

**STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE HOUSE VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
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Good afternoon Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to present the Administration's views on (1) H.R. 4791, (2) a draft education benefits bill, and (3) a proposed amendment to H.R. 3082, each of which would affect Department of Veterans Affairs (VA) programs of benefits and services. I understand two other draft bills pertaining to programs administered by the Department of Labor (DOL) also are the subject of today's hearing. VA defers to DOL as to those draft bills.

Before I discuss the bills the Subcommittee is considering today, I would like to note that, as you know, these measures would affect direct spending and receipts. Accordingly, the support VA expresses here for particular bill provisions is contingent on accommodating the provisions within the President's Budget request if the costs are discretionary, and would require acceptable offsetting legislation if the costs are mandatory.

G.I. Bill Flexibility Act of 2006

Flexibility in Accelerated Payment of Basic Educational Assistance.

Mr. Chairman, I will begin by addressing the draft bill entitled the "G.I. Bill Flexibility Act of 2006." Section 2 of this bill would expand the programs of education for which accelerated payment of educational assistance may be made under the chapter 30 Montgomery GI Bill (MGIB) program. Specifically,

this measure would permit accelerated payment of the basic educational assistance allowance to veterans pursuing an approved program of education that leads to a certification or licensure in an occupation; does not lead to an associate or higher degree; and leads to employment in an occupation in an industry that has a critical shortage of employees or that is a high growth industry, as determined by the Department of Labor.

Under current law, only an MGIB participant pursuing high-cost courses leading to employment in a high technology occupation in a high technology industry has the option of receiving an accelerated benefit payment. This optional lump-sum accelerated benefit payment may cover up to 60 percent of the cost of such a course, provided the pro-rated course costs exceed 200 percent of the applicable monthly MGIB rate. The lump-sum payment is deducted from the veteran's MGIB entitlement balance in the same manner as if paid on a monthly basis and may not exceed that balance.

The draft bill provision would allow for accelerated payment for pursuit of the covered licensure and certification programs up to 60 percent of the cost of the course, provided the pro-rated course costs exceed 200 percent of the applicable monthly MGIB rate, or \$10,000 dollars, whichever is the lesser. It would also allow for payment of up to 75 percent of the course costs if the veteran has a service-connected disability. The payment would be deducted from the veteran's entitlement at one and one half times the current rate, unless the veteran has a service-connected disability.

Mr. Chairman, we have several objections to this section of the bill. First, it would introduce into chapter 30 the novel concept of authorizing greater payments for service-disabled veterans than for other veterans, which would set a precedent to which we are opposed. We have, and will continue to support, when appropriate, preferences, including additional benefits, for service-disabled veterans when needed and reasonably related to achieving the legislative objective in providing veterans benefits. In this case, however, we do not find that the mere existence of a service-connected disability requires or justifies affording the higher accelerated payment amount. It seems to us that the

accelerated benefits payment reflects an economic need as to which the existence of a 0 percent service-connected disability, for example, is not a reliable predictive indicator. Moreover, we note that vocational rehabilitation and employment services are available under chapter 31 of title 38, United States Code, for eligible service-disabled veterans for whom MGIB benefits are insufficient to allow a proper readjustment to civilian life.

Next, this section would change the entitlement charge for receiving the accelerated payment. Currently, an individual's entitlement charge is computed by dividing the amount of the accelerated payment by the full-time monthly rate of basic educational assistance allowance. The proposed new computation would multiply this calculated entitlement charge by 1.5, thus, charging more entitlement than is currently being charged. While we find this objectionable, its impact is not clear. In fact, it may have no effect since, unlike the existing law, section 2 contains no provision limiting the accelerated payment amount to the aggregate amount of basic educational assistance to which the individual remains entitled at the time of the payment. Absent such limitation, VA could effectively pay more benefits than the individual has in remaining entitlement if the individual's remaining entitlement is less than the proposed maximum \$10,000 accelerated payment.

If enacted, VA estimates section 2 would cost \$10 million during FY 2007 and approximately \$109 million over the period FYs 2007-2016. The latter cost estimate would need to be reassessed annually because DOL changes the listing of critical jobs yearly.

Exception for Government-Supported Institutions Administering Nonaccredited Courses to Requirement of Refunding Unused Tuition.

Section 3 of the draft bill would exempt Federal, State, or local government institutions, as well as those primarily supported by Federal, State, or local government funds, from the requirement that public or private, profit or nonprofit, educational institutions refund the unused portion of tuition, fees, and other charges for nonaccredited courses to an individual if that individual fails to

enter the course or withdraws or is discontinued therefrom any time prior to completion of the course.

Under current law, such institutions must comply with the refund policy requirements for nonaccredited courses pursuant to chapter 36, United States Code.

VA cannot support this section since we are aware of no reason why veterans should be disadvantaged by not receiving refunds in appropriate circumstances merely because the institution involved is a governmental entity or supported with government funds.

Determination of Full-Time or Part-Time Status for Purposes of Educational Assistance Payments.

Section 4 would, for purposes of determining the amount of monthly chapter 30 MGIB educational assistance allowance payable to an eligible individual who is enrolled in a program of education offered on a term, quarter, or semester basis, require VA to determine, at the beginning of the term, quarter, or semester, whether the individual is pursuing such program on a full-time or less-than-full-time basis by counting the total number of credit hours for which the individual is enrolled for the entire term, quarter, or semester. The amount so determined would be payable for each month of the term, quarter, or semester, as applicable, unless the individual thereafter reduced such number of credit hours, in which event the monthly allowance would be reduced accordingly.

The objective of this provision is not entirely clear to us. We note that, generally, VA already determines training time on this basis for payment purposes and that other provisions of title 38, United States Code, as well as VA regulations, currently set forth extensive requirements governing the same matters. For example, section 3680(a) of that title addresses in depth the period for which educational benefits may be paid for course enrollment and pursuit; section 3680(g) grants the Secretary the authority to determine what constitutes course enrollment, pursuit, and attendance; and section 3688 details training time measurement not only for courses offered on a term, quarter, or semester

basis, but also courses offered on a clock-hour basis. The latter courses are not covered by this proposal.

We do note that section 3680(a)(1) recognizes and permits payment for an actual period of pursuit of one or more unit subjects pursued for a period of time shorter than the enrollment period at the educational institution. This would apply, for instance, to students who attend mini-semesters (one-month sessions) during the summer and other extended intersession breaks. VA currently pays these students for the time that they are attending school, not necessarily for the full term, quarter, or semester. Thus, were a student to attend school full-time during one of three mini-semesters in the summer, VA would pay the student the full-time rate for that one month of attendance at the conclusion of the month.

Perhaps the instant section is meant to address pursuit of such mini-term enrollments. In that case, we do not necessarily object to the approach, but it could result in some unintended and undesired results. Given the case above, for example, where the student enrolls full time for one of three summer mini-sessions, section 4 would require that VA pay the student the ½-time rate for each of the 3 months in the summer semester. The student would end up receiving an extra payment at the ½-time rate in this scenario. There are other scenarios, however, where the student may receive less.

We believe a new approach to paying education benefits for pursuit of “mini-courses” may have merit and should be studied. However, we cannot support the section 4 proposal as drafted for the reasons stated above and because its relationship to the above-referenced title 38 requirements is not apparent, it would create ambiguity, and it could unintentionally alter the long-established policies embodied therein. Nevertheless, we would be pleased to consult with the Subcommittee staff and, as a technical service, assist in crafting appropriate language tailored to the intended objective.

Extension and Provision of Additional Qualifying Work-Study Activities for Veterans.

Section 5 of the draft bill would extend through December 26, 2011, work-study opportunities for veteran-students and eligible dependents to include: outreach services furnished by State approving agencies to servicemembers and veterans; activities for veteran-students and/or dependents (who have declared an academic major) within the department of an academic discipline that complements and reinforces the program of education pursued by the student; services in connection with provision of domiciliary care and nursing home and hospital care to veterans (including state veterans' homes) under chapter 17 of title 38, United States Code; for those receiving educational assistance under chapter 1606 of title 10, activities relating to the administration of that chapter at Department of Defense (DoD), Coast Guard, or National Guard facilities; and activities relating to the administration of national and state veterans' cemeteries. With regard to this provision, VA has data showing that that these work-study activities have been consistently performed and, therefore, believe that rather than extending the ending date for these work-study opportunities, they should be made permanent.

Under current law, VA makes additional educational assistance allowance payments (so-called work-study allowances) to eligible individuals who agree to perform certain specified services, such as assisting in outreach to service members and veterans regarding available benefits. To participate, the individual must be pursuing a program of rehabilitation, education, or training under chapter 30, 31, 32, 34, or 35 of title 38 or chapter 1606 or 1607 of title 10 United States Code.

Section 5 of the draft bill also would expand the term "work-study activity" for qualifying individuals to include (a) the provision of assistance in identifying employment and training opportunities, as well as related information and services under the Transition Assistance Program (TAP) and the Disabled Transition Assistance Program (DTAP) to members of the Armed Forces being

separated from active duty and their spouses (under the supervision of a Disabled Veterans Outreach Program (DVOP) specialist or Local Veterans Employment Representative); and (b) any activity approved by VA in support of a Senior Reserve Officers' Training Corps program at an educational institution or military installation (under the supervision of an administrator or instructor referred to in section 2111 of title 10).

With regard to work-study students assisting with the TAP and DTAP programs, we agree with the intent of the provision. However, we are concerned, on the one hand, with some of the functions the student would be permitted to perform and, on the other hand, with certain restrictions imposed on their performance of other functions. We don't believe, for example, that work-study students, in most cases, could provide the employment assistance in identifying employment and training opportunities provided for in this section because such assistance requires specialized training. Accordingly, we would suggest deleting reference to such functions. Further, this section would unnecessarily restrict use of work-study students in support of the TAP and DTAP programs to activities under the supervision of DOL employees. In many cases, however, VA, DoD, or contractor personnel would be appropriate supervisors, as well. Therefore, we would suggest including language that would permit work-study students to assist with the TAP and DTAP programs in ways consistent with their abilities.

Finally, with regard to using work-study students to support Senior ROTC programs at educational institutions and military installations, VA has no objection to this portion of section 5.

If enacted, VA estimates section 5 of this draft bill would cost \$1.6 million during FY 2007 and \$8.3 million over the period FYs 2007-2016.

Report on Improvement in Administration of Educational Assistance Benefits.

Section 6 would require VA, within 90 days from the date of enactment of the draft bill, to submit a report to Congress that proposes methods to streamline

the processes and procedures of administering education benefits under chapters 30, 31, 32, 34, 35, and 36 of title 38 and chapters 1606 and 1607 of title 10, United States Code.

Given the breadth of the request and the complexity of the programs in chapters 30, 31, 32, 34, 35 and 36 of title 38 and chapters 1606 and 1607, of title 10, United States Code, it is, we believe, unrealistic to expect such a report to be written in 90 days. We would have no objection to this section if VA were given 6 months in which to submit the required the report.

Restoration of Lost Entitlement for Individuals Who Had to Discontinue a Course of Education Because of Being Ordered to Full-Time National Guard Duty.

Section 7 would make a technical amendment to restore entitlement under the chapter 35 education benefits program that eligible persons lost as a result of being involuntarily ordered to full-time National Guard duty after September 11, 2001, pursuant to 32 U.S.C. §502(f) .

In enacting Public Law 107-103, Congress restored education benefits to National Guard personnel called to active duty under specific sections of title 10, United States Code, and extended their delimiting period for using those benefits. Public Law 108-183 likewise extended the delimiting date for National Guard personnel entitled to chapter 35 benefits who had to discontinue course pursuit as a result of being called to full time National Guard duty under section 502(f) of title 32, United States Code, but inadvertently omitted provisions restoring entitlement for those persons as it had for similarly circumstanced individuals called to active duty under title 10. Section 7 would remedy this oversight. We note that the effective date provision is clear as to the enrollment periods to which this section applies. It is unclear, however, as to whether there is any limit as to how far back in time the title 32 service could occur. VA recommends the effective date be September 11, 2001, to accommodate those ordered to full-time National Guard duty under section 512(f) of title 32 on or after that date.

VA supports section 7 and suggests this provision be extended to MGIB participants under section 3013(f)(2)(A), as well.

If enacted, VA estimates section 7 of this draft bill would cost \$3 thousand during FY 2007 and \$96 thousand over the period FYs 2007-2016.

Technical Amendments

Section 8 contains technical corrections to the work-study program provisions. VA has no objection to this section.

H. R. 4791

Disabled Veterans Adaptive Housing Improvement Act

Increase in Amount of Assistance Available to Disabled Veterans for Specially Adapted Housing.

Section 2 of H.R. 4791 would increase the amounts of assistance available to eligible service-disabled veterans under VA's Specially Adapted Housing (SAH) program (38 U.S.C. §§ 2101 et seq.).

The SAH program provides monetary assistance to help certain service-disabled veterans acquire housing units or needed residence adaptations suitable for their physical needs. Current law establishes two eligibility categories for such program assistance, based on the nature of the veteran's permanent and total service-connected disability, and caps the amount of assistance for each category at \$50,000 and \$10,000, respectively. These cap amounts were established by Public Law 108-183 effective December 16, 2003. H.R. 4791 would increase these caps to \$60,000 and \$12,000, respectively. VA supports the increases proposed by section 2 as an appropriate adjustment to the current levels of SAH program assistance, given the significant increase in residential construction costs that have occurred since the end of 2003.

Index of Amount of Assistance Available to Reflect Increase in Cost of Residential Home Construction

Section 3 of this bill would mandate that the Secretary increase the SAH assistance caps each fiscal year, commencing October 1, 2007. Such increases would be based on the percentage by which the residential home cost-of-construction index for the preceding calendar year exceeds the index for the year immediately preceding that calendar year. The residential home cost-of-construction index, which would be established for such purpose by the Secretary, would reflect a national average increase in the cost of residential home construction determined on a calendar-year basis. The Secretary would be authorized to use an appropriate private sector index for this purpose.

VA cannot support section 3. Construction costs generally are not indexed in other government programs, and the Administration does not support making an exception for this program. We would, however, be pleased to work with Congress each year to determine if an increase in these caps is necessary.

Finally, Mr. Chairman, in connection with the subject of this bill, we note that, in the enactment of certain Public Law 108-454 amendments, the Secretary's previously existing authority to make SAH assistance available to active duty service members was omitted without discussion. VA believes this omission was inadvertent and, accordingly, recommends that a technical amendment be added to H.R. 4791 to reinstate that authority.

We estimate that the enactment of section 2 would have a first year benefits cost of \$5,784,000, a five year cost of \$28,920,000, and a ten year cost of \$57,840,000, and that enactment of section 3 would result in further additional benefits cost of \$0 for the first year, \$22,500,642 for the first five years, and \$112,540,174 for the first ten years. We do not anticipate any additional costs for the aforementioned technical amendment, as those costs are already factored into existing assumptions.

AMENDMENT TO H. R. 3082

Department of Veterans Affairs Goals for Participation by Small Businesses Owned and Controlled by Veterans in Procurement Contracts.

Section 2 of H.R. 3082 would amend subchapter II of chapter 81 of title 38, United States Code, to add a new section 8127 governing VA contracting goals and preferences for participation by small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities. Section 3 would, in addition, add a new section 8128 to such subchapter mandating contracting priority for certain small business concerns owned and controlled by veterans when goods and services are being procured pursuant to contracting preferences under title 38 or other law. Current law establishes a 3% government-wide prime and subcontracting goal for small business concerns owned and controlled by veterans with service-connected disabilities.

VA supports the Amendment to H.R. 3082. However, we request that the following changes be made before the bill moves forward.

In Sole Source Contracts, section 8127(c), we recommend revising the language to read that Contracting Officers may award a contract using other than competitive procedures. The amendment reads “shall” which is inconsistent with subparagraphs (b) and (d) of this section.

In Database of Veteran-owned Businesses, section 8127(f), we recommend that subparagraph (4)(A) be revised to read that the Secretary shall verify that veterans own at least 51% of the business. The current language reads “verification that each person listed in the database is a veteran.” The database does not list all persons who own the business.

In Change In Ownership or Control, section 8127(i), we suggest replacing word “terminate” with “end.” For Federal procurement purposes, the word “terminate” has a very specific meaning. When an existing term is completed, the contract ends and is then closed out. We would further recommend revising the section to remove the parenthetical phrase. Currently, it leads the reader to believe that options may be executed after the change of ownership, which we believe is not the intent of the section. The following paragraph establishes that

after a change in ownership, one option may be exercised. We understand this may be necessary to accomplish re-procurement.

In Quarterly Reports, section 8127(k), we recommend revising subparagraphs (1) through (3) to read “percentage of contract dollars awarded.” This has very different meaning than “percentage of contracts awarded” and is consistent with reporting of all small business program accomplishments.

We do have some concern about the Quarterly Reports. This amendment will establish a single, consolidated goal which will collect information from both prime and subcontract actions with veterans and a separate consolidated goal for accomplishments with service-disabled veterans. Currently, most prime contractors report their subcontracting actions annually or semi-annually. To obtain quarterly reports from VA’s prime contractors will require contract modifications which will cost the Department as this quarterly reporting will be unique in Federal government. These same contractors will continue to report accomplishments with other small business programs annually or semi-annually. We believe this will be both costly and confusing for prime contractor personnel. Therefore, we request that the amendment be revised to require annual reporting on these contracting accomplishments, which should not add additional reporting burdens on our prime contractors.

In section 8127(l), Definitions, we have concern with the language where it attempts to define ‘small business concern owned and controlled by veterans.’ In subparagraph (2)(B), it addresses “the management and daily business operations of which are controlled by one or more veterans or, in the case of a veteran with a service-connected disability that is permanent and severe, the spouse of such veteran.” This implies that when a veteran has such a disability, his/her spouse must control daily business operations to be considered. We do not believe that was the intent of the committee. Public Law 106-50, "The Veterans Entrepreneurship and Small Business Development Act of 1999," and implementing regulations define small businesses owned and controlled by service-disabled veterans to include situations where there is a spouse or permanent caregiver who is legally designated in writing to undertake

responsibility for managing the well-being of the service disabled veteran. We request the language be amended to reflect that situation.

VA has been a leader in use of the service-disabled veteran-owned small business set-aside tool. However, for many reasons, VA has not recently achieved the Secretary's veteran-owned small business goal. We believe the flexibility in the proposed amendment will give contracting officers the opportunity to "Choose Veterans First." This legislation will offset the negative impression that some veterans have about being left out of the Federal procurement process. The VA-specific set-aside tool will deliver an important message of support to these veteran-owned small businesses.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you or any of the other members of the Subcommittee may have.