STATEMENT OF

MR. CURTIS COY,

DEPUTY UNDER SECRETARY FOR ECONOMIC OPPORTUNITY

VETERANS BENEFITS ADMINISTRATION

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

JUNE 15, 2017

Good morning, Mr. Chairman and Members of the Committee. Joining me today is Brad Flohr, Senior Advisor for Compensation Service, (VBA). We are pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on the following pending legislation affecting VA's compensation, education, and vocational rehabilitation programs: S. 75, S. 111, S. 410, S. 473, S. 758, S. 798, S. 844, S. 882, S. 1192, S. 1209, S. 1218, S. 1277, and a draft bill that would, among other things, consolidate the current amount of qualifying active duty service required after September 10, 2001 for payment of educational assistance at the 50-percent and 60-percent benefit levels under the Post-9/11 Educational Assistance Program, increase the amounts of educational assistance payable for pursuit of institutional courses and institutional courses with alternate phases of training in a business or industrial establishment under the Survivors' and Dependents' Educational Assistance Program, and authorize the use of Post-9/11 educational assistance to pursue independent study programs accredited by an accreditor recognized by the Secretary of Education at educational institutions that are not institutions of higher learning (IHLs), *i.e.*, area

career and technical education schools that provide postsecondary level education and postsecondary vocational institutions.

S. 75

Section 3(a) of S. 75, the "Arla Harrell Act," would require the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, to reconsider all claims for compensation based on exposure to mustard gas or Lewisite during World War II that were denied before enactment of the bill. If the Secretary of Veterans Affairs or Defense makes a determination regarding whether a Veteran experienced full-body exposure to mustard gas or Lewisite, such Secretary shall presume that the Veteran experienced such exposure "unless proven otherwise," and may not use information contained in the Department of Defense (DoD) and VA Chemical Biological Warfare Database or any list of known testing sites for mustard gas or Lewisite as the sole reason for finding that the Veteran did not experience such exposure. Section 3(a)(4) would require the Secretary of Veterans Affairs to submit a report to the appropriate congressional committees every 90 days following enactment of the bill specifying the reconsidered claims that were denied during the previous 90 days, including the rationale for each denial.

Section 3(b) of the bill would also require the Secretaries of VA and Defense to establish a policy for processing future claims in connection with exposure to mustard gas or Lewisite within one year following enactment. In addition, under section 3(c), the Secretary of Defense would be required, within 180 days after enactment, to investigate and assess whether a site should be added to the DoD list of sites where mustard gas or Lewisite testing occurred based on whether the Army Corps of Engineers has

uncovered evidence of such testing or more than two Veterans have submitted claims for VA compensation alleging such exposure and to submit a report to appropriate congressional committees on mustard gas and Lewisite experiments conducted by DoD during World War II, including a list of each location which such an experiment occurred, the dates of such experiment and the number of members of the Armed Forces who were exposed during such experiment. Section 3(d) would require the Secretary of Veterans Affairs, within 180 days after enactment, to investigate and assess actions taken to reach out to individuals who had mustard gas or Lewisite testing and the claims filed based on such testing and the percentage of such claims denied by VA and to submit a report on these findings to the appropriate congressional committees, along with a list of each location where mustard gas or Lewisite was tested.

VA respects the intent of this legislation and, if it is enacted, will do all we can to ensure that Veterans who are determined to have been exposed receive every benefit to which they may be entitled. Providing Veterans with the care they need when they need it remains VA's top priority. We owe it to Veterans to ensure our decisions are fair, clear, and consistent across the board. We support the intent of the bill but have significant concerns that should be resolved prior to moving forward. The suggestion that VA ignore certain evidence, which may already be in a Veteran's claims file, would not only be unfair to other Veterans, but would conflict with other applicable provisions of law. Under 38 U.S.C. § 1154(a), in determining whether a condition is related to service, VA must give "due consideration" to the "places, types, and circumstances of" a Veteran's service "as shown by such Veteran's service record, [and] the official history of each organization in which such Veteran served." In addition, 38 U.S.C. § 5107(b)

requires VA to "consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary." Finally, under 38 U.S.C. § 1154(b), in the case of a Veteran who engaged in combat with the enemy, VA must accept lay or other evidence of service regarding service incurrence of a disease or injury, notwithstanding the absence of an official record of such incurrence. However, the Veteran must first establish that he or she engaged in combat with the enemy, which usually involves consideration of service department records, and the lay or other evidence must be "consistent with the circumstances, conditions, or hardships of such service."

The proposed presumption of exposure to mustard gas and Lewisite, which would not require support by service department records or other objective evidence, would be unprecedented, if enacted. It appears that the presumption would be invoked solely on the basis of a Veteran's statement that such exposure occurred. Existing presumptions of an in-service exposure or event apply to discrete groups of Veterans whose service records reflect unique circumstances of service. Examples include Vietnam and Korean Veterans who are presumed exposed to Agent Orange during certain time periods, Veterans whose records indicate participation in World War II and cold war nuclear weapon detonations who are presumed exposed to ionizing radiation, and combat Veterans of all eras who are presumed exposed to the sort of traumatic stressor that can cause post-traumatic stress disorder. Each of these sets of Veterans will have service department evidence of an in-service event or circumstance that may have triggered post-service disability.

Under the standard proposed in the bill, any World War II Veteran who has claimed participation in a mustard gas or Lewisite test would be entitled to a presumption of full body exposure. This includes Veterans who may be confusing exposure to mustard gas or lewisite with more routine agents such as tear gas, or even to placebo agents. As a result, all prior World War II claimants essentially would be presumed exposed to mustard gas – even Veterans who participated in no chemical testing.

With regard to a joint VA/DoD policy for processing future disability compensation claims based on exposure to mustard gas or Lewisite, VA notes that mustard gas and Lewisite claim policies and procedures are already in place and have and continue to lead to fair and equitable outcomes. VA promulgated a regulation in 1994 to address full-body mustard gas and Lewisite claims (*see* 38 C.F.R. § 3.316) and recently updated procedural guidance directing VA claims processors to consider all relevant evidence, including both service department data and information from outside sources.

We share the Committee's concern for these Veterans, and we will continue to do everything we can, to provide care for those who have been identified by DoD as having had full body exposure to mustard gas and have been diagnosed with conditions due to that exposure. Additionally, we remain eager to work with the committee to address the concerns we have with S. 75 as currently drafted. We value our Veterans and want to ensure that each and every Veteran seeking care is treated fairly under the law.

S. 111

S. 111, the "Filipino Veterans Promise Act," would require the Secretary of Defense, in consultation with the Secretary of Veterans Affairs and military historians, to establish a process to determine whether a person who claims service as a member of the Philippine organized military forces under 38 U.S.C. § 107(a) or Philippine Scouts under 38 U.S.C. § 107(b) but who is not included in the Approved Revised Reconstructed Guerilla Roster of 1948 is in fact eligible for benefits under section 107(a) or (b).

VA defers to DoD on S. 111. To address the concerns that prompted this legislation, the previous Administration's White House Initiative on Asian Americans and Pacific Islanders, in collaboration with the Office of Management and Budget and the Domestic Policy Council, created the FVEC Fund Interagency Working Group (IWG) in October 2012. The IWG was comprised of VA, the Department of Defense (DoD), and the National Archives and Record Administration (NARA), and was tasked with analyzing the process faced by Filipino Veterans in demonstrating eligibility for compensation in order to ensure that all applications receive thorough and fair review. This effort culminated in July 2013 with a report from each member of the IWG and resulted in increased transparency and accelerated the processing of appeals within the existing framework.

As a result of the IWG, VA created a special team to expedite the processing of FVEC appeals. In addition, VA created a standard notification letter for appellants requesting submission of all available service records and information. VA personnel also obtain copies of the Affidavit for Philippine Army Personnel (AGO Form 23) for appeals that

are submitted without a Form 23 from the Adjutant General. VA anticipates these steps will further expedite the processing of appeals for the appellants with advanced age by minimizing the turnaround time for service verification requests and hearing requests.

S. 410

S. 410, the "Shawna Hill Post 9/11 Education Benefits Transferability Act," would amend 38 U.S.C. § 3319 to authorize transfer of unused Post 9/11 Education Assistance benefits to additional dependents upon the death of the originally designated dependent. The bill would apply to deaths occurring on or after August 1, 2009.

VA defers to DoD. Currently, an individual cannot designate a new dependent to receive a transfer of entitlement to Post 9/11 Education Assistance after separating from the Armed Forces.

Benefit costs are estimated to be $6.3 million in the first year, $20.5 million over 5 years, and $31.7 million over 10 years. There are no additional full-time equivalents (FTE) or general operating expenses (GOE) costs associated with the proposed legislation. There currently are no identified costs required for changes to the Long Term Solution (LTS).

S. 473

Section 2 of S. 473, the "Educational Development for Troops and Veterans Act of 2017," would amend 38 U.S.C. § 3301(1)(B) to include, in the case of members of the Reserve Components of the Armed Forces, service on active duty under a call or order

to active duty under 10 U.S.C. §§ 12304a and 12304b as service constituting active duty for purposes of Post-9/11 GI Bill benefits.

VA supports section 2 of the bill, subject to the Congress identifying acceptable offsets for the additional benefit costs. Under the current law, two Reserve Component members who are serving side-by-side on active duty may not receive similar benefits under the Post-9/11 GI Bill. The active duty time of a Reserve Component member who volunteers for active duty under10 U.S.C. § 12301(d) is counted toward the aggregate required for Post-9/11 GI Bill eligibility. By contrast, the active duty time of a Reserve Component member who was involuntarily activated under 10 U.S.C. §§ 12304a or 12304b for similar duty does not count toward the aggregate for Post-9/11 GI Bill eligibility. This proposal would allow Reserve Component members who are involuntarily activated under 10 U.S.C. §§ 12304a or 12304b to receive the same benefits as those Reserve Component members who have volunteered to perform duty under 10 U.S.C. § 12301(d).

Benefit costs are estimated to be $0 in the first year, $53.7 million over 5 years, and $140.5 million over 10 years. There are no additional FTE or GOE costs associated with section 2. We have not, however, fully determined if there would be any costs associated with any information technology (IT) changes to support the change.

VA defers to DoD with regard to sections 3 and 7 of the bill, and to the Department of Education on sections 5 and 6 of the bill.

Section 4 of the bill would amend 38 U.S.C. § 3103(f) to extend the eligibility period for participation in a vocational rehabilitation program for Reserve Component

members who are involuntarily activated under 10 U.S.C. §§ 12304a or 12304b and are unable to participate in such program by length of time the Reserve Component member serves on active duty plus four months.

VA supports section 4. Currently 38 U.S.C. § 3103(f) provides an extension of the eligibility period for reservists who are ordered to active duty under certain provisions of title 10, United States Code. Section 4 would provide the same extended eligibility period for reservists who are prevented from participating in a vocational rehabilitation program during their period of eligibility because they are ordered to active duty to provide assistance in response to a major disaster or emergency, or to augment the active forces for a preplanned mission in support of a combatant command.

Section 8 would add a new paragraph to 38 U.S.C. § 3313 to provide for payment of the monthly housing allowance (MHA) on a pro rata basis for any period in which a reservist or individual pursuing a program of education is not performing active duty. This amendment would be applicable to a quarter, semester or term commencing on or after August 1, 2016.

VA supports section 8 as it would be equitable to prorate MHA payments for each day of the month an individual is not serving on active duty. We note, however, that section 8 would result in a decrease in the MHA for the month in which a reservist is ordered on active duty and in an increase in the MHA for the month in which a reservist is released from active duty. As a result, the amount of MHA that each reservist receives would depend upon the dates on which the reservist entered and was released from active duty. We note as well that new section 3313(j) would not apply to

other persons on "active duty" as defined in 38 U.S.C. § 3301(1)(A) and (C). We have not, however, fully determined if there were to be any costs associated with IT changes.

S. 758

Section 2(a) of S. 758, the "Janey Ensminger Act of 2017," would require, within one year of the date of the enactment of the bill and at least once every three years thereafter, the Secretary of Health and Human Services, through the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) to review the scientific literature relevant to the relationship between the employment or residence of individuals at Camp Lejeune, North Carolina, for not fewer than 30 days between August 1, 1953, and December 21, 1987, and specific illness or conditions incurred by those individuals. ATSDR would also be required to determine each illness or condition for which there is evidence that exposure to a toxic substance at Camp Lejeune during the specified time period may be a cause of such illness or condition, and to categorize the evidence of the connection of the illness or condition to exposure. ATSDR would be required to publish in the Federal Register and online a list of conditions or illnesses for which a determination has been made that exposure may be a cause of such condition or illness, and to provide bibliographic citations for reviewed literature.

While section 2(a) would impose obligations on to the Department of Health and Human Services, we do have several concerns with this provision. Specifically, we are concerned that requiring ATSDR to evaluate the likely causation between exposures and health effects is unnecessary given VA's current reliance on the National Academies of Science, Engineering, and Medicine (NASEM). In addition to being

duplicative, the proposed role of ATSDR would, in our view, be a less independent process than what is used by NASEM. Finally, we find the evidence bar that would be set for ATSDR's review misleading—the focus on causation implies a level of confidence not scientifically possible for attributing the low doses likely received in this context with the chronic health effects of interest.

Section 2(b)(1) would amend 38 U.S.C. § 1710(e)(1)(F) to make Veterans eligible for care for any condition or illness for which the evidence of connection to exposure to toxic substances at Camp Lejeune is categorized as sufficient or modest by ATSDR. It would also require VA to continue providing hospital care and medical services to Veterans who have received such care or services under section 1710(e)(1)(F), notwithstanding a determination that the evidence of connection of an illness or condition and exposure is not categorized as sufficient or modest.

Section 2(b)(2) would make a similar amendment to 38 U.S.C. § 1787 to require VA to continue providing hospital care and medical services to eligible individuals notwithstanding that their illness or condition is no longer described in section 1710(e)(1)(F). Section 2(b)(3) would require, for FY 2017 and FY 2018, the Secretary to transfer $2 million from funds made available to VA for medical support and compliance to the Chief Business Office and Financial Services Center of the Department to be used to continue building and enhancing the claims processing system, eligibility system, and web portal for the Camp Lejeune Family Member Program.

VA does not support sections 2(b)(1) and (b)(2), as they would effectively defer Veteran health care eligibility decisions to ATSDR. This is inappropriate for several

reasons. First, VA insists that an internationally accepted standard of categorization be used to characterize the strength of evidence, such as that used by NASEM. A consistent standard is necessary to ensure fairness across time, population subgroup, chemical, and health endpoint. VA strongly advises against the use of the terms "cause" or "causation" in the context of the types of very low exposures received and the prevalence of the chronic health effects identified. Additionally, we recommend that ATSDR reports be submitted to VA in an advisory capacity only, as has been done with previous reports from NASEM. NASEM, in conducting independent reviews on behalf of VA, assembles a multidisciplinary committee that represents a breadth of knowledge relevant to the specific exposure scenario that is significantly more expansive than the subject matter expertise within ATSDR. Thus, VA should have the opportunity to review these reports and seek external opinions, if necessary, to make determinations about policy changes. If VA must rely on ATSDR reports in any capacity, we would suggest that the bill require that these reports be subjected to a rigorous, external, independent peer review process, consistent with OMB's Information Quality Bulletin for Peer Review, before being published.

If enacted, VA would require additional resources to assist the Veterans and family members who would become eligible for hospital care and medical services, while continuing to care for Veterans who remain eligible following a determination that that the evidence of a causal connection is not categorized as sufficient or modest. Section 2(b)(3) would transfer $2 million to the VA Chief Business Office and Financial Services Center to be used to enhance the Camp Lejeune Family Member Program's claim processing system, eligibility system, and web portal. While these funds could be

used to enhance these systems, VA does not believe this would be a responsible use of funds. The Camp Lejeune Family Member Program is a small program with a volume of claims that VA does not believe warrants having separate claims processing and eligibility systems. VA prefers to focus on the creation of a single standardized claims processing and eligibility system for all programs supported by the Office of Community Care. We also note that the language does not appropriate additional funds—it merely requires the transfer of funds from other sources, which would impede VA's ability to furnish services for other Veterans and beneficiaries.

We have several technical comments on the bill as well. First, we note that the time period specified in current 38 U.S.C. § 1710(e)(1)(F) ends on December 31, 1987; whereas, the time period in proposed 42 U.S.C. § 399V-7(a)(1)(A) of the Public Health Service Act would end on December 21, 1987. This should be changed in any further revisions of this legislation. Additionally, we note that section 2(b)(3) of the bill would apply to Fiscal Year (FY) 2017 and 2018, but because FY 2017 ends in 3½ months, we believe this should be updated. Lastly, we recommend the reference to the Chief Business Office be updated to the Office of Community Care.

VA cannot provide a cost estimate for the bill because we do not know for which illnesses and conditions, if any, ASTDR would determine there is evidence that exposure to a toxic substance at Camp Lejeune during the specified time period may be a cause of such illness or condition at the "sufficient" or "modest" standard. The cost to VA of implementing this provision would depend upon which illnesses or conditions ATSDR finds satisfy these requirements, how many Veterans and family members will qualify for hospital care and medical services for those conditions or illnesses, and the

average cost for the necessary hospital care and medical services of those conditions or illnesses.

S. 798

S. 798, the "Yellow Ribbon Improvement Act of 2017," would amend 38 U.S.C. § 3317(a) to provide that recipients of the Marine Gunnery Sergeant John David Fry scholarship are covered under the Yellow Ribbon GI Education Enhancement Program and to expand the Program to include instances in which the amount of educational assistance provided to covered individuals for pursuit of a program of education leading to a degree while on active duty or for pursuit of a program of education on a half-time basis or less does not cover the full cost of established charges.

VA supports the intent of S. 798, subject to Congress identifying acceptable offsets for the additional benefit costs. Also, VA estimates that implementation of the bill would require one year from the date of enactment to make the changes to the Benefits Delivery Network, VA Online Certification of Enrollment system (VA-ONCE), and Long term Solution system (LTS) necessary to implement the bill.

S. 844

S. 844, the "GI Bill Fairness Act of 2017," would amend 38 U.S.C. § 3301(1)(B) to count the time that a reservist is ordered to active duty to receive authorized medical care, be medically evaluated for disability, or complete a required DoD health care study, as active duty for purposes of the Post-9/11 Veterans Educational Assistance Act

of 2008. The amendment would be retroactive to immediately after enactment of the Post-9/11 Veterans Educational Assistance Act of 2008.

VA supports the intent of the bill, regarding the proposed changes to qualifying active duty service under the Post-9/11 GI Bill, subject to the Congress identifying acceptable offsets for the additional benefit costs. We note, however, that this change to the eligibility criteria would require VA to make modifications to the type of data exchanged between DoD and VA through the VA/DoD Identity Repository and displayed in the Veteran Information System. In addition, new rules would need to be programmed into LTS in order to calculate eligibility based on service described in new section 3301(1)(B) and to allow for retroactive benefit payments. VA estimates that it would need one year from enactment to complete these changes.

Benefit costs for S. 844 would be $39.2 million for the first year, $281.5 million over 5 years, and $542.9 million over 10 years. There are no additional FTE or GOE costs associated with S. 844.

S. 882

S. 882 would amend 38 U.S.C. § 3311(b) to provide for payment of Post-9/11 GI Bill educational assistance to individuals awarded the Purple Heart for service in the Armed Forces occurring on or after September 11, 2001, at the same rate (100%) as for individuals entitled to Post-9/11 GI Bill educational assistance who served at least 3 years on active duty or who served at least 30 days on active duty and were discharged for a service-connected disability. The bill would also allow such Purple Heart recipients to participate in the Yellow Ribbon G.I. Education Enhancement Program.

VA supports the intent of the proposed bill. However, we note that the proposed bill contains no character of discharge requirement for payment of Post-9/11 GI Bill educational assistance to individuals awarded the Purple Heart. Consequently, an individual who receives the Purple Heart for service on or after September 11, 2001, and subsequently receives a dishonorable discharge would nonetheless be eligible for Post-9/11 GI Bill educational assistance at the 100-percent rate. This could be problematic to those recipients of other noteworthy medals such as the Medal of Honor, Silver Star, Bronze Star, etc. who may have a dishonorable discharge. If Congress wishes to address this issue, we recommend that the bill be amended to require that the individual also be discharged as described in section 3311(c).

Because VA would need to modify its existing information technology (IT) system to implement this bill, there would be associated IT costs. Specifically, VA would need to modify the Long-Term Solution, VA's Post-9/11 GI Bill processing system, to verify eligibility for Purple Heart recipients. VA would also need to make changes to the VA application forms (VA Form 22-1990 and Veterans On-Line Application (VONAPP)) to identify Purple Heart recipients. Costs related to this bill are not available at this time.

S. 1192

S. 1192, the "Veterans To Enhance Studies Through Accessibility Act of 2017," or "Veterans TEST Accessibility Act," would amend 38 U.S.C. §§ 3315(c) and 3315A to allow for the proration of entitlement charges for licensing and certification examinations and national tests under the Post-9/11 GI Bill based on the actual amount of the fee charged for the test. The bill would also add educational assistance for a chapter-33

beneficiary for a "national test that evaluates prior learning and knowledge and provides an opportunity for course credit at an institution of higher learning as so described." The amendments made by this section would apply to a test taken more than 90 days after the date of the enactment of this legislation.

VA supports S. 1192 because it would benefit Post-9/11 GI Bill beneficiaries by reducing the negative impact of test reimbursement on their remaining benefit entitlement and increasing the months of training available for the beneficiaries, thus expanding educational opportunities. Under current sections 3315 and 3315A, an individual is charged a portion of his entitlement for the reimbursement of fees associated with a licensing or certification exam, or a national test, in whole months. Thus, VA charges an individual one month of entitlement for each $1,832.96 reimbursed for the academic year beginning on August 1, 2016, rounded to the nearest whole month, regardless of the cost of the test.

As noted in VA's FY 2017 legislative proposal, the Department believes the law should be amended to charge entitlement for reimbursement of VA approved exams at a prorated number of days of entitlement based on the ratio of the cost of the test to the statutory amount. However, it should be noted that, as S. 1192 is currently drafted, sections 3315 and 3315A would no longer specify the amount of benefit payment equaling one month of entitlement. VA suggests that the draft language be amended in order to include that amount.

Benefit costs are estimated to be $125,000 in the first year, $676,000 over 5 years, and $1.4 million over 10 years. There are no additional FTE or GOE costs

associated with the proposed legislation. We have not, however, fully determined if there would be any costs associated with IT changes.

S. 1209

S. 1209 would amend 38 U.S.C. § 1562(a) to increase the amount of special pension for Medal of Honor recipients to $3000, effective 180 days after the date of enactment, but if this date is not the first day of a month, the first day of the first month beginning after the date that is 180 days after enactment. If the effective day is prior to December 1, 2018, the monthly rate of the pension would not be increased by the cost of living adjustment (COLA) for FY 2019, and the annual COLAs would resume effective December 1, 2018.

VA supports an increase in the pension for these heroes, subject to the Congress identifying acceptable offsets for the additional benefit costs. Currently our records show there are 72 living recipients of the Medal of Honor.

Benefit costs are estimated to be $717,000 in the first year, $6.5 million over 5 years, and $14.6 million over 10 years. There are no additional FTE or GOE costs associated with the proposed legislation.

S. 1218

S. 1218, the "Empowering Federal Employment for Veterans Act of 2017," or the "Empowering FED Vets Act," would establish, at VA and other covered agencies, a Veterans Employment Program Office. This Office would, among other things, promote employment opportunities for Veterans, develop and implement Veterans recruitment

programs, and training programs for Veterans with disabilities. The Office would also provide mandatory annual training on Veterans' employment issues to human resources employees and hiring managers, including training on Veterans' preference and hiring authorities.

We defer to the Office of Personnel Management on S. 1218 because of the government-wide impact of the bill.

S. 1277

S. 1277, the "Veteran Employment Through Technology Education Courses Act," would require the Secretary of Veterans Affairs to carry out a pilot program for five years under which eligible Veterans who are entitled to educational assistance would be able to enroll in high technology programs of education. The term "high technology program of education" would be defined as a program offered by an entity other than an IHL that does not lead to a degree and provides instruction in computer programming, computer software, media application, data processing, or information sciences. Within 180 days after the date of enactment, VA, in consultation with the State Approving Agencies VA considers applicable, would be required to enter into contracts with providers of such programs that have been operational for at least two years. Under these contracts, VA would agree to pay 25 percent of the cost of providing the program of education upon enrollment of an eligible Veteran; 25 percent upon the Veteran's completion of the program; and 50 percent upon the employment of the Veteran in a field related to the

course of study following completion of the program. Preference would be given to a qualified provider that offers tuition reimbursement for students who complete a program of education offered by the provider and do not find full-time meaningful employment within 180 days after completion of the program. The bill would also authorize VA to pay a MHA to eligible Veterans enrolled in this program on a full-time basis. The bill would authorize appropriations of $15 million for each fiscal year during which the pilot program operates.

VA has significant concerns regarding implementation and administration of the pilot program. The bill would require VA to enter into contracts with multiple providers of high technology programs of education. However, the bill provides little guidance regarding the applicable standards for choosing qualified providers other than requiring that the provider have been operational for two years, verify that the credentials it plans to offer have demonstrated market value based on the employment and earnings of its participants in the programs, and has the ability to evaluate job placement rates and earnings through means other than survey data or self-reported data. This is a departure from VA's current approval criteria for other programs of education.

VA estimates that it would require 12 to 18 months from the date of enactment to make the IT system changes necessary to implement the proposed legislation and the acquisition timeline for $15 million in contracts.

The costs for S. 1277 are estimated to be $15 million in the first year, $75 million over 5 years, and $150 million over 10 years.

GI Bill Discussion Draft

Section 2 would amend 38 U.S.C. § 3311(b) by consolidating the current amount of qualifying active duty service required after September 10, 2001, for payment of educational assistance at the 50-percent and 60-percent benefit levels under the Post-9/11 Educational Assistance Program. As a result, the current benefit level requiring at least six months but less than twelve months of active-duty service would be eliminated. This means that an individual with aggregate service of at least six months but less than eighteen months of active duty service (excluding entry and skill training) would qualify at the 60-percent benefit level.

VA supports the proposed legislation, subject to the Congress identifying acceptable offsets for the substantial benefit costs, because it would increase benefits for Veterans and Servicemembers. However, VA is concerned with the implementation of this bill. As drafted, the bill does not contain an effective date. Assuming that this increase in rates would be effective on the date of enactment, LTS would be unable to immediately accommodate these increases in benefit levels. As a result, claims examiners would have to review and make manual adjustments to affected claims, which would negatively impact claims processing timeliness and the delivery of education benefits. VA estimates that it would require one year from the date of enactment to make the IT system changes necessary to implement the proposed legislation. We have not, however, fully determined if there would be any costs associated with IT changes.

Finally, additional conforming amendments to title 38, United States Code, would be required based upon the changes made by amending sections 3311(b) and 3313(c)(1).

Benefits costs for section 2 would be $124.6 million in the first year, $677.8 million over 5 years and $1.5 billion over 10 years. There are no additional FTE or GOE costs associated with section 2.

Section 3 would add section 3320 to title 38, United States Code, which would authorize VA to provide up to nine months of additional Post-9/11 GI Bill benefits to an individual who has used all of his or her Post-9/11 GI Bill educational assistance and is enrolled in a program of education leading to a post-secondary degree that requires more than the standard 128 semester (or 192 quarter) credit hours for completion in biological or biomedical science, physical science, science technologies or technicians, computer and information science and support services, mathematics or statistics, engineering, engineering technologies or an engineering-related field, a health profession or related program, or medical residency program, or has earned a post-secondary degree in one of these fields and is enrolled in a program of education leading to a teaching certification. Priority would be given to individuals who are entitled to 100 percent of Post-9/11 GI Bill benefits and to those who require the most credit hours. Each eligible individual would be entitled to a lump sum payment that is the lesser of the amount available under 38 U.S.C. § 3313 for nine months of the program of education in which the individual is enrolled or $30,000. These additional benefits would not be transferrable to a dependent. The total amount of benefits paid to all eligible individuals could not exceed $100 million for any fiscal year.

VA supports the intent of the bill subject to the availability of funds. However, VA has concerns about the eligibility criteria for the additional educational assistance. As currently drafted, individuals who have been enrolled in a science, technology,

engineering, and mathematics (STEM) program of education for only one day, week, or month at the point at which they exhaust the 36 months of chapter-33 entitlement would be eligible for an additional nine months of educational assistance. Additionally, individuals who enroll in a STEM program for the first time after they have exhausted their chapter-33 entitlement in a non-STEM program would also be eligible for an additional nine months of entitlement. We do not believe that providing additional benefits under these circumstances would serve the purpose of the legislation. This bill is designed for programs that require more than the standard 128 semester (or 192 quarter) credit hours for completion. However, the additional nine months of educational assistance would not enable individuals who previously enrolled in a limited number of STEM classes or have not previously enrolled in a STEM program to complete a STEM program.

To implement this legislation, VA would need to make modifications to VA-ONCE and LTS in order to verify eligibility and allow for the award of additional months of educational assistance. VA estimates that it would require one year from the date of enactment to make the IT changes necessary to implement the proposed legislation.

Benefit costs for section 3 would be $100 million in the first year, $500 million over 5 years, and $1 billion over 10 years. There are no additional FTE or GOE costs associated with section 3.

Section 4 would increase the amounts of educational assistance payable for pursuit of institutional courses under the Survivors' and Dependents' Educational Assistance Program. An eligible person would be entitled to a monthly allowance of $1224 for full-time coursework, $967 for three-quarter time, and $710 for half-time

coursework. The increases would be effective 540 days after the date of enactment of the bill.

VA supports section 4, subject to the Congress identifying acceptable offsets for the additional benefit costs, because it would provide additional funding for individuals currently utilizing the benefit for pursuit of these types of programs. These rates were last increased in 2003 and have only been increased through an annual cost of living allowance in subsequent years.

Benefit costs for section 4 are estimated to be $0 in the first year, $586.3 million over 5 years, and $1.7 billion over 10 years. There are no FTE or GOE costs associated with section 4.

Section 5 would amend 38 U.S.C. § 3680A(a)(4) to authorize the use of Post-9/11 educational assistance to pursue independent study programs accredited by an accreditor recognized by the Secretary of Education at the following educational institutions that are not IHLs: area career and technical education schools as defined in 20 U.S.C. § 2302(3) that provide postsecondary level education and postsecondary vocational institutions as defined in 20 U.S.C. § 1002(c). Currently, under section 3680A(a)(4), the Secretary may only approve enrollment in an "accredited independent study program (including open circuit television) leading (A) to a standard college degree, or (B) to a certificate that reflects educational attainment offered by an institution of higher learning." As such, VA is not authorized to pay educational assistance for independent study courses at an institution that is not considered to be an IHL.

VA supports section 5, subject to the Congress identifying acceptable offsets for the additional benefit costs. This section would expand VA's approval authority to pay Post-9/11 GI Bill benefits for enrollment in accredited independent study certificate programs at educational institutions that are not IHLs but are accredited by an accreditor recognized by the Secretary of Education and at career and technical schools that lead to industry-recognized credentials and certificates for employment. VA understands and appreciates the importance of career and technical education courses and the growth in the utilization of online and other 21st century training modalities in the delivery of instruction for both degree and non-degree programs. As such, expanding the approval authority for certain independent study programs would be in the best interests of VA education beneficiaries.

We note that, because this bill would amend 38 U.S.C. § 3680A, the expansion of benefits would not be limited to Post-9/11 GI Bill benefits. If the intent of the bill is to limit this expansion to chapter-33 beneficiaries, the provision should be codified in chapter 33 or the bill should be revised to incorporate this limitation. We have not, however, fully determined if there would be any costs associated with IT changes.

Benefit costs are estimated to be $49.7 million in the first year, $268.4 million over 5 years, and $595.7 million over 10 years. There are no additional FTE or GOE costs associated with the proposed legislation.

Section 6 would provide for the calculation of the amount of the MHA payable under the Post-9/11 Educational Assistance Program based on the location of the campus where the individual physically participates in a majority of classes, rather than the location of the IHL at which the individual is enrolled. The bill would apply to the

initial enrollment in a program of education on or after the date of enactment of the legislation.

VA supports section 6 because it would make MHA payments commensurate with the cost of housing in the location where students actually attend classes. In particular, this bill would address two situations in which the current MHA is likely not aligned with the cost of living where an individual actually attends classes: (1) courses that are held at the branch or satellite location of an IHL rather than at the IHL's main campus; and (2) online degree programs that require some in-residence courses. We believe that this bill would also remove the issue of the amount of the MHA as a factor in choosing a school and instead allow students to focus on the educational program when choosing an IHL.

VA is unable to determine if any costs or savings would result from this legislation because of a lack of data on trainees who attend school at a branch location with a zip code that is different than the main campus. There are no additional FTEs or GOE associated with this bill.

Section 7 would amend 38 U.S.C. § 3485(a)(4) by removing the expiration date for a qualifying work-study activity for which an individual may be paid an additional educational assistance allowance. These activities are providing outreach services to Servicemembers and Veterans furnished under the supervision of a State approving agency (SAA) employee and hospital and domiciliary care and medical treatment to Veterans in a State home and any activity relating to administration of a national cemetery or state Veterans' cemetery.

VA supports section 7 because it would permanently authorize work-study allowances for individuals who are performing work-study activities that involve providing services to or on behalf of Servicemembers and Veterans.

The benefits costs for section 7 are estimated to be $0 for the first year, $277,000 over 5 years, and $6.6 million over 10 years. There are no FTE or GOE costs associated with section 7.

Section 8 would amend 38 U.S.C. § 3319(f)(2) to allow dependents to whom entitlement to Post-9/11 GI Bill benefits is transferred by an individual who subsequently dies to transfer some or all of such entitlement to another dependent to whom entitlement was previously transferred by such individual.

VA supports section 8. Currently, if an individual who has transferred entitlement subsequently dies, no additional changes to the transferred entitlement are authorized. We believe that an eligible dependent should be given the authority to transfer entitlement to another eligible dependent. However, we interpret section 8 to provide that if a Servicemember or Veteran does not transfer the maximum entitlement to a dependent, the amount that was not transferred would be forfeited. We do not have costs at this time.

Section 9 would amend chapter 36 of title 38, United States Code, to add a new section 3697B, titled "On-campus educational and vocational counseling." New section 3697B would: (1) require VA to provide educational and vocational counseling services for Veterans at locations on IHL campuses as selected by VA; (2) provide criteria for the selection of IHLs to participate in these services, and (3) require that no later than 180 days after enactment, and each year thereafter, VA will submit a report to

Congress regarding the average ratio of counselors providing these services to Veterans at each location, a description of the services provided, and recommendations for improving the provision of these services.

VA supports the objectives of providing veteran students with quality, readily available counseling services. However, we believe that this bill would duplicate the VetSuccess on Campus (VSOC) program, which VA already administers under the Secretary's authority in 38 U.S.C. §§ 3115 and 3116. VSOC aims to help Veterans, Servicemembers, and their qualified dependents succeed and thrive through a coordinated delivery of on-campus benefits assistance and counseling, leading to completion of their education and preparing them to enter the labor market in viable careers.

VA, however, is concerned about the language in section 9 regarding the population to be served. Currently as outlined in 38 U.S.C. §§ 3697 and 3697A, educational and vocational counseling services are available to Servicemembers, Veterans, and, in some instances, their eligible dependents. If the Congress were to enact this bill, VA recommends that Servicemembers and their eligible dependents be added to section 9(a), in order to preserve the benefit for the full population served by the existing VSOC program. In addition, VA does not believe that reporting on the ratio of individuals served to counselors would accurately reflect the amount of services provided because counselors often have multiple contacts with an individual and handle multiple issues for the individual. We believe that it would be more accurate to report on the number of contacts in which services were provided by a counselor.

Section 10(a) would amend 38 U.S.C. § 3312 to provide that, if VA finds that an individual was forced to discontinue pursuit of a course or courses under the Post-9/11 GI Bill as a result of permanent closure of an institution or did not receive credit or lost training time toward completion of the program for that course or courses, any payment of educational assistance to the individual for pursuit of the course or courses would not be charged against the individual's entitlement to benefits under the Post-9/11 GI Bill or counted against the aggregate period for which 38 U.S.C. § 3695 limits the individual's receipt of educational assistance. The period for which educational assistance will not be charged against entitlement or counted toward the aggregate period would not exceed the aggregate period permitted under section 3695. This new subsection would apply with respect to courses and programs of education discontinued in FY 2015 or thereafter.

Section 10(b) would amend 38 U.S.C. § 3680(a) to authorize the Secretary of Veterans Affairs to continue to pay a MHA to eligible persons during periods when schools are temporarily closed based on an Executive order of the President or due to an emergency situation for up to four weeks in a 12-month period. The MHA would also be payable during periods following a permanent school closure until the earlier of the date of the term, quarter, or semester during which the school closure occurred and the date that is four months after the date of the school closure.

VA supports section 10. The closure of educational institutions while GI Bill beneficiaries are actively pursuing an approved program of education or training negatively impacts Veterans and eligible dependents. While VA can pay benefits for the term, quarter, or semester up to the time of the school's closure, the student is charged

entitlement for the period prior to the closure for which benefits are received, even if the student does not earn any credit toward completion of a program. In some instances, this could result in a beneficiary exhausting chapter-33 entitlement prior to being able to complete a program at another institution. Allowing VA to restore entitlement and to continue to pay MHAs in the event of a school closure would be in the best interests of Veterans and eligible dependents because it would help ensure that they are able to successfully complete their educational goals.

We note that there appears to be a discrepancy between the new subsection (d)(2), which applies to an individual who meets the criteria of both (A) and (B) of that subsection, and the applicability provision in section 2(a)(2) of the bill, which describes new subsection (d) as applying if the criteria of either paragraph (A) or paragraph (B) of subsection (d)(2) are met.

We have not, however, fully determined if there were to be any costs associated with IT changes.

Section 11 would amend 38 U.S.C. § 3684(a) to require educational institutions to treat courses that begin seven or fewer days before or after the first day of an academic term as beginning on the first day of the academic term for purposes of reporting enrollment under section 3684.

VA understands that section 11 would eliminate the separate reporting requirement for reporting for courses that begin seven or fewer days before the first day of an academic term. We note however that VA policy guidance currently does not require schools to separately certify classes that begin within 7 calendar days after the start of the term, quarter, or semester. Nonetheless, it should be noted that amended

section 3684(a) would not change the period(s) for which VA educational assistance can be paid, which are codified in 38 U.S.C. § 3680(a) and in the various education benefit chapters. As a result, the reporting period under amended section 3684(a) would be inconsistent with the enrollment period for which VA pays educational assistance.

Section 12(a) would require VA, to the maximum extent possible, to make changes and improvements to the VBA IT program to ensure that, to the maximum extent possible, original and supplemental claims for educational assistance under chapter 33 are adjudicated electronically and that rules-based processing is used to make decisions on such claims "with little human intervention." Section 12(d) would authorize $30 million for FY 2018 through FY 2019 to implement the changes.

VA concurs that there is room to improve the automation of the processing of education benefits claims. VBA is currently working with the Office of Information and Technology to assess IT capabilities. While VA is currently prioritizing replacement of legacy systems due to the risk of maintaining these systems, VA is also considering additional LTS functionality needed to provide faster and more accurate claims processing for those who apply for Post-9/11 GI Bill benefits and submit supplemental claims. The current average processing time for eligibility claims, which are not automated and are very labor-intensive, is 22 days. During calendar year 2017, an average of over 5,200 supplemental (reenrollment) claims were processed automatically each day using LTS, without human intervention. The remainder of supplemental claims are processed using partial automation. Section 12(b) would require VA to submit to Congress an implementation plan within 180 days after

enactment of the bill and a report on implementation within one year of enactment. VA, however, would need at least 24 months from the date of enactment to report on changes due to the time needed for the procurement process, systems development, testing, and deployment.

Section 13 would add 38 U.S.C. § 3699 to authorize the Secretary to make available to educational institutions offering courses of education that have been approved for educational assistance to which a Veteran or individual is entitled information about the amount of assistance to which the Veteran or individual is entitled. The information would be provided via a secure IT system accessible by the educational institution and would be updated regularly.

VA supports the intent of section 13. However, section 13 would present implementation challenges for VA. Currently, VA provides the amount of a Veteran's entitlement (original and remaining) and other information such as the delimiting date for educational assistance to the educational institution in which the individual is enrolled through VA-ONCE. This information is available for individuals training under chapter 30 of title 38, United States Code, and chapters 1606 and 1607 of title 10, United States Code, after VA processes an award for education benefits. This functionality is not currently available for Veterans or other individuals training under chapters 32, 33, or 35 of title 38, United States Code; therefore, VA would need to make programming changes to VA-ONCE in order to make this information available to these beneficiaries as well. We note in this regard that there are very few individuals who remain eligible for chapter 32 benefits. We have not, however, fully determined if there were to be any costs associated with IT changes.

There are no benefit costs or additional FTE or GOE costs associated with section 13.

Section 14 would amend 38 U.S.C. § 3692(c) to re-authorize the Veterans' Advisory Committee on Education (VACOE) through December 31, 2022. VACOE provides advice to the Secretary on the administration of education and training programs for Veterans and Servicemembers, members of the National Guard and Reserve Components, and dependents of Veterans under chapters 30, 32, 33, and 35 of title 38, United States Code, and chapter 1606 of title 10, United States Code. VA supports section 14. If reauthorized, the Secretary would be able to continue to receive recommendations and seek advice from VACOE in order to enhance VA's educational assistance programs.

GOE costs are $51,000 for the first year and $255,000 for 5 years.

Section 15 would amend section 3684(c) of title 38, United States Code, to revise requirements governing reporting fees payable to educational institutions and joint apprenticeship training committees. Section 15 would increase the annual fee to $16 for each eligible individual enrolled in VA's education and vocational rehabilitation and employment programs. Section 15 would prohibit an educational institution or joint apprenticeship training committee from using reporting fees from VA for or merging such fees with the amounts available for the general fund of the educational institution or joint apprenticeship training committee.

As a technical matter, VA notes that both current 38 U.S.C. 3684(c) and the proposed revisions to section 3684(c) use the term “joint apprenticeship training committee.” VA notes (and the Department of Labor agrees) that the term “joint

apprenticeship training committees” is specific to the construction industry and refers to a subset of the possible universe of entities that could be apprenticeship program sponsors. Given that the bill does not focus strictly on the construction industry, the use of this term is problematic because the bill would exclude other industries which have registered apprenticeship programs. VA recommends revising section 15 of the bill to change the term “joint apprenticeship training committee” to “apprenticeship sponsor” whenever it is used in section 15 of the draft bill (amending 38 U.S.C. 3684(c)). With this technical change, VA can support section 15 because it would prohibit schools from using reporting fees for, or merging such fees with, their general funds. Educational institutions are required to use reporting fees solely for making certifications or otherwise supporting programs for Veterans, and this would ensure that the reporting fees are used solely for those purposes.

Benefit costs for section 15 would be $6.9 million in the first year, $34.7 million over 5 years, and $67.3 million over 10 years. There would be no FTE or GOE costs associated with enactment of this section.

Section 16 would authorize VA, in consultation with the SAAs, to provide training requirements for school certifying officials employed by covered educational institutions that offer courses of education approved under chapter 36 of title 38, United States Code. If an educational institution does not ensure that a school certifying official meets the training requirements, VA may disapprove any course of education offered by the educational institution. A "covered educational institution" would refer to an educational institution that has enrolled 20 or more individuals using VA educational assistance and a "school certifying official" would be defined as an employee of an educational

institution with primary responsibility for certifying Veteran enrollment at the educational institution.

VA supports section 16. VA currently provides guidance and training opportunities for school certifying officials via webinars, the School Certifying Official Handbook, and on the GI Bill website but does not have the authority to require school certifying officials to complete this training or to disapprove educational programs if the training is not completed. The proposed legislation would provide VA with the authority to require school certifying officials to meet certain training requirements as determined by VA.

VA suggests that the proposed requirements be codified in chapter 36 of title 38, United States Code.

There are no benefit costs or additional FTE or GOE costs associated with section 16.

Section 17 would amend 38 U.S.C. § 3674(a) to provide that reasonable and necessary salary and travel expenses of SAA employees and local agencies that VA has agreed to pay would be payable out of appropriated amounts as well as from amounts available for payment of readjustment expenses. Section 17 would authorize $3 million in appropriated funds per fiscal year and the maximum total amount available under section 3674 for any fiscal year would be increased from $19 million to $21 million. The maximum total amount available for these expenses would increase by the same percentage as the annual increase in the benefit amounts payable under title II of the Social Security Act.

VA supports section 17. VA suggests a technical change to clarify the funding ceiling in this section. As drafted, new section 3674(a)(4) would conflict with new section 3674(a)(5)(A) because each appears to be setting a new funding ceiling. Also, if enacted as drafted, VA would be limited to $21 million per fiscal year for SAA payments.

Benefit costs for section 17 are estimated to be $2 million in the first year, $10 million over 5 years, and $20 million over 10 years. There are no additional FTE or GOE costs associated with the proposed legislation.

Section 18 would amend 38 U.S.C. § 3313(c) to provide that scholarships or other Federal, State, institutional, or employer-based aid or assistance provided directly to the institution, to defray the amount of tuition and fees of persons entitled to less than 100 percent of the amounts payable under the Post 9/11 GI Bill for pursuing a program of education on more than a half-time basis, would not be deducted from the amount of tuition and fees assessed by the institution for the program of education for purposes of calculating the amount of educational assistance payable under the Post 9/11 GI Bill.

VA supports section 18 of this bill because it would reduce the out-of-pocket expenses of Veterans and dependents who do not qualify for 100-percent educational assistance under the Post-9/11 GI Bill. Additionally, section 18 could reduce the amount of educational loans that Veterans or dependents need and therefore reduce their financial burdens. However, some eligible individuals could receive more Post 9/11 educational assistance than the cost of the program in which they are enrolled. For example, if a scholarship paid to an institution on behalf of an individual who is entitled to VA educational assistance at the 90 percent rate exceeds 10 percent of the

tuition and fees assessed by the institution, and VA is precluded from subtracting the amount of the scholarship from the educational assistance, the educational institution would refund the surplus to the student, who would receive a windfall. In addition, as a result of section 18, some eligible individuals who are entitled to educational assistance at less than the 100-percent rate could receive more funding for their education than an individual who is eligible at the 100 percent benefit level.

This concludes our statement, Mr. Chairman. I would be happy now to entertain any questions you or the other members of the Committee may have.