POW sites, including the total number of prisoners at each location, will be engraved on these panels. The POW sites will be displayed by major conflict or campaign.

The Riverside National Cemetery Memorials and Monuments Commission (RNCMMC) is a private organization that has proposed to erect the memorial and donate it to the National Cemetery Administration (NCA). The Commission is responsible for funding and contracting issues related to this project. The RNCMMC is currently raising funds for the construction and future maintenance of the memorial through donations. The statue for the memorial is finished and is ready for installation once the plaza is completed. NCA approved plans for the project in March 2004 and designated a location for the memorial within cemetery grounds. The RNCMMC anticipates that construction of the plaza will commence this summer and plans to dedicate the memorial six months after construction begins.

The National Park Service (NPS) currently maintains and operates the National POW Museum located at the Andersonville National Historic Site in the State of Georgia. In 1970, Congress authorized the establishment of the Andersonville National Historic Site pursuant to Public Law 91-465, 84 Stat. 989, in order to "provide an understanding of the overall prisoner-of-war story of the Civil War, to interpret the role of prisoner-of-war camps in history, to commemorate the sacrifice of Americans who lost their lives in such camps, and to preserve the monuments located therein." The park and the National POW Museum currently serve as a national memorial to all American POWs. Accordingly, we recommend that NPS have an opportunity to comment on this legislation.

We estimate that there would be no costs to VA associated with designation of a national memorial at Riverside National Cemetery. We have no objection to designating the memorial as provided for in section 2(b). However, we are concerned that section 2(c) of the bill would restrict use of Federal funds to maintain the memorial in the event that private funds are not adequate for this purpose. Section 2(c) would apparently preclude VA from expending any

Federal funds for future maintenance of the memorial under any circumstances. Although the RNCMMC is raising funds to cover the future costs to operate and maintain the memorial, should the donating organization become unable to meet the future costs associated with maintenance and repair of the memorial, VA would be prohibited by section 2(c) from using Federal funds to provide such maintenance or repairs.

Without authority to use Federal funds for the care and maintenance of the memorial, we do not support this legislation.

H.R. 2612

The next bill I will discuss, Mr. Chairman, is H.R. 2612. This measure would authorize the Secretary to provide specially adapted housing grants to veterans with permanent and total service-connected disabilities due to the loss or loss of use of both upper extremities such as to preclude use of the arms at and below the elbows.

VA favors enactment of H.R. 2612, provided that the Congress can find offsetting savings.

Under current law, veterans who are entitled to compensation under chapter 11 of title 38, United States Code, for certain permanent and total service-connected disabilities described in section 2101(a) of title 38 are eligible for grants of up to $50,000 to acquire homes which are equipped with special features made necessary by the nature of their disabilities. The qualifying disabilities generally involve either the loss or loss of use of both lower extremities, or the loss or loss of use of one lower extremity together with certain other conditions specified in the statute.

H.R. 2612 would add “the loss, or loss of use, of both upper extremities such as to preclude use of the arms at and below the elbows” as a disability that qualifies for this grant.

Currently, veterans who have lost or lost the use of both hands are eligible for a special housing adaptations grant of up to $10,000. That grant, authorized by section 2101(b) of title 38, United States Code, will pay for the adaptations to veterans’ homes which may be necessary by reason of the veterans’ disabilities. The grant authorized by section 2101(a) will pay for up to 50 percent of the total cost to the veterans of the adapted homes and necessary land. Veterans who are eligible for the grant under section 2101(a) may not receive a grant under section 2101(b). Therefore, if H.R. 2612 is enacted, veterans who have lost or lost the use of their arms at and below the elbow would qualify for the full $50,000 specially adapted housing grant rather than the more limited $10,000 grant.

VA supports providing the increased benefit for this class of severely-injured veterans.

VA estimates that approximately 12 additional veterans per year would become eligible for the increased grant if H.R. 2612 is enacted. This would produce costs of $480,000 per year, with a 10-year cost of $4.8 million.

H.R. 3936

H.R. 3936, Mr. Chairman, would authorize the Court of Appeals for Veterans Claims to conduct business from any location in the Washington, D.C., metropolitan area instead of being limited to a site strictly within the District of Columbia. The bill would also express the sense of the Congress that the Court be provided a dedicated Veterans Courthouse and Justice Center, preferably at a Federal site in proximity to the Pentagon Reservation.

VA defers to the United States Court of Appeals for Veterans Claims on H.R. 3936.

H.R. 4172

Mr. Chairman, H.R. 4172 would amend title 38 in three respects with regard to benefits for radiation-related disabilities and deaths.

Section 1(a) of H.R. 4172 would add cancer of the bone, brain, colon, lung, and ovary to the list of diseases for which a presumption of service connection is available for a radiation-exposed veteran. VA amended its regulations effective March 26, 2002, by adding these diseases to the list of diseases for which a presumption of service connection is available for veterans who participated in a radiation-risk activity while serving on active duty or as a member of a reserve component while on active duty for training or inactive duty training. VA did so in order to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under the Radiation Exposure Compensation Act (RECA), Public Law 101-426, and the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106-398. Section 1(a) of the bill would merely codify in statute this provision in the current regulations.

Section 1(b) of H.R. 4172 would also codify another provision in existing VA regulations. It would amend the definition of "radiation-risk activity" in 38 U.S.C. § 1112(c)(3)(B) to include service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual as a member of the Special Exposure Cohort pursuant to 42 U.S.C. § 7384*l*(14). The Energy Employees Occupational Illness Compensation Program Act of 2000 authorizes compensation and benefits for certain Department of Energy (DOE) employees

and DOE contractor or subcontractor employees who were employed at certain DOE facilities during certain time periods. Under that Act, if a "member of the Special Exposure Cohort" develops a "specified cancer" after beginning employment at one of these facilities, the cancer is presumed to have been sustained in the performance of duty and is compensable. Effective March 26, 2002, VA expanded the definition of "radiation-risk activity" in 38 C.F.R. § 3.309(d)(3)(ii) to include the same employment criteria as required pursuant to 42 U.S.C. § 7384*l*(14) to qualify as a "member of the Special Cohort." VA does not object to the statutory codifications in sections 1(a) and 1(b) of the bill.

Section 2(a) of H.R. 4172 would amend 38 U.S.C. § 1112(c) to provide that a radiation-exposed veteran who receives a RECA payment would be eligible for VA compensation for a disease presumed to be service connected under section 1112(c). Section 2(b) would amend 38 U.S.C. § 1112(c) to provide that a person who receives a RECA payment would be entitled to receive dependency and indemnity compensation (DIC). VA compensation and DIC would be offset by the amount received under RECA. VA favors enactment, provided that Congress can find an offset, of section 2 because it would enable veterans to receive ongoing compensation for the continued effects of their radiation-exposed disabilities. Section 2 would also be consistent with 38 U.S.C. § 1151(b), which provides for an offset of veterans benefits against potentially-duplicative awards pursuant to the Federal Tort Claims Act. However, we would also recommend amendment to section 6(e) of RECA, which currently provides that acceptance of a RECA payment "shall be in full satisfaction of all claims of or on behalf of that individual against the United States . . . that arise out of exposure to radiation, from atmospheric nuclear testing, in the affected area . . . at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4(a), exposure to radiation in a uranium mine, mill, . . . or exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device."

VA estimates that enactment of H.R. 4172 would not produce any benefit costs until Fiscal Year 2008. The projected 10-year cost of this measure is approximately $29.6 million.

H. R. 4173

Mr. Chairman, H.R. 4173 would require VA to enter into a contract with an organizational entity described therein that would study and prepare a report on employment placement, retention, and advancement of recently-separated servicemembers. The organization would analyze employment-related data to determine whether the employment obtained by recently-separated veterans is commensurate with their training, whether these veterans received educational assistance or training under the MGIB or VA's Vocational Rehabilitation and Employment programs, and whether transition assistance services helped the veterans in obtaining civilian employment. It would also analyze trends in the hiring of veterans in the private sector and identify recently-separated veterans that have reached senior level management positions. The contract would require that the contractor submit the study to VA not later than 2 years after the date on which the contract was made. The contract would not exceed $490,000 and would be funded through the VA's compensation and pension appropriations.

VA supports the goals of H.R. 4173. We believe such a study should be done in consultation with the Department of Labor (DOL) and should not be duplicative of DOL requirements to study modifications to certain employment reforms. We note, however, that VA has under consideration long-term plans for a broad-based study of the full panoply of veterans' transition benefits, including but not limited to employment. VA believes it may be advantageous to broaden a study contract beyond what is contemplated in the bill. VA also believes it would be more appropriate to fund this study out of the Readjustment Benefits account – which provides funding for educational training and vocational rehabilitation.

While the funding limit in H.R. 4173 is sufficient for the work contemplated in the bill, additional funding may be needed in the future for further studies.

We further note that the "Qualified Entity" provision may be too narrowly tailored to provide fair competition. In addition, the bill purports to study "recently separated servicemembers," defining "recently separated" as within the previous 16 years. We believe this timeframe is too long, since there have been many significant enhancements to employment programs for separating servicemembers over the past sixteen years. Within that timeframe, Congress put into place the successful transition assistance program, which was further enhanced based on the findings of the "Principi Commission." Continued improvements to these programs are an ongoing process. Because of these enhancements, the results of this study would not represent the changes brought about by these more recent programs. The study would be more significant if it was limited to measuring the impact of current programs and services. Further, because the nature of military service has changed dramatically over the past three years, an evaluation of sixteen-year-old data could erode the otherwise beneficial results of such a study.

DRAFT BILL – "VETERANS EDUCATION OPPORTUNITY ACT OF 2004"

Mr. Chairman, you also requested our views on a draft bill entitled the "Veterans Education Opportunity Act of 2004." This proposal would authorize certain individuals eligible to participate in the chapter 32 Veterans' Education Assistance Program (VEAP) to transfer to the Montgomery GI Bill (MGIB) program during the one-year period beginning on the date of enactment of this proposal. This section would require these individuals to have served on active duty without a break in service since June 30, 1985, through at least April 1, 2004; to have completed the requirements of a secondary school diploma (or its equivalent) or the equivalent of 12 semester hours in a program of education leading to a standard college degree; to have been discharged or released, if a

veteran, with an honorable discharge; and not to have made an election to enroll in VEAP under section 3018C of title 38 (the previous "open window" authority). Finally, the new section would require these otherwise qualified individuals, in addition, to pay $3,900 to become eligible for this entitlement. The election to enroll in the MGIB (and disenroll from VEAP where applicable) would be irrevocable.

By way of background, post-Vietnam servicemembers were eligible to enroll in VEAP after December 31, 1976, and before July 1, 1985. Under that program, active duty servicemembers made voluntary contributions to an individual account which the Government matched at a 2:1 ratio. In October 1996, Public Law 104-275 allowed VEAP participants a one-year "window" in which to transfer to the MGIB, where they would be afforded a greater education benefit. Again, in November 2000, Public Law 106-419 afforded individuals who either had turned down a previous opportunity to convert to the MGIB or had a zero balance in their VEAP account the option to convert to the MGIB program. Both of these election opportunities have expired. The proposed draft bill would provide another, similar opportunity for qualified individuals to transfer to the MGIB.

This bill also allows individuals who entered on active duty during the VEAP era who are not eligible for MGIB education benefits because they did not qualify for a previous election or they failed to act on a previous election opportunity to enroll in MGIB. Neither previous open window allowed servicepersons who were not enrolled in VEAP to convert to MGIB. Enactment of this bill would result in significantly increased costs, as described below, that are not contemplated in the President's budget. Therefore, we are unable to support this bill's enactment.

VA estimates that, if enacted, this proposal would cost $17.2 million for FY 2005, $50.3 million for the five-year period from FY 2005 through 2009, and $402.3 million over the ten-year period from FY 2005 through 2014.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the Subcommittee may have.