

**LEGISLATIVE HEARING ON H.R. 294, H.R. 1169,
H.R. 1182, H.R. 2416, H.R. 2461, H.R. 2614,
H.R. 2696, H.R. 2874, H.R. 2928, H.R. 3223,
H.R. 3554, H.R. 3561, H.R. 3577, AND H.R. 3579**

HEARING
BEFORE THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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THURSDAY, SEPTEMBER 24, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:10 p.m., in Room 334, Cannon House Office Building, Hon. Thomas S.P. Perriello presiding.

Present: Representatives Perriello, Adler, Kirkpatrick, Teague, Boozman, and Bilirakis.

OPENING STATEMENT OF HON. THOMAS S.P. PERRIELLO

Mr. PERRIELLO. Good afternoon, ladies and gentlemen, the Committee on Veterans' Affairs Subcommittee on Economic Opportunity Hearing on pending legislation will come to order.

I have received word that Chairwoman Herseth Sandlin is delayed at the moment and will be joining us shortly.

I would like to call attention to the fact that the U.S. Department of Labor, Military Officers Association of America (MOAA), CTIA—The Wireless Association, Iraq and Afghanistan Veterans of America (IAVA), the National Association of Surety Bond Producers, Student Veterans of America, and Jones, Odom, Davis and Politz, L.L.P., have asked to submit written statements for the hearing record.

If there is no objection I ask for unanimous consent that their statements be entered for the record. Hearing no objection so entered.

[The prepared statements for the record appear starting on p. 74.]

Mr. PERRIELLO. I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks, and that written statements be made part of the record. Hearing no objection so ordered.

Today we have a full schedule that includes 14 bills before us that would address the unique needs of our veteran population. The bills before us today seek to address veteran-owned small business matters, expand protections provided under the Servicemembers Civil Relief Act (SCRA), and address the unmet education needs of our Nation's veterans.

On June 30th, 2008, Congress successfully passed the Post-9/11 Veterans Educational Assistance Act of 2008 to help pay for the full cost of tuition at 4-year colleges to veterans of the wars in Iraq and Afghanistan. Yesterday, the U.S. Department of Veterans Affairs (VA) announced that it has provided certificates of eligibility to nearly 200,000 applicants for Post-9/11 GI Bill benefits.

I commend the VA on its administration of the program and look forward to working with the Veterans Benefits Administration (VBA) to ensure that our veterans continue to have easy access to the benefits they have earned and deserve.

Although the Post-9/11 GI Bill provides a number of benefits, including licensure and certification, it does not provide on-the-job training (OJT) program benefits. Servicemembers and veterans interested in OJT benefits would be unable to take advantage of the Post-9/11 GI Bill and would have to register under the Montgomery GI Bill, chapter 30 benefit.

On-the-job training offers veterans and members of the Guard and Reserve an alternative to attending a college or university by using their education benefit to obtain employment training. OJT is training that veterans received while actually performing a job. This program allows veterans to become gainfully employed since the job for which they are currently training in should lead to an entry-level job. Additionally, while they are training, the employer will provide a wage.

H.R. 2928 would amend title 38, United State Code, to provide for an apprenticeship and on-the-job training benefit under the Post-9/11 Veterans Educational Assistance Program. The bill would entitle those veterans enrolled in a full-time educational program of apprenticeship or other on-the-job training to a monthly benefit payment equal to 85 percent of the national average cost of tuition at an institution of higher education for each of the first 6 months of the program, 65 percent of such amount for each of the second 6 months of the program, and 45 percent of such amount for each of the months following the first 12 months of the program.

We have an obligation to help those who have defended our country by giving them the tools they need to rejoin the civilian workforce. H.R. 2928 is a commonsense bill which will provide America's veterans with the resources they need to join the workforce.

I would like to thank the VFW, DAV, AMVETS, the Military Officers Association of America, Student Veterans of America, Iraq, and Afghanistan Veterans of America, and the U.S. Department of Labor for their support.

I look forward to receiving feedback on H.R. 2928 and the other bills before us today.

I now recognize Ranking Member Boozman for any opening remarks he may have.

[The prepared statement of Congressman Perriello appears on p. 41.]

OPENING STATEMENT OF HON. JOHN BOOZMAN

Mr. BOOZMAN. Thank you, Mr. Chairman. I want to thank you for bringing us together to take testimony on 14 bills, including H.R. 1169, a bill that would increase the amounts available for the Specially Adapted Housing and Auto Adaptive Equipment pro-

grams, as well as other bills introduced by Members on our side of the aisle.

We have a lot of ground to cover today, so I will merely say that this is a good list of bills. Obviously there are some major PAYGO issues that we are going to have to deal with, and some might need some minor tweaking to accomplish what the authors intend.

I am eager to hear from today's witnesses, and I will yield back.

[The prepared statement of Congressman Boozman appears on p. 41.]

Mr. PERRIELLO. Thank you, Mr. Boozman. Before we begin with our first panel, I would like to recognize the Subcommittee Members with legislation before us today.

Congresswoman Kirkpatrick, you are now recognized to speak on your bill.

OPENING STATEMENT OF HON. ANN KIRKPATRICK

Mrs. KIRKPATRICK. Thank you Mr. Chairman. I appreciate this opportunity to discuss my bill, H.R. 2614, the "Veterans Advisory Committee on Education Reauthorization Act of 2009."

In recent years, Congress has devoted a whole lot of attention to the education benefits administered by the Department of Veterans Affairs, culminating last year in the introduction and passage of the Post-9/11 GI Bill.

One of the VA's most important tools in this fight has been the Veterans Advisory Committee on Education. This Committee's mission includes advising the Secretary of Veterans Affairs on existing education benefit programs and services, as well as recommending new education benefit programs.

As the Military Officers Association of America has pointed out, the Committee was instrumental in the Post-9/11 GI Bill being constructed, including incorporating recommendations that limit/mirror the National average cost of a public education, as well as earn-as-you-serve provisions.

The Committee is now more important than ever with veterans starting to receive education benefits under the Post-9/11 GI Bill. However, the Committee's charter is currently set to expire on December 31st. This bill reauthorizes the Committee until the end of 2015, allowing it to fulfill its vital role.

With the help of veterans service organizations (VSOs), we are working hard to better keep our promises to our veterans, and I have been proud to be a part of it. There is still more to do to make sure they have the opportunities they have earned, and reauthorizing this Committee is a useful step in that effort.

Mr. Chairman, thank you for this opportunity. I would be happy to answer any questions.

[The prepared statement of Congresswoman Kirkpatrick appears on p. 41.]

Mr. PERRIELLO. Joining us to speak on their respective bills today are Committee Chair, the Honorable Bob Filner of California, the Honorable Ciro Rodriguez of Texas, the Honorable John Carter of Texas, the Honorable Brad Miller of North Carolina, the Honorable David Loebsack of Iowa, and the Honorable Gerry Connolly, if he chooses to join us.

Welcome to the Subcommittee, all of your written statements will be entered into the hearing. Without further ado, Chairman Filner, you are now recognized.

STATEMENTS OF HON. BOB FILNER, CHAIRMAN, COMMITTEE ON VETERANS' AFFAIRS, AND A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. CIRO D. RODRIGUEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; HON. JOHN R. CARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; HON. BRAD MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA; HON. DAVID LOEBSACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA; AND HON. GERALD E. CONNOLLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

STATEMENT OF HON. BOB FILNER

Mr. FILNER. Thank you, Mr. Chairman, it is good to see a new Member in that chair, and we thank you for your service on this Committee. You have done a great job and we are proud to see you up there. I want to talk about H.R. 3579. Although it is very uncomfortable for me, Mr. Chairman, to be here on the far right of this panel, of course you see me in the direction I should be, so thank you.

I think you all know some of the history of the GI Bill that was enacted in 1944. Few changes have been made over the years until this Subcommittee took the lead into the Post-9/11 GI Bill. Benefits have basically been declining, but I think we have restored the full intent of the original GI Bill with the GI Bill for the 21st century.

While that is a significant achievement, I don't think we have addressed another part of making sure that we do all this in a timely manner. That is the growing demand placed upon university certifying officials who are responsible for assisting student veterans in enrolling in a college and providing the services while they are on campus.

I know for example at the university where I am a professor emeritus at San Diego State University, they have close to 1,000 veteran students. To process those applications takes some time, takes some effort, and takes staffing. Some of the delay, as you mentioned, may be because we have several hundred thousand people now enrolling under the current GI Bill, and that could lead to many of them not getting their checks on time. The blame is not necessarily on the VA, but on the university, which has had trouble processing the great increase in students.

What H.R. 3579 is trying to do is to address the issue by increasing the reporting fees payable to institutions of higher learning from \$7 a student, which is way outdated, up to \$50 per student which will reflect today's demand for the expanded services.

I think you are all aware of the number of students and how they want to make sure they get timely receipt, and I think this will complete an important piece of the puzzle by providing the university with the needed resources to obtain up-to-date training on the options that are available to student veterans and their dependents.

We certainly need to serve our veterans with the very best advice, and we are going to have to make sure resources are available.

I thank this Committee, Mr. Perriello, your chair, Ms. Herseth Sandlin, and Ranking Member Boozman who have done an incredible job. I look forward to working with you to make sure that we do meet all the needs as we experience with this first year of the GI Bill. We are going to have, through your Subcommittee, a fix for several problems. This is one part of it, another is the housing stipend for those who elected distant learning, for example, and try to remedy the inequalities that we see that especially hit low tuition States. The States that have low tuition for their public universities and colleges results in some disparity to the payments that the student veterans will get.

So I look forward to working with you to clean up what is a great bill, but we are going to make it even better. Thank you, Mr. Chairman.

[The prepared statement of Congressman Filner appears on p. 43.]

Mr. PERRIELLO. Thank you, Mr. Chairman, for all of your leadership. I don't see you as being a matter of right or left, or right and wrong. Thank you for doing the right thing for your veterans.

Mr. Rodriguez, welcome back to the Subcommittee, you are now recognized.

STATEMENT OF HON. CIRO D. RODRIGUEZ

Mr. RODRIGUEZ. Thank you, very much. Thank you for allowing me to speak today on H.R. 3577, which will expand the eligibility for Post-9/11 GI Bill transferability for benefits to dependents.

Last year Congress passed a groundbreaking GI Bill that provides a significant increase level of benefits to servicemembers who served at least 90 days of aggregate military service after September 10th, 2001.

This new benefit also provides for the transferability of benefits to dependents. However, whereas the basic eligibility for the Post-9/11 GI Bill benefits consists of at least 90 days on active duty after September 10th, 2001, transferability eligibility is not open to many of those that would otherwise be eligible for Post-9/11 GI Bill benefits. For transferability, a member must have served at least 6 years on active duty and be currently on active duty as of August 1st, 2009.

As a general rule, and necessarily so, the servicemember must incur an extended commitment to serve an additional 4 years in order to transfer those benefits to their dependents. These are provisions that were included in the final piece of legislation for military retention purposes that puts some at a disadvantage.

The U.S. Department of Defense (DoD) has published its rules for transferability and has made some exceptions to the re-enlistment requirement to certain servicemembers who are near retirement and unable to fulfill the 4-year commitment.

Specifically, personnel that have approved retirements as of August 1, 2009, do not incur any further commitment in order to transfer their benefits.

While the option of transferability is a welcomed option for servicemembers who are eligible to re-enlist, it fails to provide this option to veterans who have honorably served at least a minimum of 20 years of honorable active-duty service to our country.

We have heard from many military personnel and veterans asking for a legislative change to correct laws to allow veterans who served after September 10th, 2001, and retired before July 31, 2009, to transfer their benefits to the eligible dependent. They argue that retirees are most likely in a better position to transfer their benefit, considering many of them have already received their college education, and their children are more likely to be college age.

Additionally, this bill would help ensure that transferability is granted to those service men and women who are otherwise eligible for Post-9/11 GI Bill benefits, eligibility for Post-9/11 GI Bill benefits and for transferability remains the same under this bill, simply with the expanded date range from those that have retired from the service after having served for 20 years or more.

Mr. Chairman, Members of the Committee, Subcommittee, I want to thank you for allowing me to testify. Our troops have earned this, and I would ask that you take this particular piece of legislation into consideration. More importantly, their families have sacrificed their way of life and their careers, and have also earned this transferability eligibility.

Thank you very much.

[The prepared statement of Congressman Rodriguez appears on p. 43.]

Mr. PERRIELLO. Thank you, Mr. Rodriguez for your advocacy. Mr. Carter you are now recognized.

STATEMENT OF HON. JOHN R. CARTER

Mr. CARTER. Thank you, Mr. Chairman, Members of the Committee, good afternoon.

First of all I want to thank you for your support you have already demonstrated for the military spouses by considering the Military Spouses Residency Relief Act last Congress and again today.

Since we last discussed this issue, I am pleased to acknowledge that with hard work and the support of Senators Burr and Feinstein this legislation was unanimously passed by the Senate as a stand alone bill. Your Subcommittee's action will help to ensure that these commonsense reforms become a reality. This small measure will provide invaluable relief for numerous military spouses who regularly uproot their entire lives to accommodate the needs of our Armed Forces.

As you are all aware, the Servicemembers Civil Relief Act provides basic civil relief to our men and women in the Armed Services in exchange for their voluntary service. These range from relief from adjudication while deployed in combat to maintaining a single State of domicile regardless of where their military orders might send them. This State of domicile provides an important stability for our soldiers, sailors, airmen, and Marines. Though their orders may send them to numerous States, they are able to simplify their State income tax requirements, maintain property titles, and con-

tinue to vote for the elected officials in their own home area or hometown.

Without SCRA protections, the servicemember would have to deal with all of those every time they move to a military installation located in a different State. But their spouses are currently not afforded these SCRA protections. They must still deal with those stresses while facing or being faced with challenges of moving, finding schools for the children, balancing unsupported relocation costs, and the loss of spouse earnings as they leave jobs to go to another location.

However, SCRA protection is already extended to the military spouses pertaining to other moving challenges such as entering into contracts for phone service, utilities, the ability to break leases, as well as protection from eviction if they fall behind on bills. This precedence clearly illustrates Congress' long understanding that spouses are a vital component of our military readiness and they deserve SCRA protection.

The military has changed since SCRA was first written. We no longer deal with a primarily unmarried force. It is no longer enough for us to provide just for the men and women who volunteered to protect us, we have to provide for the families. We have saying, "Recruit a soldier but retain the family," and you can't meet this because you can't have anything that is more accurate in today's military.

While our servicemembers receive this important civil relief, we do not offer the same protections to those that bear the same stress and responsibility as their members, the spouse.

Over the course of their spouse's career, they face multiple voter and vehicle registration changes, pay income tax to States they never intended to live in, and likely do not have their name on any property titles leading to a feeling that they are second class citizens.

This bill, which has drawn the strong support of over 170 bipartisan cosponsors, including more than half the Veterans' Affairs Committee Members, would amend SCRA to allow the military spouse to claim the State of domicile of the servicemember for the purposes of State income tax and property taxes, as well as voter registration. Spouses could elect to stand united with their spouse not only in support of our county, but sharing the same State as a home base.

This policy would prevent a military family from suddenly losing up to 10 percent of their income if they are called upon to relocate to a different State. This is a significant loss of income that occurs as a direct result of government orders.

H.R. 1182, supported by the Military Officers Association of America, the Air Force Sergeants Associations, AMVETS, Veterans of Foreign Wars of the United States (VFW), the Military Spouse Business Association, among other VSOs, will also provide the impetus for military spouses to put their names on deeds and titles, which would build and strengthen their own credit and further ensure legal protection.

Military spouses sacrifice their careers and endure numerous challenges to support the servicemembers who defend our country. They share the stress of deployments, relocations, and ever increas-

ing operational tempos with their servicemember. Shouldn't they be able to share the same State? We believe they deserve the choice to have a home base too.

Thank you for your time and consideration for this bill, and I will be glad to submit copies of those letters that I mentioned in support.

[The prepared statement of Congressman Carter, and referenced letters, appear on p. 44.]

Mr. PERRIELLO. Thank you very much, Mr. Carter, and for your advocacy for the whole military family, it is appreciated.

Mr. Miller, from the great State of North Carolina you are now recognized to speak on your legislation.

STATEMENT OF HON. BRAD MILLER

Mr. MILLER. Thank you, Mr. Perriello, from the great State of Virginia, and Mr. Boozman and Members of the Committee, thank you for this opportunity to testify today on H.R. 2696, the "Servicemembers' Rights Protection Act."

I also want to thank Representative Walter Jones for working with me on this issue. He has been a tireless advocate for our servicemembers and veterans, and I appreciate his efforts.

Congress has long recognized the need for legislation to protect servicemembers who face special burdens when trying to meet their financial and legal obligations while serving our country. Congress passed temporary legislation during the Civil War and again during World War I, and in 1940 Congress passed permanent legislation, the Soldiers and Sailors Civil Relief Act. In 2003, Congress updated that legislation and passed the Servicemembers Civil Relief Act, or SCRA.

The act temporarily suspends certain judicial and administrative proceedings and transactions that may harm a servicemembers legal rights during their active duty. The bill does not extinguish or diminish any rights anyone has against a servicemember, but legal proceedings are put on hold until a servicemember can have a fair chance to defend their rights in the legal proceedings.

The SCRA provides for penalties for violations, but it does not expressly state whether servicemembers have a private cause of action, whether they can bring a lawsuit on their own behalf for violation of the act.

Most courts have recognized the inherent right of servicemembers to bring suit for a violation of their rights under SCRA, but a couple recent court decisions have questioned whether the act does grant servicemembers a private cause of action. In *Batie v. Subway Real Estate Corp.* a servicemember alleged that the defendants had violated his rights when they evicted him from two commercial spaces while he was deployed in Afghanistan. In *Hurley v. Deutsche Bank Trust Company*, a servicemember sued the defendants after they foreclosed on him and evicted his family, sold his home, all while he was deployed in Iraq.

The initial ruling in both of those cases was that the servicemembers did not have a right to act on their own to vindicate their rights under the statute because there was not expressly such a right in the bill, in the legislation itself. The initial ruling in both cases were overturned on appeal, but only after the

servicemembers and their families had to go through prolonged legal uncertainty and considerable expense, and there remains uncertainty in other jurisdictions, other circuits around the country.

Congressman Jones and I introduced H.R. 2696, the "Servicemembers' Rights Protection Act," to end any question about a right of action for servicemembers. The legislation would authorize an Attorney General, the Attorney General to file civil action for violation of the SCRA, and allow the servicemember to join in that civil action brought by the Attorney General. But more important, the legislation provides that servicemember have their own private cause of action regardless of any action taken by the Attorney General.

There have been efforts in the past to strengthen enforcement provisions of the SCRA for specific kinds of contracts. Those efforts are worthwhile, but they are a piecemeal approach to strengthening the SCRA and leaves open the possibility that something, some contract, some proceeding will be left out, and a servicemember will be left without any legal recourse.

The SCRA is a comprehensive statute protecting the rights of servicemembers, the remedies under the statute should be comprehensive too. We need a comprehensive approach that will ensure enforcement provisions for all actions brought to enforce the SCRA. The "Servicemembers' Rights Protection Act" does that.

In February 2009, the American Bar Association (ABA) unanimously adopted resolution proposed by the ABA's Standing Committee on Legal Assistance for Military Personnel that recommended unambiguous authority for a private right of action, what this bill does. Further in his statement before the House and Senate Veterans' Affairs Committee on March 12th, 2009, Colonel Robert F. Norton, Deputy Director of Government Relations of MOAA, stated that MOAA recommends that the Committees amend the SCRA to clarify the private cause of action that a private right of action exists under the SCRA authorizing a servicemember or dependent to file suit.

The DoD has also vetted the language in this legislation.

Our servicemembers should be given the right, the opportunity to devote their entire energies to the defense of the Nation when they are deployed. They should not have to worry about whether their homes are being foreclosed, their rights are being prejudiced, their families are being evicted because they are deployed in the service to our country. A right that cannot be enforced is no right at all. A right without a remedy is no right at all. The SCRA should have real teeth or it is meaningless.

Denying individuals a private right of action to enforce their rights under the SCRA threatens the readiness of our armed forces and is fundamentally unfair.

Thank you again for allowing me the chance to testify on this bill.

[The prepared statement of Congressman Miller appears on p. 47.]

Mr. PERRIELLO. Thank you, Mr. Miller and Mr. Jones for your advocacy on this. Mr. Loeb sack, you are now recognized.

STATEMENT OF HON. DAVID LOEBSACK

Mr. LOEBSACK. Thank you, Chairman Perriello and Ranking Member Boozman, Members of the Committee, thank you for inviting me to testify before this Subcommittee, and in particular on H.R. 3554, the "National Guard Education Equality Act," which would amend the Post-9/11 GI Bill to first include title 32 service in the calculation of benefits under the Post-9/11 Bill, and second provide a full 4-year college education to Members of the National Guard who are discharged with a service-connected disability.

The landmark Post-9/11 Veterans Educational Assistance Act not only expresses our Nation's gratitude to our men and women in uniform, it will also help to make this generation of veterans part of our country's economic recovery.

As a former college professor, I know firsthand the impact a college education can have on both individuals and families. It opens doors and it broadens opportunities and it is critical to the strength of our military, as well as the future of our economy.

As the representative of Iowa's Second Congressional District and a Member of the House Armed Services Committee, I have had the distinct honor to meet many members of the Iowa National Guard. I have seen them respond to the devastating floods that inundated my district in 2008, and I visited with them in Iraq and Afghanistan. The dual role of the National Guard in both our homeland and national security is unique among our Armed Forces, and it has only increased since the 9/11 attacks.

The National Guard is no longer a strategic reserve, it is an operational one. These soldiers and airmen secure our air space, respond to disasters, and deploy overseas in support of our efforts in Iraq and Afghanistan, yet the Post-9/11 GI Bill did not recognize the dual role of the National Guard. It counts only their national security service, that is their title 10 service overseas in Iraq, Afghanistan, and other strategic locations. It overlooked the role the National Guard plays in federally-funded homeland security missions under title 32, including airport security missions directly after the 9/11 attacks, protection of U.S. air space as part of Air Sovereignty Alert, disaster response in instances such as Hurricane Katrina, and border security as part of Operation Jump Start.

By not including title 32 the Post-9/11 GI Bill, also overlooked the active Guard and Reserve (AGR). AGRs provide the full-time support that is necessary to keep our National Guard ready to respond to missions at home and abroad. Yet while their counterparts in the Reserve accrue eligibility for the Post-9/11 GI Bill through their AGR service, National Guard AGRs serving under title 32 do not.

To put it simply, federally-funded essential homeland security missions are performed by our National Guard every day. Their service to our Nation should in fact be counted toward their Post-9/11 GI Bill benefits.

Furthermore, the Post-9/11 GI Bill made a commitment to recognize the service and sacrifice of those servicemembers who are discharged with a service-connected disability providing them with a full 4-year college education. However, under current law, only those servicemembers who are discharged under title 10 are eligible for this benefit.

Members of the National Guard with a service-connected disability are discharged under title 32 even if they sustain their injuries while serving under title 10. As a result, they do not currently receive the full slate of benefits that they deserve.

To address these inequities, I have introduced the “National Guard Education Equality Act,” H.R. 3554. This bill recognizes, as I have already mentioned, the service of our National Guard, soldiers, and airmen by counting homeland security missions in first the calculation of benefits under the Post-9/11 GI Bill and providing second a full 4-year college education to members of the National Guard who are discharged with a service-connected disability.

The “National Guard Education Equality Act” recognizes and honors the contribution of the National Guard to both our homeland and our National security. It ensures that the roughly 30,000 National Guard soldiers and airmen who are not currently receiving the full GI benefits they deserve are able to take advantage of the opportunities a college education provides.

I should mention that this bill has over 30 bipartisan cosponsors and has been endorsed by the Iraq and Afghanistan Veterans of America, the National Guard Association of the United States, the Enlisted Association of the National Guard of the United States, the Veterans of Foreign Wars, and the American Legion.

And Mr. Chair, I would like to ask that these letters of support from each of these organizations be included in the record as well.

I urge the Subcommittee’s support for H.R. 3554 and I thank you for allowing me to testify thank you. Thank you very much.

[The prepared statement of Congressman Loeb sack, and referenced letters, appear on p. 49.]

Mr. PERRIELLO. Thank you, and so ordered on submitting the letters.

Mr. Connolly, thank you for joining us, you are now recognized.

STATEMENT OF HON. GERALD E. CONNOLLY

Mr. CONNOLLY. Thank you, Mr. Chairman, and Members of the Subcommittee, and once again Ranking Member Boozman, good to see you again today, having testified before a different Committee where you were present the other day.

I want to thank you for inviting me to testify on what is called the “Helping Active Duty Deployed (HADD) Act of 2009,” H.R. 2874, which I introduced earlier this year with my fellow Virginians: Congressman Perriello and Congressman Nye.

As you know, deployment or change of station orders to leave one’s home, community, and family are exceptionally difficult and disruptive. During times like that, we as Members of Congress and our Nation as a whole should be doing everything we can to support our troops and their families. That is why I was shocked when I met with a group of veterans and was informed that servicemembers are being charged penalties when a deployment forces them to terminate contracts for things like cell phones, residential leases, and even college tuition.

I find it very difficult to understand why brave men and women putting their lives on the line, responding to the country’s call

would be charged an early termination fee when deployment, not choice, necessitates the cancellation of such contracts and leases.

Based on those conversations, I introduced the HADD Act to provide three additional protections consistent with those already provided by the Servicemembers Civil Relief Act.

First, to build upon action taken by the previous Congress allowing servicemembers to terminate an individual cell phone contract without penalty, my bill would compliment that by extending the same protection from early termination fees to family cell phone plans as well.

In addition, the HADD Act will provide consistent protections for troops who need to terminate residential and motor vehicle leases due to deployment or change of station.

The SCRA already permits the cancellation of motor vehicle leases and prohibits early termination, but it does permit cancellation of residential leases, and does not provide the same protection for early termination fees. Just as with automobile leases, servicemembers are not choosing to end these contracts before they are fulfilled, they are doing so because they have been ordered by the U.S. Government to deploy into combat or change stations and they should not face a penalty for obeying that call.

Working with Chairman Filner and Members of the Veterans' Affairs Committee staff, I was able to work with the House Armed Services Committee to amend the National Defense Authorization Act of 2009 to include these two provisions of the HADD Act, and I am hopeful the language will be retained in the conference report.

The final provision of the HADD Act would assist servicemembers in obtaining a refund for the unused tuition paid to an institution of higher education should they have to deploy or relocate in the middle of a semester. Just as the Post-9/11 GI Bill preserves the educational opportunities for our returning veterans, this provision of the HADD Act would have preserved the opportunities of those being called into service.

Mr. Chairman, these are protections that have been identified by our veterans to make their transition into combat or a new station that much easier. These are simple requests for us to fulfill given the tremendous sacrifice we ask of them.

The HADD Act has the endorsement of the Iraq and Afghanistan Veterans of America, which worked with me to draft this legislation, and I am pleased to say with CTIA, the Wireless Association, which has endorsed the legislation through correspondence to myself and the Members of the Subcommittee. They would like some modifications to some of the provisions. I am happy to pledge to work with them and Members of this Subcommittee to do just that.

And I thank the Members of the Subcommittee for inviting me here today to testify on this important endeavor.

[The prepared statement of Congressman Connolly, and referenced information from IAVA, appear on p. 53.]

Mr. PERRIELLO. Thank you, Mr. Connolly. With that we will recognize Members of the Subcommittee for 5 minutes of opening remarks, starting with Mr. Adler.

OPENING STATEMENT OF JOHN H. ADLER

Mr. ADLER. Mr. Chairman I thank you, and I thank the Ranking Member Mr. Boozman and the Members of the Subcommittee. Thank you all for the opportunity to speak in support of my bill, H.R. 2416, the "Success After Service Act."

We are currently experiencing the worst economic climate since the Great Depression. The Nation's unemployment rate has reached or exceeded 9.7 percent, the highest it has been in 23 years. The number of unemployed Iraq and Afghanistan veterans is now at least at 11.3 percent, which is almost the same as the number of servicemembers currently deployed abroad. And it is even worse in terms of unemployment in my State of New Jersey, where the unemployment rate among Iraq and Afghanistan veterans is at 14 percent. Our heroes certainly deserve better. They deserve our help, not just our gratitude.

Many servicemembers are returning home to this tough economic climate in search of career opportunities that can support themselves and their families. Some will search for work among existing jobs, while others will attempt to forge their way by starting a small business of their own.

I think we all know that small businesses are the backbone of our economy and they have an important role to play in our country's economic future. We should incent servicemembers to live the American dream by pursuing their entrepreneurial spirit and starting the small businesses, which will aid in our broad economic recovery.

I have introduced H.R. 2416, the "Success After Service Act," to increase the opportunities that are available to veteran-owned small businesses and service-disabled veteran-owned small businesses (SDVOBs) in obtaining contracts and subcontracts from the Department of Veterans Affairs.

H.R. 2416 seeks to empower veteran small business owners by setting aside a set percentage of VA contracts in the Federal supply schedule for all qualified veteran-owned businesses. These set asides are the types of incentives, which will positively influence the marketplace by encouraging servicemembers to start new businesses to deliver services needed to meet the VA's goals.

We must ensure that our veterans, who so selflessly served our country, are given the opportunity to succeed after their service.

H.R. 2416 will not only serve as a token of appreciation to these brave men and women from a grateful Nation, but also as a tool to empower these veteran entrepreneurs to re-ignite our economy once again.

This measure has strong bipartisan support. It reflects the will of the Congress, Members of Congress who want to work together without regard to party labels to help our heroes.

Mr. Chairman, Ranking Member Boozman, I once again thank you for your time and consideration.

[The prepared statement of Congressman Adler appears on p. 42.]

Mr. PERRIELLO. Thank you, Mr. Adler. Mr. Teague.

OPENING STATEMENT OF HON. HARRY TEAGUE

Mr. TEAGUE. Yes, Chairman Perriello and Ranking Member Boozman and fellow Subcommittee Members, thank you for allowing me to have this opportunity today to speak on behalf of H.R. 3561. I believe that this bill does exactly what this Subcommittee is supposed to be doing, creating economic opportunity for our veterans.

H.R. 3561 increases the flight training education assistance allowance for tuition and fees from 60 percent to 75 percent. Recently, program costs for this training have risen, but the benefit has not risen to keep up with the increased cost.

In my home State of New Mexico, the flight schools that offer this program tell me that a student can expect to pay anywhere from \$60,000 to \$90,000. So in a State where the median family income in my State is \$48,798, it is becoming more difficult for veterans to utilize this program and get a good job as a result.

By increasing funding for this program by 15 percent, we can open doors for veterans who need help and assistance and deserve it after serving our country.

I believe that this bill is a commonsense solution to a problem that we are facing, and I hope that I can garner support from my colleagues and pass this legislation into law.

I would like to take this time to thank the staff members of the Economic Opportunity Subcommittee who lent their expertise during the drafting of this bill, and I thank Congresswoman Herseth Sandlin and Ranking Member Boozman for the opportunity to advance this bill.

This concludes my testimony and I am happy to answer any questions you may have regarding H.R. 3561.

[The prepared statement of Congressman Teague appears on p. 43.]

Mr. PERRIELLO. Are there any additional questions or comments on the first panel? To the first panel, thank you very much for taking the time from your busy day.

Mr. BOOZMAN. Well, I would just like to say, Mr. Chairman, that I really do appreciate the Members bringing forward these bills, and I think it is just a great example that these individuals are really working hard to make the life of our servicemen and women a little bit easier, and we really do appreciate their hard work and their efforts in that regard.

Mr. PERRIELLO. Well thank you very much. I want to thank you as Ranking Member for being a great mentor and supporter for those of us who are new to the Committee to be able to translate what we are hearing from veterans in our community into functional legislation, and we really appreciated that support.

I want to thank all the Members who joined us on the first panel for their efforts and their commitment to our Nation's veterans. We look forward to working with you in the future.

We now invite panel two to the witness table.

Joining us on our second panel of witnesses is Ms. Lynn Schubert, President of the Surety and Fidelity Association of America (SFAA); Mr. Mark Walker, Assistant Director, Economic Commission, the American Legion; Mr. Justin Brown, Legislative Associate, Veterans of Foreign Wars of the United States; Mr. John Wil-

son, Associate National Legislative Director, Disabled American Veterans (DAV); Mr. Rick Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America (VVA); and Ms. Christina Roof, National Deputy Legislative Director of AMVETS.

In the interest of time and courtesy to all the panelists here today, we ask that you limit your testimony to 5 minutes, focusing on your comments and recommendations. Your entire written statement has been entered into the Committee record.

Ms. Schubert, you are now recognized for 5 minutes.

STATEMENTS OF LYNN M. SCHUBERT, PRESIDENT, SURETY AND FIDELITY ASSOCIATION OF AMERICA; MARK WALKER, DEPUTY DIRECTOR, NATIONAL ECONOMIC COMMISSION, AMERICAN LEGION; JUSTIN BROWN, LEGISLATIVE ASSOCIATE, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; JOHN L. WILSON, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; RICHARD F. WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA; AND CHRISTINA M. ROOF, NATIONAL DEPUTY LEGISLATIVE DIRECTOR, AMERICAN VETERANS (AMVETS)

STATEMENT OF LYNN M. SCHUBERT

Ms. SCHUBERT. Thank you, Mr. Chairman, Ranking Member Boozman, Members of the Subcommittee, thank you very much for having us here to testify on a matter that is critical to the surety industry, to the construction industry, and to small veteran-owned and controlled contractors.

SFAA is a statistical and advisory organization with more than 450 members who write collectively the vast majority of surety bonds that are issued in the United States both Federally and on State projects. We are here to provide our assessment of whether or not the surety bond provisions in H.R. 294 would achieve the objective of promoting small veteran-owned and controlled businesses and how to enhance the bonding of small veteran-owned and controlled contractors.

We support the intent of this bill and are committed to establishing this. In fact, one of our members just wrote a \$9 million bond for a veteran-owned business down in Florida just a few days ago.

The bill as drafted, however, will not achieve its intended purposes, and in fact would hurt the very businesses that it is designed to help.

To understand our concerns you must first understand just what performance and payment bonds actually are and why they are required by the Federal Government, all State governments, and most local governments for public construction.

A performance bond secures the performance of a contractor's obligation to complete the contract itself. A payment bond secures the contractor's obligation to actually pay the laborers, the subs, and the suppliers on that project. It is a three-party agreement. The contractor enters into a contract with the Federal Government

agency and the surety guarantees the performance of that contract. If the contractor defaults on the contract, the surety actually performs. The contractor then is liable to the surety for the amount paid on its behalf.

Although these bonds are written by insurance companies, the product is similar to a letter of credit or a guarantee that someone provides for a friend's loan that they might be taking out.

Therefore, in order to decide whether the surety is going to write the bond or not, they have to look at the entire business of the contractor, and whether they believe that contractor can perform the work. Because that is who they are going to be standing behind.

The Federal law requiring these bonds on Federal construction projects, the Miller Act, requires that the performance bond be in the amount of the contract price, and that the payment bond also be equal to the performance bond, the amount of the contract price. This bill, however, would prohibit the same level of taxpayer and worker protection to be required from small veteran-owned and controlled contractors. It would allow bonds of no more than 50 percent of the contract price, whether the business was acting as a prime or a subcontractor, and also would allow a prime contractor to furnish a bond on behalf of its sub.

There are fundamental problems with these proposals that are addressed in detail in our written testimony. In that testimony, we explain how surety bonds are underwritten and priced and the principles behind surety bonds.

We would welcome the chance to meet further with the Members of the Subcommittee and staff to discuss these principles, as well as some of our proposals regarding access to bonding for small veteran-owned and controlled contractors.

For today, however, let me merely highlight some of the facts.

First, reducing the bond size will not increase access to surety bonds nor reduce the price of these bonds.

Second, since the subcontractor's bond is to benefit the prime and not the government, a prime contractor is not going to provide a bond on behalf of its subcontractor. Federal law doesn't even require the subs to provide those bonds.

And third, and probably most importantly, reducing the bond size actually harms the small contractors that this is intended to help.

Prior to 1999, the payment bond posted under the Miller Act was in an amount less than 100 percent of the contract price. In fact, at a sliding scale that was capped at \$2.5 million, subcontractors were not adequately protected and many refused to work on Federal projects. They then approached Congress with their concerns and the Miller Act was amended to have the payment bond equal the performance bond. There is excellent testimony in the Congressional Record on these concerns.

The statutory bond requirements throughout our country were put in place to ensure that contractors working on projects funded with taxpayers' dollars are qualified to complete the work and pay their laborers and subs. And to ensure that if they do not complete that work and pay those subs that a surety steps into its place and does those things.

Sureties evaluate the contractors and provide the necessary bonds. However, not all contractors have ready access to the surety bond industry and not all are financially stable enough to perform the jobs they wish to undertake.

Our written testimony describes numerous types of programs that SFAA and the surety underwriters and producers have undertaken at the State, Federal, and local level to address access to surety bonds for small and emerging contractors. We have implemented the programs around the country and they are working. In some cases it has helped contractors get their first bond, in other cases to increase the size of bonding that they currently have.

We would be happy to work with the VA on a similar project for veteran-owned and controlled contractors.

Education and access are not enough. Suffice it to say that Federal construction projects are being let at sizes that are much too large for small contractors to perform, they are being bundled into projects that are much too large to be performed, and these things must be changed. We have a number of proposals in our written testimony to address those major fundamental concerns, and we would very much like to work with Veterans Affairs and the Subcommittee in implementing some of those procurement changes that need to be adopted, as well as some educational and access programs both through the Small Business Administration (SBA), the U.S. Department of Commerce, and the VA, and put them all together into one coordinated effort, which was proposed by a bill passed in February of 2008, H.R. 4253, that would coordinate all of these small business programs.

Thank you for your time today, and we will be happy to meet with you or answer any questions.

[The prepared statement of Ms. Schubert appears on p. 55.]

Mr. PERRIELLO. Thank you, Ms. Schubert.

Mr. Walker welcome back to the Subcommittee, you are now recognized for 5 minutes.

STATEMENT OF MARK WALKER

Mr. WALKER. Thank you, Mr. Chairman, Ranking Member Boozman, and Members of the Subcommittee, thank you for this opportunity to present the American Legion's views on the several pieces of legislation being considered by the Subcommittee today. The American Legion commends the Subcommittee for holding a hearing to discuss these very important and timely issues.

I would like to say that the American Legion supports H.R. 1169, H.R. 1182, H.R. 2416, H.R. 2614, H.R. 2696, H.R. 2874, H.R. 2928, H.R. 3223, H.R. 3554, H.R. 3561, and H.R. 3579.

The American Legion believes the increase in grant money for specially adapted housing and automobiles will provide severely injured veterans with a specific quality of life that they are entitled to.

The American Legion believes enacting the legislation that deals with VA business practices will provide capable veteran services, disabled veteran businesses the maximum practicable opportunities to compete and receive contracts from the VA.

The American Legion supports the amendments to the Servicemembers Civil Relief Act that will protect military spouses

from income tax liability, give these spouses the ability to vote by absentee ballot in his or her legal residence, as well as clarify the servicemembers' right to bring personal cause of action for damages against violators of SCRA.

The American Legion also supports veterans having apprenticeship and on-the-job training programs added to the Post-9/11 GI Bill. We also believe this new education benefit should be expanded to include title 32, active Guard and Reserve.

The American legion supports the increase in funding for flight training, and believes the Veteran Advisory Committee on Education should be reauthorized so this independent body can continue to analyze and develop intelligent practical solutions to difficult issues and to present the solution to VA senior leadership and Congressional Members and other stake holders.

Last, the American Legion supports the proposed increase in reporting fees payable to schools that veterans are receiving educational assistance from the VA. The increased funding could assist with more staffing, provide better equipment, or allow school's certified officials to attend training or other workshops.

The American legion has no official positions on H.R. 294, H.R. 2461, and H.R. 3577 at this time.

The American Legion appreciates the opportunity to present this statement for the record. Again, thank you Mr. Chairman, Ranking Member Boozman, and Members of the Subcommittee for allowing the American Legion to present its views on these very important issues today.

[The prepared statement of Mr. Walker appears on p. 60.]

Mr. PERRIELLO. Thank you very much.

Mr. Brown, you are now recognized for 5 minutes.

STATEMENT OF JUSTIN BROWN

Mr. BROWN. Thank you, Chairman. Chairman, Ranking Member Boozman, Representative Bilirakis, on behalf of the 2.2 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, I would like to thank this Committee for the opportunity to testify. The issues under consideration today are of great importance to our members and the entire veteran population.

The economic downturn has impacted the entire Nation, and nowhere is it more demoralizing than with our recently separated veterans. The most recent monthly survey from the Bureau of Labor Statistics highlighted the dire situation facing America's newest veterans. There are only 9,000 fewer unemployed Post-9/11 veterans in the United States than there are servicemembers in Iraq and Afghanistan. That's 185,000 unemployed veterans, compared to 194,000 Operation Enduring Freedom and Operation Iraqi Freedom servicemembers.

The economic stimulus may or may not be working, but it surely is not working for America's veterans.

In March of this year, the Veterans of Foreign Wars testified before this body that the economic stimulus was largely circumventing this at-risk population. We worked with the Senate prior to passage of the economic stimulus in an attempt to pass legislation that would help America help veterans in the economic stim-

ulus and through these tough times. However, these changes never occurred.

In consideration of this, and the startling unemployment numbers for Post-9/11 veterans, the VFW requests that any and all Federal stimulus money be subjected to the same requirements it currently is as if it were directly spent by the Federal Government.

Federal laws relating to veterans preference and contracting are being circumvented by distributing large sums of Federal money in the form of State grants.

The VFW believes expansion of any government workforce as a result of stimulus funds should be bound, as a condition for use of Federal dollars, to adhere to all veterans' unemployment laws; specifically the Veterans Employment Opportunity Act and any government contracts awarded due to Federal stimulus funding should be bound to set aside 3 percent of all such contracts and sub-contracts for disabled veteran-owned small businesses as required by Public Law 106-50. Any company that receives a contract of more than \$100,000, and was funded in any part from the Federal stimulus, should also be bound by the Jobs for Veterans Act.

Our Nation's economic stimulus package should not be a mechanism for skirting Federal veterans' employment and small business laws. Less than one-half of the total stimulus dollars have been distributed and this needs to be corrected immediately.

We have submitted our views on the 14 bills in question. Mr. Chairman, this concludes my testimony, and I will be pleased to respond to any questions you or the Members of this Subcommittee may have. Thank you.

[The prepared statement of Mr. Brown appears on p. 63.]

Mr. PERRIELLO. Thank you. Mr. Wilson, you are now recognized for 5 minutes.

STATEMENT OF JOHN L. WILSON

Mr. JOHN WILSON. Thank you, Mr. Chairman and Members of the Committee. I am glad to be here this afternoon on behalf of the Disabled American Veterans to present our views. We are pleased to support various measures insofar as they fall within the scope of our mission. I would like to address these bills in my testimony today: H.R. 294, H.R. 1169, and H.R. 2461.

The first bill the "Veteran-Owned Small Business Promotion Act of 2009," H.R. 294, reinstates and modifies this program. While this bill would repeal the authority to make direct loans, it instead grants loan guarantees for qualified veterans. It would also address several other issues faced by veteran-owned small businesses, such as reducing the minimum disability rating eligibility from 30 percent to 10 percent, increasing the maximum loan guarantee from \$200,000 to \$500,000, authorizing VA to subsidize loans to reduce interest rates by up to one-half percent, limiting performance bond requirements for construction alteration or repair of any VA public building or public work, and other benefits.

Veterans, particularly those with service connected disabilities, have difficulty obtaining financial support. The Small Business Administration established the Patriot Express Loan Initiative to help veterans obtain business loans up to \$500,000 and to qualify for SBA's maximum loan guarantee of up to 85 percent of the loan

value of \$150,000 or less, and 75 percent for loans more than \$150,000. Unfortunately, lenders require collateral to secure the 15 percent to 25 percent of the loan not covered by the SBA guarantee.

It was the Independent Budget's recommendation that the VA establish a loan guarantee program similar to the VA's Home Loan Guarantee Program to provide recently discharged veteran entrepreneurs the security needed to establish a small business, even though they may be starting with little or no income or collateral.

While H.R. 294 would not authorize loans, it does provide VA-backed loan guarantees. Once bond issues are resolved, this worthy legislation will provide an important tool to help eligible veterans in these difficult economic times.

The second bill is H.R. 1169, which addresses both specially adapted housing and the purchase of automobiles and their adaptive equipment. It increases from \$12,000 to \$36,000, the maximum amount authorized the VA can provide for those veterans eligible for specially adapted housing features; from \$60,000 to \$180,000, the amount authorized for the construction of specially adapted housing; and from \$11,000 to \$33,000, the amount authorized for purchase of automobiles and adaptive automobile equipment.

The Specially Adapted Housing provisions of H.R. 1169 is in agreement with one of two provisions of DAV's Resolution No. 176, which seeks an increase in specially adapted housing grants, and we applaud the increase that this bill provides.

We would also ask for the Committee's consideration by amending this bill to also provide for automatic annual cost of living adjustments, the second provision of Resolution No. 176. Such an amendment would allow this program to keep pace with an expanding economy, eventually, and would be most beneficial to eligible veterans.

Regarding the sections of H.R. 1169 dealing with the purchase of automobiles and adaptive equipment, it is in agreement with the DAV's Resolution No. 171. The current grant of \$11,000 represents only 39 percent of the average cost of an automobile today. This bill, if enacted, would raise the maximum amount to \$33,000. The IB identified \$22,800 based on 2007 data as the amount needed to restore the automobile allowance to 80 percent of the average cost of a new automobile. DAV endorses this increased amount to a maximum of \$33,000.

The third bill is H.R. 2461, the "Veterans Small Business Verification Act." This bill stipulates that those requesting inclusion in the VA's database as veteran small business owners, are also granting permission for the VA to verify their eligibility as a result of that request. Such a database is critical to Federal agencies when they certify veteran status and ownership. We, therefore, support this bill.

We do, however, respectively request it be amended to also require Federal agencies to certify veteran status and ownership through the VA's Vendor Information Program before awarding contracts to companies claiming to be veteran or service-disabled veteran-owned small businesses. Government agencies need a one-stop access to identify such small businesses. This bill, if amended,

would not only provide the reliable database for just such usage, but also a one-stop access point for government agencies.

That concludes my statement, and I look forward to any questions you may have.

[The prepared statement of Mr. Wilson appears on p. 66.]

Mr. PERRIELLO. Thank you very much, Mr. Wilson.

Mr. Weidman, welcome back, you are now recognized.

STATEMENT OF RICHARD F. WEIDMAN

Mr. WEIDMAN. Thank you, Mr. Chairman. I would like to associate VVA with the remarks from our distinguished colleague from the VFW, because the use of the stimulus funds, it is much deeper even than described. It is not only a veteran-owned small business, the stimulus fund is basically freezing out small businesses across the board, and Federal procurement officers, contracting officers across the board are being instructed to go to the stimulus funds and disperse those first before going to dispersing of the regular fiscal year 2009 monies. And as you know, the stimulus package specifically precludes any special provision for small business.

So we have talked to the White House about it, we have talked to the National Economic Council about it, and we will continue to press on that front, and it would help greatly if in fact this Committee went on record as saying something needs to be done about all stimulus funds. Expenditures in the future must focus on small business and those amounts that are given to the States in great chunks should also be adjusted to 23 percent going to small business, and 3-percent minimum going to service-disabled veteran business owners. So I want to thank the VFW for their leadership in this area.

In regard to the specially adapted housing and specially adapted automobile grants, Mr. Boozman, I thank you for your leadership in proposing this legislation, and particularly I want to commend you that instead of a small increment, that you took a major chunk and raised it significantly to bring it up to date, so that in fact it is useful to those most profoundly disabled veterans who need these alleged indications of funds in order to lead a fairly normal life.

And similarly, Chairman Filner, in introducing the proposed legislation to increase the amount for reporting by institutions from \$11 to \$50 per will help significantly.

While we are on that, I hope that the Committee will some time this Congress, if not this session, look to the issue of establishing veterans offices. All that you have done and which is extraordinary in the last Congress and this with the Post-9/11 GI Bill is extraordinary in terms of helping people go to school limited only by their own drive and their own hard work as to which school they can get in to. But the key is not getting in school, the key is graduates from school and getting the degrees. And re-establishing the veterans offices as was done in the seventies, at that time was funded by the Department of Health, Education and Welfare, where there is tutoring, where there are places for people to gather, where there are lay counselors, if you will, or other students, upper classmen who will help them through. We know that the veteran clubs are making a huge difference where they are well organized,

but they are not well organized everywhere, and we need that kind of support in order to optimize the huge investment, and it is an investment not an expenditure, that we have made in the tuition in paying for the Post-9/11 GI Bill. So we thank you for you.

In regard to the “Veterans Small Business Verification Act.” Both VVA and the Veterans Entrepreneurship Task Force have consistently wanted the CVE or Center for Veterans Enterprise database to be the gold standard in the Federal Government. The reason why we have not pushed this in this Congress is we are having so many problems with the backlog on verification period there, number one, and number two is some things that were not spelled out in the legislation before were—seemed to make sense, although they don’t make any sense business wise, in terms of imposing requirements of the owner being on site. Those were addressed in the bill that has been introduced by Mr. Buyer, and we are grateful for that. You don’t have to be on site to be in control of the business today. That is certainly the case. And yes, you can be in full control of more than one business at a time.

So we commend Mr. Buyer for his “Veteran-Owned Business Promotion Act,” and would also support that with two reservations. One is we are not sure that the way in which the surety bonding market works will accommodate the 50 percent, that that is not the way to get to where we need to get to. And second, that both this legislation and any other, veterans’ preference in employment is not an affirmative action group, a motivation behind it. It is not to make up for social economics. And the same thing is true when it comes to business. It is a reward by the Nation for services rendered and sacrifices made. It is a wholly different philosophic basic, and we would object at any point to being treated as socially and economically disadvantaged, because that is not the philosophic basic for 106–50, nor for veterans’ preference in Federal hiring, nor for letting contracts, and we would urge that we instead develop a way where contract officers, particularly during the last quarter of the year when so many contracts are let, can reach and directly contract with service-disabled veterans on a par with any other group.

Mr. Chairman, I am over time, and I thank you for your indulgence, and be happy to answer any questions, sir.

[The prepared statement of Mr. Weidman appears on p. 69.]

Mr. PERRIELLO. Thank you very much. Ms. Roof, you are now recognized for 5 minutes.

STATEMENT OF CHRISTINA M. ROOF

Ms. ROOF. Thank you. Mr. Chairman, Ranking Member Boozman, and distinguished Members of the Subcommittee. On behalf of AMVETS, I would like to extend our gratitude for being given the opportunity to discuss and share with you our views and recommendations at today’s hearing.

The Committee has my full statement for the record addressing all pieces of legislation. So in the interest of time I will limit my statement to three bills.

On a side note, AMVETS applauds the efforts of the Subcommittee on their continued commitment to creating an environment of stability and evenhandedness within our veterans’ commu-

nity so that they may pursue and thrive in their business and educational endeavors.

AMVETS supports H.R. 1169. Just as section 2604 of the Housing and Economic Recovery Act of 2008 modestly increased the adaptive housing benefits for disabled veterans by \$2,000 in subsection (B) and 10,000 in paragraph 1, H.R. 1169 stands to dramatically improve upon those initial steps and improve the lives of thousands of veterans and their family.

While AMVETS applauds any increase to these benefits, we believe this bill genuinely sets forth the changes needed to bring these benefit amounts into the 21st Century and help align them to the actual costs of living today.

AMVETS strongly recommends the immediate implementation of these changes and that they shall apply with respect to payments made in accordance with section 2102 of title 38, as well as, being reflected in the Secretary's established residential home cost-of-construction index for the purposes of this subsection.

AMVETS also urges these benefit amounts to be regularly reviewed by this Committee to ensure that they stay current with the actual costs of living.

AMVETS also lends our support to H.R. 2461, introduced by Representatives Herseth Sandlin and Ranking Member Boozman. This bill sets forth the standards of business verification and transparency that has been needed. As AMVETS has urged in prior hearings, the integrity of VA's procurement process must be protected, and this bill stands to do that. This bill will also protect veteran-owned businesses from loss of awards due to possible untruths or unverified statuses in ownership.

AMVETS agrees with the timetables laid out by H.R. 2461, but has concerns on whether VA has an accurate and dependable system and enough trained staff in place to handle the initial heavy workload of verification and data processing.

As we have very recently seen with the rollout of the Post-9/11 GI Bill, backlogs are occurring. There needs to be a temporary plan of action in place and possibly temporary or maybe even reassigned trained staff to assist with the initial high volume verification process. As with the implementation of any new procedure, difficulties and errors can arise. However, AMVETS believes that VA can overcome any of these hurdles as long as there is an appropriate action plan in place.

Once again, AMVETS commends the Chairwoman and Ranking Member Boozman for leading the way in a call for transparency and accountability as it relates to Federal procurement.

Finally, AMVETS strongly supports H.R. 1182 introduced by Congressman Carter. AMVETS believes this bill is vital in supporting our servicemembers and their families well being. Currently, some SCRA protections are extended to military spouses regarding certain service contracts, housing agreements, and protection from eviction. However, AMVETS would respectfully like to remind the Committee that our servicemembers population has changed significantly since the SCRA was originally enacted.

It is in the opinion of AMVETS that for our legislative system to work correctly and to assist those for who it was written, it must be kept up to date. Just as many of the pieces of legislation dis-

cussed today will update current legislation to reflect changes in our servicemember and veteran population, the SCRA must mirror these changes as well. We most not forget that military families sacrifice parts of their lives, without complaint, so that their spouses may selflessly uphold the rights and freedoms that allow us to meet here today.

Finally, AMVETS urges the Committee to continue on their great endeavors of helping our veterans and military communities.

And that is my testimony for today. Thank you.

[The prepared statement of Ms. Roof appears on p. 70.]

Mr. PERRIELLO. Thank you very much, and thanks to all of you for your ongoing advocacy and for your time today.

Let me begin with Ms. Schubert. Just to clarify, it is your position that the amount of the bond is not going to affect the availability within the program? If so, does this mean that no matter how much the bond is lowered the business will still not be able to secure a bond in the situations you described?

Ms. SCHUBERT. The size of the bond is 100 percent of the contract price. It is not that you reduce the size of the bond as much the percentage. An evaluation of a surety in determining whether to write a bond or not is based on the entire contract and whether the contractor can perform that contract. So when the surety makes its initial determination whether to write it or not write it, it is based on the size of the contract, and it is not based on what percentage of the contract price the bond is.

Bonds are available, and what we would like to do is to continue to work to make sure that contractors can develop and grow and be able to obtain those bonds.

Mr. PERRIELLO. Along those lines, what is your opinion of the SBA Surety Bond Guarantee, which guarantees bonds for contracts up to \$5 million covering bid, performance, and payment bonds for companies unable to secure bonds through regular commercial channels?

Ms. SCHUBERT. The SBA Bond Guarantee Program provides a very valuable service. The use of the bond program has waxed and waned over the years based on attention to it within the administration and also the market, whether bonds are readily available in the marketplace or whether a government program is needed.

There are changes that are needed in the Bond Guarantee Program, but the current staff that has been working on that program for the last few years has made amazing strides, and we have been working very closely with them on that.

There are some significant fundamental changes that need to be made in the program. For example, there are currently two different programs that probably should be merged into one. The amount of the bond guarantee should be increased. The SBA and the stimulus package increased the guarantee for the loan program, but did not increase the size of the guarantee for the bond program, and they reduced the fees for the loan program, but they didn't reduce the fees for the bond program. Both of those things would make a considerable difference in assisting small businesses to get bonds through the guarantee program.

Mr. PERRIELLO. Thank you. For the various VSOs, I have a couple of questions. One, are there concerns in any of the bills, includ-

ing Mr. Miller's, that if it were to pass that some employees might be hesitant to hire servicemembers? Are there concerns about unintended consequences in terms of hiring members of the National Guard and Reserves?

Mr. BROWN. Thank you, which I remember. Could you just give me the bill number really quick?

Mr. PERRIELLO. H.R. 2696.

Mr. BROWN. We only have 14, so my apologies.

Mr. PERRIELLO. Understood.

Mr. WEIDMAN. If I may offer a general comment. That that is the biggest problem right now, is many employers, particularly large employers, what they are saying privately is we are going to take good care of the people we already have, but we are not going to go hire anymore. And we are hearing that from the military job boards and from the other people who are in the placement business of those who are active duty or continuing on in the Guard and Reserve rather. And you can make it illegal, but that is not the issue. Because you are never going to prove a negative, you know, about why somebody didn't hire someone, particularly when we have high unemployment.

So we need to flip this on the head, if I may suggest, Mr. Perriello, and we have proposed to the Small Business Committees on both sides of the Hill that they move toward doing employer incentives for having Guard and Reservists. That would include monies to train a replacement for the period of time that the individual was deployed, and to retrain the individual when they return, and you can do it through tax breaks. We give tax breaks for all kinds of other things, and this is one of the things that we need to reward.

There are about 10 percent of the Nation's employers who are bearing 100 percent of the burden of this war for the portion carried by the National Guard and Reserve, and we need to equalize that burden among all employers, sir.

Mr. BROWN. And Mr. Chairman, just to follow up. I would agree with most of Rick's sentiments. I think on the front end incentives always help in consideration of hiring veterans. There is a tax break for very recently separated servicemembers. I think that could either be extended or increased.

But I think overall most of the individuals we are talking about in regard to SCRA are already employed. I think employees already know about the Uniformed Services Employment and Reemployment Rights Act, so if they are hesitant to hire people due to current laws in place, they probably already are. I don't think that passage of this legislation would necessarily greatly increase or lessen that risk. Thank you.

Mr. PERRIELLO. Also to any of the VSOs, under H.R. 3223, Mr. Buyer's proposal, how many businesses should a veteran be allowed to have before being disqualified for business set asides, if any, and is that a concern?

Mr. WEIDMAN. It is actually not a concern to us. Let me just take an example. We have the current chair of the GSA Advisory Committee on Veterans Small Business who also sits on the overall—John Moliere. John has three businesses. And CVE refused to verify two of those businesses. And one of them is he divided his

Federal business into that which is essentially clerical and that which is highly skilled and does basically black contracts. And so there is a reason why he divided both. Does he run both companies? Absolutely, which he is known about being a control freak. I know he is in charge of both of those. And he has a third company that deals with business to business as opposed to business to Fed. There is a good reason why the overall enterprise is organized the way in which it is. And I can assure you that John is very much in control of all three elements of it.

So the judgment that you can't control X number of businesses I think, I just find it fallacious and flies in the face of entrepreneurship in general, and flies in the face of modern practices in management where you don't have to be on site at any given time.

Our National President of Vietnam Veterans of America really is our Chief Executive Officer, but he lives in New York City. I can assure you that he is very much in control of the entity.

Mr. PERRIELLO. Should there be any distinction at all between those that have been verified in terms of that role and those that have applied but not been verified in terms of the veteran-owned status?

Mr. WEIDMAN. Not until they eliminate the backlog. We have talked to the Secretary about this, we have talked to John Gingrich, the Chief of Staff at VA, they have yet, unfortunately they are naming a new head of Office of Small and Disadvantaged Business Utilization (OSDBU), and that process is taking much longer than it takes, unfortunately. And they have reorganized that office with the departure of the previous incumbent, Scott Denison, who rendered great service and essentially did three jobs, and they broke the job into three so that there will be a head of the Center for Veterans Enterprise and then there will be a head of OSDBU and then a person to head up both divisions. So those people have yet to be named. And apparently they are waiting to make some of the changes until then. That is one.

Two, is just last week they started—a contractor finally started work to assist them with the verification process. But until such time as they can eliminate that backlog on the verification of veteran-owned service disabled veteran-owned and ownership in control we think it would be unfair, and it already is having a discriminatory effect about those who are stuck in the queue versus those who already have the little medallion. And at VA, they know that people are stuck in the backlog.

The rest of the Federal Government, many people now are already contract officers are looking as to whether people are verified are not, and if you are not verified, they are passing over those folks. So we need to get this problem solved. And like I say, we brought it to the attention of Secretary Shinseki and his people repeatedly. They say they are doing their things and we will see in the next 30 days whether they can really knock this backlog down and eliminate it, sir.

Mr. PERRIELLO. One last question before I recognize the Ranking Member. Looking at H.R. 2416 for a moment, with the issue about VA's purchasing of goods and services through the Federal supply schedule. Are there any concerns that this could restrict the VA's

acquisition choices? I am referring to H.R. 2416. Perhaps Mr. Walker, could you address?

Mr. WALKER. I couldn't comment on that as of now. But the reason that we are supporting the bill is we want to give the maximum opportunity for veteran service—disabled veteran businesses to compete and receive these contracts. We think there is a lot of money being left on the table and we just want to make sure that—although now we do applaud the VA has reached their goals and exceeded in some ways, so the VA is doing a good job, but we want to continue and not make the sort of 3-percent goal, or the goals that they said some sort of ceiling, but that they continue to say if the veterans business owners are out there that can compete and have the capacity, every one of them should be recognized to compete and receive these contracts.

Mr. WEIDMAN. If I may kick in on that. The problem with the Federal supply schedule, as you know at the VA any way, the General Services Administration delegates authority to the VA to administer their supply schedules. We believe that if you delegate it that you have to adhere to GSA laws, and in fact, VA is invoking generally what they call value added, which is very subjective, and/or what is known in some States as a manufacturer's rule. In other words, if you don't manufacture something then you can't be the one. What this does is this knocks most small business, not just veteran-owned small business, out of getting on the VA supply schedules.

Small business does not make very expensive medical equipment. Many of the manufacturers of very expensive medical equipment don't even have a marketing for us anymore, they work only through brokers.

So the subjective judgment by the folks at VA, and it is very subjective, I can assure you, as to what is value added and, therefore, to let those people onto that supply schedule at VA is just wrong. VA should be adhering to the GSA law, and if they don't adhere to it, we have told GSA you should revoke it because these people are breaking the law.

So the problem is not that people—the problem is getting service-disabled veterans, small business, and other small businesses on the supply schedules at the VA.

Insofar as the bill, the limited thing about setting aside 3 percent, we don't object to that, but what we do object to is the difficulty that is much more different at VA than elsewhere to get our people onto the supply schedule itself.

Mr. PERRIELLO. Thank you. Let me recognize the Ranking Member Mr. BOOZMAN.

Mr. BOOZMAN. Thank you, Mr. Chairman. I appreciate you all in the sense that so many veteran-owned businesses are small business. In fact, I have said the vast majority, and you all would know the percentage better than I, although I should know it very well, but you are right, the things that affect small business affect veteran-owned business. Because if they don't have the opportunity then you just can't do it. So I really do appreciate that. And I don't say that in a partisan way at all. I think that my colleagues on both sides would agree with that very much. Any way that you can

help with us pushing as far as stimulus money or any money to make things easier really is very, very important.

Small business is the backbone of our economy. And as you guys know, it is very tough in the real world right now. It is just very, very difficult, and so our small businesses really are hurting at this time.

Let me ask you, Mr. Weidman, about this bond situation, the ability of the prime contractor purchasing the performance bond on behalf of their subcontractors. Can you help me better understand that, your perspective as to whether or not that is a good thing or a bad thing?

Mr. WEIDMAN. The really sticky wicket for a lot of veteran-owned construction funds is they partner with larger individuals who have the organizational capacity. However, if their partner, which has 49 percent of the enterprise itself is the one who can get the bonding, then they can't be considered as Disabled Veteran-Owned Business for the purpose of the joint enterprise. Am I making sense?

Mr. BOOZMAN. Yes.

Mr. WEIDMAN. So that they have the organizational capacity, they have the expertise in order to get the job done, but they can't get the bonding because they don't have the wherewithal, or even though they may have a successful track record at smaller jobs. So it becomes a conundrum, if you will, about how do you get the bonding because otherwise you can't bid? And if you partner with somebody who can get the bonding, but they are the ones who have to provide all the bonding, then you are getting knocked out of being a Service-Disabled Veteran-Owned Business and, therefore, aren't eligible to compete under the set-aside.

So we need to figure out a number of things it seems to me. One is for all small business bidding on major Federal construction projects is mostly handled by the dams. Dams is a better example. It is almost all Canadian firms now. You know why? Because American firms can't get the surety bond, and the Canadian Government gives the surety bond for those things happening. So it is Americans doing the subs, but the Canadians are the primes on dams in America. I mean it is crazy.

We have got to figure out a better way to make this work and where there is need for a government surety bond we can do it, one.

Two, is at the VA we have seen them waive surety bonds for so-called jay water ability one contractors. If they can do it for them there is no reason why they shouldn't be able to do it in some cases for service-disabled veteran business owners.

Mr. BOOZMAN. So Ms. Schubert, this is the problem. Is there a commonsense simple way to fix that?

Ms. SCHUBERT. There absolutely is. As he was saying originally, the major concern is that the small contractor gets no-certified as a small contractor by being in a joint venture with the larger contractor providing the bond. There is a very easy solution to that, which is you should allow the larger contractor in the joint venture to be able to provide the access to the bond. Their surety writes the bond for the entire joint venture, which does two things, as long as you don't then say that the joint venture no is longer entitled

to the small business set-aside. One, you get the project, and two, the small contractor then develops a relationship with that surety who begins to understand their capabilities because they are with them throughout that project and they move into being able to get the bonds on their own through that surety or through another surety.

The Bond Guarantee Program is a good example of how the government should be involved in surety bonds, not necessarily providing a direct bond.

So on this particular bill, if we could amend the language so that we don't have prime contractor and subcontractor, but instead we address the issue of joint ventures it would go a long way to solving this problem.

Mr. BOOZMAN. Good. Hopefully we can work on that. And again that is encouraging.

So let me put you guys on the spot just a little bit. We have a lot of bills that are very worthwhile, many of them involve PAYGO. I want to hear from all of you if you would comment. If we do have a limited amount of money to offsetting things, what would be your order of preference? I mean, are there some bills that are more important than others? I get put on the spot all the time, so it is okay for you guys.

Mr. WEIDMAN. Well some of the bills don't have a major cause. Like the spouses bill.

Mr. BOOZMAN. Exactly.

Mr. WEIDMAN. We should do that just because—as was said, I spent a lot of time at Walter Reed in Bethesda with the young people, and it is the individual soldier or Marine who gets hit, but it is the whole family that has to recover. And the families do pay an enormous price. And anything we can do in the bills currently pending before this Subcommittee aren't costers.

In terms of priority, it always has to be for those who are the most disabled, and so the adaptability grants have to come first. And second, those things cost money. The big one here is of course the putting \$1 billion into business loans. The question is whether or not that is an investment or is that an expenditure? Now, I know that the CBO, the Congressional Budget Office, doesn't care and they don't distinguish between it, but I think that the use of the GI Bill is a good example. It is good investment to invest in veteran-owned small business.

Perhaps one way to leap the cost of that dilemma is to do a guarantee revolving fund. And I would be glad to work with the Committee on that. That wouldn't be dissimilar to a bill that was sponsored almost a decade ago for multiple-family transitional housing. And essentially what it did is provide an overall guarantee that then would attract—make it probably to attract private capital. And it seems to me that that might be something that would be more useful.

But the crux of the issue is for veteran-owned and particularly for service-disabled veteran-owned, securing capital is a son of a gun. And when your lender finds out that they can't garnish your compensation, this is particularly for 100 percenters, a lot of them just don't want anything to do with you, particularly traditional banks. And so it is very difficult to get initial funding, and even

more difficult to get the all essential what is known as mezzanine funding. In other words, you have got it up and running and you need to take the next steps in terms of expanding in order to be able to sustain the business, and this is tough for all small business, but it is particularly tough to service disabled is to get the funding to take the next step so you can make the business sustainable over a multi-year period.

Mr. BOOZMAN. Mr. Brown.

Mr. BROWN. Thank you for the question, Ranking Member Boozman. Some of these aren't going to cost a lot of money. We have SCRA fixes. We should be able to get those done.

The big one on the table that I see that is going to cost some money would be H.R. 3577, and that is the fix for the title 32 Guard and Reservists. These guys, many of them already should have been eligible. We have our men and women who have fought overseas and are not eligible for the GI Bill. I think that is a gimmick.

But you know, also getting some of the stimulus money to small businesses, especially veterans. Veterans hire veterans. And you know, as far as economic fixes, that is really where I think we should be looking is the stimulus and regulating Public Law 10-650. It has been 10 years since we passed Public Law 10-650 and we are still not even half way there. We are not even at 1.5 percent. And so I think those are the things that really could help unemployment for America's veterans. Thank you.

Mr. BOOZMAN. Very good. Mr. Walker?

Mr. WALKER. I would say title 32 is our main priority for the Legion as well, along with the adaptability for housing. And I think also that we, although it is a small change, but the increase for reporting fees for the school certifying officials. We think they are overloaded and they need some assistance, and we think that would be well worth a few funds that would go there.

Mr. BOOZMAN. Very good.

Mr. JOHN WILSON. And I would be pleased to respond on the record to that question, sir.

[Mr. Wilson subsequently provided the following information:]

My review of the legislation and preference ranking focuses on those bills that I supported in my testimony, which fall within the scope of the DAV missions as they relate to the needs of service-connected disabled veterans.

Order of Preference

1. H.R. 1169, addresses specially adapted housing and purchase of automobiles and their adaptive equipment

2. H.R. 294, Veteran-Owned Small Business Promotion Act of 2009

I naturally defer questions regarding PAYGO to the due consideration of Congress.

Mr. BOOZMAN. Sure.

Ms. ROOF. Which bill numbers were yours again? I am kidding. Just real quick. I think I agree with Justin and Rick. Some of those are going to be really not that difficult to get through and not cost a lot of money, but I don't think it is fair necessarily to put one class over another one.

But some bills that do stand out to us are again H.R. 1182, the military spouses residency. That should be pretty easy in the long run to get done. Also H.R. 1169. That is so past due. Bring rates

up to where they should be to help these men and women who come home and need to be able to sustain a good quality of life.

Mr. WEIDMAN. Those eligible under chapter 32 should have been included in the original GI Bill, and to some degree there was recognition of that in a phrase that was coined by Bob Norton, "Same hostile fire, same benefits." But the same is true, the decision about whether or not you say in the States in the Contiguous United States, and that is where you are most needed or you go into the combat theater is usually not the servicemembers choice. And in many cases they would rather go deploy because their unit is going, but operations require that their particular skills are most useful to the war effort some place else that is not in the combat theater of operation, and they shouldn't be penalized for that. Same service, same benefits.

We need to rectify it. If we have got to wait for an emergency appropriation, an emergency supplement in order to establish that next February then so be it, but it needs to be made equal across the board. Because even counting the Guard and Reserve, it is 1 in 100 Americans who are wearing the uniform today and we need to recognize that service and sacrifice.

Mr. BOOZMAN. Good. Thank you, Mr. Chairman.

Mr. PERRIELLO. Let me reclaim the time for a couple of questions. One for Ms. Roof and Mr. Brown.

On the issue about some of this work with small businesses. Should we be asking the SBA to provide better services or should we be looking to create sort of a mini SBA within a VA system?

Ms. ROOF. I am going to have quite an extensive answer for that, so I would like to submit that to you in writing for the record.

[Ms. Roof subsequently provided the following information:]

I believe we should be asking not only SBA, but OFCCP, DOL, and all agencies involved with veteran entrepreneurship to provide better services to our veteran community. These services should include, but not be limited to, outreach and education on available resources, better loan programs, new business and entity formation education, and more staffing to meet the increasing number of veterans entering into self owned businesses. I think that placing all of the responsibility solely on SBA would be a misuse of available programs and staff already in place, but not being used correctly. I do not necessarily believe that an entire new agency is warranted, however I do believe that through agency partnering and proper delegation of responsibilities throughout the agencies all ready in place can be very beneficial in fully meeting the needs of our SDVOSB and VOSBs. The best way to develop a stronger program is not necessarily through more studies, but going back to basics by bringing together key figures and solid data from SBA, OFCCP, VA, DOL, OPM, and all other agencies tasked with providing services to SDVOSBs and VOSBs. I am suggesting these agencies regularly meet and quite basically pool and share all their ideas, successes and failures, and data to establish what is working, what areas are lacking, and what areas and activities are being duplicated. Duplication of efforts is often overlooked and is vital in establishing necessary metrics of any successful program. Weeding out duplication also allows for the allocation of misused funds to new or improvements to current initiatives. There seems to be an overwhelming, self proclaimed, lack of or nonexistent communication and exchange of the most basic data between agencies that are all suppose to be working toward a common cause. This does not seem reasonable, nor cost effective in meeting the needs of our veteran entrepreneurs and providing the best programs, outreach, and assistance that, at minimum, expected and outlined by law and Federal regulation. The resources and staff are not necessarily the most adequate in meeting the huge increase in the VOSB community since 1996, however I think it would be a vital mistake and misuse of appropriations not to thoroughly examine all programs currently in place and to use all the years of experience and data that is all ready out there. Establishing a solid centralization of many of these activities and responsibilities to better track accountability and transparency will, if done correctly, will im-

mensely benefit our veterans' business community. I believe they will see faster than normal results and start benefiting from a system based on accountability, transparency, and communication. I believe it is important to add, that this Committee be tasked with holding all parties involved accountable to timelines and results if the suggested partnering and/or shifting of responsibilities was to occur. I also believe that the Committee be permitted to take the necessary actions they find fitting if certain individuals or agencies do not openly and actively participate in the betterment of services we owe our SDVOSB and VOSB communities.

Mr. BROWN. Mr. Chairman, I think it is a very good question and one that has been tossed back and forth. Should a robust business program for veterans be in the VA or should it be in the SBA or should we ask the SBA to do more? I think to ask the SBA to do more without additional resources is going to be tough. Their funding is for veterans to my understanding is very low. After they essentially pay their overhead they don't have a lot for veterans' programs. And in fact, the House did pass a bill this year to dramatically increase that funding, but I don't think it has gone anywhere in the Senate.

So it is a good question. I think the answer is it needs to be one or the other, but either way it needs to be an expanded veterans business program for both training and then access to those contracts and enforcement of Public Law 10-650 and the other veteran small business laws that are out there. Thank you.

Mr. WEIDMAN. Vietnam Veterans of America has favored and we have it as one of our top four legislative priorities is creation of a fourth division of the VA that would be the economic opportunities administration. We need to get the GI Bill and vocational rehabilitation away from comp and pen and away from the give me mindset and focused on helping people become as independent as possible. We need to greatly expand CVE and find a way to include the loan fund or a version of the loan fund that was proposed by Mr. Buyer in legislation before this Subcommittee. And frankly, have much better relationship and expand the employment placement specialists that are associated with VA vocational rehabilitation. There are only 62 currently in the entire Nation. We need to have many more.

Last, but not least, in that regard is so that—the real point here is this, is that we only—everybody looks to the VA, people don't look to the SBA for any part of veteran services, one.

Two is there is no organizational capacity after the ravages of the last 20 years at SBA. They just don't have the staff, much less staff with expertise as a general rule at the service delivery point at the district office. What does exist in every Congressional district is at least one of the 1,000 small business development centers and some way of incentivizing the development centers to meet the special needs of veterans may be the way to do it.

Last, but not least, I just want to say it is not Bill Elmore. I mean he is not seven people to serve the entire veterans constituency including Admin. I mean, I don't care who you are, you can't do the Nation with seven people no matter how good you are to do that.

So the resources have not been there at SBA. They have more resources at VA. And each has a piece of that. I don't think you need to have either or ultimately. SBA is going to be what it is and we should increase the organization and the capacity, but we be-

lieve very strongly that we need an overall economic opportunities administration as part of the VA that has a robust center for veterans enterprise and it is closely coordinated with the small business develop centers, the PTACs, and other resources that are out there across the country to help veteran entrepreneurs get what they need when they need it in order to succeed at business.

Mr. PERRIELLO. Mr. Boozman, do you have any additional questions?

Mr. BOOZMAN. I don't think at this time. What we would like to do, we have got a couple things though that we probably will submit in writing if that is okay and see if you guys can help us out in that regard. Thank you.

Thanks very much for being here as always, the panel was very, very helpful.

Mr. PERRIELLO. Thank you, we will submit additional questions in writing. Thank you so much for testifying before the Subcommittee, your feedback on legislation before us today, and for your dedication to our Nation's veterans. Thank you very much.

We now invite panel three to the witness table.

Mr. BOOZMAN. We now invite the panel three witnesses to the table. Joining us on our third panel is Mr. Keith Wilson, Director of the Office of Education Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Mr. Wilson is accompanied by Mr. John Brizzi, Deputy Assistant General Counsel; Ms. Gail Wegner, Acting Director, Office of Small and Disadvantaged Business Utilization; and Mr. Ford Heard, Executive Director, Center for Acquisition Innovation Office of Acquisition and Logistics, U.S. Department of Veterans Affairs.

Your full written statements will be entered into the record as well.

Mr. Wilson, we welcome you back, and you are now recognized.

STATEMENT OF KEITH M. WILSON, DIRECTOR, OFFICE OF EDUCATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS; ACCOMPANIED BY F. JOHN BRIZZI, JR., DEPUTY ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND GAIL WEGNER, ACTING DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. KEITH WILSON. Chairman Perriello, Ranking Member Boozman, good afternoon. I am pleased to be here today to provide VA's views on pending legislation. I regret VA did not have sufficient time to formulate Departmental views on five measures, H.R. 1169, H.R. 3554, H.R. 3561, H.R. 3577, and H.R. 3579. However, we are pleased to provide written views as well as cost estimates for the record.

[The VA failed to provide the Departmental views for H.R. 1169, H.R. 3554, H.R. 3561, H.R. 3577, and H.R. 3579, appear in Post-Hearing Questions and Responses for the Record, which appears on p. 104.]

H.R. 2614, the Veterans Advisory Committee on Education Reauthorization Act of 2009, extends the current termination date of the

Veterans Advisory Committee on Education for 6 years, from December 31, 2009 to December 31, 2015.

VA supports this legislation; the Secretary looks forward to continuing to receive recommendations and advice from the Committee.

H.R. 2928 would amend the Post-9/11 GI Bill by adding a new section to provide benefits for apprenticeships and on-the-job training.

VA supports allowing individuals to qualify for the Post-9/11 GI Bill to receive benefits for OJT and apprenticeship training, subject to Congress identifying offsets for any additional costs. However, we do have reservations about this bill, as drafted, as outlined in my written testimony, and we would be pleased to work with the Subcommittee to formulate appropriate legislation.

H.R. 1182, H.R. 2874, and H.R. 2696 cover areas under the jurisdiction of the Department of Defense, Department of Justice, and the Department of Education. The VA defers to those agencies regarding the merits of those bills.

H.R. 294 would re-authorize the Small Business Loan Program for service-disabled veterans with disability ratings of at least 10 percent. VA supports reauthorization of the loan program in order to increase employment opportunity for veterans and to promote economic stabilization by encouraging the establishment and expansion of veteran-owned small businesses.

However, VA believes that a partnership with the Small Business Administration through an inner agency agreement would be a more preferable mechanism in order to gain the benefits of SBA's expertise in administering business loan programs.

Section 4 of the bill would align VA's contracting processes for veteran-owned small business with SBA's section 8(a) Program. VA is unclear of the intent of the provision. Under 38 U.S.C. 8127, veteran-owned small businesses already have priority over section 8(a) contractors. Veterans' achievements under 38 U.S.C. 8127 since its mid-2007 effective date demonstrate that the new program's sourcing priority is helping to ensure equitable consideration of veteran-owned small businesses in VA contracts.

VA is concerned that the proposed provision would create confusion and have unintended negative consequences on existing authorities. For those reasons, VA does not support H.R. 294.

H.R. 2416 would mandate VA use Federal supply schedules to meet the goals established by the Secretary under statute. We cannot support this bill since would be far too restrictive for VA acquisition operations and would remove any business discretion that VA contractor officers have to consider other acquisition vehicles such as competitive set asides, sole source awards, or full and open market competitions when appropriate.

H.R. 2461, the "Veterans Small Business Verification Act," would amend title 38 to clarify VA's responsibility to verify the veteran status of the owners of small businesses concerns listed in the VA database.

VA awarded a contract for VA Verification Program Advisory and Assistance Services and the contractor became fully operational in July 2009. The contractor will benchmark the existing verification process and recommend improvements.

In addition, the U.S. Government Accountability Office is completing its own review of the verification program. The cost to verify the 17,000 businesses in the database in the time frames contemplated would be approximately \$12 million annually.

For the foregoing reasons, VA does not support enactment of this bill. However, we would be pleased to work with the Subcommittee to formulate appropriate legislation.

H.R. 3223 would require a VA contracting officer to award a contract to a small business concern owner and controlled by veterans using other than competitive procedures in specified circumstances.

VA believes that the proposed language would be too restrictive and would remove necessary business judgment that would be made at the discretion of VA contracting officers to acquire goods and services by the best means available for an applicable acquisition.

Additionally, permitting part-time ownership, remote ownership, or ownership of multiple businesses by a single eligible party increases the likelihood that businesses controlled by ineligible parties may receive contract awards from the Department. For those reasons VA does not support the enactment of H.R. 3223.

Mr. Chairman, that includes my statement. I would be happy to answer questions you or other Members of the Subcommittee may have.

[The prepared statement of Mr. Wilson appears on p. 71.]

Mr. PERRIELLO. According to your testimony you are concerned about the on-the-job training bill, that it does not clarify how monthly rates should be established and that you recommend a basic amount to help determine a monthly benefit rate similar to how chapter 30 is determined. If the legislation would take this approach, would you have a recommendation?

Mr. KEITH WILSON. We would have a recommendation to tie it to the current rate, which is the existing chapter 30 rate.

Mr. PERRIELLO. If a monthly benefit rate similar to what is used for a chapter 33, can the VA use its current payment system in that?

Mr. KEITH WILSON. I would have to provide a written response for the record. We would need to look into the details of our IT technology.

[The VA subsequently provided the information in the Post-Hearing Questions and Responses for the Record, which appears on p. 104.]

Mr. PERRIELLO. Okay. You state that the VA does not have a current system to pay OJT and apprenticeship for chapter 33. What is the difference between the current OJT under chapter 30 and then the potential of this new one?

Mr. KEITH WILSON. The amount of dollar benefit that is paid out is the same; however, the mechanism in which we pay to calculate the benefit and pay the benefit is done separately in what we have put together in an interim solution for chapter 33 benefits, and that interim solution was based on paying schools, IHLs, largely individuals into granting programs.

Mr. PERRIELLO. On the small business side, in your written testimony you state that the proposed language under H.R. 3223 would change the wording in section 8127 from "may" to "shall." You say

that that change would be too restrictive. In your opinion does changing the current wording from “may” to “shall” benefit or hurt the veteran-owned small businesses?

Mr. KEITH WILSON. I would like to request Ms. Wegner respond to that question, please.

Ms. WEGNER. Thank you for your interest, sir. We believe that the acquisition community in the Department of Veterans Affairs has strongly shown their support for veteran-owned businesses, for that reason we would like for them to have the flexibility to choose whether to non-competitively negotiate with a veteran or service-disabled veteran-owned business as a permitted under 8127 or to compete the requirement.

Mr. PERRIELLO. Does the VA have personnel and expertise to set up a program as outlined in H.R. 294, the “Veteran-Owned Small Business Promotion Act?” This would be essentially the mini SBA idea.

Ms. WEGNER. We like the idea of a stronger partnership with the Small Business Administration. We in the Office of Small and Disadvantaged Business Utilization rely heavily upon the expertise of the small business development centers in assisting veterans in establishing more successful businesses. So anything that we can do to promote greater collaboration and communications with the SBA offices, especially those offices that promote government contracting requirements and manage the SBDCs, we would like to do that.

Mr. PERRIELLO. It is our understanding that VA only needed assistance in completing the business verification backlog and then VA would be able to handle the incoming applications with the people in place. Is that correct?

Ms. WEGNER. We do have a number of applications that are currently in process. We have made great strides in the past 60 days to gain additional resources that will enable us to process those applications more quickly. Does that answer your question, sir?

Mr. PERRIELLO. I think so. Well can you explain why it would cost \$12 million annually to process the 17,000 businesses in the database?

Ms. WEGNER. We do have an estimate of how those costs are derived and would be happy to provide that to you.

[The VA subsequently provided the information in the Post-Hearing Questions and Responses for the Record, which appears on p. 104.]

Mr. PERRIELLO. And related to that, did the VA hire a contractor to assist with the business verification backlog? And if so, when is that proposed to be finished?

Ms. WEGNER. To be finished? It is not going to be finished for a while, Mr. Chairman. Actually we have multiple contractors who are assisting us at this point in time. You have already received information about our advisory and assistance services contractor who is looking at the entire program as we have currently developed it, comparing it with other set aside programs at the Federal level and also in commercial sector to see if we can learn from best practices and apply those to our verification program.

In addition to the advisory and assistance services contractor we also have the services now of an on-site survey company that will

go out and do inspections of the applicant businesses, and we have most recently acquired additional supplemental labor to process applications. So we have got lots of contractors ready to go and tackle our inventory.

Mr. PERRIELLO. Let me just ask one last question. It has been stated that in the regular world people can have as many businesses as they would like. Is the set aside program an artificial world with set asides for specific groups not found in the regular world? Or in the regular world there is no competition restriction for contracts? How do we compare these worlds?

Ms. WEGNER. The set aside world as you have heard today has lots of rules on it, specifically with regard to who you can partner with and how you can partner with those other entities. We heard mention earlier of joint ventures and the restrictions that are placed upon a business owner seeking to establish a joint venture agreement. Currently if you partner with a large company that will disqualify you from being able to participate in a set aside requirement being issued by a Federal agency.

So that has created some conflicts and some loss of opportunity for some businesses, especially with regard to bonding. So there are artificial requirements in the set aside world that don't apply in full and open competition.

Another example of those restrictions concerns the limitations on subcontracting. In a full and open competition a business owner can win an award and subcontract as much as he or she wants to. In a set aside competition where a business owner wins that award they have to agree to perform X amount of labor with their own workers or with workers from a like company. That has been another major impediment. And the owners come to the small business development centers, and the advocates for small business and say, "Why are these extra rules placed upon us?" I don't know the answer to that question. All I know is that the Federal acquisition regulation is the guidance that the acquisition community follows and we need to conform to that.

Mr. PERRIELLO. Let me recognize Ranking Member Boozman.

Mr. BOOZMAN. I guess my question would be, Ms. Wegner, how many businesses have applied? I guess I would like to know how many have applied and then how many have we approved.

Ms. WEGNER. I can give you that answer. I didn't bring the answer of how many businesses applied only once. I can tell you with certainty that as of today we have received 4,772 applications. Of those applications that we received we have approved 1,726 as of today. We have excluded from consideration 500 applications because they came from business owners whose character of military service could not be identified in the Veteran Benefits Administration's database. That is about 10 percent of everybody that got approved.

Mr. BOOZMAN. Right.

Ms. WEGNER. And we have denied for consideration about, let us see, a little over 100 businesses have been denied, 122 to be exact.

Mr. BOOZMAN. Okay. So the other thing would be in the last year how many have we gotten approved? What I would like to know is, you know, if you look at this last year, your approval rate versus

who you project we are going to do in the next year with the increased staff.

Ms. WEGNER. Oh, sure. With the additional support that we now have and with our new ability to work from alternate work environments, which gets us out of our telephone coaching requirement in the CVE, we estimate that we are going to be able to raise our processed application weekly estimate from what we have historically done, which is 50 applications per week, to if we exercise all options with our contractor support, we will be able to go up to 1700 applications a month. So that is going to go from 50 to about 400 applications a week.

Now that is going to be a real challenge, and part of those challenges are, you know, administrative. Where are we going to put the people? Are we going to keep up with the administrative processes? But I am feeling, as some of you may be aware, we encountered some surprising challenges in the first year of this program. At this point in time we are feeling much better about the Department's ability to actually get the work done on time and properly.

Mr. BOOZMAN. Good, very good. Mr. Wilson, I support Mrs. Kirkpatrick's bill to extend the Advisory Committee. Are you happy with the current make up of the board? Do you feel like that that is appropriate? Do we need to make some changes in that regard? What is your recommendation?

Mr. KEITH WILSON. I believe we have a good make up in the board. We have got diverse representation. We have a high level of expertise in that area. And we don't have problems recruiting folks to dedicate their time to being on the Advisory Committee. So we are satisfied.

Mr. BOOZMAN. Let me ask. SFAA mentioned agreements with several Federal agencies to promote small businesses. If a similar venture was concluded between VA and SFAA, which VA office would be the appropriate office to manage such a program?

Mr. KEITH WILSON. I will ask Ms. Wegner to respond to that, please.

Ms. WEGNER. And Ms. Wegner has no answer for you, sir, but we will certainly get one after this meeting.

[The VA failed to provide the information for the record.]

Mr. BOOZMAN. Thank you very much. SFAA mentioned their willingness to work with VA to promote veteran-owned small businesses. Would the Department welcome such assistance, and who would be the point of contact at the Department? And that might be another—go ahead.

Ms. WEGNER. I will take that hat temporarily. In the history of the Small Business Program for veterans we have heard continually that bonding is a problem.

Mr. BOOZMAN. Right.

Ms. WEGNER. Knowing that there is now an education program established through SFAA we can incorporate that in VA's Small Business Program to train our contractors through Federal contractor certification. So we can own that. Education is one that I don't think we are going to have an issue with. The other part we will need to get back to you on.

Mr. BOOZMAN. Okay, very good. Well as you said, I think we all agree that that is a problem, and it does seem that working together it is a very solvable problem.

Okay, thank you, Mr. Chairman.

Mr. PERRIELLO. Let me just go back to one other question which many people raise with me and others. The concern about quote unquote, "rent a vet" scenarios. Is this a valid concern? If so, do you think that that part-time ownership, remote ownership, and ownership of multiple businesses contributes to this problem?

Ms. WEGNER. Rent a vet is real and it has been getting worse. It has gotten a lot worse in my opinion over the past 3 or 4 years as we have seen other Federal agencies step up their interest and ability to issue set asides for service-disabled veteran-owned businesses.

We have a very good relationship with SBA's Office of Government Contracting who provides us on the days that they are issued with protest decisions, decisions that are being released by their Office of Hearing and Appeals on protests of eligibility. We get those on a regular basis, and control is the significant factor in many of these decisions. So we have used the decisions that we have on file in our organization to make a decision that says at this point in time we really do not want to bring part-time owners into the program. We would like to Reserve that discussion for a later date after we have had the opportunity to review the other programs in Federal Government and other commercial sector programs more carefully to see if they have part-time ownership eligibility.

We do have correspondence from the SBA strongly recommending to us that we encourage full-time ownership as much as we can, and if we were to make an exception that we would have to have a statement from the business owner as to why they could not run the business on a full-time basis.

Mr. PERRIELLO. Thank you all very much for your time and for your service to our Nation's veterans. I want to thank everyone who was part of this hearing today. I look forward to working with Chairwoman Herseth Sandlin and Ranking Member Boozman, as well as my colleagues on the Subcommittee and our panelists as we continue to evaluate the suggestions that were provided to us today.

This hearing stands adjourned.

[Whereupon, at 3:11 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Statement of Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity

Today we have a full schedule that includes fourteen bills before us that would address the unique needs of our veteran population. The bills before us today seek to: address veteran-owned small business matters; expand protections provided under the Servicemembers Civil Relief Act; and address the unmet education needs of our Nation's veterans.

Included in today's hearing will be legislation I introduced earlier this year. H.R. 2461, the Veterans Small Business Verification Act seeks to verify that applicants to the Department of Veterans Affairs' Vendor Information Pages database, also known as VIP database, are verified as veteran-owned small businesses or service disabled veteran-owned small businesses.

As some of my colleagues may know, the *Veterans Benefits, Health Care, and Information Technology Act of 2006* requires the Department of Veterans Affairs to maintain its VetBiz Vendor Information Pages database and verify its applicants as veteran-owned small businesses or service disabled veteran-owned small businesses.

From the feedback that we have received in a previous Subcommittee hearing, follow-up meetings with VA staff, and veteran's community, I have been informed that up until this year veteran or service disabled veteran-owned small business verification was submitted to the VA on a voluntary basis. Furthermore, once the firms were registered in the VIP database, they would qualify to receive set-aside or sole-source awards, regardless if they have been verified.

Because of the current language in the law, there has been misinterpretation of the requirement on verification of small business ownership. Currently, the VA has concluded that Public Law 109-461 does not require veteran-owned small businesses and service disabled veteran-owned small businesses to submit information for verification, but rather it be voluntary. According to the most recent U.S. Government Accountability Office briefing received by Subcommittee staff in January of this year:

- Of the 16,500 registered firms, 484 were verified by the VA as veteran-owned small businesses or service disabled veteran-owned small businesses;
- Four hundred nineteen submitted information to be verified and were pending verification; and
- Fifteen were denied verification.

I have been informed by Subcommittee staff that VA has begun to verify applications to their VIP database back in May 2008. In addition, the VA has supplemented its staff by hiring contractors to identify best practices in processing applications to the database, and conduct on-site visits to verify the small business as a veteran-owned small business or service disabled veteran-owned small business. I applaud the progress made on verifying existing VIP entries, but more should be done to ensure our veterans are afforded the small business opportunities Congress intended them to enjoy.

My legislation seeks to amend Title 38 to clarify current law and require the Department of Veterans Affairs to verify that firms are veteran-owned small businesses or service disabled veteran-owned small businesses in order to be listed in the VIP database. Furthermore, it requires that VA notify small businesses within 90 days of the need to verify the status of the small business concern. If after 90 days the veteran status ownership is not verified, the small business concern shall be removed from the database.

I look forward to receiving feedback on H.R. 2461 and the other bills before us today.

**Prepared Statement of Hon. John Boozman, Ranking Republican Member,
Subcommittee on Economic Opportunity**

Good afternoon. Madam Chair, I thank you for bringing us together to take testimony on 14 bills including my bill, H.R. 1169, a bill that would increase the amounts available for the Specially Adapted Housing and Auto and Adaptive Equipment programs as well as other bills introduced by Members on our side of the aisle. We have a lot of ground to cover today so I will merely say that this is a good list of bills. Obviously there are some major PAYGO issues and some might need some minor tweaking to accomplish what the authors intend.

I am eager to hear from today's witnesses so I will yield back.

Prepared Statement of Hon. Thomas S.P. Perriello

Good Afternoon—Let me begin by thanking Chairwoman Herseth-Sandlin and Ranking Member Boozman for holding this important legislative hearing. I appreciate the opportunity to offer testimony in support of my bill H.R. 2928.

On June 30, 2008, Congress successfully passed the Post-9/11 Veterans Educational Assistance Act of 2008 (Public Law 110-252) to help pay for the full cost of tuition at 4-year colleges to veterans of the wars in Iraq and Afghanistan. Yesterday, the Department of Veterans Affairs (VA) announced that it has provided certificates of eligibility to nearly 200,000 applicants for Post-9/11 GI Bill benefits. I commend the VA on its administration of the program and look forward to working with the Veterans Benefits Administration to ensure that our veterans continue to have easy access to the benefits they have earned and deserve.

Although the Post-9/11 GI Bill provides a number of benefits, including licensure and certification, it does not provide on-the-job (OJT) program benefits. Servicemembers and veterans interested in OJT benefits would be unable to take advantage of the Post-9/11 GI Bill and would have to register under the Montgomery GI Bill, Chapter 30 benefit.

On-the-Job Training (OJT) offers veterans and members of the Guard and Reserve an alternative to attending a college or university by using their education benefit to obtain employment training. OJT is training that veterans received while actually performing a job. This program allows veterans to become gainfully employed since the job for which they are currently training in, should lead to an entry level job; additionally while they are training the employer will provide a wage.

H.R. 2928 would amend title 38, United State Code, to provide for an apprenticeship and on-job training benefit under the Post-9/11 Veterans Educational Assistance Program. The bill would entitle those veterans enrolled in a full-time educational program of apprenticeship or other on-job training to a monthly benefit payment equal to: (1) 85 percent of the national average cost of tuition at an institution of higher education for each of the first six months of the program; (2) 65 percent of such amount for each of the second 6 months of the program; and (3) 45 percent of such amount for each of the months following the first 12 months of the program.

We have an obligation to help those who have defended our country by giving them the tools they need to rejoin the civilian workforce. H.R. 2928 is a common-sense bill which will provide America's veterans with the resources they need to join the workforce. I would like to thank the VFW, DAV, AMVETS, the Military Officers Association of America, Student Veterans of America, Iraq and Afghanistan Veterans of America, and the Department of Labor for their support and look forward to working with you as the legislation progresses. I thank the Subcommittee for holding this hearing and look forward to answering any questions you may have.

Prepared Statement of Hon. Ann Kirkpatrick

Thank you Madam Chairwoman for the opportunity to discuss my bill, H.R. 2614, the Veterans' Advisory Committee on Education Reauthorization Act of 2009.

In recent years, Congress has devoted a whole lot of attention to the education benefits administered by the Department of Veterans Affairs, culminating last year in the introduction and passage of the Post-9/11 GI Bill.

One of the VA's most important tools in this fight has been the Veterans Advisory Committee on Education. This Committee's mission includes advising the Secretary of Veterans Affairs on existing education benefit programs and services as well as recommending new education benefit programs. As the Military Officers Association of America has pointed out, the Committee was instrumental as the Post-9/11 GI

Bill was being constructed, including recommendations that limits mirror the national average cost of a public education as well as earn-as-you-serve provisions. The Committee is now more important than ever, with Veterans starting to receive education benefits under the Post-9/11 GI Bill.

However, the Committee's charter is currently set to expire on December 31. This bill reauthorizes the Committee until the end of 2015, allowing it to fulfill its vital role.

With the help of Veterans service organizations, we are working hard to better keep our promises to our Veterans, and I have been proud to be a part of it. There is still more to do to make sure they have the opportunities they have earned, and reauthorizing this Committee is a useful step in that effort.

Chairwoman, thank you again for the opportunity to speak.

Prepared Statement of Hon. John H. Adler

Madam Chairwoman, Ranking Member Boozman, and Members of the Subcommittee, thank you for the opportunity to speak in support of my bill, H.R. 2416, the "Success After Service Act."

We are currently experiencing the worst economic climate since the Great Depression.

- The Nation's unemployment rate has just reached 9.7 percent—the highest it's been in 23 years.
- The number of unemployed Iraq and Afghanistan veterans is now at 11.3 percent, which is almost the same as the number of servicemembers currently deployed abroad.
- And it's even worse in my home state of New Jersey, where the unemployment rate among Iraq and Afghanistan veterans is at 14 percent.
- Our heroes deserve better. They deserve our help not just our gratitude.

Many servicemembers are returning home to this tough economic climate in search of career opportunities that can support themselves and their families.

Some will search for work among existing jobs, while others will attempt to forge their own way by starting a small business of their own.

Small businesses are the backbone of our economy and they have an important role to play in our country's economic future.

- In addition, we should incent servicemembers to live the American dream by pursuing their entrepreneurial spirit and starting a small business which will aid in our broad economic recovery.
- As a key component of small business entrepreneurship, veterans contribute to our great country's economy each year with new jobs, new ideas, and new employment.

I have introduced H.R. 2416, the "Success After Service Act," to increase the opportunities that are available to Veteran Owned Small Businesses and Service-Disabled Veteran Owned Small Businesses in obtaining contracts and subcontracts from the Department of Veterans Affairs.

H.R. 2416 seeks to empower veteran small business owners by setting aside a set percentage of VA contracts in the Federal Supply Schedule for all qualified veteran owned businesses.

- These set asides are the types of incentives which will positively influence the marketplace by encouraging servicemembers to start new businesses to deliver services needed to meet the VA's goals.

We must ensure that our veterans, who so selflessly served our country, are given the opportunity to succeed after their service.

- H.R. 2416 will not only serve as a token of appreciation to these brave men and women from a grateful Nation, but also as a tool to empower these veteran entrepreneurs and re-ignite our economy once again.

This measure has strong bipartisan support. It reflects the efforts of all of us in Congress who want to work together, without regard to party labels, to help our heroes.

Madam Chairwoman, Ranking Member Boozman, I once again thank you for your time and consideration.

Prepared Statement of Hon. Harry Teague

Madam Chairwoman and Ranking Member Boozman and fellow Subcommittee Members, thank you for allowing me to have the opportunity to speak on behalf of H.R. 3561. I believe that this bill does exactly what this Subcommittee is supposed to be doing—creating economic opportunity for our veterans.

H.R. 3561 increases the flight training education assistance allowance for tuition and fees from 60 percent to 75 percent. Recently, program costs for this training have risen, but the benefit has not risen to keep up with the increased cost. In my home state of New Mexico, the flight schools that offer this program tell me that a student can expect to pay anywhere from \$60,000 to \$90,000. So in a state where the median family income in my state is \$48,798, it is becoming more difficult for veterans to utilize this program and get a good job as a result.

By increasing funding for this program by 15 percent, we can open doors for veterans who need help and assistance and deserve it after serving in our country. I believe that this bill is a common-sense solution to a problem we're facing, and I hope that I can garner support from my colleagues and pass this legislation into law.

I would like to take this time to thank the staff members of the Economic Opportunity Subcommittee who lent their expertise during the drafting of this bill, and I thank Chairwoman Herseth-Sandlin and Ranking Member Boozman for the opportunity to advance this bill. This concludes my testimony and I am happy to answer any questions you may have regarding H.R. 3561.

**Prepared Statement of Hon. Bob Filner, Chairman, Committee on
Veterans' Affairs, and a Representative in Congress from the State of
California**

Good afternoon Chairwoman Herseth Sandlin, Ranking Member Boozman and Members of the Subcommittee. Thank you for the opportunity to speak on H.R. 3579, legislation to increase veteran reporting fees to institutions of higher learning.

As many of my colleagues in the Subcommittee know, Congress has made several changes to education benefits since the enactment of the first GI Bill of 1944. The same holds true with last year's passage of the Post-9/11 Veterans Education Assistance Act of 2008 to help pay the full cost of tuition at 4-year colleges to veterans who served after September 11, 2001.

While we have made significant strides to address the most current education needs of our veterans, we have not addressed the growing demand placed upon certifying officials responsible in assisting student veterans enroll in a college or university program.

My legislation seeks to address this very important issue by increasing the reporting fees payable to institutions of higher learning from the outdated \$7 per student to \$50 per student that reflects today's increased demand for expanded services.

As some of my colleagues are aware, there is a growing concern among student veterans in regards to receiving accurate information on their education benefits and timely receipt of benefits. I share their concern and am confident that my bill is a significant piece of the puzzle that will provide school certifying officials with the needed resources to obtain up-to-date training on the various benefit options available to student veterans and their dependents. Our Nation's veterans certainly deserve the best services their school may provide.

I want to thank my colleagues Chairwoman Herseth Sandlin and Ranking Member Boozman for their continued work in the Subcommittee. I look forward to working with all of my colleagues to provide our Nation's veterans with education benefits in a timely manner. I would be happy to address any questions you may have.

**Prepared Statement of Hon. Ciro D. Rodriguez, a Representative
in Congress from the State of Colorado**

Thank you Madam Chairwoman for allowing me to speak today on my bill, H.R. 3577, which will expand the eligibility for Post-9/11 GI Bill Transferability of benefits to dependents.

Last year Congress passed a ground breaking GI Bill that provides a significantly increased level of benefits to servicemembers who served at least 90 days of aggregated military service after September 10, 2001.

This new benefit also provides for the transferability of benefits to dependents. However, whereas the basic eligibility for the Post-9/11 GI Bill benefits consists of at least 90 days on active duty after September 10th, 2001, transferability eligibility is not open to many of those that would otherwise be eligible for Post-9/11 GI Bill benefits. For transferability, a member must have served at least 6 years on active duty and be currently on active duty as of August 1st, 2009.

As a general rule, and necessarily so, the servicemember must incur an extended commitment to serve an additional 4 years in order to transfer those benefits to their dependents. This provision was included in the final legislation to increase military retention rates. The Department of Defense has published its rules for transferability and has made some exceptions to the re-enlistment requirement to certain servicemembers who are near retirement and unable to fulfill the 4 year re-enlistment. Specifically, personnel that have approved retirements as of August 1st, 2009, do not incur any further commitment in order to transfer their benefits.

While the option of transferability is a welcomed option for servicemembers who are eligible to re-enlist, it fails to provide this option to veterans who have honorably served a minimum of 20 years of honorable active duty military service. We have heard from military veterans asking for a legislative change to current laws to allow veterans, who served after September 10, 2001, and retired before July 31, 2009, to transfer their benefits to an eligible dependent. They argue that retirees are most likely in a better position to transfer the benefit considering many have already received their college education and most likely have children who are eligible to attend college.

Additionally, this bill would help ensure transferability is granted to those service men and women who are otherwise eligible for Post-9/11 GI Bill benefits. The eligibility for Post-9/11 GI Bill benefits and for transferability remains the same under this bill, simply with the expanded date range for those that have retired from the service after having served for 20 years or more.

Madam Chairwoman, Members of the Economic Opportunity Subcommittee—this is the right thing to do. Our troops have earned this. More importantly, their families have sacrificed their way of life and often careers of their own in order to follow their military sponsor around the world, from base to base, country to country, and have stood steadily by as their loved ones went to war. These families deserve the ability to receive the unused benefits earned by the servicemember.

I appreciate your consideration of H.R. 3577 and ask for your support.
Thank you.

**Prepared Statement of Hon. John R. Carter, a Representative
in Congress from the State of Texas**

Executive Summary

H.R. 1182 extends the same residency rights to military spouses as are currently extended to active-duty servicemembers. Under current law, active-duty military members can keep a home state of residence no matter where military orders send them. However, military spouses do not have these rights, even though they move right along with their servicemember. This means that every time they move, military spouses have to change their license plates and registrations, voter registration, and even file state and local tax returns in a different state than their active-duty spouse.

Many of us take for granted the frequent moves that military spouses must make to support our armed forces and what these moves mean not only in terms of the headaches and hassles involved in constantly changing residency but also the impact on careers. Studies by the RAND Corp. have found that military wives move farther and more often than their civilian counterparts; are more likely to be unemployed than the average civilian spouse; and, even if they do find work, tend to earn less than civilian wives. Moreover, spouses are also much less likely to have their names on deeds and titles of family property because of the implications of moving to another state, leaving many feeling like second class citizens.

The Military Spouses Residency Relief Act has the support of the Military Officers Association of America, Veterans of Foreign Wars of the United States, AMVETS, the Air Force Sergeant's Association, and the Military Spouse Business Association. Additionally, the Congressional Budget Office has determined that this legislation "will have no significant effect on the Federal budget."

This is just one easy way we can support our military spouses, who are instrumental to the readiness and strength of our troops.

Madam Chairwoman and Members of the Committee, good afternoon. First, allow me to thank you for the support you have demonstrated for military spouses by considering the Military Spouses Residency Relief Act last Congress and again today. Since we last discussed this issue, I am pleased to acknowledge that with the hard work and support of Senators Burr and Feinstein this legislation was unanimously passed by the Senate as a stand alone bill. Your Subcommittee's action will help to ensure that these commonsense reforms become a reality. This small measure will provide invaluable relief to numerous military spouses who regularly uproot their entire lives to accommodate the needs of our Armed Forces.

As you are all aware, the Servicemember's Civil Relief Act (SCRA) provides basic civil relief to our men and women in the Armed Services in exchange for their voluntary service. These range from relief from adjudication while deployed in combat to maintaining a single state of domicile regardless of where their military orders may send them. This state of domicile provides an important stability for our soldiers, airmen, and marines. Though their orders may send them to numerous states, they are able to simplify their state income tax requirements, maintain property titles, and continue to vote for the elected officials from their hometown. Without the SCRA protections, the servicemember would have to deal with all of those every time they move to a military installation located in a different state.

But their spouses—currently not afforded these SCRA protections—must still deal with those stresses even while faced with the challenge of moving, finding schools for children, balancing some unsupported relocation costs, and the loss of spouse earnings as they leave jobs to join the servicemember. However, SCRA protection is already extended to military spouses pertaining to other moving challenges such as entering into contracts for phone service and utilities, the ability to break leases, as well as protection from eviction if they fall behind on bills. This precedence clearly illustrates Congress' long understanding that spouses are a vital component of our military readiness and deserving of SCRA protection.

The military has changed since SCRA was first written. We no longer deal with a primarily unmarried fighting force. It is no longer enough for Congress to provide relief to just the men and women who volunteered to protect us. The saying "We recruit the soldier but retain the family" could not be any more accurate. While our servicemembers receive this important civil relief, we do not offer the same protections to those that bear the same stress and responsibility as the member—their spouse. Over the course of their spouse's career, they face multiple voter and vehicle registration changes, pay income tax to states they never intended to live in, and likely do not have their name on any property titles leading to a feeling that they are second class citizens.

My bill—which has drawn strong significant bipartisan support—would amend the SCRA to allow a military spouse to claim the same state of domicile as the servicemember for the purposes of state income and property taxes as well as voter registration. Spouses could elect to stand united with their spouse—not only in support of our country—but sharing the same state as a home base. This policy would prevent a military family from suddenly losing up to 10 percent of their income if they are called upon to relocate to a different state. This is a significant loss of income that occurs as a direct result of government orders.

H.R. 1182—supported by the Military Officers Association of America, the Air Force Sergeants Associations, AMVETS and the Military Spouse Business Association among other VSOs—would also provide the impetus for military spouses to put their names on deeds and titles, which would build and strengthen their own credit and further ensure legal protection.

Military spouses sacrifice their careers and endure numerous challenges to support the servicemembers who defend our country. They share the stress of deployments, relocations, and ever increasing ops tempos with their servicemembers; shouldn't they be able to share the same state? We believe they deserve the choice to have a home base, too.

I thank you for your time and thoughtful consideration, and ask your consent to submit copies of the previously mentioned VSO's support letters into the record.

Air Force Sergeants Association
 Temple Hills, MD.
 February 26, 2009

The Honorable John R. Carter
 409 Cannon House Office Building
 Washington, DC 20515

Dear Representative Carter,

On behalf of the Air Force Sergeants Association's 125,000 members, I offer our support for H.R. 1182, the "Military Spouses Residency Relief Act." This legislation is of very high interest to many of our members. AFSA represents the Total Air Force enlisted corps—current, veteran, and retired members of the Air Force Active Duty, Air National Guard, and Air Force Reserve Command and their families.

Your legislation would provide a long-overdue correction of an unfortunate situation that has had a negative impact on military families. Whereas military members can vote and pay taxes in one state throughout their military careers, spouses have not been afforded that stability. Under your legislation, military spouses would be able to keep residency in their home state regardless of where military orders send their family. Your legislation makes sense and is the right thing to do for those who directly support this Nation's warriors.

Congressman Carter, we applaud your initiative on this issue and your dedication to those who serve this Nation. I offer this association's assistance to help this legislation move forward, and we look forward to working with you on this and other matters of mutual interest.

Sincerely,

Richard M. Dean, CMSgt (Ret.)
 Chief Executive Officer

Serving the *Total Air Force* Enlisted Corps
 And Their Families since 1961

Military Officers Association of America
 Alexandria, VA.
 February 25, 2009

The Honorable John Carter
 U.S. House of Representatives
 Washington, DC 20515

Dear Congressman Carter:

On behalf of the more than 370,000 members of the Military Officers Association of America (MOAA), and their spouses, we applaud your Military Spouse Residency Relief Act that will allow military spouses the option to claim the same state of domicile as their servicemember.

This week, MOAA, the Nation's largest association for military officers and their families, celebrated our 80th anniversary. Over the past eight decades, we've seen significant changes in our military, and the majority of servicemembers are now married.

Our Nation has long recognized the importance of servicemembers' ability to maintain a domicile for voting and taxes. The service of today's military spouses is such that they deserve that same opportunity.

That's why MOAA strongly supports this amendment of the Servicemember's Civil Relief Act (SCRA). We've seen the sacrifices of military spouses throughout the years, and we've seen their service to our country.

Military spouses deserve the freedom to vote in the same State with their servicemember, the elimination of stressors such as getting new licenses and registering to vote each time they move, and a place to call "home" in the midst of multiple military moves.

We are grateful for your leadership and the support of your bipartisan co-sponsors for this important initiative.

Sincerely and all the best,

VADM Norbert R. Ryan, Jr., USN (Ret)
President

**Prepared Statement of Hon. Brad Miller, a Representative
in Congress from the State of North Carolina**

Executive Summary

In 2003 Congress passed the Servicemembers Civil Relief Act (SCRA) to provide protections for servicemembers when their military service hinders their ability to meet financial obligations and they are at a great disadvantage in defending their rights in legal proceedings. The SCRA provides for penalties for violations but does not specifically state whether servicemembers have a private right of action for violation of the Act. While most courts have recognized the inherent right of individual servicemembers to bring suit for a violation of their rights under the SCRA, recent court rulings have questioned whether the Act gives servicemembers the right to protect themselves and their families against evictions and foreclosure while they are deployed overseas.

In *Batie v. Subway Real Estate Corp.*, a servicemember alleged that the defendants had violated his rights when they evicted him from two commercial spaces while he was deployed in Afghanistan. In another case, *Hurley v. Deutsche Bank Trust Co.*, a servicemember sued the defendants after they foreclosed on and sold his home, evicting his family, while he was deployed in Iraq. The initial ruling in both cases was that the servicemembers did not have the right to bring a suit against the defendants because the SCRA does not explicitly provide servicemembers a private cause of action. The initial rulings were eventually reversed, but only after the servicemembers and their families endured prolonged legal uncertainty and considerable expense.

Congressman Walter B. Jones and I introduced H.R. 2696, the Servicemembers' Rights Protection Act, to end any ambiguity. The legislation authorizes an Attorney General to file a civil action for violation of the SCRA and allows a servicemember the right to join the Attorney General civil action. The legislation also provides that servicemembers have their own private cause of action, regardless of any enforcement action taken by an Attorney General.

Also, since many claims under the SCRA will be for relatively small amounts, the collection of attorneys' fees will encourage settlements by those who might otherwise refuse to pay damages, calculating that the cost of litigation would keep people from pursuing relief.

The American Bar Association and the Military Officers Association of America have both endorsed this type of clarification to the SCRA and the Department of Defense vetted the language in the bill.

A right that cannot be enforced is no right at all. The SCRA must have real teeth or it is meaningless. Our servicemembers should not have to worry whether their homes will be foreclosed or their families will be evicted while serving their country overseas. Denying individuals a private cause of action to enforce their rights under the SCRA threatens the readiness of our Armed Services.

Thank you Chairwoman Herseth Sandlin and Ranking member Boozman for allowing me the opportunity to testify today on H.R. 2696, the Servicemembers' Rights Protection Act. I would also like to thank Rep. Jones for working with me on this issue. He has been a tireless advocate for our servicemembers and veterans, and I applaud his efforts.

Congress has long recognized that there is a need for protective legislation for servicemembers who at times face special burdens when trying to meet financial obligations while serving their country. In 1940, Congress passed the Soldiers' and Sailors' Civil Relief Act, and in 2003 Congress updated this legislation and passed the Servicemembers Civil Relief Act, or SCRA. This Act provides protections for servicemembers when their military service hinders their ability to meet financial obligations and they are at a great disadvantage in defending their rights in legal proceedings.

The SCRA does not require the forgiveness of debts nor does it provide servicemembers absolute immunity from all civil lawsuits. Instead, the Act temporarily suspends certain judicial and administrative proceedings and transactions that may harm their legal rights during active duty.

The SCRA provides for penalties for violations but does not specifically state whether servicemembers have a private cause of action for violation of the Act. While most courts have recognized the inherent right of individual servicemembers to bring suit for a violation of their rights under the SCRA, recent court rulings have questioned whether the Act does indeed grant servicemembers a private cause of action.

In *Batie v. Subway Real Estate Corp.* a servicemember alleged that Subway Corp. violated the SCRA by evicting him from two commercial spaces while he was deployed to Afghanistan. After obtaining declaratory judgments in the State of Texas courts, Subway evicted the servicemember from spaces under lease. Lt. Col. Batie subsequently filed suit in the Federal district court seeking relief from the declaratory judgments and for compensatory and punitive damages for the alleged violations of the SCRA. In addition to denying the claim for compensatory and punitive damages, the court also found that, even if the servicemember maintains the SCRA as a basis for damages, “there is no provision in SCRA that authorizes a private cause of action to remedy violations of the statute.” Lt. Col. Batie’s claims were dismissed by the court. Lt. Col. Batie filed a Motion for Reconsideration citing cases in which courts have interpreted certain sections of the SCRA to create a private cause of action and eventually the court vacated its earlier decision and reinstated the complaint for further adjudication.

In a second case, *Hurley v. Deutsche Bank Trust Co.*, a servicemember sued the defendants after they foreclosed on and sold his home, evicting his family, while he was deployed in Iraq. In this case, Sgt. Hurley asserted multiple violations of the SCRA, but the defendants asserted that the SCRA sections cited by Hurley did not expressly create a private cause of action. The court decided that, “the SCRA affords certain rights to servicemembers, but a private cause of action is not among them.” The judge eventually reversed and vacated this earlier opinion, and then entered a new opinion in favor of Sgt. Hurley. But once again, it was only after the servicemembers and their families had endured prolonged legal uncertainty and considerable expense.

Congressman Jones and I introduced H.R. 2696, the Servicemembers Rights Protection Act, to end any ambiguity. The legislation would authorize an Attorney General to file a civil action for violation of the SCRA and allows a servicemember the right to join the Attorney General’s civil action. More importantly, the legislation also provides that servicemembers have their own private cause of action, regardless of any action taken by the Attorney General.

Also, since many claims under the SCRA will be for relatively small amounts, the legislation allows for the collection of attorney’s fees to encourage settlements by those who might otherwise refuse to pay damages, calculating that the cost of litigation would keep people from pursuing relief. Allowing for the reward of attorney’s fees will make equal access to justice for servicemembers a reality. It should be noted that the award of attorney’s fees for successful litigants is also authorized by the Uniformed Services Employment and Reemployment Rights Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Federal Truth in Lending Act, to name just a few statutes.

Our servicemembers should not have to worry whether their homes will be foreclosed or their families will be evicted while serving their country overseas. Nor should they have to endure months of litigation, submitting motion after motion, with potentially disastrous consequences. I would like to share with you part of a letter Rep. Jones and I received from one of the Nation’s leading experts on SCRA issues, Colonel John Odom (USAF–Ret), regarding this legislation.

He writes, “While serving a total of 31 years of combined active and reserve duty in the U.S. Air Force as a judge advocate, I have maintained a private law practice in which I spend a considerable amount of my time—much of it *pro bono*—representing servicemembers in SCRA matters. Since 2002, I have recovered more than \$3.5 million in damages for servicemembers from banks, mortgage companies, credit unions and auto finance companies who violated the SCRA. In virtually every litigated case, I have had to spend many hours of professional time opposing the inevitable defendants’ motions to dismiss the case because there is no specific provision in the 2003 SCRA authorizing private causes of action to sue violators for damages. While I have been successful in every case thus far, on several occasions (including the *Hurley* case in Michigan in which I am an expert witness for the plaintiff) it has required expensive and time-consuming motion practice before we finally got a judge to uphold the servicemembers’ right to sue SCRA violators for damages.

Enough is enough. It is time to amend the SCRA, and that is precisely what your H.R. 2696 would do in the correct, broadest possible sense.”

There have been efforts in the past to strengthen the enforcement provisions of the SCRA for specific types of contracts. While these efforts are laudable, they are a piecemeal approach to strengthening the SCRA which leaves open the possibility that something, some contract, some proceeding, will be left out. And consequently will leave a servicemember without any legal recourse. The SCRA applies to all actions in all courts. It is a comprehensive statute protecting the rights of servicemembers. As such, we need a comprehensive approach that will ensure enforcement provisions for all actions brought to enforce the SCRA. The Servicemembers’ Rights Protection Act does just that.

The relief made available in this bill does not constitute a change of current practice. Judge Quist ruled in the *Hurley v. Deutsche Bank Trust Co.* case that punitive damages were one of the remedies available in an SCRA enforcement action. There are other sections in the current SCRA that mention the availability of consequential and punitive damages as remedies under the SCRA. So, the concept of punitive damages available as relief under the SCRA is not new. This legislation will provide that consequential and punitive damages, in line with current statute, and the collection of attorney’s fees to deter those contemplating bad faith abuses of the SCRA, are available in all actions brought to enforce any provision of the SCRA. It is a comprehensive approach for a comprehensive statute.

It should be noted that the language in H.R. 2696 is the same as language that was included in S. 1033, the original version of the Senate’s National Defense Authorization Act for FY 2010, not the bill that is currently in conference. Col. Shawn Shumake, Director of the Office of Legal Policy for the Undersecretary of Defense for Personnel and Readiness, has personally reviewed H.R. 2696 and compared it to the Senate language and has concluded that except for leaving off the technical corrections, they are substantively identical. The only difference is how the conforming amendments were addressed in the bills. The Senate language addressed changes to sections 301(c), 302(b), 303(d), 305(h), and 307(c) in one paragraph; whereas H.R. 2696 writes out explicitly what those sections would look like as amended. The language in both of these bills has been vetted by the Department of Defense.

On February 16, 2009, the American Bar Association unanimously adopted a resolution proposed by ABA’s Standing Committee on Legal Assistance for Military Personnel, which recommended unambiguous authority for a private right of action in the SCRA. Furthermore, in his statement before the House and Senate Veterans’ Affairs Committees on March 12, 2009, Colonel Robert F. Norton (USA–Ret), Deputy Director of Government Relations of MOAA commented on the lack of a specific private cause of action provision in the SCRA. He said, “This issue goes to fundamental access to justice for service men and women and their families, recognizing the SCRA protections in the statute are only as strong as the ability to bring violators to court.” He concluded by stating, “MOAA recommends that the Committees amend the SCRA to: authorize civil enforcement actions by the Attorney General of the United States in any Federal District Court; to clarify that a Private Right of Action exists within the SCRA authorizing a covered servicemember or dependent to file suit, either independently or in conjunction with a Dept. of Justice action; and, provide that in such a case a plaintiff may recover damages or injunctive relief, and that a prevailing plaintiff may recover reasonable attorney’s fees.”

I believe that a right that cannot be enforced is no right at all. The SCRA must have real teeth or it is meaningless. Denying individuals a private cause of action to enforce their rights under the SCRA threatens the readiness of our Armed Services.

Thank you again for allowing me the opportunity to testify on this bill.

**Prepared Statement of Hon. David Loeb sack, a Representative
in Congress from the State of Iowa**

Chairwoman Herseth Sandlin, Ranking Member Boozman, Members of the Committee—thank you for inviting me to testify before the Economic Opportunity Subcommittee today.

The landmark Post-9/11 Veterans Educational Assistance Act not only expresses our Nation’s gratitude to our men and women in uniform, it will also help to make this generation of veterans part of our country’s economic recovery.

As a former college professor, I know firsthand the impact a college education can have on both individuals and families. It opens doors and broadens opportunities—and it is critical to the strength of our military as well as the future of our economy.

As the Representative of Iowa's Second Congressional District and a Member of the House Armed Services Committee, I have had the distinct honor to meet many members of the Iowa National Guard. I have seen them respond to the devastating floods that inundated my District in 2008, and I have visited them in Iraq and Afghanistan.

The dual role of the National Guard in both our homeland and national security is unique amongst our Armed Forces, and it has only increased since the 9/11 attacks. The National Guard is no longer a strategic reserve—it is an operational one. These Soldiers and Airmen secure our airspace, respond to disasters, and deploy overseas in support of our efforts in Iraq and Afghanistan.

Yet the Post-9/11 GI Bill did not recognize the dual role of the National Guard. It counts only their national security service—that is, their Title 10 service overseas in Iraq, Afghanistan, and other strategic locations.

It overlooked the role the National Guard plays in federally funded homeland security missions under Title 32, including airport security missions directly after the 9/11 attacks; protection of U.S. airspace as part of Air Sovereignty Alert; disaster response in instances such as Hurricane Katrina; and border security as part of Operation Jumpstart.

By not including Title 32, the Post-9/11 GI Bill also overlooked the Active Guard and Reserve. AGRs provide the full time support that is necessary to keep our National Guard ready to respond to missions both at home and abroad. Yet while their counterparts in the Reserve accrue eligibility for the Post-9/11 GI Bill through their AGR service, National Guard AGRs serving under Title 32 do not.

To put it simply—federally funded, essential homeland security missions are performed by our National Guard every day. Their service to our Nation should be counted toward their Post-9/11 GI Bill benefits.

Furthermore, the Post-9/11 GI Bill made a commitment to recognize the service and sacrifice of those servicemembers who are discharged with a service-connected disability by providing them with a full 4-year college education. However, under current law, only those servicemembers who are discharged under Title 10 are eligible for this benefit. Members of the National Guard with a service-connected disability are discharged under Title 32, even if they sustain their injuries while serving under Title 10. As a result, they do not currently receive the full slate of benefits that they deserve.

To address these inequities, I introduced the National Guard Education Equality Act. This bill recognizes the service of our National Guard Soldiers and Airmen by counting homeland security missions in the calculation of benefits under the Post-9/11 GI Bill and by providing a full 4-year college education to members of the National Guard who are discharged with a service-connected disability.

The National Guard Education Equality Act recognizes and honors the contributions of the National Guard to both our homeland and national security. It assures that the roughly 30,000 National Guard Soldiers and Airmen who are not currently receiving the full GI Bill benefits they deserve are able to take advantage of the opportunities a college education provides.

The bill has over 30 bipartisan cosponsors and has been endorsed by the Iraq and Afghanistan Veterans of America; the National Guard Association of the United States; the Enlisted Association of the National Guard of the United States; Veterans of Foreign Wars; and the American Legion. Madam Chairwoman, I ask that letters of support from each of these organizations be included in the record.

I urge the Subcommittee's support for the National Guard Education Equality Act and thank you for allowing me to testify today. I look forward to your questions.

The American Legion
Washington, DC.
September 9, 2009

The Honorable Dave Loebsack
U.S. House of Representatives
1221 Longworth House Office Building
Washington, DC 20515

Dear Representative Loebsack:

On behalf of the 2.5 million members of the American Legion, I would like to express our appreciation and full support of the *National Guard Education Equality Act*, which would amend title 38, United States Code, to provide for the inclusion

of certain active duty service in the reserve components as qualifying service for purposes of the Post-9/11 Educational Assistance Program.

This legislation will extend benefits to title 32 Active Guard Reserve (AGR) servicemembers under the Post-9/11 GI Bill. Many AGR personnel were called to active duty via title 32 in support of the response to the attacks on America on September 11, 2001, in addition to deploying for Operation Iraqi Freedom and Operation Enduring Freedom. Thus, AGR servicemembers have answered the Nation's call to arms and should receive equal education benefits for their service.

Additionally, this bill will provide a full 4-year college education to members of the National Guard who are discharged with a service-connected disability.

In conclusion, The American Legion fully supports enacting the *National Guard Education Equality Act*. We appreciate your leadership in addressing issues that are important to America's veterans and their families.

Sincerely,

Clarence Hill
National Commander

Enlisted Association of the National Guard of the United States
Alexandria, VA.
August 18, 2009

The Honorable Dave Loebsack
1221 Longworth House Office Building
United States House of Representatives
Washington, D.C. 20515

The Enlisted Association of the National Guard of the United States (EANGUS) is the only military service association that represents the interests of every enlisted soldier and airmen in the Army and Air National Guard. With a constituency base of over 414,000 soldiers and airmen, their families, and a large retiree membership, EANGUS engages Capitol Hill on behalf of courageous Guard personnel across this Nation.

On behalf of EANGUS, and the soldiers and airmen it represents, I am both pleased and honored to extend the organization's full support for the National Guard Education Equality Act. This much needed legislation will address the inequity between the educational benefits received by service-disabled Title 10 and Title 32 soldiers and airmen. As you know, only Title 10 service, that which is federally funded/controlled, is counted when calculating eligibility for the Post-9/11 GI Bill. Unfortunately, this leaves large numbers of service-disabled National Guard soldiers and airmen involved in Title 32 (Federally funded/State controlled) critical missions, with suboptimal educational benefits.

The National Guard Education Equality Act would rectify this disparity by including Title 32 service in the calculation of benefits under the Post-9/11 GI Bill and by providing a full 4-year college education to members of the National Guard who have been discharged under Title 32 with service-connected disabilities.

Our association stands solidly behind Congressional action to alleviate the prejudicial treatment currently being received by so many enlisted National Guard soldiers and airmen. It's time to treat these invaluable and selfless members of our national defense team with the courtesy, respect, and consideration they so rightly deserve.

Thank you for taking the legislative action that is not only necessary and right, but timely. We look forward to working with your staff as this legislation works its way into law.

Working for America's Best!

MSG Michael P. Cline, USA (Ret.)
Executive Director

Iraq and Afghanistan Veterans of America
 Washington, DC.
September 1st, 2009

The Honorable David Loebsack
 1221 Longworth House Office Building
 Washington, DC 20515

Dear Congressman Loebsack:

Iraq and Afghanistan Veterans of America (IAVA) is honored to offer our support for H.R. 3554, the National Guard Education Equality Act. This bill will compensate full time National Guard soldiers and airmen for their service. Although the Post-9/11 GI Bill is the greatest investment in veterans' education since WWII, it has some rough edges that need to be ground down to better serve our newest generation of veterans, as they pursue their education.

National Guard members who are serving on active duty called active guard reserve (AGR) duty do not receive credit for their service under Chapter 33 and are being denied the education benefits they deserve. It shouldn't matter if you are in a firefight in Afghanistan or fighting a fire in California, if you are wearing a military uniform you should be compensated for your service. Last year, there were almost 30,000 Army National Guard and 13,500 Air National Guard servicemembers serving on Title 32 who will benefit from this legislation.

We are proud to offer our assistance on this vital piece of legislation. If we can be of help please feel free to contact me at (202) 544-7692 or Patrick@iava.org. We look forward to working with you.

Sincerely,

Patrick Campbell
Chief Legislative Counsel

National Guard Association of the United States, Inc.
 Washington, DC.
September 17, 2009

The Honorable David Loebsack
 1221 Longworth House Office Building
 Washington, D.C. 20515

Dear Representative Loebsack:

Thank you for your sponsorship of H.R. 3554.

Amid rightful celebration and expectations, the historic legislation which provided educational assistance for members of the Armed forces who served after September 11, 2001, more commonly known as the Post-9/11 GI Bill, was hurriedly enacted as part of the Supplemental Appropriations Act, 2008 Public Law 110-252 but with one glaring omission; Congress excluded National Guard Title 32 active duty service after 9/11 from qualifying for benefits under this program.

The impact of this omission is that Congress has effectively denied significant educational benefits to dedicated men and women who have served in defense of our homeland after 9/11 on Title 32 active duty in support of such mission as Operation Noble Eagle, Ballistic Missile Defense, Operation Jump Start, and the critically needed airport security operations following the 9/11 attacks. Of particular note is that the Post-9/11 GI Bill currently provides benefits for the domestic active duty service of Reserve and other Active forces on Title 10 orders performing virtually the identical duties as National Guard forces on Title 32 orders.

NGAUS strongly supports The National Guard Education Equity Act, H.R. 3554, now before the 111th Congress, which would include Title 32 service in the calculation of benefits under the Post-9/11 GI Bill and provide a 4-year college education to qualifying members of the National Guard who have been discharged because of a service-connected disability arising from Title 32 active duty service. The latter benefit is now only available to qualifying members of the Active forces who had served on Title 10 orders.

Members of the National Guard deserve to be equitably rewarded and recognized for their selfless and dedicated service in defense of our homeland. Thank you again for your efforts

Sincerely,

Stephen M. Koper, Brigadier General, USAF, (Ret.)
President

Veterans of Foreign Wars of the United States
Washington, DC.
August 25, 2009

The Honorable David Loebsack
United States House of Representatives
2448 Rayburn House Office Building
Washington, DC 20515

Dear Representative Loebsack,

On behalf of the 2.2 million members of the Veterans of Foreign Wars and our Auxiliaries, I would like to offer our support for your bill, the National Guard Education Equality Act.

Your important legislation proposes to provide the benefits of the Post-9/11 GI Bill to not only those under Title 10 service, but also those under Title 32 service. Furthermore, those National Guard members who have been medically discharged would now be eligible for a full 4-year college education as well.

Representative Loebsack, the *National Guard Education Equality Act* would be greatly beneficial in helping to provide education to over 30,000 members of the National Guard who currently do not enjoy the benefits of the Post-9/11 GI Bill but have been actively involved in both Operation Iraqi Freedom and Operation Enduring Freedom. This crucial legislation is yet another way to take care of the men and women who serve our country so proudly. The VFW looks forward to working with you and your staff to ensure the passage of this legislation.

Thank you for your continued support of America's veterans.

Sincerely,

Dennis Cullinan
Director, National Legislative Service

**Prepared Statement of Hon. Gerald E. Connolly, a Representative
in Congress from the State of Virginia**

Chairman Herseth Sandlin, Ranking Member Boozman, and distinguished Members of the Subcommittee, thank you for inviting me to testify on the Helping Active Duty Deployed Act of 2009, H.R. 2874. I introduced this legislation along with fellow Virginia Congressmen Glen Nye and Tom Perriello, who is a Member of this Subcommittee.

As you know, deployment or change of station orders to leave one's home, community and family, are exceptionally difficult and disruptive. During times like that, we as Members of Congress and our Nation as a whole should be doing everything we can to support our servicemembers and their families. That is why I was shocked when I met with a group of veterans and was informed that servicemembers are being charged penalties when a deployment forces them to terminate contracts for things like cell phones, residential leases and college tuition. I find it unconscionable that the brave men and women putting their lives on the line to protect our freedom could be charged an early termination fee when deployment, not choice, necessitates the cancellation of these contracts and leases.

Based on my conversations with our veterans, I introduced the HADD Act to prohibit cell phone companies, landlords and colleges from imposing such early termination fees. Before providing a brief overview of the legislation, let me acknowledge that with assistance of Chairman Filner and Members of the Veterans' Affairs Committee staff, I was able to work with House Armed Services Committee to amend

the National Defense Authorization Act of 2009 to include two of the three primary provisions of the HADD Act.

As you know, Congress has long recognized the need to safeguard our deploying personnel, having enacted the Soldiers and Sailors Civil Relief Act in 1940. This Act and the more recently enacted Servicemembers Civil Relief Act (SCRA) of 2003 provide a number of protections to servicemembers, including allowing them to retain their state of residence for the purpose of taxation despite a relocation, providing them protection from court actions against their interests during a deployment, and allowing for the termination of certain leases entered into prior to receiving orders, among others.

Unfortunately, servicemembers continue to face undue hardships, and the HADD Act seeks to provide additional safeguards. First, the Act would build upon action taken by the 110th Congress allowing servicemembers to terminate an individual cell phone contract without penalty. My bill would complement that action by extending the same protection from early termination fees to family cell phone plans as well. The provision would affect just designated family plans. It would not allow members of a family to alter multiple separate accounts.

In addition, the HADD Act would provide consistent protections within the SCRA for troops who need to terminate a residential or motor vehicle lease due to deployment or change of station. The SCRA already permits the cancelation of motor vehicle leases and prohibits early termination penalties. It also permits cancellation of residential leases, but it does not provide protection from early termination fees. Just as with automobile leases, servicemembers are not choosing to end these contracts before they are fulfilled. They are doing so because they have been ordered by the U.S. Government to deploy into combat or change stations, and they should not face a penalty for obeying the call to duty.

Those two provisions were unanimously adopted on the House floor during debate on the NDAA in June, and I am hopeful the language will be retained in the conference report.

The final provision of the HADD Act would assist servicemembers in obtaining a refund for unused tuition paid to an institution of higher education should they have to deploy or relocate in the middle of a semester. Just as the Post-9/11 GI Bill preserves the educational opportunities for our returning veterans, this provision of the HADD Act would preserve the opportunities of those being called into service.

Madam Chairman, these are protections that have been identified by our veterans to make their transition into combat or a new station that much easier. For the most part, we are proposing to extend existing protections. By my estimation, these are simple requests for us to fulfill given the tremendous sacrifices we ask of these individuals. The HADD Act has the endorsement of the Iraq and Afghanistan Veterans of America, which worked with me to draft this legislation. I look forward to working with the Committee to provide these additional protections to our men and women in uniform and save them the hassle of being unfairly penalized for fulfilling their service to our country.

Enclosures:
Section-by-section summary
IAVA letter of support

**Summary of H.R. 2874, The Helping Active Duty Deployed (HADD)
Act of 2009—Congressman Gerald E. Connolly (VA-11th)**

General Overview: To provide assistance to active duty, deployed servicemembers who currently face financial penalties for early terminations of certain contracts entered into prior to their deployment.

Section 2:

Family Plan Cellular Telephone Service: The 110th Congress amended the Servicemembers Civil Relief Act (SCRA) to allow deployed servicemembers to end an individual cellular telephone service contract prior to its scheduled expiration without incurring an early termination penalty. However, servicemembers who have a family plan service are not exempt from such penalties. The HADD Act would allow any cellular telephone service contract entered into “on behalf of” a servicemember, which courts have ruled to include family plans, to be terminated by a deployed servicemember without penalty.

Section 3:

Rental Lease Early Termination Penalty: The SCRA currently permits active duty deployed servicemembers to terminate rental residential property leases and motor vehicle leases. As currently written, there is an explicit section stating that there can be no early termination penalties in the case of a motor vehicle lease. The HADD Act would provide consistency by amending the SCRA to also prohibit early termination penalties on real property leases terminated due to a deployment.

Section 4:

Higher Education Tuition Payments: The 110th Congress amended Title 20 of the U.S. Code to permit active duty servicemembers who were deployed subsequent to enrollment in an institute of higher education to regain admittance following the cessation of their deployment. The HADD Act would amend the Code to permit deployed servicemembers to obtain a refund of the tuition payments made to an institute of higher education for the portion of the educational program that the servicemember had not yet received academic credit prior to being deployed.

Iraq and Afghanistan Veterans of America
Washington, DC.
May 8, 2009

The Honorable Gerald E. Connolly
327 Cannon House Office Building
Washington, DC 20515

Dear Congressman Connolly:

Iraq and Afghanistan Veterans of America (IAVA) is proud to offer our support for the Helping Active Duty Deployed Act of 2009 (HADD). The Servicemember Civil Relief Act must continue to be modernized to ensure that our men and women in uniform are focusing on their missions overseas and not bureaucratic morass back at home.

Over 500,000 National Guard and Reservists have been deployed since 9/11 and nearly 1/5th of those are currently enrolled in college. Without Federal protections these servicemembers who are deployed mid academic term face a patchwork of refund procedures which are confusing and inconsistent. HADD will require colleges to refund tuition paid by the servicemember for courses they could not complete due to a deployment.

This legislation will also allow servicemembers who have cell phone contracts on a family plan to suspend their service while they are overseas. While I was in Iraq, I was required to pay a monthly fee to my cell phone provider in order to keep my cell phone contract current. I spent 5 hours of my first day back from Iraq in a Cingular Wireless store just trying to get my service restored. It took me over 7 months for the whole issue to get resolved and required filing a complaint to the FCC and switching service providers.

If we can be of help in securing passage of this bill, please feel free to contact me at (202) 544-7692 or patrick@iava.org. We look forward to working with you.

Sincerely,

Patrick Campbell
Chief Legislative Counsel

**Prepared Statement of Lynn M. Schubert, President,
Surety and Fidelity Association of America**

Madam Chairwoman, thank you for inviting us here today to testify on a matter that is critical to the surety industry, to the construction industry and to small veteran-owned and controlled businesses.

The Surety & Fidelity Association of America (SFAA) is a trade association of more than 450 insurance companies that are licensed to write surety and fidelity bonds. SFAA members collectively provide the vast majority of performance and payment bonds on Federal and state construction projects in the United States.

We are here to provide our assessment of how and to what extent the surety bond provisions in H.R. 294 would achieve the objective of promoting small veteran-owned and controlled businesses. In particular, we can provide guidance regarding how performance and payment bonds are underwritten and how to enhance the bonding of small veteran-owned and controlled contractors.

Summary of the Provisions in H.R. 294 That Impact Surety Bonding

H.R. 294 would: (1) prohibit the Department of Veterans Affairs from requiring a small veteran-owned and controlled business to furnish a performance or payment bond in an amount that exceeds 50 percent of the contract price; (2) prohibit any subcontractor that is a small veteran-owned and controlled business from being required to furnish a performance or payment bond in an amount that exceeds 50 percent of the amount of the subcontract; and (3) permit the prime contractor to furnish performance and payment bonds on behalf of a small veteran-owned and controlled subcontractor.

The Impact of the Surety Bonding Provisions in H.R. 294

We support the intent of this bill, to help small veteran-owned and controlled businesses participate in Federal construction projects, and are committed to helping accomplish this. In fact, in March of 2007 SFAA was awarded the "Lane Evans Veteran Entrepreneur Public Service Award" for our program providing access to surety bonding for service-disabled veterans. This bill as drafted, however, will not achieve its intended purposes, and in fact, would hurt the very businesses it is designed to help.

A performance bond secures the contractor's obligation to perform the contract. A payment bond secures the contractor's obligation to pay its subcontractors and suppliers. In determining whether to provide the bonds, a surety company makes an assessment of the contractor's capability and financial strength to perform the obligations of the contract. A surety's evaluation of a contractor is designed to prevent defaults on public construction projects. The surety's assessment must take into account the size and scope of the underlying obligation, the construction contract. The risk to the surety is that the contractor will not be able to complete the contract. If the contractor defaults, the surety's obligations under the bond are triggered. The surety's financial and other underwriting thresholds are based on the size of the contract, not the size of the bond. No matter the size of the bond, the bond secures the performance of the whole contract. A surety never anticipates a loss in the full amount of the bond when executing the bond (although that certainly does occur). To a surety underwriter, a bond that is in the amount of 100 percent of the contract price presents essentially the same risk to the surety as a bond that is in the amount of 50 percent of the contract. Therefore, because the surety's assessment of risk and underwriting thresholds do not change with a lower bond amount, reducing the required amount of the performance and payment bonds will not affect availability to any significant degree.

In addition, a reduced bond amount will not affect the cost of the bonds. Since the measure of the surety's risk is the contract price, the premium of a performance bond and payment bond typically is based on the contract price, not the bond amount. Sureties, like all insurance companies, are regulated by state insurance departments and are required to file rates and rating rules based on actuarial principles with these departments. An SFAA member may develop its own rules or adopt the rules filed by SFAA. Sureties are required to charge bond premiums based on these rules. According to the rating rules approved or accepted by state insurance departments, contract price (not bond amount) is the basis for determining the cost of performance and payment bonds.

While not achieving the goal of greater access to surety bonds for small veteran-owned and controlled contractors, requiring a bond of less than 100 percent of the contract price unnecessarily exposes the government to additional costs and subcontractors and suppliers to the risk of nonpayment if there is a default. Although a surety may not anticipate a loss of 100 percent of the contract price, those situations do occur, and when they do that money is there for the completion of the work and payment of the unpaid laborers, subcontractors and suppliers.

The performance bond ensures that the project is completed for the contract price. If the contractor defaults and additional funds are needed for completion, the surety pays those costs, up to the dollar amount of the bond. If less than a 100 percent performance bond is allowed, the taxpayers take on the additional costs if the contractor defaults.

Mechanics liens cannot be asserted against public property. Laborers, subcontractors and suppliers on public projects must rely on the general contractor's payment bond for protection. If less than the full contract amount is available for protection,

these parties can be left with little or no payment security for their services and supplies if the contractor is unable or unwilling to pay them. Every time the surety pays a claim, the penal sum of the bond essentially is reduced by that amount, leaving less and less protection for workers and suppliers. Because small and emerging contractors, including veteran-owned and controlled contractors, are more likely to start out as subcontractors, these contractors would be the ones deprived of complete payment protection by this bill.

The most recent revisions to the Miller Act, the statute requiring performance and payment bond protection on Federal construction projects, highlighted the importance of full payment bond protection. Prior to 1999 the payment bond posted under the Miller Act was in an amount less than the full contract price: 50 percent of the contract price for contracts up to \$1 million, 40 percent of the contract price if the contract was more than \$1 million but not more than \$5 million, and \$2.5 million for all contracts in excess of \$5 million. Subcontractors were not adequately protected and many refused to work on Federal construction projects. They then approached Congress with their concerns and the Miller Act was amended by the Construction Industry Payment Act 1999. Now the payment bond is in the same amount as the performance bond, which is 100 percent of the contract price pursuant to regulation, except under extremely limited circumstances. The purpose of the amendments was "to improve payment bond protections for persons who furnish labor or material for use on Federal construction projects." H.R. Rep. No. 106-277, at 2. The House report includes the testimony of several subcontractor and trade contractor organizations in support of the increase of the payment bond amount. *Id.* at 6-7. Decreasing the amount of the payment bond would be a step backward.

H.R. 294 also permits a general contractor to furnish performance and payment bonds on behalf of its veteran-owned and controlled small subcontractors. We are unclear about the intent of this provision. It is unlikely that a general contractor would post a bond on behalf of its subcontractor. The general contractor requires bonds from its subcontractors to protect itself against the risk of subcontractor default. The general contractor is the party protected under bonds required of subcontractors. By providing a bond on behalf of its subcontractor, the general contractor would be providing a bond to itself. However, if a small business enters into a joint venture with a larger contractor and the larger contractor were allowed to furnish the required bonds on behalf of the joint venture, or the surety wrote the bonds for the joint venture based on the strength and indemnification of the larger contractor without the small business losing the opportunity for the set-aside project, that would assist small veteran-owned and controlled contractors. First, they would be able to obtain that specific contract with the Federal Government. Second, they would develop a relationship with a surety through that project, increasing the likelihood of obtaining bonds on their own in the future.

What Will Work to Assist Small Veteran-Owned Businesses in Obtaining Bonding

Because underwriting is based on the contractor's ability to perform contracts of a certain size and type and the contractor's ability to run its operation successfully, the focus of any program should be on enhancing the contractor's financial and operational capabilities—and the bonding will follow. This is the recipe for success in enhancing job opportunities for small and emerging contractors. SFAA has a Model Contractor Development Program (MCDP) that it has implemented in several states to help small and emerging contractors become ready for and obtain surety bonding. The MCDP has two parts: 1) Educational Workshops designed to help small and emerging contractors improve their company's operations, thereby enhancing their ability to obtain bonding or increase their bonding capacity; and 2) a Bond Readiness Component, which consists of one-on-one counseling sessions with surety bond producers, underwriters and other professionals who work with the contractors to assemble the materials necessary for a complete bond application and address any omissions and/or deficiencies that might deter the successful underwriting of a bond.

Most recently, SFAA has implemented its MCDP in a number of locations in New York State. To date, more than \$30 million in surety bonding has been offered or underwritten for small and emerging contractors through this initiative. In some cases, the initiative helped small contractors obtain their first surety bond, and in other cases, it helped small contractors increase the size of the bonds they are able to obtain for a single job or as a total bonding limit.

SFAA would be happy to assist the Department of Veterans Affairs with such a program specifically designed for veteran-owned and controlled small contractors.

In addition, we have other initiatives under way at the Federal level to assist small and emerging contractors in obtaining bonding, which could help small veteran-owned and controlled businesses as well. Since 2006, SFAA has worked with

the Department of Commerce Minority Business Development Agency (MBDA) through a Memorandum of Understanding (MOU) whose objective is for SFAA to share its resources with MBDA for the benefit of minority owned firms to enhance their access to bonding and educate them on how to become bondable or increase their bonding capacity. In meeting this objective, SFAA has conducted numerous MBDA-sponsored bonding outreach and information workshops throughout the country and MBDA regional offices and grantees have been active partners in our MCDP efforts in New York, Illinois and Texas.

The recent economic stimulus package also added \$20 million in funding for 2009 for the Minority Resource Center (Center) of the U.S. Department of Transportation (DOT) for its disadvantaged business enterprise bonding assistance program. Current law provides that the Center shall provide assistance in obtaining bid, performance and payment bonds by disadvantaged business enterprises. SFAA was involved with the DOT when the program was initiated and is entering into a Memorandum of Agreement (MOA) with the Center to conduct a bond education program similar to that of the MCDP. SFAA also has offered to work with the Center on an expanded surety bonding program that would include a capital access component to provide working capital and collateral guarantees for contractors seeking bonding. SFAA would be happy to work with the Department of Veterans Affairs on a similar program.

In addition to programs that follow the MCDP, there are other programs that currently exist to assist small contractors. The recent economic stimulus package made certain amendments to the Surety Bond Guarantee Program of the Small Business Administration (SBA) that improve the viability of the program. The maximum size of contracts eligible for the SBA's bond guarantee was increased from \$2 million to \$5 million and can be increased up to \$10 million if a Federal agency's contracting officer certifies that the guarantee is necessary. SFAA continues to work with the staff of the SBA Office of Surety Guarantees to make it more attractive to sureties. Ultimately, however, legislative and regulatory changes will be needed.

What Else is Needed

Capital

Many times, what is perceived to be a bonding problem is not. Small and emerging contractors that are having difficulties in obtaining bonding actually may have a capital problem. In the current credit crunch, they may not be receiving the bank lines of credit that they need to provide the financial stability in their businesses that would make them bondable. Small contractors need capital, capacity and experience in order to obtain bonds. A capital access program combined with a surety bond access program could be the best solution right now.

Procurement reform

In addition, all Federal agencies have a goal that requires 23 percent of the total dollars awarded in government contracts to be given to small businesses. This ambitious goal combined with a stretched procurement workforce within the Federal Government leads to project opportunities that are set aside for small businesses, but are too large for them to perform. Contracting agencies argue that they do not have a sufficient number of contracting officers to manage a higher number of low-dollar projects. The high dollar value of some Federal Government construction projects, however, makes these projects impossible for a small contractor to undertake. (SFAA staff is aware of instances of small business construction project opportunities valued in excess of \$50 million.) Qualified small contractors that are "small" in accordance with the applicable regulations could perform some of the work and could obtain bonding for that amount, but cannot perform or obtain bonds for the entire project. There is a disconnect between the size of projects that are advertised to meet small business goals and the size of construction projects that these small contractors are qualified to perform. To address the disconnect, the Federal Government must set its procurement policy to give small contractors access to projects they are capable of performing. We offer some suggested approaches:

- ***Joint Venture and Mentor-Protégé Programs That Work to Permit Small Business Participation.*** Mentor/protégé programs and joint ventures with larger contractors provide a means for small contractors to participate in public construction projects. The current Federal regulations, however, lack clarity and standardization among the procuring agencies as to what arrangements are acceptable. In addition, the regulations present a disincentive for smaller contractors to participate in Federal construction projects with larger contractors in joint ventures or mentor-protégé programs. For example, a small business may lose its status as "small" if it participates in a joint venture in which the joint venture partner does not qualify as a small business or, in some cases, such as

the 8(a) protégé-mentor joint venture, the protégé does not control the joint venture. Once an otherwise qualified small business loses its status for that particular set-aside opportunity, the small contractor cannot take advantage of the set-aside opportunity and the Federal agency letting the construction contract faces an obstacle in meeting its small business participation goal. Yet, just because a contractor is too small to complete all of the work on that project, does not mean that such contractors cannot do any of the work.

SFAA believes that small businesses should not lose their status and be disqualified from bidding on a small business opportunity because of their participation in mentor/protégé programs or joint ventures or because bonds were issued based on the strength of the joint venture partner. SFAA recommends that the Federal regulations explicitly permit open joint ventures between the small contractor and a larger contractor. The larger contractor's indemnity to the surety for losses under the bond should not threaten the small contractor's status. The new rules could apply to construction contracts under a certain dollar value, such as \$50 million. An additional requirement could be that in any project in which the small contractor is in a joint venture with a larger contractor, the small contractor must self-perform at least 10 percent of the work in jobs between \$25 million and \$50 million and 15 percent of the work in jobs under \$25 million.

- ***Unbundling Federal Contracts.*** As previously described, Federal agencies increasingly are bundling and letting larger construction contracts. Added to that, a Federal court recently held that Federal construction projects were not explicitly subject to the anti-bundling provisions in the Federal regulations so that contract bundling cannot be challenged in the construction arena. To address the needs of small businesses, Federal procurement rules must contain both mandates and incentives to break construction contracts into smaller parts to create genuine opportunities for small businesses. We recommend that the Federal definition of contract bundling be amended to include specifically Federal construction projects. In addition, a small business procurement requirement should be established under which any Federal agency letting construction contracts must let a certain percentage of its total construction procurement budget in contracts of no more than \$5 million.
- ***Interagency Coordination of All Federal Resources Targeted for Small Businesses.*** With loan and bonding programs in the SBA and DOT, and the loan guarantee program for the Department of Veterans Affairs proposed in this bill, coordination is needed among the various Federal programs. H.R. 4253, enacted on February 14, 2008, provides a model for coordination. The Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2007 requires the President to establish an interagency task force to coordinate the efforts of all Federal agencies that are involved in increasing capital and business development opportunities for small business owners and service-disabled veterans. The new law directs the interagency task force to coordinate administrative and regulatory activities and develop proposals relating to increasing capital access and capacity of these small business concerns through loans, surety bonding and franchising.

We believe that this coordination mechanism among the agencies is all the more important now to assure small business participation in Federal projects funded with stimulus money.

Summary and Conclusion

SFAA believes that the current surety bonding provisions of H.R. 294 will not have the desired effect of facilitating access to surety bonding for small veteran-owned and controlled contractors. However, there are programs available to the Department of Veterans Affairs that can be effective in enhancing bonding access. In addition, SFAA's procurement recommendations provide methods to significantly increase small business participation in Federal construction work, and help procurement agencies meet their goals.

We hope that the Department of Veterans Affairs will be interested in working with the surety community to address the needs of veteran-owned and controlled small businesses for long-term participation and success in Federal construction projects.

**Prepared Statement of Mark Walker, Deputy Director,
National Economic Commission, American Legion**

Executive Summary

The American Legion has no official positions on H.R. 294, H.R. 2461, and H.R. 3577 at this time. The American Legion supports the increase in grants that are provided for severely injured veterans in H.R. 1169. The American Legion supports H.R. 1182, which expands Servicemembers Civil Relief Act protection against state income tax liability that applies to a military spouse. This bill would also protect the right of the military spouse to vote by absentee ballot in his/her home state (legal residence), despite their absence from the state for the purposes of being with the active duty husband/wife in another state. The American Legion supports H.R. 2416, which would require VA to use Federal Supply schedules for the purpose of meeting their veteran and service-disabled veteran-owned businesses procurement goals. The American Legion supports H.R. 2614. The American Legion believes there is a definite need to constitute an independent body that is able to analyze and develop intelligent practical solutions to difficult issues and to present those solutions to VA's senior leadership and Congressional Members as well as other stakeholders. The American Legion supports H.R. 2696. The amendments to SCRA in this bill will clarify the servicemember's right to bring a personal cause of action for damages or other appropriate remedies against violators of the SCRA. The American Legion support H.R. 2874. This bill would give servicemembers needed relief from early termination charges related to residential, professional, business, or agricultural rental leases. This bill would also require an institution of higher learning to refund the tuition and fees paid by a student whose absence is due to military service. The American Legion supports H.R. 2928. Many veterans prefer traditional employment and/or may require employment for personal or family reasons. The American Legion recommends that these programs be included under the Post-9/11 GI Bill (Chapter 33); flight training; correspondence schools; vocational schools; apprentice programs; and, on-the-job training programs. The American Legion supports H.R. 3223, which would allow for more qualified veteran and service-disabled veteran business owners to compete and receive contracts from the VA. The American Legion fully supports H.R. 3554, which expands education benefits to title 32 Active Guard Reserve. The American Legion supports H.R. 3561. The extra funds would eliminate a considerable amount of the costs to obtain the initial instrument rating and commercial pilot certifications needed for advancement in the aviation field. The American Legion supports the drafted legislation will provide an increase in reporting fees to schools that enroll veterans. The increased money could assist with more staffing, provide better equipment (i.e. computers), which would provide self-serve area for veterans or allow more money to provide for a Veteran Center. Thank you for the opportunity to submit these opinions of The American Legion on these issues.

Madam Chairwoman, Ranking Member Boozman, and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's views on the several pieces of legislation being considered by the Subcommittee today. The American Legion commends the Subcommittee for holding a hearing to discuss these very important and timely issues.

H.R. 294, Veteran-Owned Small Business Promotion Act of 2009, which amends title 38, United States Code, to provide for the reauthorization of the Department of Veterans Affairs (VA) small business loan program. The American Legion does not have an official position on reauthorizing the small business loan program within the VA at this time. However, The American Legion recommends that Congress establish a direct lending program through the Small Business Administration (SBA). This effort would offer low-interest loans to otherwise healthy veteran-owned and service-disabled veteran-owned businesses that are having trouble obtaining the credit they need for necessary operating expenses or expansion. The American Legion believes the SBA's Office of Veterans' Business Development should be the lead agency to ensure that Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) veterans are provided with Entrepreneurial Development Assistance. Comprehensive training should be handled by the SBA and Resource Training Centers should include DoD and VA facilities.

H.R. 1169 seeks to amend title 38, United States Code, to increase the amount of assistance provided by the Secretary of VA to disabled veterans for specially

adapted housing and automobiles and adapted equipment. This legislation seeks to triple the amount of grants that are provided to severely injured veterans. Cost of construction has risen significantly. The increase in funding will assist those severely wounded veterans with the resources to pay for automobiles, adaptive automobile equipment, and adaptive housing for their disabilities. Ultimately, this bill would provide injured veterans with a specific quality of life that they are entitled to. The American Legion supports this legislation.

H.R. 1182, Military Spouses Residency Relief Act, would amend the Servicemembers Civil Relief Act (SCRA) to prohibit, for purposes of voting for a Federal, state, or local office, deeming a person to have lost a residence or domicile in a state, acquired a residence or domicile in any other state, or become a resident in or any other state solely because the person is absent from a state because the person is accompanying the person's spouse who is absent from the state in compliance with military or naval orders. This bill would add a new subsection (c) of section 571, as follows: "Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders." This bill expands SCRA protection against state income tax liability that applies to a working military spouse. This bill would also protect the right of the military spouse to vote by absentee ballot in his/her home state (legal residence), despite their absence from the state for the purposes of being with the active duty spouse in another state. The American Legion supports this important piece of legislation.

H.R. 2416 seeks to require VA to use purchases of goods or services through the Federal Supply Schedules for the purpose of meeting certain contracting goals for participation by small business concerns owned and controlled by veterans, including veterans with service-connected disabilities. The American Legion has encouraged Congress to require reasonable "set-asides" of Federal procurements and contracts for businesses owned and operated by veterans. The American Legion supported legislation in the past that sought to add service-connected disabled veterans to the list of specified small business categories receiving 3 percent set-asides. Public Law (PL) 106-50, "The Veteran Entrepreneurship and Small Business Development Act 1999," included veteran-owned small businesses within Federal contracting and subcontracting goals for small business owners and within goals for the participation of small businesses in Federal procurement contracts. It requires the head of each Federal agency to establish agency goals for the participation by small businesses owned and controlled by service-connected disabled veteran, within that agency's procurement contracts. Agency compliance with PL 106-50 has been minimal. In 2004, Executive Order 13360 was issued to strengthen opportunities in Federal contracting for service-disabled veteran-owned businesses. The American Legion supports this legislation.

H.R. 2461, Veterans Small Business Verification Act, amends title 38, United States Code, to clarify the responsibility of the Secretary of VA to verify the veteran status of the owners of small business concerns listed in the database maintained by the Secretary. The American Legion has no official position on this issue at this time.

H.R. 2614, Veterans' Advisory Committee on Education Reauthorization Act of 2009, seeks to amend title 38, United States Code, to reauthorize the Veterans' Advisory Committee on Education (VACOE). VACOE is composed of members who are prominent leaders in education/training, particularly in veterans' education and training. They are able to provide valuable insight and advice to the VA Secretary and Members of Congress. The American Legion believes there is a definite need to constitute an independent body that is able to analyze and develop intelligent, practical solutions to difficult issues and to present those solutions to VA's senior leadership and Congressional Members as well as other stakeholders. Last, VACOE meetings are open to the public. Any individual/group can attend and address VACOE with issues they wish to bring to the attention of VA leadership. In turn, this Advisory Committee can pass those concerns onto VA and Members of Congress.

H.R. 2696, Servicemembers' Rights Protection Act, amends the Servicemembers Civil Relief Act (SCRA) to provide for the enforcement of rights afforded under that Act. The American Legion supports this legislation that authorizes the Attorney General to file a civil action for violation of the SCRA and allows a servicemember the right to join the Attorney General in a civil action. This bill will also provide servicemembers their own private cause of action, regardless of any enforcement action taken by the Attorney General. These amendments to SCRA will

clarify the servicemember's right to bring a personal cause of action for damages or other appropriate remedies against violators of the SCRA.

H.R. 2874, Helping Active Duty Deployed Act of 2009, amends the Servicemembers Civil Relief Act to improve the equitable relief available for servicemembers called to active duty. This bill would give servicemembers needed relief from early termination charges related to residential, professional, business, or agricultural rental leases. This bill would also require an institution of higher learning to refund the tuition and fees paid by a student whose absence is due to military service.

H.R. 2928 seeks to amend title 38, United States Code (U.S.C.), to provide an apprenticeship and on-the-job training program under the Post-9/11 Veterans Education Assistance Program. Not all veterans attend institutions of higher learning (IHLs). Many veterans prefer traditional employment and/or may require employment for personal or family reasons. The American Legion recommends that these programs be included under the Post-9/11 GI Bill (Chapter 33):

- flight training;
- correspondence schools;
- vocational schools;
- apprentice programs; and,
- on-the-job training programs.

Chapter 33 needs to be modified to include non-college degree programs. Veterans choosing to use their educational benefits for other than IHLs are able to use them under the existing Chapter 30 or Chapters 1606 or 1607, title 10, U.S.C.; however, in those instances the benefit recipients are not entitled to either the housing stipend or the allowance for books and supplies. The American Legion believes that veterans should never be limited in the manner they use their educational benefits.

H.R. 3223 amends title 38, United States Code, to improve the VA's contracting goals and preferences for small business concerns owned and controlled by veterans. This bill will amend section 8127 of title 38, United States Code, in subsection (c), by striking 'may' and inserting 'shall' for the purpose of reaching and surpassing veterans' and service-disabled veterans' procurement goals. This bill would also not disqualify a veteran or veterans of more than one small business concern from being included in the VA's database. The American Legion supports these amendments that would allow for more qualified veteran and service-disabled veteran business owners to compete and receive contracts from VA.

H.R. 3554, National Guard Education Equality Act, amends title 38, United States Code, to provide for the inclusion of certain active duty service in the Reserve components as qualifying service for purposes of Post-9/11 Educational Assistance Program. This legislation will extend benefits to title 32 Active Guard Reserve (AGR) servicemembers under the Post-9/11 GI Bill. Many AGR personnel were called to active duty via title 32 in support of the response to the attacks on America on September 11, 2001, in addition to deploying for Operation Iraqi Freedom and Operation Enduring Freedom. Thus, AGR servicemembers have answered the Nation's call to arms and should receive equal education benefits for their service. Additionally, this bill will provide a full 4-year college education to members of the National Guard, who are discharged with a service-connected disability. The American Legion fully supports enacting the National Guard Education Equality Act.

H.R. 3561 amends title 38, United States Code, to increase the amount of educational assistance provided for certain veterans for flight training. The American Legion supports the increase from 60 percent to 75 percent for veterans pursuing flight training. The extra funds would eliminate a considerable amount of the costs to obtain the initial instrument rating and commercial pilot certifications needed for advancement in the aviation field.

H.R. 3577, Education Assistance to Realign New Eligibilities for Dependents (EARNED) Act of 2009, amends title 38, United States Code, to provide authority for certain members of the Armed Forces who have served 20 years on active duty to transfer entitlement to Post-9/11 Educational Assistance to their dependents. The American Legion has no official position on this issue at this time.

The draft legislation seeks to provide for an increase in the amount of reporting fees payable to educational institutions that enroll veterans receiving educational assistance from the VA. Due to the lack of staffing and budget cuts that are being made at institutions, an increase in reporting fees is warranted. The school's certifying official assists veterans with applying for classes and monitors their enrollment weekly along with ensuring this information is reported to VA. The increased funding could assist with more staffing and provide better equipment (i.e. computers) which would provide a self-serve area for veterans or allow more funds to provide for a Veterans Center.

The American Legion appreciates the opportunity to present this statement for the record. Again, thank you Madam Chairwoman, Ranking Member Boozman, and Members of the Subcommittee for allowing The American Legion to present its views on these very important issues today.

**Prepared Statement of Justin Brown, Legislative Associate,
National Legislative Service, Veterans of Foreign Wars of the United States**

MADAM CHAIRWOMAN AND MEMBERS OF THIS SUBCOMMITTEE:

On behalf of the 2.2 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, I would like to thank this Committee for the opportunity to testify. The issues under consideration today are of great importance to our members and the entire veteran population.

The economic downturn has impacted the entire Nation and nowhere is it more demoralizing than with our recently separated veterans. The most recent monthly survey from the Bureau of Labor Statistics highlighted the dire situation facing America's newest veterans. There are only 9,000 fewer unemployed Post-9/11 servicemembers in the United States than there are servicemembers in Iraq and Afghanistan (185,000 unemployed—194,000 in OEF & OIF). The economic stimulus may or may not be working, but it surely is not working for veterans.

In March of this year, the Veterans of Foreign Wars testified before this body that the economic stimulus was largely circumventing this at-risk population. We worked with the Senate prior to passage of the economic stimulus, in an attempt to pass legislation that would help America help veterans in the economic stimulus and through these tough times. However, these changes never occurred.

In consideration of this, and the startling unemployment numbers for Post-9/11 veterans, the VFW requests that any and all Federal stimulus money be subjected to the same requirements it currently is as if it were directly spent by the Federal Government. Federal laws relating to veterans preference and contracting are being circumvented by distributing large sums of Federal money in the form of state grants.

The VFW believes expansion of any government workforce as a result of stimulus funds should be bound, as a condition for use of Federal dollars, to adhere to all Federal veterans' employment laws; specifically the *Veterans Employment Opportunity Act*. Any government contracts awarded due to Federal stimulus funding should be bound to set-aside 3 percent of all such contracts and sub-contracts for disabled veteran owned small businesses (SDVOSBs) as required by P.L. 106-50. Any company that receives a contract of more than \$100,000, and was funded in any part from the Federal stimulus, should also be bound by the Jobs for Veterans Act.

Our Nation's economic stimulus package should not be a mechanism for skirting Federal veterans' employment and small business laws. Less than one-half of the total stimulus dollars have been distributed and this needs to be corrected immediately.

H.R. 294, to amend title 38, United States Code, to provide for the reauthorization of the Department of Veterans Affairs small business loan program, and for other purposes.

The Veterans of Foreign Wars does not have a formal position on H.R. 294 at this time. In previous testimony before the House Small Business Committee, VFW urged Congress to create a direct loan or hybrid loan program via the Small Business Administration for veterans' small businesses. Many have argued that the better route is to raise loan guarantees thereby increasing the lender's incentive to provide veterans with capital. However, the VFW has found that if lenders are not lending, as has been the case in the current economic situation, raising loan guarantees is insufficient. Offering an array of financial tools, guarantees, and/or a direct loan program, would increase veterans' options in regard to starting and maintaining businesses. Clearly, different types of loans would require different conditions of lending based on the situational factors of the veteran.

H.R. 1169, to amend title 38, United States Code, to increase the amount of assistance provided by the Secretary of Veterans Affairs to disabled veterans for specially adapted housing and automobiles and adapted equipment.

The Veterans of Foreign Wars offers its enthusiastic support for H.R. 1169; legislation that would increase the amount of assistance provided by VA to disabled veterans for specially adapted housing, automobiles and adapted equipment.

For many years the amount of grants provided to certain severely disabled veterans who need adaptations made to home or automobiles have not kept pace with inflation causing the benefit to erode. VFW believes that H.R. 1169 would provide much needed relief by increasing from \$12,000 to \$36,000 the maximum amount authorized by VA for specially adapted features in a home and from \$60,000 to \$180,000 for the construction of specially adapted housing. It also makes a much needed change to the adaptive automobile benefit by providing up to \$33,000 for the purchase of an automobile and specially modified automobile equipment for our severely disabled veterans and servicemembers.

H.R. 1182, to amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes.

The Veterans of Foreign Wars strongly supports H.R. 1182. This important legislation would amend the *Servicemembers Civil Relief Act* so that certain rights and protections of this act apply not only to servicemembers, but to their spouses as well. Particularly, this legislation provides a guarantee of residency for spouses for voting purposes. Spouses of servicemembers who have moved out of state will no longer be deemed to have lost residency in their original state, nor be deemed to have acquired a residence in any other state. Thus, spouses' voting eligibility will be kept to their original state of residence if they choose.

Also of importance, this legislation helps determine residency of spouses of servicemembers in dealing with taxes. A spouse's relocation will neither cause them to lose nor gain state residency as long as they moved to their new location for the sole purpose of being with their spouse who moved due to military orders. A spouse's income will not be deemed to be income within the new tax jurisdiction. Last, H.R. 1182 applies the suspension of land rights residency requirement to the spouses of servicemembers.

H.R. 2416, to require the Department of Veterans Affairs to use purchases of goods or services through the Federal supply schedules for the purpose of meeting certain contracting goals for participation by small business concerns owned and controlled by veterans, including veterans with service-connected disabilities.

The Veterans of Foreign Wars supports this legislation that would help the Federal Government meet its legally established 3 percent disabled veteran owned small business (SDVOSB) set-aside mandate of all Federal contracts. Ten years have gone by since the passage of P.L. 106-50, and the Federal Government has yet to surpass 1.5 percent of all Federal contracts. The VFW calls on Congress to step up its efforts to ensure governmental departments meet their established mandates.

This particular legislation would extend an opportunity to veteran small businesses to fulfill regularly and often needed consumable items of the VA.

According to the VA, the National Acquisition Center Federal Supply Schedule Service is responsible for establishing, soliciting, awarding, and administering the VA's Federal Supply Schedule Program, which currently consists of 8 active schedules. These schedules encompass such products as pharmaceuticals; medical equipment and supplies; dental supplies; x-ray equipment and supplies (including medical and dental x-ray film); patient mobility devices (including wheelchairs, scooters, walkers, etc.); antiseptic skin cleansers, detergents and soaps; in vitro diagnostics, reagents, test kits and sets; and clinical analyzers, laboratory cost-per-test. There are a total of over 1,200 contracts in place for the various commodity groups. Annual sales against these contracts exceed \$2 billion. All Federal Supply Schedule contracts are multiple award, indefinite delivery-indefinite quantity type, and are national in scope. These contracts are available for use by all government agencies including but not limited to: VA medical centers, Department of Defense, Bureau of Prisons, Indian Health Services, Public Health Services, some State Veterans Homes, etc. Performance periods can be established up to 5 years in length.

H.R. 2461, to amend title 38, United States Code, to clarify the responsibility of the Secretary of Veterans Affairs to verify the veteran status of the owners of small business concerns listed in the database maintained by the secretary.

The Veterans of Foreign Wars strongly supports this legislation that would verify small businesses that claim to be veteran or disabled veteran owned are in fact owned and operated by those veterans. The potential exists for companies to claim veteran status in order to gain unearned access to veterans' business benefits. These companies then may become competitors of benefit eligible veteran or disabled veteran owned businesses.

This legislation would require VA to confirm a small business is owned and controlled by veterans and a veteran/s are in fact disabled prior to being listed in the

VA's database of veteran owned and service disabled veterans. The legislation would also require all unverified parties currently in the database be verified within 60 days of the passage of this Act. The VFW hopes to see both the VA and Congress address this issue immediately.

H.R. 2614, to amend title 38, United States Code, to reauthorize the Veterans' Advisory Committee on Education.

The Veterans of Foreign Wars supports H.R. 2614 which would allow the Veterans' Advisory Committee on Education to continue to serve our veterans for another 6 years. The Veterans' Advisory Committee on Education is an important Committee that provides advice on the administration of education and training programs to our veterans.

H.R. 2696, to amend the Servicemembers Civil Relief Act to provide for the enforcement of rights afforded under that Act.

The VFW strongly supports this legislation that would add a new title VIII to the *Servicemembers Civil Relief Act* to enhance the protections provided under that Act for servicemembers and their dependents.

This legislation would authorize the Attorney General to commence a civil action in any appropriate United States District Court whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in, or has engaged in a pattern or practice of conduct in violation of any provision of the *Servicemembers Civil Relief Act*; or any person or group of persons is denying, or has denied, any person or group of persons any protection afforded by any provision of this Act, and such denial raises an issue of general public importance. It establishes the right of those persons individually protected by the Act to intervene in any action brought by the Attorney General and to receive injunctive and monetary relief, along with reasonable attorneys' fees and costs.

The Act would also clarify that those persons individually protected by the Act have their own personal cause of action, independent of any enforcement action the Attorney General might initiate. Those individually protected who bring their own private action may generally seek and obtain the same remedies available upon intervention in an action brought by the Attorney General.

Furthermore, this act would make explicit that in addition to attorneys' fees, consequential and punitive damages may be awarded for violations of the Act. Although some courts have found such damages to be implied, others have not. This disparity will now be eliminated.

H.R. 2874, to amend the Servicemembers Civil Relief Act to improve the equitable relief available for servicemembers called to active duty, and for other purposes.

The VFW supports this legislation which addresses rent and lease amounts for premises and motor vehicles for servicemembers. H.R. 2874 states that unpaid lease amounts preceding the effective date of the lease will be paid on a prorated basis. This legislation also prohibits the lessor from imposing an early termination charge. However, any taxes, summonses, title and registration fees, or other obligations and liabilities would still be paid by the lessee.

This legislation also addresses tuition relief for postsecondary students who are called to military service. H.R. 2874 would allow for a student, who is a member of the military, to get reimbursed for their tuition and fees for school if they are called away to military action and are thus absent and do not receive school credit. These refunds however do not include tuition or fees paid on behalf of the student by scholarships awarded to the student by the institution of higher learning or through funds awarded under Title 20 U.S.C.

H.R. 2928, to amend title 38, United States Code, to provide for an apprenticeship and on-job training program under the Post-9/11 Veterans Educational Assistance Program.

While the VFW fully supports the intent of H.R. 2928 the legislation needs clarification. The VFW fully supports providing apprenticeship and on-job training under the purview of the Post-9/11 Veterans Educational Assistance Program. However, H.R. 2928 is not clear in that it does not provide a clear measurement for the benefit. The VFW believes that the current suggested criteria would actually provide less for apprenticeship training than is currently provided under Chapter 30 educational benefits. Therefore, the VFW suggests that the minimum that be offered under Chapter 33 be that which is currently offered under Chapter 30 with that rate being tied to a favorable annual rate of inflation.

H.R. 3223, to amend title 38, United States Code, to improve the Department of Veterans Affairs contracting goals and preferences for small business concerns owned and controlled by veterans.

The Veterans of Foreign Wars strongly supports H.R. 3223. This important legislation would clarify a longstanding issue in the veterans' business community by

simply changing “may” to “shall” in regards to a GAO interpretation of the law that caused massive confusion in regards to priority of contracting set-asides. Furthermore, the legislation would clarify that veterans who may own more than one business would not be a means for disqualification of small business set-asides. Also, the legislation would clarify the term “control of management and daily business operations.”

H.R. 3554, to amend title 38, United States Code, to provide for the inclusion of certain active-duty service in the reserve components as qualifying service for purposes of Post-9/11 Educational Assistance Program, and for other purposes.

The Veterans of Foreign Wars strongly supports this legislation that would qualify certain members of the Army National Guard who were activated under title 32 orders but due to a clerical error were excluded from Chapter 33 benefits. Over 30,000 members of the National Guard who currently do not enjoy the benefits of the Post-9/11 GI Bill but may have been actively involved in both Operation Iraqi Freedom and Operation Enduring Freedom would become eligible for it. In regards to Post-9/11 GI Bill fixes, this is the VFW's number one priority. Certain veterans who should be eligible for the benefit are not and the VFW strongly encourages Congress to address this issue as quickly as possible.

H.R. 3561, to amend title 38, United States Code, to increase the amount of educational assistance provided to certain veterans for flight training.

The Veterans of Foreign Wars supports this legislation that would allow veterans to receive additional assistance paying for their flight school programs. This important legislation increases the amount of educational funding for flight programs from 60 percent to 75 percent of the immediate costs up to the maximum amount of benefit provided under Chapter 30 educational benefits. H.R. 3561 would help eliminate funding barriers facing veterans interested in using their educational benefits to pursue certified flight training programs.

H.R. 3577, to amend title 38, United States Code, to provide authority for certain members of the Armed Forces who have served 20 years on active duty to transfer entitlement to Post-9/11 Educational Assistance to their dependants.

The Veterans of Foreign Wars strongly supports this legislation. H.R. 3577 would make eligible for the transferability of the Post-9/11 GI Bill all active duty military that served at least 90 days after September 10, 2001 and retired with 20 years of service between the dates of September 11, 2001 and July 31, 2009. The VFW has received numerous calls and emails from upset soldiers, sailors, and marines who found the August 1, 2009 deadline unfair. Had many of these servicemembers known such a benefit was going to be available many would have likely extended in order to receive it. The VFW believes these men and women served their country proudly and honorably during a time of war and ought to be offered the same benefit as their counterparts.

H.R. 3579, to amend title 38, United States Code, to provide for an increase in the amount of the reporting fees payable to educational institutions that enroll veterans receiving educational assistance from the Department of Veterans Affairs, and for other purposes.

The VFW supports this legislation that would raise the reporting fees, payable to institutions that enroll veterans receiving educational assistance from the VA, from \$7 or \$11 to \$50. This will raise the funding levels of institutions in order to assist them with the large influx of veterans using the Post-9/11 GI Bill.

Madam Chairwoman, this concludes my testimony and I will be pleased to respond to any questions you or the Members of this Subcommittee may have. Thank you.

Prepared Statement of John L. Wilson, Assistant National Legislative Director, Disabled American Veterans

Madam Chairwoman and Members of the Subcommittee:

On behalf of the 1.2 million members of the Disabled American Veterans (DAV), I am honored to present this testimony to address various bills before the Subcommittee today. In accordance with our congressional charter, the DAV's mission is to “advance the interests, and work for the betterment, of all wounded, injured, and disabled American veterans.” We are therefore pleased to support various measures insofar as they fall within that scope.

The Veteran-Owned Small Business Promotion Act of 2009, H.R. 294, reinstates and modifies this program, which was terminated at the end of fiscal year 1986. The

previous veteran-owned small business loan program authorized the Department of Veterans Affairs (VA) to provide loans to veteran-owned small businesses for:

- Financing plant construction, conversion, or expansion;
- Financing the acquisition of equipment, facilities, machinery, supplies, or materials; or
- Supplying working capital.

While it would repeal the authority to make direct loans, it would instead grant loan guarantees for qualified veterans. It would also:

- Reduce the minimum disability rating eligibility from 30 percent to 10 percent;
- Expands eligibility to all veterans which, under current law, was limited to Vietnam era veterans and veterans discharged or released due to a disability incurred or aggravated in the line of duty;
- Increases the maximum loan guaranty amount from \$200,000 to \$500,000;
- Authorizes the VA to subsidize a loan lender in order to reduce by up to one-half percent the interest rate paid by the veteran-owned small business;
- Includes, under a loan preference, members of the National Guard and reserves activated in support of the Global War on Terrorism;
- Limits performance bond requirements of veteran-owned small businesses with respect to the construction, alteration, or repair of any Department of Veterans Affairs (VA) public building or public work; and
- Treats a small business owned and controlled by veterans as a socially and economically disadvantaged small business for purposes of contracts awarded to the latter businesses under provisions of the Small Business Act.

As noted in the *Independent Budget* (IB), a policy document prepared annually by the DAV, AMVETS, Paralyzed Veterans of America, and Veterans of Foreign Wars of the United States, veterans, particularly veterans who are service disabled, have difficulties obtaining financial support to establish or maintain a small business. In an effort to assist veterans with financing a business, the Small Business Administration (SBA) has established a new loan program entitled "The Patriot Express Loan Initiative." Under this program, veterans can obtain business loans up to \$500,000 and qualify for SBA's maximum loan guarantee of up to 85 percent of the loan value of \$150,000 or less, and 75 percent guarantee for loans more than \$150,000. Unfortunately, lenders require collateral to secure the 15 percent to 25 percent of the loan not covered by the SBA guarantee. This collateral requirement actually restricts most recently discharged veterans from obtaining small business loans due to insufficient collateral.

It was the IB's recommendation that the VA should establish a loan-guarantee program similar to its current VA Home Loan Guarantee program to provide recently discharged veteran entrepreneurs the security needed to establish a small business after they have left the military service, even though they may be starting with little or no income or collateral.

While H.R. 294 would not authorize loans, it does provide VA-backed loan guarantees, the reduction of interest rates by one-half percent, and limits performance bond requirements of veteran-owned small businesses with respect to the construction, alteration, or repair of any Department of Veterans Affairs (VA) public building or public work, treats a small business owned and controlled by veterans as a socially and economically disadvantaged small business for Small Business Act-awarded contracts, and other beneficial provisions. Although the DAV has no resolution on this issue, we are not opposed to the favorable consideration of this legislation.

H.R. 1169 addresses both specially adapted housing and the purchase of automobile and their adaptive equipment. It increases:

- from \$12,000 to \$36,000 the maximum amount authorized to be provided by the VA to certain disabled veterans for specially adapted features in a home;
- from \$60,000 to \$180,000 the total amount authorized to be provided per veteran for the construction of specially adapted housing; and
- from \$11,000 to \$33,000 the maximum amount authorized to be provided for the purchase of automobiles and adaptive automobile equipment.

The specially adapted housing provision is in partial agreement with one provision of DAV's Resolution No. 176, which seeks to provide an increase in the specially adapted housing grant to veterans who have incurred service-connected disabilities consisting of loss or loss of use of both lower extremities, total blindness together with loss or loss of use of one lower extremity, or loss or loss of use of one lower extremity together with either the loss or loss of use of an upper extremity or other organic disease that requires use of a wheelchair or the use of braces, crutches, or canes.

We would also ask for the Committee's consideration by amending this bill to provide for automatic annual adjustments based on increases in the cost of living to be in concert with the second provision of Resolution No. 176. Such an amendment would allow this program to keep pace with an expanding economy and would be most beneficial to eligible veterans.

Regarding the section of this bill dealing with the purchase of an automobile and adaptive automobile equipment, it is in agreement with DAV's Resolution No. 171 which seeks to increase the grant for automobiles or other conveyances available to certain disabled veterans and provide for automatic annual adjustments based on the increase in the cost of living. VA provides a grant to assist eligible disabled veterans and servicemembers in purchasing specially equipped automobiles or other conveyances. The amount of the grant was set at an amount sufficient to cover the full cost of lower-priced automobiles in 1946. The current grant of \$11,000 represents only about 39 percent of the total average cost of automobiles based on most current available pricing. DAV is pleased to endorse this bill as it increases the automobile grant to an amount representing 80 percent of the average cost of new automobiles.

H.R. 1182, the Military Spouses Residency Relief Act. The DAV has no resolution on this issue. Additionally, this legislation is outside the scope of the DAV's mission. We nonetheless have no opposition to its favorable consideration.

H.R. 2416 requires VA contracting officers to use purchases of goods or services through the Federal supply schedules for the purpose of meeting the government-wide goal for participation by small businesses owned and controlled by veterans and service-disabled veterans. The DAV has no resolution on this issue. We nonetheless have no opposition to its favorable consideration.

H.R. 2461, the Veterans Small Business Verification Act. This bill provides that applications by veteran small business owners for inclusion in a database of veteran-owned small businesses maintained by the VA constitute as permission for the Secretary to verify information included in the application. Such small businesses would not be included in the database until the VA receives sufficient information to verify their eligibility. The IB noted that the VA's database is critical to Federal agencies when they certify veteran status and ownership. We therefore agree with the provisions of this bill.

We do, however, respectively request this bill be amended in such a way as to require all Federal agencies to certify veteran status and ownership through the VA's Vendor Information Pages (VIP) program before awarding contracts to companies claiming to be veteran or service-disabled veteran-owned small businesses. Government agencies need a one-stop access to identify veteran and service-disabled veteran-owned small businesses and verify their veteran status.

H.R. 2614, the Veterans' Advisory Committee on Education Reauthorization Act of 2009. The DAV has no resolution on this issue. We nonetheless have no opposition to its favorable consideration.

H.R. 2696, the Servicemembers' Rights Protection Act. The DAV has no resolution on this issue. Additionally, this legislation is outside the scope of the DAV's mission. We nonetheless have no opposition to its favorable consideration.

H.R. 2874, the Helping Active Duty Deployed Act of 2009. The DAV has no resolution on this issue. Additionally, this legislation is outside the scope of the DAV's mission. We nonetheless have no opposition to its favorable consideration.

H.R. 2928, amends title 38, United States Code, to provide for an apprenticeship and on-the-job training program under the Post-9/11 Veterans Educational Assistance Program. The DAV has no resolution on this issue. We nonetheless have no opposition to its favorable consideration.

H.R. 3223, requires under current law, a VA contracting officer to award a contract to a small business concern owned and controlled by veterans using other than competitive procedures, often referred to as a sole source contract. This bill would prohibit using ownership and control by a veteran or veterans of more than one small business as grounds for disqualification from inclusion in an existing database of veteran-owned businesses. The DAV has no resolution on this issue. We nonetheless have no opposition to its favorable consideration.

H.R. 3554 would amend title 38, United States Code, to provide for the inclusion of certain active-duty service in the reserve components as qualifying service for purposes of Post-9/11 Educational Assistance Program. The DAV has no resolution on this issue. Additionally, this legislation is outside the scope of the DAV's mission. We nonetheless have no opposition to its favorable consideration.

H.R. 3561, to amend title 38, United States Code, to increase the amount of educational assistance provided to certain veterans for flight training, was introduced by Representative Teague. The DAV has no resolution on this issue. Additionally,

this legislation is outside the scope of the DAV's mission. We nonetheless have no opposition to its favorable consideration.

H.R. 3577, the Education Assistance to Realign New Eligibilities for Dependents (EARNED) Act of 2009. The bill provides the authority for certain members of the Armed Forces who have served 20 years on active duty to transfer entitlement to Post-9/11 educational assistance to their dependents. The DAV has no resolution on this issue. We nonetheless have no opposition to its favorable consideration.

Madam Chair, this concludes my testimony on behalf of DAV. We hope you will consider our recommendations.

**Prepared Statement of Richard F. Weidman, Executive Director
for Policy and Government Affairs, Vietnam Veterans of America**

Chairwoman Herseth-Sandlin, Ranking Member Boozman, and distinguished Members of the Subcommittee, on behalf of VVA National President John Rowan, and the Board of Directors and members, I thank you for giving Vietnam Veterans of America (VVA) the opportunity to testify today regarding these important items of pending legislation.

In regard to H.R. 294, we strongly support anything that will inject more capital into small business concerns, especially veteran owned firms and service disabled veteran owned firms. While this idea of reviving the business loans at VA, which was so successful following World War II, is a concept that has been raised time and again over the past three decades, this is the first piece of legislation that we can recall that has actually come up for a hearing. We agree with lowering the percent of disability from 3 percent to 10 percent for eligibility, and also concur with increasing the guaranty amount. Assuming that the offset can be found under "PAYGO" we favor enactment of this legislation.

We also support the move in make it easier for service disabled veteran owned firms and other veteran owned firms to secure bonding. However, we are not sure that the mechanism suggested in this section will actually work in the surety bond market, after discussions with some of the most respected surety bonding leaders in the field.

What is possible is waiver of the bonding requirement by the Secretary. It is often done for firms doing business with VA pursuant to the Javits-Wagner-O'Day or JWOD program. This is an area that merits further exploration.

Last, we are unclear as to how section 4 of this proposal would work. If it would entail a veteran to have to be certified under 8(a), then we do not favor this provision. If the effect is to give the Secretary the authority to essentially use the direct contracting authority to contract with any verified veteran owned business who (VOSB) offers a good product at a fair market price without such certification, then we favor it. However, as written that is unclear to us as to how it would actually work in practical terms.

VVA favors the provisions of H.R. 1169, which would dramatically increase the amount of funds available to specially adapt housing and specially adapt automobiles. Despite increases in recent years, the amount currently available just does not even begin to cover the costs for these very necessary aids for significantly disabled veterans. We thank you for moving this bill.

In regard to H.R. 2461, VVA strongly favors this bill. The need to ensure the integrity of the program as the service disabled veteran owned business and veteran owned business authorities become more accepted and successful is readily apparent to virtually all observers. VVA concurs with the Veterans Entrepreneurship Task Force (VET-Force) position that it is essential to do this. However, it is also essential that VA develop the organizational capacity to verify businesses in a timely fashion. Currently the backlog is many, many months. Implementation of this clarification must be accompanied by an elimination of that backlog, or it will result in many legitimate veteran owned firms missing out on important opportunities.

VVA favors renewing the authority for the Veterans Advisory Committee on Education through 2015, as contained in H.R. 2614.

VVA favors the enactment of H.R. 2928, which will provide for apprenticeship and on the job training (OJT) under the Post-9/11 GI Bill. While we strongly encourage young veterans to go to school, AND stick with it to get their degrees, there are many veterans that wish to pursue trades that do not require college, but rather apprenticeships or OJT, yet are legitimate and important avenues for educational advancement on a civilian career path. This legislation will ensure that these young people have a means of pursuing their goals when they return from military service.

VVA favors enactment of H.R. 3554, which will move toward better inclusion of National Guard and reserve servicemembers who are deployed in the 9/11 GI Bill.

VVA's position continues to be that the same hostile fire from the enemy merits full and equal benefits being accorded to National Guard and Reserve troops who are deployed.

Thank you, Madam Chairwoman, for the opportunity to present testimony here today on these important legislative initiatives.

**Prepared Statement of Christina M. Roof, National Deputy Legislative
Director, American Veterans (AMVETS)**

Madam Chairwoman, Ranking Member Boozman, and distinguished Members of the Subcommittee, on behalf of AMVETS, I would like to extend our gratitude for being given the opportunity to discuss and share with you our views and recommendations on the multiple pieces of pending legislation regarding our veteran community.

AMVETS feels privileged in having been a leader, since 1944, in helping to preserve the freedoms secured by the United States Armed Forces. Today our organization prides itself on the continuation of this tradition, as well as our undaunted dedication to ensuring that every past and present member of the armed forces receives all of their due entitlements. These individuals, who have devoted their entire lives to upholding our values and freedoms, deserve nothing less.

AMVETS applauds the efforts of the Subcommittee on their continued commitment to creating an environment of stability and evenhandedness, where all veterans may pursue and thrive in their business and educational endeavors. Today we are discussing multiple bills, which stand to achieve more of the goals set forth by the Committee.

AMVETS supports H.R. 294, the 'Veteran-Owned Small Business Promotion Act of 2009'. It is in the opinion of AMVETS that the changes this bill proposes could only benefit the veteran small business community. This bill would open up the procurement process and eligibility to bid to more Veteran Owned Small Businesses (VOSB), by decreasing performance bond requirements from 30 percent to 10 percent. H.R. 294 will also increase the maximum gratuity amounts in Section 3742(b)(2) and decrease the interest rates payable by veteran owned small business concerns by up to one-half percent. Though these numbers may not seem staggering at first glance, in the long run they could actually decide success or failure for a small business concern. Being a former small business consultant, I have seen firsthand the major importance of interest rates on a business concerns success. Allowing the Secretary to enforce reduced rates will prove incredibly beneficial to veteran owned small business concerns in an economy where every penny proves to be significantly important.

AMVETS supports H.R. 1169, introduced by Mr. Boozman and Mr. Buyer. As the Housing and Economic Recovery Act of 2008, Sec 2605, modestly increased the adaptive housing benefits for disabled veterans by \$2000 in subsection (B)(2) and paragraph 2, as well as by \$10,000 in paragraph 1, this bill stands to improve greatly upon those initial steps and improve the lives of thousands of veterans and their families. While AMVETS applauds any increase of these benefits, this bill genuinely sets forth the changes needed to bring the amounts into the 21st century and help align the benefits to the actual costs. AMVETS strongly recommends the immediate implementation of these changes and that they shall apply with respect to payments made in accordance with section 2102 of title 38, United States Code, as well as, being reflected in the Secretary's established residential home cost-of-construction index for the purposes of this subsection.

AMVETS supports H.R. 1182, the 'Military Spouses Residency Relief Act'. This Act will afford the same "home-of-record" status as the servicemember. Allowing spouses the ability to retain residency in a state regardless of where they are physically living while accompanying a military spouse who is on official military orders. This legislation will allow military spouses to retain their voting rights and maintain current tax status in their home-of-record state, thus relieving any burdens felt by spouses during transfers or deployments.

AMVETS supports H.R. 2416 by way of the goals it promotes of aiding VOSB and SDVOSB in regards to the awarding of contracts in the Federal procurement and acquisition process.

AMVETS supports H.R. 2461 and the standards of business verification transparency it calls for. As AMVETS has requested in prior hearings, the integrity of VA's procurement process must be protected, as well as all business concerns receiving awards be held accountable for meeting the requirements of said awards. This bill will also protect the SDVOSBs and VOSBs from loss of awards due to possible untruths or unverified statuses. AMVETS agrees with the timetables laid out by

H.R. 2461, but has concerns on whether there is an accurate system and staff in place to handle the initial heavy workload. As we have seen with the Post-9/11 GI Bill rollout backlogs, there needs to be a temporary plan in place and possibly temporary staff to assist with the verification process of existing database businesses. Again AMVETS commends the Chairwoman and Ranking Member Boozman for leading the way in a call transparency and accountability as it related to all Federal procurement.

AMVETS supports H.R. 2614, amendment to date change.

AMVETS supports H.R. 2696, the 'Servicemembers' Rights Protection Act'. One of AMVETS founding principles and current legislative goal is to ensure the protection of rights of all current and past military members and their families. H.R. 2696 will help further enforce current laws and penalties for violation of any act of unjust imposed upon a member of the United States military or their family while serving. AMVETS believes that the amendment called for in section 307(c) is crucial to holding employers accountable for any violation of servicemembers rights.

AMVETS supports H.R. 2874, 'Helping Active Duty Deployed Act of 2009'. AMVETS believes it is vital to the success of our country's servicemembers called to active duty, to relieve any undue stress and/or obligations in regards to outstanding financial obligations and education.

AMVETS supports H.R. 2928, with the contingency that proposed section 3319 of Title 38, Chapter 33 reflects any changes to Department of Labor's apprenticeship pay standards and/or changes to 29 CFR. Whereas, the veteran or designee is receiving: *"entry wage shall be not less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable Federal law, State law, respective regulations, or by collective bargaining agreement,"* AMVETS strongly believes that all veterans should receive equal and fair industry standard pay, regardless of title.

AMVETS supports H.R. 3223; however, we do have some concerns over the wording of the proposed new paragraph in subsection l. AMVETS understands that the paragraph's intent is to clarify the definition of 'control of management and daily business operations', nonetheless AMVETS believes that by adding this definition and not referencing the qualifying percentage of ownership, if even in footnotes, there could be misunderstanding by business concerns, thus opening the door to unwanted disputes.

AMVETS supports H.R. 3554, the 'National Guard Education Equality Act'. AMVETS supports the entitlements of the Post-9/11 GI Bill to any Active Guard Reserve (AGR) soldier or Guard member who is called to active duty by their state, and who engages in activities designed to support and protect this country and our borders, regardless of title.

AMVETS supports H.R. 3561 in increasing the educational assistance for flight training from '60 percent' to '75 percent'. This will ease some of the financial burden and enable more eligible veterans and reservist to utilize such benefits.

AMVETS supports H.R. 3577, the 'Education Assistance to Realign New Eligibilities for Dependents (EARNED) Act 2009'. Many of our Nation's servicemembers have chosen to devote their lives to a military career. AMVETS believes that having served 20 years, qualifying them as career service and retirement, the educational benefits of the Post-9/11 GI Bill should not be lost because of that choice.

AMVETS supports H.R. 3579, allowing the increase in fees to educational facilities from \$7.00 to \$50.00 and \$11.00 to \$50.00. AMVETS believes these increases will better reflect the funds necessary to pay the salaries or employment costs of the requisite processing staff.

**Prepared Statement of Keith M. Wilson, Director, Office of Education
Service, Veterans Benefits Administration, U.S. Department of Veterans**

Madam Chairwoman and other Members of the Subcommittee, good afternoon. I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending legislation.

I regret we did not have sufficient time to formulate Departmental views on five measures, H.R. 1169, H.R. 3554, H.R. 3561, H.R. 3577, and H.R. 3579. However, we will be pleased to provide written views and estimates of costs of enactment for these bills for the record.

EDUCATION PROGRAMS

H.R. 2614

H.R. 2614, the “Veterans’ Advisory Committee on Education Reauthorization Act of 2009,” would amend section 3692(c) of title 38, United States Code, to extend the current termination date of the Veterans’ Advisory Committee on Education (VACOE) for 6 years—from December 31, 2009, to December 31, 2015.

The VACOE was established to provide advice to the Secretary of Veterans Affairs on the administration of education and training programs for veterans and servicepersons, reservists and guard personnel, and for dependents of veterans. The Committee may also make such reports and recommendations as it considers appropriate to the Secretary and Congress.

VA supports this legislation; the Secretary looks forward to continuing to receive recommendations and advice from the VACOE.

We estimate that the cost associated with the enactment of H.R. 2614 would be insignificant.

H.R. 2928

H.R. 2928 would amend the Post-9/11 GI Bill (chapter 33 of title 38, United States Code) by adding a new section to provide benefits for apprenticeship and on-the-job training (OJT). The new section 3320 would provide for a monthly benefit payment to individuals pursuing full-time programs of apprenticeship or other OJT under chapter 33, using the graduated structure for similar training under other VA educational assistance programs, such as the Montgomery GI Bill—Active Duty (MGIB-AD) and Selected Reserve (MGIB-SR) programs, and the Post-Vietnam Era Veterans Educational Assistance program. For each of the first 6 months of an individual’s pursuit of such a program, the individual would be paid 85 percent of the amount equal to the national average cost of tuition at an institution of higher education; for the second 6 months of such pursuit, the individual would be paid 65 percent of such amount; and for each of the months following that the individual would be paid 45 percent of such amount. Any apprenticeship or other OJT benefit payment would be in addition to any other educational assistance benefit payment made under chapter 33.

H.R. 2928 would also amend section 3313 of title 38 to include apprenticeship or other OJT under the definition of approved programs of education for purposes of the Post-9/11 GI Bill.

VA supports allowing individuals who qualify for the Post-9/11 GI Bill to receive benefits for OJT and apprenticeship training, subject to Congress identifying offsets for any additional costs. However, we have reservations about this bill, as drafted, due to implementation challenges presented by the current legislative language. We do not understand what is meant by the “national average cost of tuition at an institution of higher education,” or how we should establish monthly rates under it. We suggest instead language that would specify a basic amount that VA could use to determine the monthly benefit rate, similar to the current approach used in the MGIB-AD program. We would appreciate the opportunity to work with the Committee to address these concerns.

If approved, this legislation would take effect 90 days after the date of the enactment. This would present some difficulty to VA because we currently do not have a payment system to support OJT and apprenticeship payments under the Post-9/11 GI Bill. We estimate a new payment system would not be available until December 2010.

Additionally, administration of the Post-9/11 GI Bill would be impacted by the increase in beneficiaries who could elect to receive the Post-9/11 GI Bill in lieu of the MGIB-AD, the MGIB-SR, or the Reserve Educational Assistance Program (REAP).

In view of the difficulty in understanding the “national average” tuition provision, we are unable to estimate the cost of enactment of this bill. Accordingly, in view of this difficulty, and for the foregoing reasons, we are not able to support H.R. 2928 as drafted.

SERVICEMEMBERS CIVIL RELIEF ACT

H.R. 1182

H.R. 1182, the “Military Spouses Residency Relief Act,” would amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency for voting, tax, and land right purposes. H.R. 1182 affects programs administered by the Department of Defense (DoD). We, therefore, defer to DoD on the merits of this bill.

H.R. 2696

H.R. 2696, the “Servicemembers’ Rights Protection Act,” would amend the Servicemembers Civil Relief Act to authorize the U.S. Attorney General, or any person protected by any provision of that Act, to enforce rights afforded under the Act. This bill relates to active-duty service personnel and would not affect VA programs. Therefore, we defer to DoD and the Department of Justice regarding the merits of this bill.

H.R. 2874

H.R. 2874, the “Helping Active Duty Deployed Act of 2009,” would amend the Servicemembers Civil Relief Act, and the Higher Education Act of 1965, to improve the equitable relief available for servicemembers called to active duty with respect to cellular telephone service, residential and motor vehicle leases, and tuition and fees for education. Section 2 of H.R. 2874 affects programs administered by DoD. Section 3 would amend the Higher Education Act 1965 to provide for tuition relief for students called to military service. VA, therefore, respectfully defers to DoD and the Department of Education regarding the merits of H.R. 2874.

PROCUREMENT, CONTRACTING, AND SMALL BUSINESS MATTERS

H.R. 294

Section 2 of H.R. 294 would re-authorize the small business loan program for service-disabled Veterans with disability ratings of at least 10 percent. VA supports re-authorization of the loan program, in order to increase employment opportunities for Veterans and to promote economic stabilization by encouraging the establishment and expansion of Veteran-owned small businesses (VOSB).

Section 2(f) of the bill states that “[t]he Secretary shall enter into a contract with an appropriate entity for the purpose of carrying out the program under this subchapter.” VA believes that a partnership with the Small Business Administration (SBA), through an interagency agreement, would be preferable in order to gain the benefit of SBA’s expertise in administering business loan programs.

VA is formulating its views regarding section 3 of the bill and will forward our comments for the record.

Section 4 of the bill would align VA’s contracting processes for Veteran-owned small business with SBA’s section 8(a) program. VA is unclear on the intent of the provision. Under 38 U.S.C. 8127, veteran-owned small businesses already have priority over section 8(a) contractors. Veterans’ achievements under 38 U.S.C. § 8127 since its mid-2007 effective date demonstrate that the new law’s sourcing priority is helping to ensure equitable consideration of Veteran-owned small businesses in VA contracts. VA is concerned that the proposed provision could create confusion and have unintended negative consequences on existing authorities.

For the reasons noted, VA does not support H.R. 294. The Department is formulating its estimate of the cost associated with enactment of the bill and will provide that information for the record.

H.R. 2416

H.R. 2416 would amend 38 U.S.C. § 8127 to mandate that VA use Federal Supply Schedules to meet the goals established by the Secretary under this statute.

We cannot support this bill since it would be far too restrictive for VA acquisition operations and would remove any business discretion that VA contracting officers have to consider other acquisition vehicles, such as competitive set-asides, sole source awards, or full and open market competition, when appropriate.

VA estimates that there are no direct costs to VA associated with the enactment of H.R. 2416.

H.R. 2461

H.R. 2461, the “Veterans Small Business Verification Act,” would amend title 38 to clarify VA’s responsibility to verify the veteran status of the owners of small business concerns listed in the VA database.

VA awarded a contract for VA Verification Program Advisory and Assistance Services (A&AS) and the contractor was fully operational by late July 2009. The contractor will benchmark the existing verification process and recommend improvements. The contractor is comparing our verification program to other small business certification programs in existence today to determine best practices in certification procedures. VA expects to receive the report by the end of September 2009.

In addition, the Government Accountability Office (GAO) is completing its own review of the verification program. GAO is conducting research and fact-finding in September and October of this year. It plans to complete report writing and follow-

up in November 2009, submit its draft report to VA for comments in December, and publish the results of a 3-year study in January 2010. This investigation will provide GAO's review of the verification program, with recommendations for improvements, from a third-party observer's viewpoint.

The reviews by GAO and by the A&AS contractor are under way. The funding to support both reviews has already been allocated. GAO is considered an authoritative, independent body whose recommendations will be respected by both VA and external stakeholders. The A&AS contractor is also an independent body with the responsibility to review other certification programs and compare VA's verification program to validate VA's processes.

The cost to verify the 17,000 businesses in the database in the time frames contemplated by H.R. 2461 would be approximately \$12 million annually. For the foregoing reasons, VA does not support enactment of this bill. However, we would be pleased to work with the Subcommittee to formulate appropriate legislation upon completion of above-noted reviews.

H.R. 3223

H.R. 3223 would require a VA contracting officer to award a contract to a small business concern owned and controlled by veterans using other than competitive procedures in specified circumstances. It would also prohibit using ownership and control by a veteran or veterans of more than one small business as grounds for disqualification as a veteran-owned business for purposes of VA procurements.

Section 1(a)(1) of H.R. 3223 would change the wording in section 8127 of title 38 from "may" to "shall," to *require* contracting officers to contract with service-disabled Veteran-owned or Veteran-owned small businesses for all VA procurements under \$5 million. VA believes that the proposed language would be too restrictive and would remove necessary business judgments that must be made at the discretion of VA contracting officers to acquire goods and services by the best means available for an applicable acquisition.

Sections 1(a)(2) and (3) would allow owners with multiple businesses, as well as owners who work part-time in the business or at a location outside the proximity of the business location, to qualify for verification. Permitting part-time ownership, remote ownership or ownership of multiple businesses by a single eligible party increases the likelihood that businesses controlled by ineligible parties may receive contract awards from the Department. Eligible individuals must have at least 51 percent ownership and day-to-day control of businesses in small business programs. VA's position is developed after review of other Federal small business programs, examination of protest and appeal decisions and study of Government Accountability Program reports which establish that day-to-day control is very difficult to sustain in part-time or remote ownership.

Section 1(b) would require VA to issue interim policy change guidance within 30 days that would be in direct contradiction of the current verification regulation published in 38 CFR part 74. Thirty days would be insufficient time for the necessary rulemaking.

For the foregoing reasons, VA does not support the enactment of H.R. 3223.

Madam Chairwoman, this concludes my statement. I would be happy to respond to questions you or the other Members of the Subcommittee may have regarding our views as presented.

**Statement of Ulric I. Fiore, Jr., Director, Soldier and
Family Legal Services, Office of the Judge Advocate General,
U.S. Army, U.S. Department of Defense**

Chairwoman Herseth Sandlin and Members of the Subcommittee, thank you for extending the invitation to the Department of Defense to address three bills that would significantly affect our servicemembers: H.R. 2696, H.R. 1182, and section 2 of H.R. 2874. Each of these bills would either amend or add new sections to the Servicemembers Civil Relief Act, Public Law 108-189 (2003) (The Act) (50 U.S.C. App. §§ 501-596).

The Department strongly supports H.R. 2696, which would clarify that the Attorney General and those individually protected may enforce the rights afforded under the Act.

The Department has no objections to section 2 of H.R. 1182, which states that for purposes of voting, spouses of military members neither lose nor gain a domicile simply by being absent from their State of domicile to accompany their spouse when the spouse is moving to a new State in compliance with military orders. The Depart-

ment has no objections to section 4 of H.R. 1182, which would suspend certain residency requirement for spouses of military members with respect to land rights protections.

The Department has concerns regarding section 3 of H.R. 1182, which purports to relieve spouses of military members from paying income taxes to a State if the spouse is not a resident or domiciliary of the State, when the spouse is in the State solely to be with the servicemember who is serving in compliance with military orders.

The Department supports section 2 of H.R. 2874, which expands the ability of servicemembers to terminate certain cellular phone contracts under the Act when the contract is made "on behalf of the servicemember." This section also amends the Act to make clear that when a servicemember is allowed to terminate a residential lease due to a covered relocation under military orders, the lessor may not impose an early termination charge.

H.R. 2696

This proposal is the most important and beneficial amendment to the Act since the sweeping 2003 amendments greatly increased the strength of the Act by codifying several decades of the Act's judicial interpretations.

New section 801 would clarify the authority of the Attorney General to commence a civil action in any appropriate United States District Court whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in, or has engaged in, a pattern or practice of conduct in violation of any provision of the Act; or any person or group of persons is denying, or has denied, any person or group of persons any protection afforded by any provision of this Act, and such denial raises an issue of general public importance. It establishes the right of those persons individually protected by the Act to intervene in any action brought by the Attorney General and to receive injunctive and monetary relief, along with reasonable attorneys' fees and costs.

New section 802 would also clarify that those persons individually protected by the Act have their own personal cause of action, independent of any enforcement action the Attorney General might initiate. Those individually protected who bring their own private action may generally seek and obtain the same remedies available upon intervention in an action brought by the Attorney General.

Although most courts have recognized this essential implied right of the servicemember to bring a personal cause of action for damages or other appropriate remedies, other courts have done so only after costly and protracted litigation. The recent decision in *Hurley v. Deutsche Bank* (W.D. MI) (Case No. 1:08-CV-361) illustrates these concerns. Such decisions that do not recognize the right to a personal cause of action threaten the readiness of our servicemembers. These amendments to the Act are designed to clarify the existence of enforcement authority that the Department believes has always been implied.

This proposal's explicit authorization of attorneys' fees supports the underlying theme of this clarifying amendment to the Act: access to justice. This explicitly stated right will ensure that upon prevailing on the merits, those protected by the Act can indeed be made completely whole.

Many claims under the Act will be for relatively small amounts. The ability to recover attorney's fees for the small claims will provide all servicemembers a voice and ensure that their rights are taken seriously. In addition, the right to collect attorneys' fees would likely reduce litigation and induce settlements by those who might have previously refused to pay damages, hoping that the amount was too small to warrant the cost of litigation.

The right to collect attorneys' fees would also bring the Act in line with somewhat similarly focused statutes such as the Uniformed Services Employment and Reemployment Rights Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Truth in Lending Act, 42 U.S.C. 1983, title VII of the Civil Rights Act 1964, the Employee Retirement Income Security Act, and virtually every state unfair and deceptive trade practices and consumer protection statute.

New section 802 would also make explicit that in addition to attorneys' fees, consequential and punitive damages may be awarded for violations of the Act. Although some courts have found such damages to be implied, others have not. This disparity will now be eliminated.

New section 803 consolidates references to the preservation of remedies found in several other provisions in the Act and expands the specific references in current sections 301(c), 302(d), 303(d), 305(h), 306(e), and 307(c) beyond conversion to include any other causes of action available under Federal or State law. It also recognizes that consequential and punitive damages that might flow from those causes of action could also be awarded.

The effectiveness of any law is measured by the ease with which it can be enforced. Rules that can be ignored without consequence crush morale. Expectations of fair play give way to the realities of self-interest. Those who do not appreciate the sacrifices that our servicemembers make every day, those who do not appreciate what it means to drop one's own affairs to take on the burden of the Nation should face the full range of enforcement options the judicial system has to offer. The playing field must be leveled so that servicemembers can actually receive all the protections the law was drafted to provide.

H.R. 1182

The report on H.R. 1182 states that this legislation "would provide military spouses with SCRA residency protections similar to those afforded to servicemembers." We appreciate their stated intention, and would like to discuss our concerns with section 3, which would amend section 511 of the Act (50 U.S.C. App. §571), to shield the income of a spouse (under the stated conditions) from taxation in the non-domiciliary State where the spouse is currently located with the servicemember. Although, the provision would provide a financial benefit for military families whose State of domicile would not tax the income earned in the non-domiciliary State, it could have significant and detrimental long-term effects that would offset the arbitrary tax benefit that some would receive.

This provision changes the normal theory of taxation as it has traditionally applied to the spouse of a servicemember. In general, a State imposes taxation on the worldwide income of individuals who are resident or domiciled in that State. States impose taxation on nonresidents of the State to the extent the nonresident receives income earned or derived from that State. The burden on a spouse who is employed in a tax jurisdiction where the member is assigned is the same as that of every other citizen of that State—no greater or less. Furthermore, the spouse receives the benefits of services and employment protections provided by the State.

There *would be*, great Federal interest in ensuring that the spouse's income is not taxed in *both* the domiciliary State and the non-domiciliary State where earned, but we are not aware that this is happening or that this bill is in any way intended to address such a possibility.

The limited interest noted above also highlights concerns raised in the statement of R. Chuck Mason, Legislative Attorney, American Law Division, Congressional Research Service before the Committee on Veterans' Affairs, United States Senate, April 29, 2009, commenting on a virtually identical bill, S. 475. Mr. Mason noted that the constitutionality of the provision appears to raise a question of first impression. He stated "It is unclear if the Constitutional power of the Congress to raise and support the armies or to declare war also encompasses the ability to exempt an individual, not actually in the armed forces, from taxation in the jurisdiction where his or her spouse is stationed." The Department shares these concerns and believes that the fiscal impact on the affected States could provide ample justification for the States to challenge the constitutionality of the provision, which would leave military families with a significant period of uncertainty as to their tax liabilities.

The above-noted limited benefit also compounds any State's legitimate concerns if prohibited from taxing compensation earned within its borders by those who live there and use its resources and services. The Department is and should always be concerned with the proper and fair balancing of interests under the Act, which is designed to counterbalance the obligations assumed by servicemembers. This could create ill-will in States so affected, especially when many States are already expanding protections for servicemembers and their families.

This provision in essence shifts the traditional emphasis of the Act as one that provides protection to one that provides benefits. It is at this point that the Department believes that the appropriate balancing of interests and obligations that has been the hallmark of the Act is threatened.

This imbalance could lead to unanticipated consequences. The loss of revenue for the States could cause them to challenge assertions of domicile not only for the spouse, but also for the servicemember. Proving domicile can be complicated and time consuming. It may well prove impossible if the servicemember and spouse have not established the appropriate contacts to prove their intent with respect to domicile. The unintended consequence of increased scrutiny of the spouse's assertion of domicile, and the likely scrutiny of the servicemember's domicile as well, could lead to the collection of back taxes that would offset any benefits this provision might provide.

This bill would also likely have the unintended consequence of damaging the Department's efforts to convince those States (about 25) that currently provide unemployment benefits to spouses who must leave their jobs to accompany their spouses

who must move under military orders. These States would have no incentive to pay unemployment benefits to someone who was exempt from paying taxes on income earned within that State in the first place. Likewise, those States that currently pay such benefits would have no incentive to continue to pay them.

This proposal also gives rise to the anomaly of providing greater tax protection for the spouse than for the servicemember. It would shield all income by the spouse (at least in the non-domiciliary State) under the noted conditions. Conversely, only military compensation for the servicemember is shielded. Thus, the servicemember who moonlighted on the weekend would pay State taxes on that income to the non-domiciliary State, but the spouse would pay none for any work performed in the non-domiciliary State, and, depending on the law of the domiciliary State, may not pay any taxes at all.

The Department is aware that proponents of the bill have stated that a servicemember is allowed to declare a "home state" that is a permanent State of residency (domicile) for the duration of his or her service. The belief is that the spouse should be able to do the same and that this bill accomplishes just that and frees military spouses from burdens within the new, non-domiciliary State, such as registering their vehicles and obtaining new drivers' licenses. These misunderstandings and the misunderstandings of the effect of this bill confuse the issues and obscure the limited benefits of this bill as drafted.

The Act does not allow a servicemember to simply declare a "home state." Rather a "home state" (which is actually meant to reflect a domicile), must generally be established by one's physical presence and the co-existing formulation of an intent to remain in that State for the indefinite future. The intent to remain for the indefinite future is demonstrated by various contacts with the State such as registering to vote, owning property, paying taxes, and registering vehicles and obtaining drivers' licenses. Also, one does not lose an established domicile until a new one is formed. These rules apply not only to servicemembers, but spouses as well.

H.R. 1182 does not change the normal rules of domicile for spouses. It would be more accurate to say that it simply re-states the law: neither a servicemember nor his or her spouse loses or acquires a domicile simply by being present in a State solely because of military orders. Creation of a domicile depends on one's intent. That intent is reflected by certain contacts with the State. At best, the language of the bill would serve as a reminder that a State should not presume domicile based simply on physical presence of a spouse of a servicemember.

The misunderstanding of the effect of this bill is compounded by those who seem to believe that domicile controls the requirement for a servicemember or the spouse of a servicemember to register a vehicle or obtain a driver's license in the non-domiciliary State. Domiciliary status has nothing to do with this requirement. The simple presence in a State for a minimal period of time could trigger such a requirement. This is a simple matter of State law and such laws vary across the country. Nothing in the Act addresses these requirements and nothing in H.R. 1182 would affect the requirement for military spouses to register their vehicles or obtain new driver's licenses in a non-domiciliary State. We note however, that most States do exempt the servicemembers themselves from these requirements, but, again, that is a function of State law and not of the Act.

The Department recognizes that relieving both servicemembers and their spouses (and dependents as well) from the requirement to re-register a vehicle or obtain a driver's license in a non-domiciliary State in which they reside under military orders would be a worthy effort. We are happy to work with the Committee and discuss our concerns further.

H.R. 2874

This proposal expands section 305A of the Act (50 U.S.C. App. § 535A) to include contracts for cellular phone service "entered into on behalf of the servicemember" in those contracts that the servicemember may terminate upon a covered deployment or change of station reassignment.

This proposal also amends section 305 of the Act (50 U.S.C. App. § 535A) to specifically state that if a servicemember terminates a lease of premises upon a covered deployment or change of station reassignment, the lessor may not impose an early termination fee. This makes the lease of premises provision consistent with a similar provision for a lease of a motor vehicle.

The Department supports both of these amendments to the Act.

**Statement of John M. McWilliam, Deputy Assistant Secretary,
Veterans' Employment and Training Service, U.S. Department of Labor**

Chairwoman Herseth Sandlin and Members of the Subcommittee. Thank you for extending the invitation to address a series of bills before the Subcommittee intended to improve services to Veterans. With regard to those bills that solely concern programs that are administered by the Department of Veterans Affairs (VA), the Department of Labor (DOL) respectfully defers to the VA.

In particular, I would like to address H.R. 2928, which amends title 38, United States Code, to allow registered apprenticeship programs and on-the-job training programs under the Post-9/11 Veterans Educational Assistance Program.

When Secretary of Labor Hilda L. Solis took office, she immediately established a strong vision for the Department of Labor—"good jobs for everyone." The Department's workforce programs have a critical role to play in realizing the Secretary's vision of good jobs by contributing to the following goals:

- Increasing workers' incomes and narrowing wage and income inequality;
- Ensuring skills and knowledge that prepare workers to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors like "green" jobs;
- Helping workers who are in low-wage jobs or out of the labor market find a path to middle class jobs; and
- Helping middle-class families remain in the middle class.

These goals have important meaning for providing veterans and transitioning servicemembers with the resources and services to succeed in the 21st century workforce, particularly given the economic challenges facing our Nation.

The Department has a strong history of funding training and employment services for veterans. The Veterans' Employment and Training Service (VETS) provides veterans and transitioning servicemembers with the resources and services to succeed in the civilian workforce by maximizing their opportunities to obtain good jobs, protecting their employment rights, and meeting the demands of employers for skilled workers with qualified veterans.

The Employment and Training Administration (ETA) also works to provide training and employment services to veterans and eligible spouses through Workforce Investment Act (WIA) and Wagner-Peyser funded activities; the Senior Community Service Employment Program (SCSEP); Indian and Native American Programs (INAP); National Farmworker Jobs Training Programs (NFJP); and the Trade Adjustment Assistance Programs (TAA).

Veterans or eligible spouses of veterans (covered persons) who are determined eligible for DOL-funded employment preparation programs receive priority over non-covered persons in the receipt of employment and training services. This means that a veteran or eligible spouse receives access to DOL-funded employment preparation programs earlier in time than non-covered persons, or instead of non-covered persons if resources are limited.

Registered apprenticeship programs, authorized by the National Apprenticeship Act, are also available to help veterans and are of particular relevance to the Subcommittee's consideration of H.R. 2928. Registered Apprenticeship programs, one of the Nation's oldest, most effective and innovative workforce programs, can provide veterans critical career training, guaranteed incremental wages increases, and nationally recognized and portable certificates that lead to good jobs in many industries. This "earn and learn" model allows veterans to support themselves and their families while receiving the training and education they need to enter sustainable careers.

Upon completion of an apprenticeship, workers earn hourly wages and yearly salaries that can help them secure sustainable employment. Registered Apprenticeship has among the highest earnings for completers of any workforce or education program, as apprenticeship completers' yearly salaries have averaged almost \$50,000 from 2004 to 2008. Today, almost 30,000 program sponsors representing 225,000 distinct employers offer registered apprenticeships in over 1,000 career areas, including advanced construction, manufacturing, health care, transportation, information technology, and emerging occupations such as green jobs.

The Department of Labor supports the intent of H.R. 2928 to amend the Post-9/11 Veterans Educational Assistance Program to include registered apprenticeship and approved on-the-job training programs under this benefit. However, because the amendment concerns a program solely administered by the Department of Veterans Affairs, we defer to VA on this new program.

In conclusion, the Department of Labor continues to work collaboratively with the Department of Veterans Affairs and State Approving Agencies to implement title 38 benefit programs that provide registered apprenticeship and approved on-the-job

training opportunities to veterans. Such opportunities allow veterans to receive education and training while supporting themselves and their families, and enable them to build on the skills gained during their military service to obtain good jobs in the civilian workforce. The Department is pleased to submit a statement for the record of this hearing, and is available to assist the Committee in any way it can as it continues to examine issues pertaining to economic opportunities for America's veterans. Again, thank you, and I would be pleased to answer any questions you may have.

CTIA—The Wireless Association®
Washington, DC.
September 24, 2009

The Honorable Bob Filner
Chairman
House Committee on Veterans' Affairs
335 Cannon House Office Building

The Honorable Steve Buyer
Ranking Member
House Committee on Veterans' Affairs
333 Cannon House Office Building

The Honorable Stephanie Herseth Sandlin
Chairwoman
House Veterans' Affairs Subcommittee
on Economic Opportunity
335 Cannon House Office Building

The Honorable John Boozman
Ranking Member
House Veterans' Affairs Subcommittee
on Economic Opportunity
333 Cannon House Office Building

Re: H.R. 2874, the Helping Active Duty Deployed Act of 2009

Dear Chairman Filner, Ranking Member Buyer, Chairwoman Herseth-Sandlin, and Ranking Member Boozman:

On behalf of CTIA—The Wireless Association®, I write to express the wireless industry's support for America's servicemembers and for H.R. 2874, the Helping Active Duty Deployed Act of 2009. As the Committee considers H.R. 2874, CTIA urges the adoption of minor modifications to ensure that the bill achieves its important goal while also guarding against potential abuse by non-servicemembers.

The wireless industry has supported efforts to amend the Servicemembers Civil Relief Act to provide for the penalty-free termination or suspension of wireless service contracts when military personnel are subject to deployment or a permanent change of station to a location where the servicemember's carrier of choice is unable to support the contract. We were pleased last year to support H.R. 3298, which was favorably reported by the Subcommittee on Economic Opportunity and then included in H.R. 6225 when that bill was approved by the full Veterans' Affairs Committee. While neither H.R. 3298 nor H.R. 6225 became law during the 110th Congress, language amending the SCRA to provide for penalty-free termination or suspension of wireless service contracts was enacted as section 805 of S. 3023, which became P.L. 110-389.

While the industry supports addressing the "family plan" issue identified by H.R. 2874, CTIA is concerned that as introduced, the bill unintentionally leaves open the possibility of abuse by non-servicemembers. CTIA supports permitting "family plan" termination or suspension when a servicemember who is the accountholder is being deployed or moved to a permanent change of station, when a servicemember is being deployed or moved and his or her family (those covered by a "family plan" contract) are moving too, and the wireless industry does not object to permitting an individual "line" to be terminated or suspended when a family member who is on a "family plan" is subject to deployment or a permanent change of station. The industry is concerned, however, that the language in H.R. 2874 opens the possibility that deployment of, or a permanent change of station for, a non-acountholder servicemember could trigger contract cancelation for an entire family when other covered individuals have no change in circumstance or residence, which could harm the impacted wireless carrier.

As the Committee considers H.R. 2874, CTIA would be pleased to work with the Committee to address this matter in a way that protects servicemembers and wireless carriers alike.

CTIA respectfully requests that this letter be made part of the record of the Subcommittee on Economic Opportunity's September 24, 2009 hearing on H.R. 2874.

Sincerely,

Jot D. Carpenter, Jr.
Vice President, Government Affairs

cc: Hon. Gerry Connolly

**Statement of Patrick Campbell, Chief Legislative
Counsel, Iraq and Afghanistan Veterans of America**

Madam Chairwoman, Ranking Member, and Members of the Subcommittee, on behalf of Iraq and Afghanistan Veterans of America (IAVA), thank you for the opportunity to submit written testimony for this legislative hearing. There are 14 bills being discussed today, many of which have a profound affect on our members.

Executive Summary:

Bill #	Bill Title	Author	IAVA Position
H.R. 0294	Veteran Owned Small Business Promotion Act	Buyer	Partially Support
H.R. 1169	Increasing Assistance for Specially Adapted Housing, Automobiles and Equipment	Boozman	Support
H.R. 1182	Military Spouses Residency Relief Act	Carter	Support
H.R. 2416	Requiring VA to Use Federal Supply Schedules	Adler	Support
H.R. 2461	Veterans Small Business Verification Act	Herseth Sandlin	Support
H.R. 2614	Veterans' Advisory Committee on Education Reauthorization	Kirkpatrick	Support
H.R. 2696	Servicemembers' Rights Protection Act	Miller	Partially Support
H.R. 2874	Helping Active Duty Deployed Act	Connolly	Support
H.R. 2928	Include OJT/Apprenticeship programs to Post-9/11 GI Bill	Perriello	Partially Support
H.R. 3223	Improving VA goals and preferences for veteran owned small businesses	Buyer	Support
H.R. 3554	National Guard Education Equality Act	Loebsack	Support
H.R. 3561	Increase MGIB rates for Flight School	Teague	Support
H.R. 3577	Education Assistance to Realign New Eligibilities for Dependents (EARNED)	Rodriguez	Support
H.R. 3579	Increasing GI Bill Reporting Fees	Filner	Support

Full Testimony:

H.R. 294, Veteran owned Small Business Promotion Act (Buyer)

H.R. 294, the Veteran owned Small Business Promotion Act, would reinstate the VA's small business loan program, which was terminated in 1986, to provide loan

guaranties to veteran owned small businesses. Veteran small business owners must have at least a 10 percent disability rating. Loans may be guaranteed up to \$500,000, and the Secretary will also be granted the authority to subsidize a loan lender in order to reduce the interest rate paid by the veteran owned small business by up to 0.5 percent. The bill also provides for preferential treatment of National Guard and reservists activated in support of the Global War On Terror (GWOT), and authorizes veteran owned small businesses to be treated as a “socially and economically disadvantaged” small business for purposes of contracts awarding under provisions of the Small Business Act.

The VA does not currently provide loans for the start up or expansion of small businesses. If veterans are looking to obtain capital for their small business, they can access it through the SBA, and specifically, the Patriot Express Loan Program. While veteran small business owners, especially reservists, have a critical need for greater access to capital, the VA may not be the best department to administer the new program. According to the GAO, “the VA’s lack of experience in administering a small business loan guarantee program could create administrative challenges and may lead to higher administrative costs than current SBA programs.”¹ IAVA supports the key provisions of the program as long as they are administered by the SBA, with the VA conducting extensive outreach to veterans to let them know of its availability.

H.R. 1169, Increasing Assistance for Specially Adapted Housing, Automobiles and Equipment (Boozman)

We are proud to offer support for H.R. 1169, increasing the amount of assistance the Department of Veterans Affairs provides to disabled veterans for adaptive housing and automobiles. In difficult economic times it is critical that we do not leave behind those injured on our behalf. H.R. 1169 triples the amount of assistance that veterans may receive when purchasing or adapting a home or automobile to accommodate their service connected disability; bringing the amount of aid to a level more consistent with the current market.

H.R. 1182, Military Spouses Residency Relief Act (Carter)

IAVA supports H.R. 1182. Each year, thousands of military spouses follow their husbands and wives to military installations overseas. These men and women selflessly leave behind their lives in order to support our Nation’s servicemembers. We should not punish these model citizens by taking away their right to vote or stripping them of tax residency. Overseas, military spouses should be entitled to the same rights as the servicemember they support. H.R. 1182 will ensure that these rights are protected.

H.R. 2416, Requiring VA to use Federal Supply Schedules (Adler)

IAVA supports H.R. 2416. This legislation would help veterans obtain contracts and subcontracts from the Department of Veterans Affairs, helping to increase opportunities for veteran small business owners. This bill would specifically require contracting officers of the Department of Veterans Affairs (VA) to purchase goods and services through the Federal supply schedules. This would help achieve the government-wide goal for participation by small businesses owned and controlled by veterans, including service-disabled veterans. In FY2007, only 1 percent of Federal contracts were awarded to businesses owned by service disabled veterans. While the VA has met its Federal contracting obligations for veterans in FY2007, this has not always been the case. This legislation would help the VA continue to meet its obligations, and increase opportunities for veteran small business owners. IAVA would like to see this program extended to all Federal agencies.

H.R. 2461, Veterans Small Business Verification Act (Herseth Sandlin)

IAVA strongly supports H.R. 2461, the Veterans Small Business Verification Act, as it will help safeguard against fraudulent activity, namely small businesses posing as veteran owned for the purposes of receiving preferential treatment. This legislation would require the Secretary of the VA to verify the veteran status of small business owners who submit applications to be listed in the VA’s small business database. It would also require the Secretary to verify service-connected disabilities for those small business owners who indicate that their business is owned and controlled by a veteran with a service-connected disability. Until these statuses are verified, the businesses should not be included in the database.

¹GAO-00-158, “Department of Veterans Affairs: Credit Costs and Risks of Proposed VA Small Business Loan Guarantee Program,” June 2000: <http://www.gao.gov/archive/2000/gg00158.pdf>.

H.R. 2614, Veterans' Advisory Committee on Education Reauthorization (Kirkpatrick)

IAVA strongly supports reauthorizing the Veterans' Advisory Committee of Education (VACoE), H.R. 2614. As a former member of the VACoE, I can attest that this Committee gives the Secretary of Veterans Affairs critical feedback on a benefits program that affects nearly half a million veterans each year. The committee has consisted of a diverse mix of veterans' advocates, higher education officials and VA personnel all of whom thoroughly know GI Bill benefits. The VA would have greatly benefited from the advice and counsel of the VACoE during the implementation of the Post-9/11 GI Bill. Unfortunately, without the VACoE the VA has been left without a system for formal feedback on their implementation plans since the Federal Register notice and comment period closed back in January.

H.R. 2696, Servicemembers' Rights Protection Act (Miller)

IAVA believes that parts of H.R. 2696, the Servicemembers' Rights Protection Act, will help strengthen critical protections for the over 550,000 National Guard and Reservists who have been called to national service since 9/11. This bill empowers the Attorney General to enforce the Servicemember Civil Relief Act (SCRA) when the Attorney General believes a pattern of violating the SCRA has occurred. Although the SCRA grants broad protections, many servicemembers who SCRA's rights have been violated do not pursue a remedy in court. As one veteran recently told me, "What's the point? It will cost me more to hire the lawyer and spend the time fixing the problem." H.R. 2696, will help veterans by aligning the SCRA with other protections for servicemembers like the Uniformed Servicemembers Employment and Reemployment Rights Act (USERRA) by allowing the Federal Government to take action against a SCRA violator on behalf of veterans generally.

IAVA does have one strong reservation with section 803 of the bill. This section proposes to rewrite the penalties for violating various provisions of the SCRA. The bill removes the mechanism for a servicemember to be compensated under Title 18 and specifically excludes the SCRA provision for the "preservation of other remedies and rights." IAVA is unclear why removing this provision is necessary, unless the bill is trying to incorporate the remedies available to the Attorney General for servicemembers themselves. If that is the intent, the bill does not say that. If that is not the intent, IAVA must strongly oppose stripping servicemembers' of their ability sue under the SCRA.

H.R. 2874, Helping Active Duty Deployed Act (Connolly)

IAVA supports the Helping Active Duty Deployed Act of 2009 (HADD). The Servicemember Civil Relief Act must continue to be modernized to ensure that our men and women in uniform are focusing on their missions overseas and not bureaucratic morass back at home. Over 500,000 National Guard and Reservists have been deployed since 9/11 and nearly 1/5th of those are currently enrolled in college. Without Federal protections these servicemembers who are deployed mid academic term face a patchwork of refund procedures, which are confusing and inconsistent. HADD will require colleges to refund tuition paid by the servicemember for courses they could not complete due to a deployment. This legislation will also allow servicemembers who have cell phone contracts on a family plan to suspend their service while they are overseas. While I was in Iraq, I was required to pay a monthly fee to my cell phone provider in order to keep my cell phone contract current. I spent 5 hours of my first day back from Iraq in a Cingular Wireless store just trying to get my service restored. It took me over 7 months for the whole issue to get resolved and required filing a complaint to the FCC and switching service providers.

H.R. 2928, Include OJT/Apprenticeship programs to Post-9/11 GI Bill (Perriello)

IAVA agrees strongly with the intent of H.R. 2928, that On The Job (OTJ) and apprenticeship programs should be explicitly included in the Post-9/11 GI Bill. The WWII GI Bill sent over 8 million veterans to school, many of whom did not seek college degrees but rather participated in vocational and apprenticeship training programs. Unfortunately modern veterans who are pursuing vocational training will not be able to access the new GI Bill. Veterans pursuing a vocational program should not be penalized.

While we support the intent of this legislation, we are confused by the mechanism H.R. 2928 uses to determine the level of monthly benefits. Section 3320(a)(1) states the amount of "monthly benefit" is "85 percent of the amount equal to the national average cost of tuition at an institution of higher education." H.R. 2928 appears to erroneously base the monthly benefit on the yearly rate. The national average cost of tuition for 2008 according to NCES is about \$12,334/year. If the VA were to follow

H.R. 2928 to the letter that would result in veterans involved in OJT/Apprenticeship receiving 85 percent of that national rate per month (\$10,483/month) for the first 6 months. If H.R. 2928, intends to spread \$10,483 over the length of an average academic year (\$1,164/month) it should be explicitly stated in the legislation. IAVA believes that using the national average cost is an unwieldy baseline and that we should simply adopt Montgomery GI Bill levels for OJT/Apprenticeship directly into the Post-9/11 GI Bill. Using the same percentages proposed in H.R. 2928, 85 percent of the new MGIB rates would equal \$1,159/month, yielding a substantially similar result without the hassle of creating a new mechanism for determining benefits.

H.R. 3223, Improving VA goals and preferences for veteran owned small businesses (Buyer)

IAVA supports H.R. 3223, Improving VA goals and preferences for veteran owned small businesses, as it will help increase contracting opportunities for veteran small business owners. This legislation would change existing law to require a contracting officer of the Department of Veterans Affairs award a contract to a small business concern owned and controlled by veterans using other than competitive procedures (often referred to as a sole source contract) in specified circumstances. It would also prohibit using ownership and control by a veteran or veterans of more than one small business as grounds for disqualification from inclusion in an existing database of veteran owned businesses.

H.R. 3554, National Guard Education Equality Act (Loebsack)

We are honored to offer our support for H.R. 3554, the National Guard Education Equality Act. This bill will compensate full time National Guard soldiers and airmen for their service. Although the Post-9/11 GI Bill is the greatest investment in veterans' education since WWII, it has some rough edges that need to be ground down to better serve our newest generation of veterans, as they pursue their education. National Guard members who are serving on active duty called active guard reserve (AGR) duty do not receive credit for their service under Chapter 33 and are being denied the education benefits they deserve. It shouldn't matter if you are in a firefight in Afghanistan or fighting a fire in California, if you are wearing a military uniform you should be compensated for your service. Last year there were almost 30,000 Army National Guard and 13,500 Air National Guard servicemembers serving on Title 32 who will benefit from this legislation.

H.R. 3561, Increasing MGIB rates for Flight School (Teague)

IAVA supports H.R. 3561, which would increase education benefits for veterans taking Flight School courses under the Montgomery GI Bill. This bill would simply raise the cap to pay for flight school tuition and fees from 60 percent of the MGIB rates to 75 percent. We believe that a veteran should not be penalized for pursuing nontraditional forms of education with their earned benefits.

H.R. 3577, Education Assistance to Realign New Eligibilities for Dependents (EARNED) (Rodriguez)

The Education Assistance to Realign New Eligibilities for Dependents (EARNED) Act would allow active duty servicemembers, who retired between September 10, 2001 and August 1st, 2009, the opportunity to transfer their unused Post-9/11 GI Bill benefits. IAVA supports expanding a veterans ability to transfer their Post-9/11 GI Bill benefits to both retirees and medical retirees during this same period. We believe that both types of retirees have EARNED the right to transfer their unused GI Bill benefits.

However, we caution the Committee to ensure that any consideration of H.R. 3577 does not compromise passage of critical Post-9/11 GI Bill upgrade legislation that would include:

1. Authorizing Post-9/11 GI Bill benefits for Title 32 Active Guard Reserve (AGRs);
2. Providing a living allowance for full time distance learners;
3. Adopting MGIB program eligibility for non degree vocational, OJT, apprenticeship and flight training programs; and
4. Sustaining full tuition and fees reimbursement for veterans attending public undergraduate colleges, while setting a national standard for private and graduate schools.

H.R. 3579, Increasing GI Bill Reporting Fees (Filner)

IAVA strongly supports H.R. 3579, which would increase reporting fees that the VA pays to schools for processing veterans' GI Bill claims from \$7/veteran to \$50/veteran. We believe that low reporting fees has caused some schools to assign the role of school certifying officials to already overworked clerical employees. Couple

this with that fact that the complexity of the new Post-9/11 GI Bill requires these same certifying officials to report more information and monitor veterans enrollment status closer than ever before. It takes a school certifying official almost an hour to input a veteran in the VA online enrollment certification program, \$7/veteran is well below minimum wage. By increasing the annual reporting rate, veterans certifying officials will be given the status at schools they deserve. This new reporting rate will also provide the VA a real bargaining chip when they work with schools to ensure that GI Bill paperwork is filed properly.

Statement of Military Officers Association of America

The Military Officers Association of America (MOAA), respectfully requests that its views on certain bills before the Economic Opportunity Subcommittee be entered in the official record of this hearing.

MOAA does not receive any grants or contracts from the Federal Government.

WOUNDED WARRIOR ASSISTANCE

H.R. 1169 would increase the amount of assistance provided by the Secretary of Veterans Affairs to disabled veterans for specially adapted housing and automobiles, and adapted equipment. The legislation would increase from \$12,000 to \$15,000 the maximum amount available from the VA to certain disabled veterans for specially adapted features in a home; increase from \$60,000 to \$180,000 the total amount authorized for a qualifying disabled veteran for the construction of specially adapted housing; and increase from \$11,000 to \$33,000 the maximum amount for the purchase of an automobile and adaptive automobile equipment.

MOAA strongly supports H.R. 1169 and recommends priority passage by the Subcommittee and full House Veterans Affairs Committee.

NEEDED POST-9/11 GI BILL IMPROVEMENTS

The legislation before the Subcommittee addresses two of MOAA's and The Military Coalition's highest priorities for correcting inequities and improving the Post-9/11 GI Bill: authorizing vocational and related non-degree training under the program and permitting full-time active duty members of the National Guard with Post-September 10, 2001 service to receive benefits.

H.R. 2928 would authorize servicemembers and veterans who are eligible for the Post-9/11 GI Bill to use the benefits for apprenticeship and on-the-job (OJT) training programs.

The monumental World War II GI Bill is regarded by historians as the greatest social legislation of the second half of the 20th century. Seventy percent of WWII GI Bill users sought job and vocational training, not college degrees. All succeeding GI Bill programs except for the Post-9/11 GI Bill built upon that established precedent permitting participants to enroll in traditional academic programs or in vocational, OJT, apprenticeship or flight training programs in non-degree granting institutions.

MOAA supports H.R. 2928 as a first step toward the goal of allowing veterans to use their Post-9/11 benefits for any approved study or training program currently authorized under the Montgomery GI Bill (Chapter 30, 38 U.S. Code).

H.R. 3554, the National Guard Education Equity Act. This bill would permit members of the National Guard on full-time active duty (AGR) under Title 32 orders to qualify for Post-9/11 GI Bill benefits.

Title 32 AGRs qualify for educational benefits under the Montgomery GI Bill (Chapter 30, 38 U.S. Code). Moreover, all other Federal Reserve servicemembers with qualifying active duty service after September 10, 2001 are eligible for the Post-9/11 GI Bill.

Last year, there were almost 30,000 Army National Guard and 13,500 Air National Guard servicemembers serving on Title 32 active duty orders. Guard AGRs are responsible for planning, coordinating and executing national security missions at home in the continental United States and preparing Guard forces for operational deployments. Under the Nation's operational reserve policy, there is no reason to deny them access to benefits earned on active duty in service to the country.

MOAA strongly supports enactment of H.R. 3554, the National Guard Education Equity Act.

SERVICEMEMBERS' CIVIL RELIEF ACT (SCRA) PROTECTIONS

H.R. 1182, the Military Spouse Residency Relief Act. The legislation would amend the SCRA by giving military spouses of active duty servicemembers the op-

portunity to select the same domicile as her or his servicemember. The legislation affects very fundamental considerations for military spouses, including voting rights and state tax requirements.

MOAA believes that military spouses deserve the right to share the same domicile as their servicemembers. Military spouses share the burden of multiple deployments, reduced “dwell” time following re-deployment, frequent and costly relocations, and enormous stresses on themselves and their families. They share in the sacrifices of their servicemember for our country. They should be able to choose the same state of residence as their military spouse, to vote in the same jurisdiction, and to own property in their own names without tax penalties. Many military spouses—and their families as a result—suffer significant income losses due to relocations and the time it takes to find new employment. Many spouses with portable careers often face cumbersome challenges in tax filings.

H.R. 1182 currently has 164 bipartisan co-sponsors. The Senate has included the provisions of the companion bill, S.475, in its version of the FY 2010 National Defense Authorization Act.

MOAA testified in favor of H.R. 1182 in a joint hearing before the House and Senate Veterans Affairs Committees on 12 March 2009 and we strongly recommend that the Subcommittee favorably report the bill and work toward its early enactment.

H.R. 2696, the Servicemembers’ Rights Protection Act. This bill would establish a right of “private cause of action” in the SCRA for servicemembers, their dependents or other person protected under the Act. The bill would remove any ambiguity in the statute that service men and women may pursue their legal rights under the law. H.R. 2696 also would empower the Attorney General of the United States to bring civil action in U.S. district court to enforce provisions of the SCRA. Civil relief in such cases may include restraining orders and injunctions, damages, and penalties.

The continuing activation and deployment of hundreds of thousands of service men and women has given rise to countless personal legal challenges, landlord-tenant, family, property and business matters governed by the SCRA.

In a 2008 case (*Hurley v. Deutsche Bank Trust Co. Americas, et al*), National Guard Sergeant James Hurley’s house was foreclosed and his dependents were evicted from the property, and the property was sold to a third party during his deployment to Iraq. Sergeant Hurley sued in Federal district court in Michigan seeking damages for violation of his rights under the SCRA. The Federal court ruled, however, that there is no “right of private cause of action” to enforce violations of the SCRA. Although this case ultimately was resolved in favor of Sergeant Hurley, it points out that some courts do not recognize a right of private cause of action under the SCRA.

This issue goes to fundamental access to justice for service men and women and their families, recognizing that SCRA protections in the statute are only as strong as the ability to bring violators to court.

MOAA testified on 12 March 2009 before a joint hearing of the House and Senate Veterans’ Affairs Committees that the SCRA should be amended to establish a right of private cause of action under the SCRA and to authorize the Attorney General to bring a civil action to enforce the SCRA as necessary. ***MOAA strongly supports passage of H.R. 2696.***

H.R. 2874, the Helping Active Duty Deployed Act of 2009. This bill would amend the SCRA to prohibit a cell phone company from charging an early termination fee to servicemembers who receive military orders for foreign deployment or for a permanent change of station (PCS) in the United States. (Current law provides such protection for a contract entered into by a servicemember.) The bill also would prohibit lessors from charging early termination fees associated with residential, professional, business, agricultural rental lease or a motor vehicle to persons entering military service or for servicemembers with deployment or PCS orders.

H.R. 2874 also would amend the Higher Education Act 1965 to require institutions of higher learning to refund tuition and fees paid by a student who is called into active military service for the enrollment period for which the student did not receive academic credit because of the military duty.

MOAA is pleased to see that aspects of H.R. 2874 are included as provisions in the House version of the FY 2010 National Defense Authorization Act (NDAA), H.R. 2674.

Section 583 of the House NDAA would prohibit under the SCRA a termination or suspension fee for cell phone contracts. In addition, section 583 also would apply to a contract for telephone exchange service, multichannel video programming service, Internet access service, water, electricity, oil, gas, or other utility if the servicemember enters into the contract and thereafter receives military orders.

Importantly, section 583 of the House NDAA also would establish a right of private action under the SCRA for servicemembers harmed by violation of the law.

Section 594 of the House NDAA (H.R. 2674) would prohibit early termination charges for residential leases and leases of motor vehicles with certain stipulations related to the lessee's obligations under a lease agreement such as taxes, title and registration, and so forth.

MOAA strongly agrees with the action taken by the House in incorporating into its version of the FY 2010 National Defense Authorization Act (H.R. 2674) needed servicemember protections for service contract, residential and motor vehicle lease terminations in the SCRA.

MOAA recommends that H.R. 2874 be favorably reported by the Subcommittee, including the provision that would reimburse activated students for payment of enrollment periods for which no academic credit was given.

VETERANS' ADVISORY COMMITTEE ON EDUCATION (VACOE)

H.R. 2614 would reauthorize the VACOE charter to December 31, 2015. In recent years, the VACOE developed and recommended to the Secretary of Veterans Affairs and the House and Senate Veterans Committees a concept for the integration and improvement of various GI Bill programs, a concept known as the "Total Force GI Bill."

The Total Force GI Bill concept called for integrating the active duty and reserve programs of the Montgomery GI Bill into a single Chapter in Title 38 and to set a benefits benchmark that would enable the GI Bill to keep pace with the average cost of a public college education.

The VACOE also recommended that reservists should earn GI Bill benefits in proportion to the length and type of military duty served.

Both the "national average cost of a public college / university education" and "earn as you serve" recommendations put forward by the VACOE helped inform key components of the Post-9/11 GI Bill legislation.

The current VACOE statute permits the Secretary of Veterans Affairs to name all of the members of the VACOE. MOAA would recommend that the Subcommittee consider expanding the appointment procedure in the statute to facilitate the appointment of a wide-range of experts on GI Bill programs, education, military and veterans' groups representatives and others to serve on the Committee. The VACOE should routinely be invited to testify on GI Bill programs before the House and Senate Veterans' Affairs Committees.

MOAA supports H.R. 2614, a bill to extend the charter of the Veterans' Advisory Committee on Education to 31 December 2015.

National Association of Surety Bond Producers
Washington, DC.
September 23, 2009

Mr. Javier Martinez
Professional Staff
U.S. House Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
335 Cannon House Office
Washington, DC 20510

Dear Mr. Martinez,

On behalf of the members of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers who assist construction firms of every size to position themselves to qualify for surety credit, I am submitting for the record for the hearing on September 24, 2009 in U.S. House Committee on Veterans' Affairs Subcommittee on Economic Opportunity NASBP's opposition to section 3 of H.R. 294, the "Veteran-Owned Small Business Promotion Act of 2009."

Although NASBP is supportive of most sections of H.R. 294, including those to renew the Department of Veterans Affairs' authority to guarantee small veteran-owned business loans up to \$500,000, NASBP strongly opposes section 3, entitled "LIMITATION ON REQUIREMENT OF SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY VETERANS TO FURNISH CERTAIN BONDS," that limits the amounts of performance and payment bonds that can be required of small, veteran-owned businesses performing construction contracts for the Department of Veterans Affairs to no more than 50 percent of the contract amount. NASBP be-

believes that this limitation on bonding is unwise and detrimental to the interests of the Federal Government, taxpayers, and the many small businesses, including those owned and controlled by veterans, that serve as subcontractors and suppliers on these projects.

Section 3 of H.R. 294 carves out an unnecessary and nonsensical exception to the bonding requirements of Federal construction projects. The Federal Miller Act (40 USCA §3131 et seq.) requires that, before any contract exceeding \$100,000 is awarded for the construction, alteration, or repair of any Federal public building or Federal public work in the United States, the construction contractor must furnish performance and payment bonds to the contracting agency.

The Miller Act states that the amount of the payment bond “shall equal the total amount payable by the terms of the contract unless the officer awarding the contract determines, in a writing supported by specific findings, that a payment bond in that amount is impractical, in which case the contracting officer shall set the amount of the payment bond.” The Miller Act then states that “[t]he amount of the payment bond shall not be less than the amount of the performance bond.” In short, unless there is a compelling reason, such as bonds are not available in the amount of the contract, performance and payment bonds are to be set in 100 percent of the contract amount. By receiving performance and payment bonds in the total contract amount, the contracting agency receives assurance that, in the event of a default, it has the necessary funds available to cover the total cost of the project and to cover payment for those who supply labor and materials on the project. Given the current tumultuous economy, it would seem to make little sense to lessen or reduce requirements that protect U.S. taxpayers funds from the losses that may arise from construction defaults.

It is worth noting that, before a surety underwrites a bond, the surety will conduct a careful and thorough process, often referred to as prequalification, to assess the contractor’s ability to perform the construction contract and to pay its subcontractors and suppliers. The surety reviews the character, capacity, and capital of the contractor, and provides a bond or bonds only if the surety finds that the contractor possesses the capability to fulfill its contract obligations. Only contractors with the necessary experience, equipment, management, and financial wherewithal will receive surety credit.

Partial bonds—bonds for less than 100 percent of the contract amount—do not lessen the surety’s underwriting scrutiny of the contractor. The surety views the contract risk as the total contract obligation, not simply the face amount of the bond. The surety also will base its bond premiums—that is, the fees charged for the bond—on rates filed with State agencies regulating insurance. These filed rates are predicated on contract amounts, not bond amounts. In short, **partial bonds neither make bonds easier to obtain nor reduce bond premium costs. Partial bonds, however, do provide less coverage (reduced bond amount) to the bond obligee (the contracting entity) and to claimants (subcontractors and suppliers) should the bond principal (the contractor) default.**

Without a full payment bond in place, project subcontractors and suppliers, which may be small businesses, including veteran-owned businesses, are at significant risk for nonpayment. Subcontractors and suppliers cannot sue the Federal Government in the event of nonpayment, since they do not have direct contracts with the Federal Government. Furthermore, subcontractors and suppliers do not have lien rights on Federal construction projects, since they cannot place liens against public property. The payment bond is their sole payment remedy in the event that the prime contractor becomes insolvent or fails to pay them. Reducing the amount of the payment bond may mean that bond funds are available only for some, but not all, claimants.

For the foregoing reasons, section 3 of H.R. 294 is not in the best interest of the Department of Veteran Affairs or veteran-owned small construction firms. By significantly reducing the amount of bonds furnished by veteran-owned small construction firms, H.R. 294 would undermine the performance guarantees afforded the Department of Veterans Affairs and the payment guarantees afforded subcontractors and suppliers working on its construction projects. **Moreover, partial bonds neither would ease surety underwriting requirements for these firms nor reduce the costs of bonds.**

NASBP remains committed to advocating for policies and programs that assist small construction businesses to succeed in the Federal marketplace. This is why NASBP advocated for reforms to the U.S. Small Business (SBA) Surety Bond Guarantee Program that were included in “The American Recovery and Reinvestment Act of 2009.” This Economic Stimulus Package made significant statutory changes to the SBA Surety Bond Guarantee Program that NASBP believes will enhance the Program to allow greater participation from surety companies and small construction firms including veteran-owned businesses. NASBP continues to advocate for ad-

ditional reforms to the SBA Surety Bond Guarantee Program to ensure that it remains a viable program for small construction firms for years to come.

NASBP urges that H.R. 294 be amended to delete section 3 since this section fails to serve any parties interests, including those of veteran-owned construction businesses.

Thank you for your time and consideration with this matter.

Sincerely,

Mark McCallum
General Counsel and Director of Government Relations

Jones, Odom, Davis and Politz, L.L.P.
Shreveport, LA.
September 23, 2009

Honorable Stephanie Herseth Sandlin
331 Cannon House Office Building
Washington, DC 20515

Honorable John Boozman
1519 Longworth House Office Building
Washington, DC 20515

Re: Subcommittee Hearing on H.R. 2696

Madam Chairwoman, Ranking Member Boozman, Members of the Subcommittee:

I am John S. Odom, Jr., a practicing attorney from Shreveport, Louisiana. From 1973 to 2005, I served as a judge advocate in the United States Air Force, retiring in 2005 in the grade of Colonel. I continue to teach the Servicemembers Civil Relief Act (SCRA) as a volunteer member of the adjunct faculty at the Air Force Judge Advocate General's School at Maxwell AFB, Alabama, the Army TJAGLC at Charlottesville, Virginia and the Naval Justice School at Newport, Rhode Island. I have lectured and taught extensively for local, state and national bar associations, judges' conferences, consumer advocacy groups, bankruptcy trustee associations and financial service groups around the country on the SCRA. In my civilian practice, I have represented servicemembers in a number of Federal actions throughout the country in suits against violators of the SCRA for damages. I have been accepted as an expert witness for the plaintiff in *Hurley v. Deutsche Bank Trust Company Americas*, an action pending in the Western District of Michigan (Case No. 1:08-CV-361). I was also counsel for the plaintiff in *Cathey v. First Republic Bank*, 2001 U.S. Dist. LEXIS 13150 (W.D. La.) which, after a similar motion to dismiss by the defendant was denied by the court, settled for \$2.35 million. In each of the major SCRA cases I have handled, the defendants have caused extensive, expensive and time-consuming motion practice by seeking—unsuccessfully thus far—to have the servicemembers' suit dismissed on a claim that the SCRA has no specific provision for private causes of action to sue violators for damages.

This testimony is submitted in support of H.R. 2696. There is a problem with the current SCRA that is hurting our troops. With the passage of H.R. 2696, Congress could immediately fix the problem by amending the SCRA to specifically provide that violators can be pursued by the Department of Justice or by private attorneys who are willing to represent servicemembers in such cases. A similar amendment to the SCRA was proposed in section 513 of S. 1033.

When the working group (comprised of four judge advocates, one each from the Army, Air Force, Navy and Marine Corps) re-drafted what ultimately became the SCRA, they did their work in 1992–93. However, it was not until the House Committee on Veterans Affairs re-engaged after the commencement of the war in 2001 that the old Soldiers' and Sailors' Civil Relief Act (SSCRA), a venerable statute that had survived in one form or another since 1917, was updated and re-enacted as the SCRA. I have a close professional relationship with Gregory Huckabee, Lt Col, USA (Retired), who chaired that 1992–93 working group. He and I have team taught the SCRA on a number of occasions and served together on the ABA's Standing Committee on Legal Assistance to Military Personnel. I asked Col Huckabee why the drafting Committee did not add a specific provision authorizing private causes of action. He advised me that they did not think one was needed, because there were already so many reported cases involving the SSCRA (the predecessor statute) that they assumed no one would question whether or not Congress would have enacted such a comprehensive set of protections for servicemembers unless those same

servicemembers had a right to go to court and sue for damages when a violation occurred.

While Col. Huckabee's answer makes perfectly good sense from an intellectual standpoint, that is not how counsel defending banks, mortgage companies, automobile finance companies and apartment complex management companies—just to name a few—are defending lawsuits brought against them by servicemembers. In virtually every major case, I encounter either a motion for summary judgment or a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure, seeking to dismiss the servicemember's suit because there is no specific provision in the SCRA authorizing suits for damages under the statute. In every case thus far, we have been successful in convincing the court that unless a cause of action is inferred from the SCRA, the Act would constitute a right without a remedy, which would lead to an absurd end result. However, getting from Point A to Point Z and protecting the rights of servicemembers—both those in the particular cases involved and all those whose future cases have yet to develop—has required literally hundreds and hundreds of unnecessary hours in briefing and arguing these defense motions.

The *Hurley* case in Michigan is a prime example of why this amendment is so badly needed. Sergeant James Hurley's house was foreclosed upon in violation of the SCRA while he was protected by the SCRA (50 U.S.C. App §§ 516, 533). His Michigan National Guard unit had been mobilized and deployed to Iraq, where he served for over a year. While Sergeant Hurley was in Iraq fighting, his home was sold by Deutsche Bank Trust Co. Americas after the expiration of a 180 day period during which foreclosed property could have been redeemed by the debtor. However, pursuant to 50 U.S.C. App § 526, that redemption period never commenced to run against Sergeant Hurley for as long as he was on active duty. He came home from the war to find his wife and children evicted from their home, his house and property owned by someone else and the mortgage company claiming he owed them a huge deficiency judgment on property he no longer owned.

When Sergeant Hurley sued the mortgage company and their foreclosure attorneys for damages—since his rights had been violated not just once (as a result of the bank's non-judicial foreclosure in violation of section 533) but also when the property was thereafter sold despite the fact that the redemption period had never commenced to run much less expired (in violation of section 526), the bank defended with a motion for summary judgment claiming that there was no private cause of action under the SCRA to sue them for damages resulting from their actions. I had been retained as an expert in the SCRA by Hurley's attorneys and I assured them that we would answer the bank's motion and the court would find, as almost all courts had previously held, that there was a private cause of action under the SCRA, even though it had to be inferred.

Imagine our shock and concern when the district court ruled in favor of the defendants and dismissed Hurley's SCRA claims altogether, finding that the SCRA did not provide for a private cause of action. The court's ruling was based on a case from the Northern District of Texas (*Batie v. Subway Real Estate Corp.*, Case No. 3:07-CV-1415-M). However, because I had also consulted with Lt. Col. Batie's counsel in his case in Dallas, I knew that the *Batie* decision (finding no private cause of action under the SCRA) cited by the Michigan Federal court had subsequently been vacated by the Texas Federal court after we filed a motion for reconsideration and pointed out to the court several previous cases in that same court in which a private cause of action to enforce the SCRA had, in fact, been allowed to proceed. In other words, the Michigan court just did not pick up on the fact that *Batie I* had been vacated and overruled by *Batie II*. No problem, we thought—just file a motion for reconsideration in the Michigan case and all will be well. But, it did not work out that way at all. The court in Michigan denied Sergeant Hurley's motion for reconsideration despite the fact that we pointed out that the earlier decision had been based on a decision of the Texas court that had been vacated. The Michigan court simply reiterated that the SCRA does not contain a specific provision authorizing suits for damages against violators.

By this point in time, all of us were working on a case that had consumed tens of thousands of dollars of legal talent time, and no one had been paid a penny for all the work we had done on the servicemember's behalf. However, the issue was so vitally important that we had to keep on working. A Federal district court had ruled that a servicemember whose property was literally stolen from him in violation of Federal law could not go to court and sue for damages. With *Hurley* on the books, every servicemember thereafter who had someone violate their SCRA rights was at risk of their future case being thrown out of court based on the *Hurley* court's ruling of "no private cause of action." Without the future protections that would result from the enactment of H.R. 2696, the same nightmare of endless litigation motion practice initiated by counsel for the creditors—who are always paid by

the hour—will continue to be an unnecessary risk encountered by every servicemember and a burden to our courts.

In *Hurley*, the procedural solution to seek a reversal of the Michigan Federal district court's incorrect ruling was to file a motion with the court seeking certification of the ruling for an appeal to the Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1292(b). After that motion was filed, on March 13, 2009, the district court reversed itself, vacated the grant of summary judgment in favor of the bank and *granted* summary judgment in favor of Sergeant Hurley. The court went on to find that as a matter of Federal law, punitive damages were available under the SCRA. As satisfying as that ruling was, nevertheless, 5 years after his property was seized in violation of the SCRA, Sergeant Hurley still has not been compensated for his damages and his fight continues.

This overly long saga about the *Hurley* case is merely illustrative of the need for H.R. 2696. Unless Sergeant Hurley had found several really hard-headed counsel who simply decided that fighting the first two incorrect decisions was more important than collecting a fee practicing law, he would have been poured out in the Michigan case. This is not what our servicemembers should expect. Not every soldier, sailor, airman or Marine is going to find Sergeant Hurley's legal team, a group of supporters of our military who simply refused to quit when such an important principle was at stake. A relatively simple legislative fix, such as H.R. 2696, would eliminate the need for such battles in the future.

When our National Guardsmen and Reservists get their mobilization orders, they have to know that "someone has their Six" as we say in the Air Force. They have to know that if something goes wrong while they are off fighting for their country, when they come home someone can seek to straighten things out and if it takes a lawsuit to do it, they will have the right to go to court and seek damages if their rights under the SCRA have been violated.

The provisions in H.R. 2696 concerning damages and attorneys fees are consistent with numerous other Federal consumer-oriented statutes. From personal experience I can assure you that many of these cases in which there are clear violations of servicemembers' SCRA rights involve relatively small sums of money. This has two ramifications: it makes it much more difficult for the servicemember to find an attorney willing to take the case and it gives the violator a feeling of "what have I got to lose?" If those same violators knew that they might be exposed to payment of attorneys fees if they fought the case and lost, there would be significantly more voluntary settlements to properly compensate servicemembers and, ultimately, fewer violations of the SCRA.

I appreciate the opportunity to have presented testimony to this Subcommittee and thank you for all you do and continue to do for the men and women in our Armed Forces. I ask that this statement be included in the record of the Subcommittee's hearing on H.R. 2696.

Respectfully,

John S. Odom, Jr.,
Colonel, USAF (Ret.)

**Statement of Brian Hawthorne, Legislative Director,
Student Veterans of America**

Madam Chairwoman, and Ranking Member Boozman, thank you for giving Student Veterans of America the opportunity to submit testimony on this important legislation. We appreciate the opportunity to comment on and contribute to legislation that could impact our members and their families.

Today, as you review the legislation that has been put before you, we would like to bring to your attention the way that these Bills affect our constituency more than most. As veterans who are currently attending colleges and universities around the country, including in your districts, any modification to current or future economic and educational legislation can have fantastic or dire consequences. The top priority on our Legislative Agenda is the improvement and upgrade of the Post-9/11 GI Bill. To that end, many of our chief concerns are being considered today by the Bills before you, and we are proud to be a part of this process to ensure that those who are most affected, the veterans currently enrolled in school or considering such an important decision, are properly represented. Student Veterans of America represents more than 200 college and university veterans' organizations across the country, from small community colleges to Ivy League schools. We firmly believe

that all veterans deserve access to the quality education of their choosing, and in their own terms. It is essential that this Congress legislate as such.

To assist in that vital process, we have prepared our opinion on five of the Bills that you consider here today, and will address each in turn.

Mr. Connolly's H.R. 2874, allowing for relief of tuition for servicemembers called to active service during one of their postsecondary semesters is a vital protection to the student veterans who remain bound to their obligatory uniformed service, be it Active Duty, National Guard, Reserve Forces, or the Inactive Ready Reserves. It is very important for a student to know that, regardless of their military affiliation, they will be able to recoup any funds spent on tuition and fees should they be called to active duty for contingency or support operations. This protection not only gives peace of mind, but also ensures that the financial stability of their family is not disrupted because of these expenditures.

In addition to this protection, however, we call upon Congress to enable the sub-sequential return of Post-9/11 GI Bill Benefits to the veteran, as the Department of Veterans Affairs would be receiving the funding paid to the institution of higher education. This creates a situation where the VA has made an investment in a veteran, but did not receive a return on its investment due to the recall to active service. The student veteran, therefore, should be able to use those months expended on another term following their activation.

Mr. Perriello's H.R. 2928 Bill rectifies one of the most glaring omissions of the Post-9/11 GI Bill: supporting benefits for Apprenticeships and On-The-Job Training Programs. We have heard from many of our constituents that this creates a serious financial burden on them, and is openly discriminatory to the important industries that are supported by these programs, which form the majority of our unions across the country. Many veterans leaving the military service have extensive experience in these exact careers, and should be supported in attaining professional certifications and journeyman's licenses. Additionally, the economy of our Nation and the maintenance of its industry depend on such skilled laborers, and this Congressional body in no way should be seen as looking down on such contributors simply because their extensive education does not result in a college degree.

We believe that these veterans should be fully supported by both the tuition and fees payments as well as the housing and book stipends available to their degree-seeking counterparts who are assigned a commiserate amount of work. Additionally, given the important nature of this amendment, we call upon this body to implement it "as if included in the enactment of the Veterans Educational Assistance Act of 2008," so as to not continue denying benefits to these very worthy student veterans.

Our changes read as follows:

See 3320 (a)

- (1) amend the amount of benefit to 90 percent,
- (2) amend the amount of benefit to 70 percent,
- (3) amend the amount of benefit to 50 percent, in addition to the increased percentage the veterans should be entitled to both the \$1000.00 annual book stipend and the BAH commensurate to the locale of the training facility.

Justification

Apprentices and OJT individuals include mandatory in classroom training, generally those who are pursuing a trade in skilled labor such as welding, pipefitting, and carpentry. Most of the skilled trades have contract with the local community colleges to facilitate the mathematical and technical comprehension needed to obtain journeyman status. Increasing the benefits to those in pursuit of a journeymen's certificate of the equivalent may lessen the burden of increased hours of employment to provide for themselves or their families and will allow for sufficient time to devote to their studies.

In a Bureau of Labor and Statistics report dated March 20, 2009, 1.7 million Americans have served in the Global War on Terror (GWOT). Among these veterans, 30 percent of employed male veterans of the GWOT—era worked in management, professional, and related occupations, compared with about 34 percent of male non-veterans. Sales and office occupations; natural resources, construction, and maintenance occupations; and production, transportation, and material moving occupations each accounted for about 18 percent of employed male veterans and non-veterans.

Generally, apprentices learn through both classroom and on-the-job training. The 5-year apprenticeship period most common to building and maintenance trades in the U.S. is divided into 1-year segments, each of which includes 1,700 to 2,000 hours of on-the-job training and a minimum of 216 hours of related classroom instruction. In-class instruction of 216 hours over 5 years (or 60 months) is averaging 43.2 hours per school year of in-class instruction; broken down by semester the individual is

tasked with three-quarter time or full time course load in addition to full daytime employment. The veteran is a student and has earned the benefit; the career path of the veteran should be irrelevant so as long as the veteran is showing satisfactory progress in the educational program of the apprenticeship.

The Apprenticeship or OJT skilled craftsman programs vary widely from each other. An example of the apprenticeship from one such industry is that of the heating, venting, air conditioning and refrigeration apprenticeship. The admission requirements are just as selective and competitive to that of a 4-year institution. The following outlines the requirements for one such course: the candidate for apprenticeship must be a minimum of 18 years of age, a High School Graduate, must have 10 high school credits or one college semester of algebra and geometry, or a Certificate of Completion or Associate of Science degree in Air Conditioning & Refrigeration curriculum from a Joint Journeymen and Apprenticeship Training Center-approved Community College, Trade or Technical School, or achieve a passing score on a test written and administered by the Joint Journeymen and Apprenticeship Training Center that encompasses Algebra and Geometry.

For these programs, all education requirements must be submitted by Official Transcripts and the selection process is a critical component in obtaining the apprenticeship. The veteran must pass an admissions test, and applicants fulfilling requirements by date of submission will be given a written English and Mathematics exam. All applicants who have completed the written test will be scheduled for an oral interview. Then, applicants who have completed the testing and oral interview will be ranked according to their combined scores. Finally, applicants will be required to submit to a drug test prior to being offered an apprenticeship position.

In closing, the proposed amendment will allow veterans who so choose to become a critical member of infrastructure maintenance and construction. This career field and curriculum is just as demanding and competitive as those attending or attempting to attend a 4-year institution. Close to twenty percent of the Nation's newest generation of veterans are employed in these and similar fields, and this legislation is a key component to advance those with technical and mechanical inclination. It is the opinion and recommendation of Student Veterans of America that this legislation be forwarded and passed with nothing less than the stipulations previously stated above.

Congressman Loeb'sack's H.R. 3554, granting Post-9/11 GI Bill benefits to those servicemembers activated under Title 32, is absolutely essential to the future of the Post-9/11 GI Bill. Excluding these well-deserving servicemembers from a benefit that the majority of their fellow veterans are receiving is simply discriminating. We must ensure that legislation is applied evenly across the spectrum of beneficiaries, regardless of affiliation to the military. H.R. 3554, and others like it, close this gap that has been identified by many Veteran Service Organizations as among their top priorities for amendment, especially those who represent the National Guard and Reservists. Student Veterans of America is proud to stand with them in this advocacy.

We are extremely pleased that the Committee is bringing to consideration H.R. 3561, the proposed amendment of Mr. Teague, to amend title 38 in order to increase the educational assistance to veterans pursuing flight training. Flight training is very expensive and the time commitment is just as great as any traditional educational program. Increasing the funding to those seeking flight training will enable them to focus more on their training and instruction and free them from having to gain employment to pay for such training, ensuring their success in these challenging academic and technical programs.

Finally, SVA is honored to support H.R. 3577 from Mr. Rodriguez, which would allow military retirees, those who have truly devoted their lives to our Nation and its ideals, to transfer their Post-9/11 GI Bill benefits to their dependents. Those servicemembers who have committed such an extensive amount of time to the military deserve to be able to support their dependent's educational dreams without having to extend their obligation. We support this honorable population and their desire to be able to use their earned benefits as they choose.

Thank you for your time and consideration of our opinion on these very important legislative matters. We look forward to working with you all in the future.

Very Respectfully.

MATERIAL SUBMITTED FOR THE RECORD

Committee on Veterans' Affairs
 Subcommittee on Economic Opportunity
 Washington, DC.
September 28, 2009

Ms. Lynn Schubert
 President
 Surety and Fidelity Association of America
 1101 Connecticut Ave, SW, Suite 800
 Washington, DC 20036

Dear Ms. Schubert:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

The Surety & Fidelity Association of America
 Washington, DC.
November 6, 2009

The Honorable Stephanie Herseth Sandlin
 Chairwoman—Subcommittee on Economic Opportunity
 U.S. House Committee on Veterans' Affairs
 335 Cannon House Office Building
 Washington D.C. 20515

Re: Questions from the Subcommittee at the Legislative Hearing on September 24, 2009

Dear Representative Herseth Sandlin:

Thank you again for giving The Surety & Fidelity Association of America (SFAA) an opportunity to present its views on H.R. 294. The following are our responses to the additional questions that were asked of us after the hearing on September 29.

Question 1: You state that you would be happy to assist the VA with developing a Model Contractor Development Program. Do you think that this would be better suited for the Small Business Administration?

Response: Historically, SFAA has implemented its Model Contractor Development Program (MCDP) in response to specific requests from Federal, state and local governmental entities, as well as from organizations and associations involved in developing contractor capability and capacity. While it would seem that SBA would be the logical candidate to partner with SFAA in such an endeavor as part of its Surety Bond Guarantee Program (the Program), thus far the SBA headquarters has not indicated an interest in expanding its bond guarantee program to include a contractor development component to assist contractors in becoming bondable in the private market, with or without the government guarantee. Over the years, we have

had an excellent relationship in working with SBA in addressing many of the issues associated with implementing its bond guarantee program, but establishing a national, SBA-sponsored bond education and technical assistance program for small and emerging contractors has not been a part of that dialog. To be sure, we have worked closely with SBA-funded Business Development Centers (most notably in New York, Rhode Island and Texas) in implementing our MCDP initiatives nationwide and the Rhode Island District Office of SBA is our primary local partner in that state's program. We feel the SBA could do more in terms of offering education, technical assistance and bond readiness support of the sort offered through our MCDP and we would welcome more opportunities to work with SBA headquarters, its regional and district offices, and its network of SBDC grantees.

Working more extensively with SBA, however, would not and should not preclude our also working with other Federal agencies and with state and local governments. In many instances, our programs with other agencies and governmental entities have come out of a need for more targeted efforts, either in terms of constituencies or in terms of construction industry sectors. For example, as referenced in my testimony, since 2006 we have had a Memorandum of Understanding with the Minority Business Development Agency (MBDA) "to share [SFAA] resources with MBDA for the benefit of minority-owned firms to enhance their access to bonding and/or educate them on how to become bondable or increase their bonding capacity." Under this agreement, SFAA has conducted a number of bonding information workshops around the country and has implemented the MCDP program jointly with MBDA in New York, Chicago and Texas. Also, we are about to enter into a Memorandum of Agreement with the Federal Department of Transportation (DOT), Office of Small and Disadvantaged Business Utilization (OSDBU), to design, develop and implement a surety bond assistance program that will offer bond assistance for transportation-related projects for minority, women-owned and disadvantaged business enterprises.

While either of these efforts theoretically could have been undertaken with SBA, we believe that, in these instances, MBDA's specific experience in providing assistance to minority companies and DOT's focus on transportation and transportation-related projects give them a programmatic advantage over SBA's more broadly based mandate to support small business in general, thus leading to more immediate and more direct impact on the contractors involved.

In addition, we have had great success in working with small and emerging contractors in our educational programs in connection with large construction projects that are underway in a given location. The states or cities we have assisted with bonding education and technical assistance have been able to target their resources to help local contractors get bonded. Similarly, there has been an incentive for small and emerging contractors to participate in our MCDP in areas in which they would have an opportunity to bid for jobs upon completion of the MCDP on a large public construction project in the area.

Soon after our testimony at the Subcommittee hearing, we met with the Acting Director of the Veterans Administration's Center for Veterans Enterprise to discuss the MCDP and how it might fit into the VA's plans for a Federal Contractor Certification Program (FCCP) which currently is being developed. The VA would like to utilize our MCDP workshops as the course modules for the construction industry-specific component of its FCCP, again a very narrowly tailored application of the MCDP in a targeted setting. We have agreed in principle to the VA's request and look forward to working with it. The time frame for getting this initiative off the ground is the end of the 2010 fiscal year. Were we not able to provide these workshops, the VA would have to look elsewhere to obtain this very important component of its FCCP initiative.

Question 2: You state that you have worked with the SBA Bond Guarantee Program to make it more attractive to sureties, but that legislative and regulatory changes are needed. What would you say are the changes that are needed?

Response: The major change necessary to address the fundamental issues with the Program is legislation to reflect the true nature of the relationship of the SBA to the participating surety, which is that of a reinsurer. For long term success, the SBA should reorganize the Program around the reinsurance model that it has been studying and that hopefully will be included as part of the SBA Reauthorization now before Congress. Under this model the SBA regulations would be rewritten to fundamentally change the Program from a rules-based approach to a principles-based approach. The Plan A and B programs described below would be combined into a single program in which the SBA assesses the risk of each surety participating and enters into a separate "treaty" with each surety. Rather than continuing its current practice of "re-underwriting" each surety bond, the SBA should be evalu-

ating and underwriting the surety in the same manner a reinsurance company would, incorporating knowledge about the surety's strengths and weaknesses, as well as its overall business plan and strategy. SBA has had a consultant reviewing this type of an approach for quite some time now, and implementation of such a change is timely and necessary. Congressional action to do this could quickly revitalize this necessary program.

In the past 10 years, over \$8 billion in bonds have been issued to small and emerging contractors through the Program. The Program has provided bonding assistance to small and emerging contractors who might not otherwise be able to obtain bonds. This has been especially true in times of economic downturn when bonding sometimes becomes more scarce and difficult to obtain. According to SBA data, it would appear that participation in the Program is declining. In 1997, the Program guaranteed 16,336 bonds; in 1999, it guaranteed 9,448 bonds; and in 2009 it is projected to guarantee 6,100 bonds. In 1992, the Program guaranteed 32,000 bonds, which was its peak. In 1999, there were 32 sureties participating in the Program. Currently, 12 sureties write through the Program. Four companies account for 89 percent of the bonds, and one company accounts for 45 percent.

While there are several reasons for the decline in surety participation and the number of bonds guaranteed under the Program, including the fact that the availability of bonds to small contractors outside of the SBA impacts the bonds guaranteed, there remain some major impediments within the Program operation itself that prevent optimal participation by surety companies and agents. In fact, SFAA member companies have expressed the opinion that, over the course of time, the Program has become increasingly unattractive for sureties. For example, for many sureties, the Program has become an expensive, if not a commercially unreasonable, partner, now that the Program charges 26 percent of the premium as fees from the sureties. In 2006, the SBA finalized changes to its regulations that would implement an increase in the guarantee fee to surety companies from 20 percent to 26 percent of the premium on bonds issued and guaranteed under the Program. This fee increase, which was decreased from the hike that SBA sought to 32 percent, still has made the Program economically unattractive for most sureties and affects its continued viability. Therefore, any changes in the Program should include a reduction in fees, at least down to the 20 percent level prior to the 2006 fee increase.

Another area of concern is the disparity in the level of bond guarantee between the Prior Approval Plan (called "Plan A") which is 90 percent, and the level of bond guarantee for the Preferred Plan (called "Plan B") which is 70 percent. When Plan A was put in place, traditional surety companies chose not to participate for a variety of reasons. The two primary reasons were that: (1) their business focus was on lower risk, larger contractors, and (2) the administrative costs of submitting each bond for prior approval of a guaranty were significant. Over time the SBA determined not enough contractors were graduating out of the program. The SBA at the time believed that if it could encourage traditional sureties to participate, more contractors would be able to obtain bonds, and more contractors would graduate from the program. Therefore, the SBA went to the SFAA for advice and assistance. Both the sureties who specialized in higher risk contractors, as well as the "traditional" sureties, were members of the SFAA, and through the input of those members, the SFAA and the SBA were able to create a program that encouraged more sureties to participate in the program, while not detrimentally impacting the existing SBA sureties. This new program was called the Preferred Surety Bond Program. Plan B addressed the concerns of the non-SBA sureties in a number of ways. First, the program provided that if a surety was approved by the SBA for Plan B, it would be granted a dollar value of guaranties from the SBA that would be automatically valid, without prior approval of each bond. In exchange for this reduction of paperwork, the sureties would receive only a 70 percent guaranty of loss on each bond rather than a 90 percent guaranty. While Plan B has worked fairly well, the 70 percent guarantee has always been a detriment in attracting enough sureties to participate and a raising of this guarantee to the level of Plan A would undoubtedly result in a significant increase in surety participation in the Program. The SBA should amend the regulation so that the same rule applies to both Plan A and Plan B sureties.

For several years, SFAA has been working to address these and other issues through the SBA reauthorization legislation in order to fix the problems sureties have had in the past with the Program. In addition to the fee structure and level of bond guarantee, these include unraveling of bond guarantees, rescinding of the requirement that the Program be self-sufficient, instituting a non-binding alternative dispute resolution process to resolve claims issues, and increasing regional staffing. We acknowledge that several critical changes needed in the Program have been accomplished, but they have not made the difference the SBA hoped. The Pro-

gram staff is committed to making the Program work well, and the industry supports them in these efforts.

The change to a reinsurer based model would be the most comprehensive solution likely to provide the largest benefit to small contractors.

If you or other Members of the Subcommittee have any additional questions, we would be happy to address them.

Sincerely,

Lynn M. Schubert
President

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
September 28, 2009

Mark Walker
Deputy Director, National Economic Commission
The American Legion
1608 K Street, N.W.
Washington, DC 20006

Dear Mr. Walker:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

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Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

American Legion
Washington, DC.
November 9, 2009

Honorable Stephanie Herseth Sandlin, Chair
Subcommittee on Economic Opportunity
Committee on Veterans' Affairs
U.S. House of Representatives
335 Cannon House Office Building
Washington, DC 20515

Dear Chair Herseth Sandlin:

Thank you for allowing The American Legion to participate in the Subcommittee hearing on several pieces of legislation on September 24, 2009. I respectfully submit the following in response to your additional questions:

Question 1: Does The American Legion support listing service-disabled veterans as part of the list of disadvantaged groups?

Response: The American Legion does not support Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) being included in the list of disadvantaged groups for the following reasons:

- Under the 8(a) program a veteran must be in business for 2 years prior to application for 8(a) approval;
- Restriction on the amount of assets one can accumulate to qualify for 8(a) and while under 8(a) (no such restrictions for SDVOSBs); and,
- Under the 8(a) program there is too much bureaucracy and reporting requirements along with restrictions on Teaming, etc. (no such bureaucracy with the SDVOSB program).

Inclusion into the 8(a) program would not be an advantage for the SDVOSB. The SDVOSB program is a reward for honorable service to this great Nation.

Question 2: Do you have concerns that there may be “rent-a-vet” enterprises if veterans are not required to be involved in the day-to-day operations of a business?

Response: Yes, The American Legion is concerned about companies (large and/or non-veteran) getting veterans within their companies to start SDVOSBs. These startup SDVOSBs seem to be serving as the Prime, but they do not have control over the contract. You can call it “affiliation or fronting,” but it is all the same: a SDVOSB being used by a large and/or non-veteran firm to obtain SDVOSB contracts that are in essence not run by the SDVOSB. This is tough to prove, but it is occurring frequently. However, The American Legion strongly believes that a veteran business owner can start and build successful companies simultaneously. With developed business acumen, current technology, and a solid network, a veteran business owner can navigate the demands of successfully operating more than one company at a time.

Question 3: Do you think businesses could be potentially set-up for failure by receiving bonds they would not normally secure as stated under Mr. Buyer’s bill H.R. 3223?

Response: The American Legion believes veteran business owners who are capable and prudent, will not be “set-up” for failure. These veteran business owners have learned how to conduct business professionally and consistent with commonsense and time-tested processes.

Thank you for your continued commitment to America’s veterans and their families.

Sincerely,

Mark Walker
Deputy Director, National Economic Commission

Committee on Veterans’ Affairs
Subcommittee on Economic Opportunity
Washington, DC
September 23, 2009

Mr. Justin Brown
Legislative Associate, National Legislative Service
Veterans of Foreign Wars of the United States
200 Maryland Avenue, NE
Washington, DC 20002

Dear Mr. Brown:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans’ Affairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

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Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

**RESPONSE TO QUESTIONS SUBMITTED BY
JUSTIN BROWN, LEGISLATIVE ASSOCIATE
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES**

**H.R. 294, H.R. 1169, H.R. 1182, H.R. 2416, H.R. 2461, H.R. 2614,
H.R. 2696, H.R. 2874, H.R. 2928, H.R. 3223, H.R. 3554, H.R. 3561,
H.R. 3577, and H.R. 3579.
November 9, 2009**

Question 1: Regarding H.R. 2928 The Federal Career Intern Program, how would you recommend that his legislative proposal provide a clear measurement for the on the job training benefit?

Response: The VFW believes the measurement for the job training benefit is not clear because the national average cost of tuition at an institution of higher education is poorly defined. The VFW suggests, offering the rate which is currently offered under chapter 30 with that rate being tied to a favorable annual rate of inflation. This would clarify the amount of payment to be distributed to those interested in pursuing the program while not substantially lowering or increasing the benefit.

Question 2: Does Veterans of Foreign Wars recommend that refunds under Representative Connolly's SCRA bill, H.R. 2874, include tuition or fees paid on behalf of the student by institutions of higher learning or funds awarded under Title 20 United States Code?

Response: The VFW currently has no formal position on this question and supports the legislation as it is written.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
September 28, 2009

Mr. Dave Gorman
Executive Director
Disabled American Veterans
807 Maine Avenue, SW
Washington, DC 20024

Dear Mr. Gorman:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

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Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

**POST-HEARING QUESTIONS FOR JOHN L. WILSON
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR OF THE
DISABLED AMERICAN VETERANS
FROM THE SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 24, 2009**

Question: Do you have concerns that there may be "rent-a-vet" enterprises if veterans are not required to be involved in the day-to-day operations of a business?

Answer: There are likely thousands of veterans and non-veterans alike that own one or more businesses in today's economy. Given the benefit of Internet access, software business tools, and teleconferencing capability, business owners can easily operate multiple businesses, manage day-to-day operations, make decisions affecting financial, operational, management policy, and employment issues as needed, without having to be on-site. Successful owners of multiple businesses may also have the assets necessary to hire personnel to attend to many of the daily operational needs of their businesses, affording them even greater flexibility.

While DAV has no resolution on this matter, we believe the number of hours worked, or location of the owner, should not be the exclusive factors to consider. Rather, controlling interest in the business and a record of successful operations should also be considered. Any efforts to restrict such flexibility for veterans and service-disabled veterans who own more than one business would unnecessarily place them at a disadvantage under non-veteran business owners. These business owners should instead, be afforded the opportunity to expand into as many business lines as they find of interest based on their expertise and the financial resources available.

Question: Do you think businesses could be potentially set-up for failure by receiving bonds they would not normally secure as stated under Mr. Buyer's bill H.R. 3223?

Answer: H.R. 3223 would prohibit using ownership and control by a veteran or veterans of more than one small business as grounds for disqualification from inclusion in an existing database of veteran-owned businesses. Although DAV has no resolution on this issue, ownership and control of more than one small business should not be the grounds for disqualifying veterans from being listed in a service disabled veteran-owned small business database. Veterans and non-veterans alike have successfully demonstrated their ability to manage multiple businesses for generations. Decisions on inclusion in a database, or awarding bonds, should be based on the veterans' controlling interest in the business or businesses, available financial resources, the soundness of the business plan, and their demonstrated expertise.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC
September 23, 2009

Mr. Richard F. Weidman
Executive Director for Policy and Government Affairs
Vietnam Veterans of America
8605 Cameron Street, Suite 400
Silver Spring, MD 20910

Dear Mr. Weidman:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans' Af-

fairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

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Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

**Deliverable from the House Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Legislative Hearing
September 24, 2009**

Questions for the Record:

1. Do you have concerns that there may be "rent-a-vet" enterprises if veterans are not required to be involved in the day-to-day operations of a business?

There is a marked difference between being involved in the running of a company and being on-site every day, which is the litmus test that the VA Center for Veterans Enterprise (CVE) is (inappropriately) applying to veteran owned small businesses (VOSB) and service disabled veteran owned small businesses (SDVOSB) today. In this day of modern communication it is foolishness to think that one cannot own and control two or more businesses at the same time. In fact we have many examples of legitimate SDVOSB where that is the case, but the CVE has heretofore not certified them.

In order to cut down on this problem we first need to eliminate the outrageous backlog in verification of VOSB/SDVOSB status at the CVE as soon as possible.

Second, there needs to be a affidavit filed with tax returns and other info to show verification that acknowledges that the individual(s) claiming ownership/control are indeed who and what they claim to be, and acknowledging that they understand that falsification of answers is a felony.

Third, there needs to be random on-site inspections of verified VOSB.

And last, where it is found that fraud has been committed we need to disbar businesses and all of the individuals involved for a period of at least 5 years, and in egregious cases they need to be convicted of a Federal felony, as well as fined and/or put in jail. It will only take one or two instances and the rest of the phonies will pursue other schemes.

The notion, made up by the people at CVE who have never run a business that you can only have one business and have to be on site every day was copied by the current staff at CVE from the early criteria for the 8(a) program at the Small Business Administration (SBA). The 8(a) program is a business development program with a great deal of logistical support, and is in no way comparable to the 'SDVOSB program. (Incidentally, we are given to understand that this is no longer rigorously enforced in the 8(a) programs.)

2. Do you think businesses could be potentially set-up for failure by receiving bonds they would not normally secure as stated under Mr. Buyer's bill H.R. 3223?

No. There are a great number of VOSB and SDVOSB that clearly have the organizational capacity and the track record to successfully complete a job, but cannot, in these tight fiscal times, get the bonding necessary so that they can bid on it. What is happening is that virtually ALL small businesses are thus frozen out, leaving the way clear for the same dozen or so large firms to get all of the work. We

will continue to work with the surety bond organizations to find ways to surmount this significant barrier, especially for SDVOSB.

3. Is VVA against listing service disabled veterans as a socially disadvantaged group?

Yes, VVA is adamantly opposed to listing service disabled veterans as a socially disadvantaged group. Both VVA and the Veterans' Entrepreneurship Task Force (VET-Force) have discussed this numerous times and have always come down as being unanimously against any such move.

4. Under the proposed Veterans Small Business Verification Act, would VVA support having two lists in the database that would have one "verified" and eligible for special consideration for Federal contracting opportunities and another for "applied but not yet verified" which is ineligible for special consideration for Federal contracting opportunities?

Frankly, this should be a short term "fix" only. There is no excuse for VA to have a long standing list of applicants waiting to be verified, through no fault of their own. VA now has finally named the Senior Executive Service level official to be in charge of the entire small business program, and we expect that they will move soon to name the GS-15 to actually head the CVE. We have made it clear to the Secretary and to the Deputy Secretary, as well as to the new small business director, Mr. Foreman, that cleaning up the long wait and backlog for verification at CVE simply must be a top priority.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
September 28, 2009

Ms. Christina M. Roof
National Deputy Legislative Director
AMVETS
4647 Forbes Boulevard
Lanham, MD 20706-4380

Dear Ms. Roof:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

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Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

**Deliverable from the House Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Legislative Hearing
September 24, 2009**

Question 1: Do you feel confident that the U.S. Department of Veterans Affairs has the right personnel who understands and are trained in making small business loans as needed under H.R. 294?

Response: AMVETS believes that from the limited knowledge on VA's entire staff an accurate response would be based on assumptions. However, AMVETS does believe that having staff armed with the knowledge and clear understanding of SDVOSB and VOSB business lending concerns is vital to the implementation of a successful lending program within VA. AMVETS speculates that as of current VA has not demonstrated that they are equipped with all the necessary tools to successfully carryout H.R. 294 and achieve all the benefits to VOSB it serves to benefit. We would recommend an intense internal review of current staff knowledge and capabilities in the efforts to ensure the success of all parts of the bill. Recent studies of our newly returning and current veteran population show a 33 percent increase in the formation of new business entities over the past 5 years. VA must be prepared with the proper staff to assist in all aspects of the lending process.

Question 2: Is the set-aside program more of an environment to help individuals start companies?

Response: AMVETS does not believe the set-aside program only stands to benefit new business owners. The original intent of the program was to help ensure all veteran owned businesses had a fair chance at government contracts. Public Law 109-461, The Veterans Benefits, Health Care and Information Technology Act of 2006, was signed into law by President Bush on December 22, 2006, and required the law to take effect by June 20, 2007. The law allows VA special authority to provide set-aside and sole source contracts to small businesses owned and operated by veterans and service-disabled veterans. This legislation is codified in 38 U.S.C. § 8127 and 8128. Over 2 years have passed with still no significant change in regards to how Federal contracting officers are trained in identifying set-asides properly. Supporting Service Disabled Veteran Owned Small Businesses (SDVOSBs) contributes significantly in restoring their quality of life while aiding in their transition from active duty to civilian life. While many private sector businesses have spent years in developing the strategies and knowledge to win government procurements, many of our SDVOSB and VOSB have not had the same luxury. Many returning war fighters often turn to self employment and entrepreneurship as a means of sustaining their new way of life. Respectfully, the SDVOSB and VOSB programs stand to not only not benefit veterans, but utterly fail unless VA, DOL, SBA, and OFCCP exercise oversight and stronger enforcement of consequences. There also needs to be an immediate focus on proactive measures to eliminate untruths, such as "rent a vet", and cease only exercising "reactive" strategies. VA, DOL, SBA, and OFCCP should pool all their resources and successful strategies to ensure swift action and non-duplication of measures.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
September 28, 2009

Mr. Keith Wilson
Director, Office of Education Service
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420

Dear Mr. Wilson:

I would like to request your response to the enclosed questions for the record and deliverable I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity Legislative Hearing on September 24, 2009. Please answer the enclosed hearing questions by no later than Monday, November 9, 2009.

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Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-5491.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

JL/ot

Questions for the Record
The Honorable Stephanie Herseth Sandlin
House Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Legislative Hearing on H.R. 294, H.R. 1169, H.R. 1182, H.R. 2416,
H.R. 2461, H.R. 2614, H.R. 2696, H.R. 2874, H.R. 2928, H.R. 3223,
H.R. 3554, H.R. 3561, H.R. 3577, and Draft
September 24, 2009

Question 1: According to your testimony, you are concerned that Congressman Perriello's on-the-job training bill does not clarify how monthly rates should be established and that you would recommend a basic amount to help determine a monthly benefit rate similar to how Chapter 30 is determined. If the legislation would take this approach, do you have a recommendation?

Response: The Department of Veterans Affairs (VA) recommends that the legislation base the monthly benefit rate for on-the-job training (OJT) and apprenticeship under the Post-9/11 GI Bill on the full-time institutional training rate for the Montgomery GI Bill-Active Duty (MGIB-AD) chapter 30 program and the current percentage of the full-time basic rate.

For example, for the first 6 months of training, VA would pay 75 percent of the full-time institutional training rate. During the second 6 months of training, VA would pay 55 percent of the full-time institutional training rate. During the remainder of training, VA would pay 35 percent of the full-time institutional training rate. The chapter 30 full-time institutional training rate for individuals with three or more years of active duty service is \$1,368. Therefore, individuals enrolled in an OJT or apprenticeship program under the Post-9/11 GI Bill would receive \$1,026 per month for the first 6 months of training; \$752.40 per month for the second 6 months of training; and \$478.80 per month for the remainder of training. Under this hypothetical payment structure, additional benefit costs to VA are expected to be \$4.2 million during the first year, \$21.8 million for five years, and \$56.7 million over 10 years.

Question 2: How many applications do VA process a day for business verification?

Response: Calculating production during the first quarter of the fiscal year, VA finalized an average of 22 applications per workday.

Question 3: Under H.R. 3223 instead of having "shall" for everyone would it be better to have "may" for everyone? (Have "may" for all socially disadvantaged groups to which Veterans would be added to the list.)

Response: Revising 38 USC 8127(c) to permit sole sourcing with any small business group is not expected to result in a dramatic change in small business program goaling achievements. 38 USC 8128 establishes an order of priority in VA contracting, establishing that the Secretary shall give priority to small businesses owned and controlled by Veterans. The proposed bill does not modify that language.

Question 4: Would the change under H.R. 3223 affect the VA only? If so, how would this impact the VA's procurement goals for Veterans and service-disabled Veteran enterprise?

Response: VA has exceeded its goals for prime contracting with service-disabled Veteran-owned small businesses (SDVOSBs) and with Veteran-owned small busi-

nesses (VOSBs) for the past several years, principally using competitive procedures. The proposed change is not expected to have significant impact on goal achievements with SDVOSBs or VOSBs.

Deliverables:

Question 1: If a monthly benefit rate similar to Chapter 30 is used for Chapter 33, can the VA use its current payment system (In reference to Rep. Perriello's bill H.R. 2928)?

Response: VA would have to modify current systems or develop new information technology systems to pay OJT and apprenticeship beneficiaries under the Post-9/11 GI Bill if the monthly benefit rate is based on the full-time institutional training rate for the MGIB-AD chapter 30 program.

Question 2: Regarding H.R. 3223, can you explain why it would cost \$12 million annually to process the 17,000 businesses in the database?

Response: Two internally-developed spreadsheets are enclosed for your review. They are:

- (1) Verification Program cost estimate MAR 2009 090306
- (2) Verification Program cost estimate NOV 2009 091123.

In developing the cost estimates, we first examined our procedural guidelines for each of the major phases of Verification. We then interviewed staff members who regularly perform that function and asked how long each task takes. Because some applications are more complicated than others, we took the approach used in PERT estimates with the following formula:

$$\text{Best time} + 4(\text{most likely time}) + \text{Worst time}$$

This formula gave us a weighted average of the time associated with each task.

The next step was to determine the cost associated with the pay grade of the staff members who perform the task. This was broken down by the minute. The cost per minute was multiplied by the time determined in the previous step to determine the cost per task.

Step three was to group the tasks together by phase of the process and add them. Completion of different outcomes of the process each have different times and costs depending on the complexity of the outcome (*i.e.* approval, denial, unverified, *etc.*)

The final step was to determine the percentage of applications that, when completed, were approved, denied, *etc.* We took the percentage for each type of outcome and multiplied it by the number of companies that need to be verified, then added the totals.

There are also some estimates for what it would be to verify all VOSBs in the Dynamic Small Business Search and in the Central Contractor Registry, should the program be expanded government-wide. These figures are considerably higher.

The final set of numbers reflects the potential Federal dollars that would be spent with VOSBs and SDVOSBs in both prime and subcontracting if the entire government were to reach the 3 percent goal. This represents the total opportunities for these companies.

Question 3: Please provide the Subcommittee with your views and estimates on the following bills: H.R. 1169, H.R. 3554, H.R. 3561, H.R. 3577, and H.R. 3579.

Response: Please see below VA's views and cost estimates for the requested education bills. [H.R. 3579 was addressed in HVAC testimony on January 25, 2010.]

H.R. 1169 Views and Cost Estimate

Issue

To amend title 38, United States Code, to increase the amount of assistance provided by the Secretary of Veterans Affairs to disabled Veterans for specially adapted housing and automobiles and adapted equipment.

Purpose

H.R. 1169 would triple the maximum aggregate amount of assistance available for the following grants:

- Specially Adapted Housing (SAH) grants from \$60,000 to \$180,000 (section 2102 (d)(1) of title 38 U.S.C.);
- Special Housing Adaptation (SHA) grants from \$12,000 to \$36,000 (sections 2102 (b)(2) and (d)(2) of title 38 U.S.C.); and
- Automobile and adaptive equipment grants from \$11,000 to \$33,000 (section 3902(a) of title 38 U.S.C.).

Views

VA supports the intent of ensuring the grant programs are sufficient to meet Veterans' needs. However, the Department cannot support H.R. 1169 due to the additional benefit costs which are not included in the Budget.

Benefits Cost (Mandatory)

Costs to the Readjustment Benefits account for the VA are estimated to be almost \$365.5 million in 2010, \$1.9 billion for 5 years, and \$4.3 billion over 10 years.

Benefits Methodology

The increase in costs to VA for the following programs is shown in the table below.

- Specially Adapted Housing (SAH): The proposed legislation increases the maximum SAH grant from \$60,000 to \$180,000 in 2010. The maximum grant amount will continue to increase with a Cost of Construction Index that follows the Turner Cost of Building Index in 2011 and beyond. Loan Guaranty Service assumes that caseload will increase from 900 to 2,150 due to the benefit increase in conjunction with the effects of the Cost of Construction Index and the multiple use provision. All cases are assumed to receive the maximum grant amount.
- Special Housing Adaptation (SHA): The proposed legislation increases the maximum SHA grant from \$12,000 to \$36,000 in 2010. The maximum grant amount will continue to increase with a Cost of Construction Index that follows the Turner Cost of Building Index in 2011 and beyond. Caseload is expected to remain at 350. All cases are assumed to receive a percentage of the maximum grant based on historical data.
- Automobile: The proposed legislation increases the maximum automobile grant from \$11,000 to \$33,000 in 2010. The maximum grant amount is expected to remain at \$33,000 in 2011 and beyond. Compensation and Pension Service is expecting caseload to remain unchanged. All cases are assumed to receive the maximum grant amount.

Fiscal Year	SAH \$(000)	SHA \$(000)	Total Housing \$(000)	Automobile \$(000)	Grand Total \$(000)
2010	\$329,598	\$5,258	\$334,856	\$30,600	\$365,456
2011	\$329,598	\$5,258	\$334,856	\$30,500	\$365,356
2012	\$345,419	\$5,510	\$350,929	\$30,400	\$381,329
2013	\$361,999	\$5,774	\$367,773	\$30,300	\$398,073
2014	\$379,375	\$6,052	\$385,426	\$30,200	\$415,626
2015	\$397,585	\$6,342	\$403,927	\$30,100	\$434,027
2016	\$416,669	\$6,646	\$423,315	\$30,000	\$453,315
2017	\$436,669	\$6,965	\$443,634	\$30,000	\$473,634
2018	\$457,629	\$7,300	\$464,929	\$29,900	\$494,829
2019	\$479,595	\$7,650	\$487,245	\$29,800	\$517,045
Total	\$3,934,135	\$62,755	\$3,996,890	\$301,800	\$4,298,690

Administrative Cost (GOE)

Due to the increased housing grant caseload, VA anticipates an additional 112 full-time equivalent, costing \$6.9 million in 2010 and \$117.5 million over 10 years.

Caseload associated with automobile grants by specific criteria as outlined at chapter 39, section 3902 in title 38. Due to the nature of section 3902, VA does not believe an increase in the grant allowance will correspond with additional workload.

H.R. 3554 Views and Cost Estimate**Issue**

H.R. 3554, National Guard Education Equality Act, 111th Congress.

Purpose

To amend title 38 to include certain active duty service in the reserve components as qualifying service under the Post-9/11 GI Bill. This bill also proposes to qualify individuals who serve at least 30 continuous days in a reserve component and are released for a service-connected disability.

Background

Currently, under section 3301 of title 38 U.S.C., members of the Active Guard and Reserve (AGR) who are called up to full-time active duty under title 32 do not qualify for the Post-9/11 GI Bill. Further, under section 3311(b)(2)(B), individuals discharged or released from active duty in the Armed Forces for a service-connected disability are entitled to educational assistance under the Post-9/11 GI Bill.

This legislation proposes to amend title 38 by adding active duty service under title 32 U.S.C. in the Army National Guard and Air National Guard as qualifying service for the Post-9/11 GI Bill. It would also add individuals discharged with service-connected disabilities with at least 30 continuous days of full-time active duty under title 32 in a reserve component as having qualifying service.

This qualifying active-duty service would include members who are called up under title 32 U.S.C. under orders from the Governor of a state or territory in the United States in response to a domestic emergency; as a part of the Active Guard Reserve; Air Sovereignty Alert; Operation Jump Start; in response to Hurricane Katrina; as part of an airport security mission; and as part of a counter-drug activity.

On average, the Army National Guard has the largest number of beneficiaries in other education benefit programs, including Reserve Educational Assistance Program (REAP) as well as the Montgomery GI Bill—Selected Reserve program. The Air National Guard has the third largest number of beneficiaries in these programs. Enrollments in these programs would be impacted negatively by making title 32 active duty service as qualifying service under the Post-9/11 GI Bill.

Views

VA does not oppose the intent to make administration of the Post-9/11 GI Bill more equitable across different groups with similar service records. However, because the Budget does not include the additional costs that this legislation would incur, VA cannot support H.R. 3554.

In addition, the administration of the Post-9/11 GI Bill would be impacted by both the anticipated increase in the number of individuals who would qualify for the Post-9/11 GI Bill and the manual process of determining eligibility. VA currently receives some servicemember and service period data electronically from Department of Defense for individuals who served under title 32 U.S.C. and are eligible for either the Montgomery GI Bill – Active Duty, REAP, and Montgomery GI Bill-Select Reserve. However, because this bill would make everyone with title 32 service eligible for the Post-9/11 GI Bill, VA and DoD would need to manually verify servicemember and service period data until a mechanism was in place for all title 32 service data to be electronically exchanged.

Cost Estimate

Benefit costs to VA are expected to be \$120.6 million in 2011, \$1.1 billion over 5 years and \$2.3 billion over 10 years. This proposed legislation would result in an eligible population beginning in Fiscal Year 2010; however, the costs associated would be insignificant until 2011, and can be absorbed in the baseline budget for FY 2010.

Methodology

For purposes of this cost estimate, enactment date is assumed to be October 1, 2010. Based on data from DoD, the proposed legislation would grant chapter 33 eligibility to an additional 23,785 soldiers that, under current law, do not have qualifying service, but have title 32 active duty service since September 11, 2001. This increase in servicemembers eligible for chapter 33 was projected for FY 2011 and annualized for FY 2012–2020. Other assumptions, including participation rates, benefit eligibility rates, cost of tuition, and cost-of-living adjustments are consistent with the assumptions used to prepare the FY 2010 mid-session budget review used to update the FY 2010 Congressional submission. The increase in chapter 33 obligations is displayed in the table below.

Under the proposed legislation, servicemembers activated under title 32 most likely would elect to receive benefits under chapter 33 because it is a larger benefit than they may have otherwise been eligible for (chapters 30, 1606 and 1607). As a result, there would be less participation in chapter 30 resulting in a decrease in chapter 30 obligations to VA. Additionally, participation and obligations for chapter 1606 would decrease. Note that the decrease in chapter 1606 obligations will decrease the VA gross obligations. However, since chapter 1606 payments made by VA are reimbursed by DoD, the reimbursements from DoD will decrease by the same amount. The VA net obligations, therefore, will not be affected by the decrease in chapter 1606 obligations. Chapter 1607 obligations are expected to be zero for FY 2011–2020, and therefore will not be affected by the proposed legislation.

Fiscal Year	Caseload	VA Chapter 33 Obligations (\$000s)	VA Chapter 30 Obligations (\$000s)	DoD Chapter 1606 Obligations (\$000s)	Total VA Net Obligations (\$000s)
2011	8,146	\$155,478	(\$34,831)	(\$5,387)	\$120,647
2012	13,641	\$270,832	(\$59,668)	(\$9,148)	\$211,164
2013	14,378	\$297,529	(\$64,343)	(\$9,806)	\$233,186
2014	14,620	\$315,908	(\$66,929)	(\$10,170)	\$248,979
2015	13,287	\$299,966	(\$62,228)	(\$9,428)	\$237,738
5-Year Total		\$1,339,714	(\$287,998)	(\$43,938)	\$1,051,716
2016	11,960	\$282,265	(\$57,298)	(\$8,656)	\$224,967
2017	11,352	\$280,237	(\$55,635)	(\$8,380)	\$224,602
2018	11,516	\$297,637	(\$57,735)	(\$8,680)	\$239,902
2019	12,327	\$328,711	(\$63,220)	(\$9,486)	\$265,491
2020	13,659	\$377,086	(\$71,663)	(\$10,732)	\$305,423
10-Year Total		\$2,905,649	(\$593,550)	(\$89,872)	\$2,312,099

H.R. 3561 Views and Cost Estimate

Issue

H.R. 3561, 111th Congress.

Purpose

To amend title 38 to increase the amount of educational assistance provided to certain Veterans for flight training.

Background

Currently, under section 3032(e)(1) of title 38, U.S.C., an individual pursuing a program of education consisting exclusively of flight training receives 60 percent of the established charges for tuition and fees.

This legislation proposes to amend subsection (e) (1) of section 3032 to increase the amount of educational assistance provided to certain Veterans pursuing flight training from 60 percent to 75 percent.

Views

VA does not oppose the intent to enable Veterans to use their benefits to pursue a wider variety of educational programs. However, because the Budget does not include the additional costs that this legislation would incur, VA cannot support H.R. 3561. If enacted, this legislation would increase costs to pay for flight training to individuals under the Montgomery GI Bill Educational Assistance program and Reserve Educational Assistance program (REAP). The REAP rates are derived from the Montgomery GI Bill rate of approved charges and by the length of service of the reservist.

Cost Estimate

Benefit costs to VA are expected to be \$2.1 million in the first year, \$10.6 million over 5 years and \$21.2 million over 10 years.

Methodology

For purposes of this cost estimate, enactment date is assumed to be October 1, 2009. Based on historical data from FY 2006–FY 2008, caseload and costs have averaged 800 and \$10,617 respectively and have remained at a consistent level annually. We assumed that the average cost of \$10,617 represents 60 percent of the total cost for flight training, and calculated the increase in average cost that would result from the amount of educational assistance provided for flight training from

60 percent to 75 percent. This increase was then applied to the caseload of 800 annually to calculate the total cost to VA.

Fiscal Year	Caseload	Cost (\$000)
2010	800	\$2,124
2011	800	\$2,124
2012	800	\$2,124
2013	800	\$2,124
2014	800	\$2,124
5-Year Total		\$10,622
2015	800	\$2,124
2016	800	\$2,124
2017	800	\$2,124
2018	800	\$2,124
2019	800	\$2,124
10-Year Total		\$21,243

H.R. 3577 Views and Cost Estimate

Issue

H.R. 3577, "Education Assistance to Realign New Eligibilities for Dependents (EARNED) Act of 2009." 111th Congress.

Purpose

To amend title 38 to provide authority for certain members of the Armed Forces who have served 20 years on active duty to transfer entitlement to Post-9/11 Educational Assistance to their dependents.

Background

Public Law 110–252 authorized the Department of Defense (DoD) to allow individuals who, on or after August 1, 2009, have served at least 6 years in the Armed Forces and agree to serve at least an additional 4 years in the Armed Forces to transfer unused entitlement to their dependents (spouse, children). This program serves primarily as a recruitment and retention tool for DoD to offset increased separations due to the more advantageous Post-9/11 GI Bill. DoD is responsible for determining who is eligible to transfer unused entitlement. The Department of Veteran Affairs (VA) is responsible for administering and paying the individual's claim for education benefits.

This legislation proposes to amend title 38 U.S.C. § 3319 (b) to include additional individuals as eligible to transfer entitlement under the Post-9/11 GI Bill. Eligible individuals would include those with 20 years of active duty service in the Armed Forces, as of any date between September 11, 2001, and July 31, 2009, including at least 90 days of such service after September 11, 2001, who were honorably discharged. This legislation is effective date of enactment and shall take effect as if included in Public Law 110–252.

Section 3319(a) provides the Secretary of Defense sole authority to determine who may transfer benefits. VA is responsible for payment of benefits to those family members approved to receive benefits. Members of the Armed Forces requesting approval to transfer unused entitlement do so through a web portal operated by DoD. DoD officials approve an individual's request and pass information electronically to VA. VA uses the electronic information to determine if the family member applying for benefits is authorized to use the benefits. Currently, retirees do not have access to DoD's web portal to seek approval by DoD to transfer benefits.

If enacted as currently written, DoD would be responsible for determining which retirees are eligible to transfer, the amount of benefits the retiree may transfer, and providing that approval information to VA.

Views

Since the intent of the transferability provisions of the Post-9/11 GI Bill was to serve as a recruitment and retention tool for DoD to offset increased separations, VA defers to DoD in regards to the merits and impact of expanding eligibility to include individuals who have already separated/retired. However, because the bill

would generate benefit costs not accounted for in the Budget, VA does not support H.R. 3577.

VA also notes that VA and DoD would need to develop an application process for these individuals to transfer their Post-9/11 GI Bill entitlement. This would be necessary because this proposed legislation would be effective on the date of enactment and DoD does not currently have a mechanism for retirees to request approval to transfer unused entitlement. This would result in a considerable delay in VA's ability to pay claims under this program.

Cost Estimate

Benefit costs to VA are expected to be \$618.1 million in 2010, \$2.4 billion over 5 years, and \$4.2 billion over 10 years. The \$618.1 million cost during 2010 includes \$121.4 million in retroactive payments for costs incurred during August and September 2009.

Methodology

Based on data provided by DoD, VA estimated the number of Veterans that would meet the following eligibility requirements for transferability under this bill: an honorable discharge and 20 years of active duty service in the Armed Forces as of any date between September 11, 2001, and July 31, 2009, including at least 90 days of such service after September 10, 2001. The assumptions for usage and average cost are consistent with those used to calculate costs to VA for those currently eligible for this benefit. Estimated costs to VA are shown in the table below.

Fiscal Year	Caseload	Cost (\$000)
2010	34,429	\$618,072
2011	40,772	\$683,130
2012	29,899	\$457,576
2013	19,027	\$305,789
2014	19,027	\$318,352
5-Year Total		\$2,382,918
2015	19,027	\$331,598
2016	19,027	\$345,568
2017	19,027	\$360,307
2018	19,027	\$375,864
2019	19,027	\$379,922
10-Year Total		\$4,176,177