STATEMENT OF

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BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

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Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation affecting VA's programs, including the following: Sections 101, 102 and 103 of S. 6, S. 200, S. 257, S. 262, S. 294, S. 373, S. 430, sections 5, 6, 7, and 8 of S. 495, S. 514, S. 515, S. 572, S. 629, S. 674, S. 690, S. 695, S. 705, S. 748, S. 893, S. 894, S. 922, sections 103, 104, 201, 202, 301, 302, 303, 304, and 305 of S. 928, and S. 939. VA has not had time to develop cost estimates for S. 514 and S. 894 and but will work to provide them. VA has not had time to develop views and costs on the other sections of S. 928. I cannot address today views and costs on S. 735, S. 778, S. 819, S. 863, S. 868, S. 889, S. 927, certain sections of S. 928, S. 930, S. 932, S. 935, S. 938, S. 944, but, with your permission, we will work to provide that information. Other legislative proposals under discussion today would affect programs or laws administered by the Department of Labor (DOL), Department of Homeland Security (DHS), Department of Defense (DoD), the Office of Personnel Management (OPM), and the General Services Administration (GSA). Respectfully, we defer to those Departments' views on those legislative proposals. Accompanying me this morning are

Thomas Murphy, Director, Compensation Service, Veterans Benefits Administration; Richard Hipolit, Assistant General Counsel; and John Brizzi, Deputy Assistant General Counsel.

S. 6

Section 101 of S. 6, the "Putting Our Veterans Back to Work Act of 2013," would extend by two years the expiration of the Veterans Retraining Assistance Program (VRAP) under section 211 of the VOW to Hire Heroes Act of 2011, from March 31, 2014, to March 31, 2016. This section also would increase the maximum enrollment in VRAP from 99,000 to 199,000 Veterans. It would add 50,000 participants during the period April 1, 2014 through March 31, 2015, and another 50,000 between April 1, 2015 and March 31, 2016. Finally, section 101 would amend subsection (b) of section 211 by striking "up to 12 months of retraining" and replacing it with "an aggregate of not more than 12 months of retraining."

VA generally supports the legislation that would extend the expiration of VRAP, to allow maximum enrollment of the currently allotted 99,000 participants. VA supports legislative initiatives that are designed to help Veterans seek and gain meaningful employment, and this legislation provides more time to select and complete their degree or certificate program, particularly those Veterans between the ages of 35 and 60. VA suggests, however, that changes be made to the existing program prior to expansion, including adding new participants.

As of April 25, 2013, VA approved 98,296 applicants for VRAP benefits, but only 43,803 Veterans were either enrolled in school or had used their benefits. VA reached

out to individuals eligible for VRAP on several occasions to encourage them to enroll in training. VA recommends that the following changes be made to VRAP before expanding the program to more participants:

- Allow participants to receive the full 12-month benefit as long as the participant starts a training program within the period between receiving their certificate of eligibility and the program's sunset date.
- Expand the program to include 4-year institutions that offer associate's degrees.
- Amend the sunset date of the program from March 31 to May 31 so that it does not end in the middle of a standard academic semester.

Finally, VA recommends removing the partition of participants by fiscal year. Many unemployed Veterans cannot enroll in training before they receive their certificate of eligibility for VRAP. Therefore, Veterans may not enroll in school during the same fiscal year that they are determined eligible. Additionally, it is unclear if any unused slots from the original 99,000 participants will be lost in the next fiscal year or will remain available for use in the next fiscal year. To reduce confusion for Veterans using the program, VA recommends that any increase in beneficiaries be effective for the remainder of the program.

VA estimates the benefit costs for section 101 of S. 6 would be $152.8 million during fiscal year (FY) 2014 and $1.3 billion for the period beginning on April 1, 2014 through March 31, 2016.

Section 102 of S. 6 would extend the provisions of Section 231 of Public Law 112-56 through December 31, 2016, VA's authority to provide vocational rehabilitation benefits to members of the Armed Forces with severe injuries or illnesses who have not

yet been rated for purposes of service-connected disability compensation. The current authority to provide such benefits to these Servicemembers expires on December 31, 2014. Section 102 also would require VA to submit a report to Congress on the benefits provided to these members of the Armed Forces within 180 days after the enactment of section 102.

VA supports this provision and believes that extending automatic eligibility for vocational rehabilitation to Servicemembers for two additional years is warranted due to the expected acceleration in Servicemembers separating from the Armed Forces. This provision would allow individuals who are still on active duty to qualify for and receive vocational rehabilitation and employment services without waiting for a VA disability rating, and would facilitate their transition from military to civilian life.

We do not anticipate additional costs to VA resulting from enactment of this provision because individuals who would receive vocational rehabilitation services under this provision would be expected to receive VA disability ratings as Veterans that would qualify them for vocational rehabilitation services.

Section 103 of the bill would provide a two-year extension of the provisions of section 233 of Public Law 112-56, which entitles a Veteran who has completed a vocational rehabilitation program under chapter 31 of title 38, United States Code, and has exhausted state unemployment benefits, to an additional twelve-month period of vocational rehabilitation services without regard to the 12-year eligibility period or 48-month limitation on entitlements. Under current law, VA must receive the application for chapter 31 services before March 31, 2014, and within 6 months of exhausting regular

unemployment compensation benefits. If section 103 were enacted, the deadline for receipt of an application would be extended until March 31, 2016.

VA supports this provision. Extending this benefit for Veterans who are beyond the 12-year delimiting date would provide them the opportunity to prepare for and obtain suitable employment.

VA estimates that benefit costs associated with enactment of section 103 would be approximately $260,000 from FY 2016 through FY 2018. There are no additional full-time equivalent (FTE) or general operating expenses (GOE) cost requirements.

Sections 104, 201, 301, and 302 affect programs or laws administered by DOL. Section 202 affects programs or laws administered by DHS. Section 203 affects programs or laws administered by GSA. Respectfully we defer to those Departments' views on those sections of S.6.

S. 200

S. 200 would establish eligibility for interment in a national cemetery for any individual who: (1) the Secretary of Veterans Affairs determines served in combat support of the Armed Forces in Laos during the period beginning on February 28, 1961, and ending on May 15, 1975; and (2) at the time of death was a U.S. citizen or lawfully admitted alien.

Section 401 of Public Law 95-202 authorizes the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA. The DOD Civilian/Military Service Review Board advises the Secretary of Defense in determining

if civilian service in support of the U.S. Armed Forces during a period of armed conflict is equivalent to active military service for VA benefits. VA provides burial and memorial benefits to individuals deemed eligible by reason of active military service established by the Secretary of Defense.

VA does not support this bill because it would bypass the statutorily mandated process established under section 401 of Public Law 95-202 that promotes consistency in evaluation of various types of service. The established process under Public Law 95-202 ensures that determinations regarding individuals or groups who did not serve in the Armed Forces are based on adequate information regarding the nature of the operations of the U.S. Armed Forces at the relevant times and locations and the nature of the support provided by the individuals or groups in question.

Further, VA relies on DoD to determine the circumstances of an individual's service and when such service was rendered, and, for purposes of this bill, VA would have to rely on DoD to make determinations such as whether such service was "in combat support of the Armed Forces." VA is not equipped to make those determinations on a case-by-case basis. Yet the bill makes no provision for DoD involvement in the process. In addition, it is unclear how "combat support" would be defined and documented for purposes of implementing this bill.

If the assumption is made that the impacted population would be small, no significant cemetery construction or interment costs would be associated with this legislation.

S. 257

S. 257, the "GI Bill Tuition Fairness Act of 2013," would amend section 3679 of title 38, United States Code, to direct VA, for purposes of the educational assistance programs administered by the Secretary, to disapprove courses of education provided by public institutions of higher education that do not charge tuition and fees for Veterans at the same rate that is charged for in-state residents, regardless of the Veteran's State of residence. The bill does not address whether tuition and fee rates for Servicemembers or other eligible beneficiaries of the GI Bill affect the approval status of a program of education. S. 257 would apply to educational assistance provided after August 1, 2014. In the case of a course of education in which a Veteran or eligible person (such as a spouse or dependent who is eligible for education benefits) is enrolled prior to August 1, 2014, that is subsequently disapproved by VA, the Department would treat that course as approved until the Veteran or eligible person completes the course in which the individual is enrolled. After August 1, 2018, any disapproved course would be treated as such, unless the Veteran or eligible person receives a waiver from VA. While VA is sympathetic to the issue of rising tuition costs, it is difficult to endorse the proposed legislation until we know more about the impact.

VA cannot predict what reductions in offerings by educational institutions would result from this requirement. In-state tuition rules are set by individual States, and are undoubtedly driven by overall fiscal factors and other policy considerations. Additionally, the bill creates ambiguity since it is unclear whether institutions that charge out-of-state tuition and fees to other eligible persons for a course

of education, but that charge in-state tuition to Veterans in the same course, would also be disapproved.

VA estimates approximately 11.8 percent of Yellow Ribbon participants attended public institutions since the program's inception. Of those, an estimated 80.6 percent were Veterans during the 2012 fall enrollment period. VA applied these percentages to the total amount of Yellow Ribbon benefits paid in FY 2012 and projected through FY 2023, assuming growth consistent with the overall chapter 33 program. Based on those projections, VA estimates that enactment of S. 257 would result in benefit savings to VA's Readjustment Benefits account of $2.3 million in the first year, $70.3 million over 5 years, and $179.9 million over 10 years. VA estimates there would be no additional GOE administrative costs required to implement this bill.

S. 262

S. 262, the "Veterans Education Equity Act of 2013," would amend section 3313(c)(1) of title 38, United States Code, to revise the formula for the payment of tuition and fees for individuals entitled to educational assistance under the Post 9/11 GI Bill who are pursuing programs of education at a public institution of higher learning (IHL). The revised formula would include, as an additional payment formula, the lesser of the actual net cost for tuition and fees after applying the receipt of any tuition waivers, reductions, and scholarships, versus the greater of the actual net cost for in-state tuition and fees after applying the receipt of any tuition waivers, reductions, and scholarships, or $17,500 for the academic year beginning on August 1, 2011 (such amount to be increased each subsequent year by the average percentage increase in undergraduate

tuition costs). The amendment would be effective with respect to the payment of educational assistance for an academic year beginning on or after the date of enactment.

Currently, resident and non-resident students pursuing programs of education at public IHLs receive the actual net cost for in-state tuition and fees charged by the institution. As written, this bill would allow non-resident students to receive an amount above net in-state tuition charges in some instances.

While VA understands the issue of rising educational costs and supports the intent underlying the bill to provide payment equity for individuals training under the Post-9/11 GI Bill, VA cannot support the proposed legislation.

The additional separate rules for tuition-and-fee charges would add yet another level of complexity to the Post-9/11 GI Bill for both Veterans and schools to understand. VA continues to receive complaints from participants regarding confusion about exactly how much they will receive in tuition and fees under the program. This bill would exacerbate that problem.

S. 262 would also lead to very complicated processing scenarios in the Long Term Solution (LTS), the computer processing system for the Post-9/11 GI Bill. Rules in the LTS system regarding payment amounts would need to be updated. Additionally, since the amount of educational assistance would be based on the actual net cost for tuition and fees versus the greater of the actual net cost for in-state tuition and fees and $17,500, VA would have to apply a blended set of rules to each claim that falls under these provisions.

In addition, VA has identified technical concerns with the bill's text. For example, it is unclear how to apply the $17,500 cap per academic year to enrollments. The bill does not specify if VA would need to pay the first term of the academic year up to the maximum amount or divide the total yearly allotment over the course of different semesters. There could be scenarios in which an individual may receive most of, if not all, the yearly allotment for the fall term alone, leaving no money to be spent in the subsequent terms.

VA estimates that the benefit cost associated with enactment of this bill would be $613.0 million in the first year, $3.4 billion over 5 years, and $7.6 billion over 10 years. No administrative or personnel costs to VA are associated with this bill. VA information technology costs are estimated to be $1 million. These costs include enhancements to the Post-9/11 GI Bill Long-Term Solution.

S. 294

Section 2(a) of S. 294, the "Ruth Moore Act of 2013," would add to 38 U.S.C. § 1154 a new subsection (c) to provide that, if a Veteran alleges that a "covered mental health condition" was incurred or aggravated by military sexual trauma (MST) during active service, VA must "accept as sufficient proof of service-connection" a mental health professional's diagnosis of the condition together with satisfactory lay or other evidence of such trauma and the professional's opinion that the condition is related to such trauma, provided that the trauma is consistent with the circumstances, conditions, or hardships of such service, irrespective of whether there is an official record of incurrence or aggravation in service. Service connection could be rebutted by "clear

and convincing evidence to the contrary." In the absence of clear and convincing evidence to the contrary, and provided the claimed MST is consistent with the circumstances, conditions, and hardships of service, the Veteran's lay testimony alone would be sufficient to establish the occurrence of the claimed MST. The provision would define the term "covered mental health condition" to mean post-traumatic stress disorder (PTSD), anxiety, depression, "or other mental health diagnosis described in the current version" of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders that VA "determines to be related to military sexual trauma." The bill would define MST to mean "psychological trauma, which in the judgment of a mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred during active military, naval, or air service."

Section 2(b) would require VA, for a 5-year period beginning with FY 2014, to submit to Congress an annual report on claims covered by new section 1154(c) that were submitted during the fiscal year. Section 2(b) would also require VA to report on the: (1) number and percentage of covered claims submitted by each sex that were approved and denied; (2) rating percentage assigned for each claim based on the sex of the claimant; (3) three most common reasons for denying such claims; (4) number of claims denied based on a Veteran's failure to report for a medical examination; (5) number of claims pending at the end of each fiscal year; (6) number of claims on appeal; (7) average number of days from submission to completion of the claims; and (8) training provided to Veterans Benefits Administration (VBA) employees with respect to covered claims.

Section 2(c) would make proposed section 1154(c) applicable to disability claims "for which no final decision has been made before the date of the enactment" of the bill.

VA is committed to serving our Nation’s Veterans by accurately adjudicating claims based on MST in a thoughtful and caring manner, while fully recognizing the unique evidentiary considerations involved in such an event. Before addressing the specific provisions of S. 294, it would be useful to outline those efforts, which we believe achieve the intent behind the bill. The Under Secretary for Benefits has spearheaded VBA's efforts to ensure that these claims are adjudicated compassionately and fairly, with sensitivity to the unique circumstances presented by each individual claim.

VA is aware that, because of the personal and sensitive nature of the MST stressors in these cases, it is often difficult for the victim to report or document the event when it occurs. To remedy this, VA developed regulations and procedures specific to MST claims that appropriately assist the claimant in developing evidence necessary to support the claim. As with other PTSD claims, VA initially reviews the Veteran’s military service records for evidence of the claimed stressor. VA's regulation also provides that evidence from sources other than a Veteran's service records may corroborate the Veteran's account of the stressor incident, such as evidence from mental health counseling centers or statements from family members and fellow Servicemembers. Evidence of behavior changes, such as a request for transfer to another military duty assignment, is another type of relevant evidence that may indicate occurrence of an assault. VA notifies Veterans regarding the types of evidence that may corroborate occurrence of an in-service personal assault and asks them to submit or identify any such evidence. The actual stressor need not be documented. If minimal circumstantial

evidence of a stressor is obtained, VA will schedule an examination with an appropriate mental health professional and request an opinion as to whether the examination indicates that an in-service stressor occurred. The mental health professional's opinion can establish occurrence of the claimed stressor.

With respect to claims for other disabilities based on MST, VA has a duty to assist in obtaining evidence to substantiate a claim for disability compensation. When a Veteran files a claim for mental or physical disabilities other than PTSD based on MST, VBA will obtain a Veteran's service medical records, VA treatment records, relevant Federal records identified by the Veteran, and any other relevant records, including private records, identified by the Veteran that the Veteran authorizes VA to obtain. VA must also provide a medical examination or obtain a medical opinion when necessary to decide a disability claim. VA will request that the medical examiner provide an opinion as to whether it is at least as likely as not that the current symptoms or disability are related to the in-service event. This opinion will be considered as evidence in deciding whether the Veteran's disability is service connected.

VBA has also placed a primary emphasis on informing VA regional office (RO) personnel of the issues related to MST and providing training in proper claims development and adjudication. VBA developed and issued Training Letter 11-05, Adjudicating Posttraumatic Stress Disorder Claims Based on Military Sexual Trauma, in December 2011. This was followed by a nationwide broadcast on MST claims adjudication. The broadcast focused on describing the range of potential markers that could indicate occurrence of an MST stressor and the importance of a thorough and open-minded approach to seeking such markers in the evidentiary record. In addition,

the VBA Challenge Training Program, which all newly hired claims processors are required to attend, now includes a module on MST within the course on PTSD claims processing. VBA also provided its designated Women Veterans Coordinators with updated specialized training. These employees are located in every VA RO and are available to assist both female and male Veterans with their claims resulting from MST.

VBA worked closely with the Veterans Health Administration (VHA) Office of Disability Examination and Medical Assessment to ensure that specific training was developed for clinicians conducting PTSD compensation examinations for MST-related claims. VBA and VHA further collaborated to provide a training broadcast targeted to VHA clinicians and VBA raters on this very important topic, which aired initially in April 2012 and has been rebroadcast numerous times.

Prior to these training initiatives, the grant rate for PTSD claims based on MST was about 38 percent. Following the training, the grant rate rose and at the end of February 2013 stood at about 52 percent, which is roughly comparable to the approximate 59-percent grant rate for all PTSD claims.

In December 2012, VBA's Systematic Technical Accuracy Review team, VBA's national quality assurance office, completed a second review of approximately 300 PTSD claims based on MST. These claims were denials that followed a medical examination. The review showed an overall accuracy rate of 86 percent, which is roughly the same as the current national benefit entitlement accuracy level for all rating-related end products.

In addition, VBA's new standardized organizational model has now been implemented at all of our ROs. It incorporates a case-management approach to claims

processing. VBA reorganized its workforce into cross-functional teams that give employees visibility of the entire processing cycle of a Veteran's claim. These cross-functional teams work together on one of three segmented lanes: express, special operations, or core. Claims that predictably can take less time flow through an express lane (30 percent); those taking more time or requiring special handling flow through a special operations lane (10 percent); and the rest of the claims flow through the core lane (60 percent). All MST-related claims are now processed in the special operations lane, ensuring that our most experienced and skilled employees are assigned to manage these complex claims.

The Under Secretary for Benefits' efforts have dramatically improved VA's overall sensitivity to MST-related PTSD claims and have led to higher current grant rates. However, she recognized that some Veterans' MST-related claims were decided before her efforts began. To assist those Veterans and provide them with the same evidentiary considerations as Veterans who file claims today, VBA is planning to advise Veterans of the opportunity to request that VA review their previously denied PTSD claims based on MST. Those Veterans who respond will receive reconsideration of their claims based on VA's heightened sensitivity to MST and a more complete awareness of evidence development. VBA will also continue to work with VHA medical professionals to ensure they are aware of their critical role in processing these claims.

Through VA's extensive, recent, and ongoing actions, we are ensuring that MST claimants are given a full and fair opportunity to have their claim considered, with a practical and sensitive approach based on the nature of MST. As noted above, VA has recognized the sensitive nature of MST-related PTSD claims and claims based on other

covered mental health conditions, as well as the difficulty inherent in obtaining evidence of an in-service MST event. Current regulations provide multiple means to establish an occurrence, and VA has initiated additional training efforts and specialized handling procedures to ensure thorough, accurate, and timely processing of these claims.

VA's regulations reflect the special nature of PTSD. Section 3.304(f) of title 38 Code of Federal Regulations, currently provides particularized rules for establishing stressors related to personal assault, combat, former prisoner-of-war status, and fear of hostile military or terrorist activity. These particularized rules are based on an acknowledgement that certain circumstances of service may make the claimed stressor more difficult to corroborate. Nevertheless, they require threshold evidentiary showings designed to ensure accuracy and fairness in determinations as to whether the claimed stressor occurred. Evidence of a Veteran's service in combat or as a prisoner of war generally provides an objective basis for concluding that claimed stressors related to such service occurred. Evidence that a Veteran served in an area of potential military or terrorist activity may provide a basis for concluding that stressors related to fears of such activity occurred. In such cases, VA also requires the opinion of a VA or VA-contracted mental health professional, which enables VA to ensure that such opinions are properly based on consideration of relevant facts, including service records, as needed. For PTSD claims based on a personal assault, lay evidence from sources outside the Veteran's service records may corroborate the Veteran's account of the in-service stressor, such as statements from law enforcement authorities, mental health counseling centers, family members, or former Servicemembers, as well as other evidence of behavioral changes following the claimed assault. Minimal circumstantial

evidence of a stressor is sufficient to schedule a VA examination and request that the examiner provide an opinion as to whether the stressor occurred. We recognize that some victims of sexual assault may not have even this minimal circumstantial evidence, and we are committed to addressing the problem.

As VA has continued its close review of this legislation as part of an Administration-wide focus on the critical issue of MST, we would like to further consider whether statutory changes could also be useful, while continuing to carry forward the training, regulatory, and case review efforts described above. VA would like to follow up with the Committee on the results of this review, and of course are glad to meet with you or your staff on this critical issue.

VA does not oppose section 2(b).

Section 2(c) does not define the term "final decision." As a result, it is unclear whether the new law would be applicable to an appealed claim in which no final decision has been issued by VA or, pursuant to 38 U.S.C. § 7291, by a court.

Benefit costs are estimated to be $135.9 million during the first year, $2.0 billion for 5 years, and $7.1 billion over 10 years.

S. 373

S. 373, the “Charlie Morgan Military Spouses Equal Treatment Act of 2013,” would consider a person a spouse, for purposes of military personnel policies and military and Veterans' benefits, if the marriage of the individual is valid in the State in which the marriage was entered into or, in the case of a marriage entered into outside any State, if the marriage is valid in the place in which the marriage was entered into

and the marriage could have been entered into in a State. It includes as a State: the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and U.S. territories and possessions. We defer to DoD's views on those parts of the bill amending titles 10, 32, and 37 of the United States Code.

Section 7 of title 1, United States Code, which implements section 3 of the Defense of Marriage Act, defines the term "marriage" for purposes of Federal statutes, regulations, or rulings to mean only a union between one man and one woman as husband and wife, and defines the term "spouse" to mean only a person of the opposite sex who is a husband or wife. This law excludes same-sex relationships from the definition of "marriage," and persons of the same sex from the definition of "spouse," regardless of whether the marital relationship is recognized under state law. Similarly, section 101(3) and (31) of title 38, United States Code, limits the definitions of "surviving spouse" and "spouse" for purposes of the statutory provisions in title 38 pertaining to VA benefits to only apply to a person of the opposite sex of the Veteran.

With regard to the laws that govern VA, section 2(d) of the bill would revise paragraph (3) of section 101 to remove the requirement that a "surviving spouse" must be a person of the opposite sex of the Veteran. We believe the revision to section 101(3) would most logically be read to incorporate the liberalized definition of "spouse" in the proposed section 101(31), but that there would be some ambiguity on that question absent language in section 101(3) expressly precluding application of section 7 of title 1, United States Code, which defines both "spouse" and "marriage" for purposes of all Federal laws.

Section 2(d) of the bill would revise paragraph (31) of section 101, which defines the term “spouse” for the purposes of title 38, to exclude the application of section 7 of title 1, United States Code, and, in most instances, to defer to the law of the State in which the parties celebrated their marriage to determine the validity of the marriage and whether an individual qualifies as a “spouse” of a Veteran. Under this section of the bill, an individual shall be considered a “spouse” if the marriage of the individual is valid in the State in which the marriage was entered into, or in the case in which the marriage was entered into outside any State, if the marriage is valid in the place in which the marriage was entered into as long as the marriage could have been entered into in a State. Section 2 would further revise section 101(31) to refer to paragraph (20) of the same section to provide the meaning of the term “State,” with the additional inclusion of the Commonwealth of the Northern Mariana Islands. The bill’s language in section 101(31) directly conflicts with 38 U.S.C. § 103(c), which provides that VA determines the validity of a marriage in accordance with the law of the State where the parties resided at the time of the marriage or the law of the State where the parties resided when the right to benefits accrued.

VA supports this bill to change the definition of "spouse" and “surviving spouse” in title 38 and exempt VA from the Defense of Marriage Act of 1996, which restricts Federal marriage benefits and requires inter-state marriage recognition to only opposite-sex marriages in the United States. However, VA is concerned about the conflict (noted above) between section 103(c) and the proposed amendments in section 101. We suggest the proposed legislation be amended to resolve this issue. Specifically, this bill could amend section 103(c), which defines a marriage based on “the law of the place

where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued" to be consistent with the other amendments of section 2 providing that an individual shall be considered a "spouse" based on the law of the place where the parties entered into the marriage. Alternatively, the amendments in section 2 of the bill could be revised to be consistent with the current section 103(c). We note that a revision to section 103(c) would change how VA administers benefits for both same-sex and heterosexual couples.

S. 373 would require an amendment to several regulations, including section 3.1(j) of title 38, Code of Federal Regulations, which defines "marriage," and section 3.50 of title 38, Code of Federal Regulations, which defines "spouse" and surviving spouse." S. 373 would also require VA to revise several sections in its adjudication procedures manual and develop other policy and procedures guidance. Full implementation of this bill would require VA to amend governing regulations, procedures, and training products. Therefore, if this bill is codified, VA will work diligently to revise its regulations in a timely manner.

S.373 would affect all VA benefits available to or for a veteran's spouse, including compensation, pension, insurance, death, burial, memorialization, and other benefits. Full implementation of this bill would require VA to amend governing regulations, procedures, and training products, which could result in some short-term delays due to the necessary transitions. For example, under Family Servicemembers' Group Life Insurance (FSGLI), members of the uniformed services insured under SGLI can purchase life insurance on the lives of their spouses. Currently same-sex spouses are not considered spouses for FSGLI purposes. Also, since the spousal coverage is

automatically included for most SGLI-insured members, it would be necessary for DoD to adjust its data systems to accommodate recognized marriages, including its premium deduction functions, since DoD's systems maintain all SGLI-related information for its Servicemembers. It would have to be determined if the Office of Servicemembers' Group Life Insurance, the office that administers the SGLI program and receives from DoD the documentation necessary to identify and pay claims, will be able to rely on DoD's certifications, or will have to try to identify and verify claims for the death of a spouse that are based upon same-sex marriages.

VA will provide a cost estimate for the record.

S. 430

Section 2 of S. 430, the "Veterans Small Business Opportunity and Protection Act of 2013," would expand the scope of the "surviving spouse" exception associated with VA's Veteran-owned small business (VOSB) acquisition program established by 38 U.S.C. § 8127. This program requires that VA verify the ownership and control of VOSBs by Veterans in order for the VOSB to participate in VA acquisitions set aside for these firms.

Currently, an exception in the law is provided for certain surviving spouses to stand in the place of a deceased service-disabled spouse owner for verification purposes if the Veteran owner had a service-connected disability rated as 100 percent disabling or died as a result of a service-connected disability for a limited period of time. Section 2 would continue to provide that if the deceased Veteran spouse had a service-connected disability rated as 100 percent disabling or died as a result of a service-

connected disability, the surviving spouse owner could retain verified service disabled Veteran-owned small business (SDVOSB) status for VA's program for a period of 10 years. In addition, a surviving spouse of a deceased Veteran with any service-connected disability, regardless of whether the Veteran died as a result of the disability, could retain verified SDVOSB status for VA's program for a period of 3 years. VA supports this provision.

Section 3 of S. 430 would add a separate, new provision to 38 U.S.C. § 8127 to enable the surviving spouse or dependent of an service member killed in the line of duty who acquires 51 percent or greater ownership rights of the service member's small business to stand in place of the deceased service member for purposes of verifying the small business as one owned and controlled by Veterans in conjunction with VA's VOSB set-aside acquisition program also created by 38 U.S.C. § 8127. This status would continue, for purposes of a surviving spouse, until the earlier of the re-marriage of the surviving spouse, the relinquishment of ownership interest such that the percentage falls below 51 percent, or 10 years. With respect to dependent status, this would continue until the dependent holds less than 51 percent ownership interest or 10 years, whichever occurs earlier. VA supports this provision but recommends clarifying the term "dependent," as appropriate, to ensure the individual is one having legal capacity to contract with the Federal Government. VA stands ready to work with the Committee to address this issue. VA estimates no additional appropriations would be required to implement this bill if enacted.

S. 492

S. 492, which would require conditioning certain DOL grants upon States establishing programs to recognize military experience in its licensing and credentialing programs. This bill affects programs or laws administered by DOL. Respectfully, we defer to that Department's views on this bill.

S. 495

Section 5 of S.495, "Careers for Veterans Act of 2013," would add a new definition to 38 U.S.C. § 8127, VA's VOSB set-aside acquisition program, to clarify that any small business concern owned exclusively by Veterans would be deemed to be unconditionally owned by Veterans. VA supports this provision.

Section 6 of the bill essentially duplicates the extension of surviving spouse status previously discussed in conjunction with section 2 of S. 430. VA supports this provision. Section 7 of this bill essentially duplicates the provisions of section 3 of S. 430. Again, VA supports this provision subject to the caveat that "dependent" be more specifically defined. Lastly, section 8 of this bill would add a new subsection to 38 U.S.C. § 8127 that would eliminate consideration of state community property laws in verification examinations with respect to determinations of ownership percentage by the Veteran or Veterans of businesses located in States with community property laws. VA supports this provision. VA estimates that no additional appropriations would be required to implement the provisions of sections 5 through 8 of S. 495.

Section 2 affects programs or laws administered by OPM and sections 3 and 4 affect programs or laws administered by DOL. Respectfully, we defer to those Departments for views on those sections of S. 495.

S. 514

S. 514 would authorize VA to pay an additional appropriate amount to each individual entitled to educational assistance under the Post 9/11 GI Bill (chapter 33) who is pursuing a program of education with a focus (as determined in accordance with regulations prescribed by VA) on science, technology, engineering, and math (STEM) or an area leading to employment in a high-demand occupation. Such payment amount would be in addition to any other educational assistance to which the individual was entitled. The additional payment would be in an amount determined by the Secretary and would be in addition to other amounts payable under the Post-9/11 GI Bill.

While VA is in favor of legislation encouraging Veterans to pursue higher education, particularly in programs leading to employment in high-demand fields including science, technology, engineering, and math, we are unable to support the bill as drafted.

First, the bill could create inequity of payments among Veterans who have all earned the same benefit. Current chapter 33 beneficiaries are free to pursue programs and degrees that best fit their personal and professional goals, yet this bill could result in higher payments to certain Veterans based on an individual's decision to pursue a specific degree or career path.

Second, the proposed bill could create an inequity if a beneficiary begins his or her education by pursuing a STEM degree or a degree leading to a high-demand occupation and later decides to pursue a degree for which no additional benefit is granted. If this occurs, two beneficiaries could conceivably complete the same degree yet have received different payment amounts over the course of their education.

We will be pleased to provide for the record an estimate of the cost of enactment of this bill.

S. 515

S. 515 would amend title 38, United States Code, to permit a recipient of the Marine Gunnery Sergeant John David Fry Scholarship (available to a child of an individual who, on or after September 11, 2001, dies in the line of duty while serving on active duty) to be eligible for the "Yellow Ribbon G.I. Education Enhancement Program" (Yellow Ribbon Program), under the Post-9/11 Educational Assistance Program (Post-9/11 GI Bill). The Yellow Ribbon Program is available to Veterans and transfer-of-entitlement recipients receiving Post-9/11 GI Bill benefits at the 100% benefit level attending school at a private institution or as a non-resident student at a public institution. The Program provides payment for up to half of the tuition-and-fee charges that are not covered by the Post-9/11 GI Bill, if the institution enters into an agreement with VA to pay or waive an equal amount of the charges that exceed Post-9/11 GI Bill coverage. This bill would take effect at the beginning of the academic year after the date of enactment.

VA supports S. 515, but has some concerns, expressed below, that we believe should be addressed. The enactment of this proposed legislation would require

programming changes to VA's Long Term Solution computer processing system. Obviously development funding is not available in VA's fiscal year 2013 budget for the changes that would be necessitated by enactment of this legislation. If funding is not made available to support them, manual processes would be required, which could result in some decrease in timeliness and accuracy of Post-9/11 GI Bill claims. The effective date for the proposed legislation would be the first academic year after enactment, which is also problematic. VA estimates that it would require one year from date of enactment to make the system changes necessary to implement this bill.

VA estimates that if S. 515 were enacted, the costs to the Readjustment Benefits account would be $609 thousand in the first year, $3.6 million over 5 years, and $8.4 million over 10 years. There are no additional FTE or GOE costs associated with this proposal.

S. 572

S. 572, the "Veterans Second Amendment Protection Act," would provide that a person who is mentally incapacitated, deemed mentally incompetent, or unconscious for an extended period will not be considered adjudicated as a "mental defective" for purposes of the Brady Handgun Violence Prevention Act in the absence of an order or finding by a judge, magistrate, or other judicial authority that such person is a danger to himself, herself, or others. The bill would, in effect, exclude VA determinations of incompetency from the coverage of the Brady Handgun Violence Prevention Act. VA does not support this bill.

VA determinations of mental incompetency are based generally on whether a person, because of injury or disease, lacks the mental capacity to manage his or her own financial affairs. We believe adequate protections can be provided to these Veterans under current statutory authority. Under the [National Instant Criminal Background Check System] NICS Improvement Amendments Act of 2007, individuals whom VA has determined to be incompetent can have their firearms rights restored in two ways: First, a person who has been adjudicated by VA as unable to manage his or her own affairs can reopen the issue based on new evidence and have the determination reversed. When this occurs, VA is obligated to notify the Department of Justice to remove the individual's name from the roster of those barred from possessing and purchasing firearms. Second, even if a person remains adjudicated incompetent by VA for purposes of handling his or her own finances, he or she is entitled to petition VA to have firearms rights restored on the basis that the individual poses no threat to public safety. VA has relief procedures in place, and we are fully committed to continuing to conduct these procedures in a timely and effective manner to fully protect the rights of our beneficiaries.

Also, the reliance on an administrative incompetency determination as a basis for prohibiting an individual from possessing or obtaining firearms under Federal law is not unique to VA or Veterans. Under the applicable Federal regulations implementing the Brady Handgun Violence Prevention Act, any person determined by a lawful authority to lack the mental capacity to manage his or her own affairs is subject to the same prohibition. By exempting certain VA mental health determinations that would otherwise prohibit a person from possessing or obtaining firearms under Federal law, the bill

would create a different standard for Veterans and their survivors than that applicable to the rest of the population and could raise public safety issues.

The enactment of S. 572 would not impose any costs on VA.

S. 629

S. 629, the "Honor America's Guard-Reserve Retirees Act of 2013," would add to chapter 1, title 38, United States Code, a provision to honor as Veterans, based on retirement status, certain persons who performed service in reserve components of the Armed Forces but who do not have service qualifying for Veteran status under 38 U.S.C. § 101(2). The bill provides that such persons would be "honored" as Veterans, but would not be entitled to any benefit by reason of the amendment.

Under 38 U.S.C. § 101(2), Veteran status is conditioned on the performance of "active military, naval, or air service." Under current law, a National Guard or Reserve member is considered to have had such service only if he or she served on active duty, was disabled or died from a disease or injury incurred or aggravated in line of duty during active duty for training, or was disabled or died from any injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident during inactive duty training. S. 629 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for Veteran status.

VA recognizes that the National Guard and Reserves have admirably served this country and in recent years have played an even greater role in our Nation's overseas

conflicts. Nevertheless, VA does not support this bill because it represents a departure from active service as the foundation for Veteran status. This bill would extend Veteran status to those who never performed active military, naval, or air service, the very circumstance which qualifies an individual as a Veteran. Thus, this bill would equate longevity of reserve service with the active service long ago established as the hallmark for Veteran status.

VA estimates that there would be no additional benefit or administrative costs associated with this bill if enacted.

S. 674

S. 674, the "Accountability for Veterans Act of 2013," would require responses within a fixed period of time from the heads of covered Federal agencies when the Secretary of Veterans Affairs requests information necessary to adjudicate claims for benefits under laws administered by the Secretary. Covered agencies would include the Department of Defense (DoD), the Social Security Administration (SSA), and the National Archives and Records Administration (NARA).

The bill would require covered agencies to provide VA with requested Federal records within 30 days or submit to VA the reason why records cannot be obtained within 30 days, along with an estimate as to when the records could be furnished. If VA does not receive the records within 15 days after the estimated date, then VA would resubmit such request and the agency must, within 30 days, furnish VA with the records or provide an explanation of why the records have not been provided and an estimate of when the records will be provided. The bill would also require VA to provide notices to

the claimant regarding the status of the records requests and to submit a semiannual report to the Senate and House Committees on Veterans' Affairs regarding the progress of records requests for the most recent 6-month period.

VA appreciates this effort to accelerate the response times when VA requests records from Federal agencies that are necessary to adjudicate disability claims. However, VA opposes this bill because adequate measures are already in place to facilitate expeditious transfer of records from the identified covered agencies.

Under a recent Memorandum of Understanding (MOU) between VA and DoD, DoD provides VA, at the time of a Servicemember's discharge, a 100-percent-complete service treatment and personnel record in an electronic, searchable format. As this MOU applies to the 300,000 annually departing Active Duty, National Guard, and Reserve Servicemembers, it represents a landmark measure that will significantly contribute to VA's efforts to achieve its 125-day goal to complete disability compensation claims.

VA also continues to work with SSA to enhance information sharing through SSA's Web-based portal, Government to Government Services Online (GSO). VA and SSA officials confer weekly to develop strategies to allow VA to more quickly obtain SSA medical records needed for VA claims. As a result, SSA is now directly uploading electronic medical records into VBA's electronic document repository at several regional offices (RO). These improvements are reducing duplication and streamlining the records transmittal and review processes. VA will continue with a phased nationwide deployment of this initiative for our new paperless processing system, beginning with the San Juan Regional Office.

VA is also concerned about the requirement to notify the claimant of the status of records requests. Although these extra administrative steps would provide additional information to claimants, they also require more work of claims processors and thus reduce claims processing capacity in ROs. VA wishes to concentrate its resources on eliminating the disability claims backlog.

There are no mandatory costs associated with this proposal. The discretionary costs associated with this bill cannot be determined, given the speculative nature of estimating what additional actions would be required of other Federal agencies.

S. 690

S. 690, the "Filipino Veterans Fairness Act of 2013," would expand VA benefits provided for Filipino Veterans of World War II.

Current law at section 107 of title 38, United States Code, addresses Filipino Veterans of World War II and restricts entitlement to VA benefits as compared to U.S. military Veterans. Section 107 states that certain service is deemed not to be "active military, naval, or air service" for purposes of some VA benefits. Accordingly, that service does not satisfy the statutory definition of "Veteran" under section 101(2) of title 38, United States Code, and persons with such service are not eligible for VA benefits, except for those benefits specifically provided under section 107.

Section 2(a)(1) and (2) of S.690 would convert service in the Philippine Commonwealth Army, the Recognized Guerrillas, and the New Philippine Scouts into active military, naval, or air service for the purpose of VA benefits. Essentially, these

individuals would no longer be excluded from the statutory definition of “Veteran” in section 101(2) of title 38, United States Code.

Section 2(a)(3) would require VA to make determinations as to whether individuals claiming such service did in fact serve, taking into account any “alternative documentation” that the Secretary determines relevant. Although the Secretary would have discretion to determine what documentation is relevant, this requirement would be a departure from VA’s longstanding practice under section 3.203 of title 38, Code of Federal Regulations, of relying on service department records, which VA believes to be the most reliable source of service verification. This would add an evidence-intensive step to the processing of these claims that does not exist for other claims.

Section 2(a)(4) would relieve persons who become eligible for VA benefits under this law from the preclusive effect of a provision of the Filipino Veterans Equity Compensation (FVEC) law, which provided that acceptance of payments from the fund constituted a complete release of any claims against the United States based on the types of service qualifying for payment from the fund and described in subsection (a)(1) and (a)(2). In other words, those who were given FVEC payments could still file “traditional” claims for benefits under the expanded eligibility criteria of this bill.

Although VA appreciates and values the service of Filipino Veterans, VA cannot support S. 690 because it would effect a unique departure, for one group of claimants, from the sound and generally applicable procedures for verification of service and would accord such claimants potential entitlement to more benefits than other Veterans, insofar as they would be eligible to receive the full range of VA benefits in addition to the FVEC payments already received.

Based on the characterization of service as active service, this bill would confer statutory "Veteran" status under section 101(2) of title 38, United States Code, upon Filipino Veterans, entitling them to all VA benefits. This would not change the dollar amount of previously covered benefits ($.50 for each dollar authorized); however, full benefits under other programs, such as Education, Loan Guaranty, and those provided by VHA may be extended to certain Filipino Veterans who are not otherwise eligible. This has significant budgetary implications and raises issues of fairness and equity given that Filipino Veterans were authorized to receive payments from the FVEC fund. Section 2(a)(4) of this bill would rescind section 1002(h)(1) of the American Recovery and Reinvestment Act of 2009, the legislation which authorized FVEC payments. This Act provided that receipt of payment under the FVEC was a release of all claims against the United States. This bill would rescind that release notwithstanding the receipt of FVEC payments.

VA currently relies on service department records under section 3.203 of title 38, Code of Federal Regulations, to determine what service a claimant rendered. That policy and the resulting procedures would be invalidated by this bill for persons claiming this service. Section 2(a)(3) would require VA to consider alternative documentation as proof of service and make a determination on service verification. VA believes the current requirements and processes are both reasonable and important to maintain the integrity of this benefit program.

VA will provide its cost estimate for S. 690 for the record at a later time.

S. 695

S. 695 would amend section 322 of title 38, United States Code, to extend for 5 years (through FY 2018) the yearly $2 million appropriations authorization for VA to pay a monthly assistance allowance to disabled Veterans who are invited to compete for a slot on, or have been selected for, the U.S. Paralympic Team in an amount equal to the monthly amount of subsistence allowance that would be payable to the Veteran under chapter 31, title 38, United States Code, if the Veteran were eligible for and entitled to rehabilitation under such chapter. S. 695 also would amend section 521A of title 38 to extend for 5 years (through FY 2018) VA's appropriations authorization, with amounts appropriated remaining available without fiscal year limitation, for grants to United States Paralympics, Inc. (now the United States Olympic Committee) to plan, develop, manage, and implement an integrated adaptive sport program for disabled Veterans and disabled members of the Armed Forces. These Paralympic programs have experienced ongoing improvement and expansion of benefits to disabled Veterans and disabled Servicemembers, to include 115 Veterans qualifying for the monthly assistance allowance, and over 1,900 Paralympic grant events with over 16,000 Veteran participants during FY 2012. Under current law, both authorities will expire at the end of FY 2013.

VA supports extension of these authorities, but recommends further revisions, to improve the accessibility and equity of these programs, by extending monthly assistance allowances to disabled Veterans who are invited to compete for a slot on, or have been selected for, the United States Olympic Team (not just the Paralympic Team) or Olympic and Paralympic teams representing the American Samoa, Guam, Puerto

Rico, the Northern Mariana Islands, and the U.S. Virgin Islands, by authorizing grants to those Olympic and Paralympic sports entities, and by clarifying that the current authority to award grants is to promote programs for all adaptive sports and not just Paralympic sports.

VA estimates there would be no costs associated with implementing this bill.

S. 705

S. 705, the "War Memorial Protection Act of 2013," would add a new section 2115 to title 36, United States Code, Chapter 21, which governs the operations of the American Battle Monuments Commission (ABMC), to authorize the inclusion of religious symbols as part of any military memorial established or acquired by the U.S. government or military memorials established in cooperation with ABMC.

Presently, VA's role in ABMC's monument authority is limited to a single mention in 36 U.S.C. § 2105(b) that "[t]he Secretary of Veterans Affairs shall maintain works of architecture and art built by the Commission in the National Cemetery [Administration], as described in section 2400(b) of title 38." The only known ABMC facility on VA property is the Honolulu Memorial at the National Memorial Cemetery of the Pacific.

As this bill does not mention VA, nor does VA establish U.S. government or military memorials, VA defers to the ABMC regarding this bill.

S. 748

S. 748, the "Veterans Pension Protection Act," would amend sections 1522 and 1543 of title 38, United States Code, to establish in VA's pension programs a look-back

and penalty period of up to 36 months for those claimants who dispose of resources for less than fair market value that could otherwise be used for their maintenance.

Subsection (a) would amend the net worth limitations applicable to Veteran's pension in section 1522 of title 38, United States Code. If a Veteran (or a Veteran's spouse) disposes of assets before the date of the Veteran's pension claim, VA currently does not generally consider those assets as part of the Veteran's net worth, so long as the transfer was a gift to a person or entity other than a relative living in the same household. As amended, section 1522 would provide that when a Veteran (or Veteran's spouse) disposes of "covered resources" for less than fair market value on or after the beginning date of a 36-month look-back period, the disposal may result in a period of ineligibility for pension. In such cases, the law would provide for a period of ineligibility for pension beginning the first day of the month in or after which the resources were disposed of and which does not occur in any other period of ineligibility.

Subsection (a) would also provide a method for calculating the period of ineligibility for pension resulting from a disposal of covered resources at less than fair market value. The period of ineligibility, expressed in months, would be the total uncompensated value of all applicable covered resources disposed of by the Veteran (or the Veteran's spouse) divided by the maximum amount of monthly pension that would have been payable to the Veteran under section 1513 or 1521 without consideration of the transferred resources.

This subsection would also give VA authority to promulgate regulations under which VA would consider a transfer of an asset, including a transfer to an annuity, trust, or other financial instrument or investment, to be a transfer at less than fair market

value, if the transfer reduced the Veteran's net worth for pension purposes and VA determines that, under all the circumstances, the resources would reasonably be consumed for maintenance.

Subsection (a) would also provide that VA shall not deny or discontinue payment of pension under sections 1513 and 1521 or payment of increased pension under subsections (c), (d), (e), or (f) of section 1521 on account of a child based on the penalty and look-back periods established by sections (a)(2) or (b)(2) of the bill if: (1) the claimant demonstrates to VA that the resources disposed of for less than fair market value have been returned to the transferor; or (2) VA determines that the denial would work an undue hardship.

Finally, subsection (a) would require VA to inform Veterans of the asset transfer provisions of the bill and obtain information for making determinations pertaining to such transfers.

VA supports in principle the look-back and penalty-period provisions of subsection (a), but cannot support the bill as written because of the manner in which the length of the penalty period would be calculated. Our reading of the bill indicates that the method used to calculate the penalty period in proposed section 1522(a)(2)(E)(i), "the total, cumulative uncompensated value of all covered resources," could be unnecessarily punitive because VA might have determined that only a small portion of the covered resources should have been used for the Veteran's maintenance. VA has similar concerns with language in proposed section 1522(b)(2)(E)(i).

VA proposes, as an alternative, that the dividend under proposed section 1522(a)(2)(E)(i) be, "the total, cumulative uncompensated value of the portion of the

covered resources so disposed of by the veteran (or the spouse of the veteran) on or after the look-back date described in subparagraph (C)(i), that the Secretary determines would reasonably have been consumed for the Veteran's maintenance;". We propose that similar language be used in section 1522(b)(2)(E)(i).

Apart from the concerns expressed regarding the method for calculating the penalty period, VA supports this subsection of the bill, which would clarify current law by prescribing that pension applicants cannot create a need for pension by gifting assets that the applicant could use for the applicant's own maintenance. It would also clarify that an applicant cannot restructure assets during the 36-month period preceding a pension application through transfers using certain financial products or legal instruments, such as annuities and trusts. A 2012 Government Accountability Office study found that there is a growing industry that markets these products and instruments to vulnerable Veterans and survivors, potentially causing them harm. Subsection (a) would amend the law in a manner that will authorize VA's implementation of necessary program integrity measures.

Subsection (b) of S. 748 would amend the net worth limitations applicable to survivor's pension in section 1543 of title 38, United States Code. Subsection (b) of the bill would apply to surviving spouses and surviving children the same restrictions pertaining to disposal of covered resources at less than fair market value as would be applied to Veterans under subsection (a). This subsection would also provide that if the surviving spouse transferred assets during the Veteran's lifetime that resulted in a period of ineligibility for the Veteran, VA would apply any period of ineligibility remaining after the Veteran's death to the surviving spouse.

As with subsection (a), VA supports in principle the look back and penalty period provisions of subsection (b), but cannot support the bill as written because of the manner in which the length of the penalty period would be calculated. VA has the same concerns with the methodology language in proposed sections 1543(a)(2)(E)(i) and (b)(2)(E)(i) as expressed above pertaining to sections 1522(a)(2)(E)(i) and (b)(2)(E)(i).

VA opposes carrying over a penalty based on a transfer of assets made during the Veteran's lifetime to a pension claim filed by a surviving spouse because it could be potentially punitive. Under proposed paragraph (a)(2)(C) of section 1543, VA would apply the same 36-month look-back period to surviving spouses that it applies to Veterans. If the Veteran died soon after his or her pension claim was filed and the surviving spouse filed a claim for pension within 36 months of the Veteran's pension claim, VA would evaluate resource transfers that the surviving spouse made during the Veteran's lifetime under section 1543(a)(2)(C). However, if the surviving spouse did not claim pension until many years after the Veteran's pension claim or many years after the Veteran's death, under proposed section 1543(a)(2)(F), VA would apply the remainder of any penalty period assessed the Veteran based on a spouse's pre-death transfer of assets. In applying a penalty period based on a very old transaction to a new pension claim, this provision could be viewed as imposing a much longer look-back period for surviving spouses than that proposed for Veterans. Because VA will evaluate the surviving spouse's claim for pension on its own merits, VA proposes that the penalty-period carry-over provisions be eliminated.

Subsection (c) would provide that the amendments to section 1522(a)(2), (b)(2), and (c), and section 1543(a)(2), (a)(4), (b)(2), and (c) prescribed in the bill would take

effect one year after the date of enactment and would apply to applications filed after the effective date as well as to any pension redetermination occurring after the effective date.

Subsection (d) provides for annual reports from VA to Congress, beginning not later than two years after the date of enactment, as to: (1) the number of individuals who applied for pension; (2) the number of individuals who received pension; and (3) the number of individuals whose pension payments were denied or discontinued because covered resources were disposed of for less than fair market value.

VA would not oppose inclusion of subsections (c) and (d) if the bill were amended as we recommend.

We lack sufficient data to estimate benefit or administrative costs associated with this proposal.

S. 893

S. 893, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2013," would require the Secretary of Veterans Affairs to increase, effective December 1, 2013, the rates of disability compensation for service-disabled Veterans and the rates of dependency and indemnity compensation (DIC) for survivors of Veterans. This bill would increase these rates by the same percentage as the percentage by which Social Security benefits are increased effective December 1, 2013. The bill would not, however, account for the expiration at the end of this fiscal year of the feature in current law that rounds down to the next lower whole dollar amount those increases not in

whole dollars. The bill would also require VA to publish the resulting increased rates in the Federal Register.

VA strongly supports annual cost-of-living adjustments (COLA) for these important compensation programs because they express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children and would ensure that the value of their well-deserved benefits will keep pace with increases in consumer prices. However, VA recommends the current "round down" statutory provisions be extended. We recommend amending sections 1303(a) and 1104(a) of title 38, United States Code, to provide a 5-year extension of the round-down provisions of the computation of the COLA for service-connected disability compensation and DIC. Public Law 108-183 extended the ending dates of these provisions to 2013. The extension for the COLA round down provision beyond the 2013 expiration date results in cost savings. The benefit savings to round down the FY 2014 COLA are estimated to be $41.6 million in FY 2014, $712.5 million for 5 years, and $2.3 billion over 10 years as a result of the compounding effects of rounding down the COLA in subsequent years.

S. 894

S. 894 would amend section 3485(a)(4) of title 38, United States Code, extending for 3 years (through June 30, 2016) VA's authority to provide work-study allowances for certain already-specified activities. Under current law, the authority is set to expire on June 30, 2013.

Public Law 107-103, the "Veterans Education and Benefits Expansion Act of 2001," established a 5-year pilot program under section 3485(a)(4) that expanded qualifying work-study activities to include outreach programs with State Approving Agencies, an activity relating to the administration of a National Cemetery or a State Veterans' Cemetery, and assisting with the provision of care to Veterans in State Homes. Subsequent public laws extended the period of the pilot program and, most recently, section 101 of Public Law 111-275, the "Veterans' Benefits Act of 2010," extended the sunset date from June 30, 2010 to June 30, 2013.

S. 894 also would add a provision to section 3485(a) that would authorize for a 3-year period from June 30, 2013 to June 30, 2016, work-study activities to be carried out at the offices of Members of Congress for such Members. Work-study participants would distribute information about benefits and services under laws administered by VA and other appropriate governmental and non-governmental programs to Servicemembers, Veterans, and their dependents. Work-study participants would also prepare and process papers and other documents, including documents to assist in the preparation and presentation of claims for benefits under laws administered by VA.

Finally, S. 894 would require VA, not later than June 30 each year beginning with 2014 and ending with 2016, to submit a report to Congress on the work-study allowances paid during the most recent 1-year period for qualifying work-study activities. Each report would include a description of the recipients of the allowances, a list of the locations where qualifying work-study activities were carried out and a description of the outreach conducted by VA to increase awareness of the eligibility of such work-study activities for work-study allowances.

VA does not oppose legislation that would extend the current expiration date of the work-study provisions to June 30, 2016. However, we would prefer that the legislation provide a permanent authorization of the work-study activities, rather than extending repeatedly for short time periods.

VA has no objection to work-study participants conducting and promoting the outreach activities and services contemplated by the bill. We also have no objection to work-study participants assisting in the preparation and processing of papers and other documents, "including documents to assist in the preparation and presentation of claims for VA benefits" under the proposed new section. However, work-study participants would be subject to the limitations found in chapter 59 of title 38 on representing claimants for VA benefits.

VA does not oppose submitting annual reports to Congress regarding the work-study program.

S. 922

Section 3 of S. 922, the "Veterans Equipped for Success Act of 2013" would require VA, in collaboration with the Department of Labor (DOL), to create a 3-year pilot program in four locations of VA's choosing to assess the feasibility and advisability of offering career transition services to eligible Veterans. Such services would provide work experience in the civilian sector, increase participants' marketable skills, assist them to obtain gainful employment, and assist in integrating eligible individuals into their local communities. These services would be available to unemployed or underemployed Veterans discharged under conditions other than dishonorable and to

members of the National Guard or Reserve Component who served at least 180 days on active-duty within 2 years of applying for the program. Not more than 50,000 eligible individuals would participate in this pilot program concurrently, and the program would be limited to participants between 18 and 30 years of age.

Career transition services offered would include:

- Internships -- Participants would receive an internship on a full-time basis with an eligible employer as determined by VA. Among other restrictions, eligible employers would not include state or Federal government agencies, those that derive 75 percent or more of their revenue from state and/or Federal government, or employers that unsatisfactorily participated in the pilot previously. Such internships would last for 1 year, and interns would be paid by VA at the greater rate of an amount consistent with the minimum wage protections of the Fair Labor Standards Act or if the intern was receiving it, the rate of unemployment compensation, up to $30,000. For the purpose of health benefits and on-the-job injuries, interns would be considered VA employees.
- Mentorship and job-shadowing -- Employers would be required to provide interns at least one mentor who would provide job-shadowing and career-counseling opportunities throughout the internship.
- Volunteer opportunities -- Participants in the pilot program would be required to participate each month in a qualified volunteer activity, as determined by VA. Such volunteer activities could include outreach, service at an institution of higher learning or for a recognized Veterans Service Organization, and/or assistance provided to or for the benefit of Veterans in a State home or VA medical facility.

- Professional skill workshops -- As part of the pilot, VA would be required to provide workshops to interns to develop and build their professional skills.
- Skills assessment -- VA would be required to provide skills assessment testing to participants to help them select an appropriate place to perform their internship.
- Additional services -- VA would provide, in addition to the services outlined above, career and job counseling, job-search assistance, follow-up services, and reimbursement of transportation expenses up to 75 miles.

VA could provide grants for up to four non-profit entities to administer this pilot. The bill would require VA and DOL to conduct a joint outreach campaign to advertise the pilot. VA would be authorized to develop an awards system by which exemplary employers and interns might be recognized.

VA would provide a report to Congress each year of the pilot containing an evaluation of the program, information about program participants and their internships, and intern job-placement rates, including wages and nature of employment among other data.

VA supports initiatives to assist Veterans in obtaining meaningful employment. While VA appreciates the intent underlying this bill, VA has several concerns with the program outlined in this legislation, including the following:

First, the requirement that the internship pilot begin in January 2014 would create a significant challenge. VA would have less than 1 year from enactment to, in addition to other tasks: conduct a study of Veteran unemployment and population densities; select four pilot locations based on that study; create eligibility criteria for both employers and interns; solicit and approve applications from employers; once

employers are identified, solicit and approve applications from interns; and match interns with employers. These tasks would require extensive coordination between VA and other stakeholders. Second, VA points out that this bill lacks specific information on the scope of the pilot program. The bill does not specify how many interns should be placed or how those interns should be dispersed across the four pilot locations. Additionally, the bill requires that participants be between the ages of 18 and 30. VA notes that the most recent data issued by the Bureau of Labor Statistics shows that Veterans aged 18 to 30 comprise less than 20 percent of currently unemployed Veterans. The third challenge posed by this bill is the requirement that VA establish criteria to determine an employer's eligibility to participate in the pilot. Among other factors, VA must consider prior investigations by the Federal Trade Commission (FTC), the employer's standing with state's business bureaus, tax delinquency, and the employer's reliance on state and Federal governments as a source of revenue. VA would need to develop agreements with the FTC, Internal Revenue Service, and DOL to acquire this data. Additionally, the bill requires VA to consider whether interns comprise over 10 percent of an employer's workforce when placing additional interns with that employer. The language of the bill is unclear, however, on whether 10 percent is a cap or simply a factor to consider when placing interns in a workplace.

It would be challenging and costly for VA to create a payment system as described in the bill. The bill would require VA to issue payments to interns, which would require VA to determine hours worked in a given pay period, calculate salary earned, and issue payments. VA's current payment systems are designed to provide benefits payments in pre-determined increments on a monthly schedule. The closest

analogous payment structure VA currently uses that could fulfill the requirements of the bill is our work-study process. Veterans who participate in the work-study program submit hard-copy time sheets, and VA performs a manual calculation of benefits earned and issues payment. In order to issue payments as required by this bill, VA would need an entirely new electronic payment system which would require both time and funding to develop.

Most of the cost of administering the pilot would be incurred "up front" by VA. VA would need funding to significantly expand its full-time, employment-focused staff, develop a new IT system to provide interns' payments, and process applications from both employers and Veterans. This issue would be further complicated by the legislation's restriction that no more than 5 percent of any appropriations made be used to administer the pilot. At the outset, VA would have no data from which to project how many Veterans may sign up for the pilot, and therefore would not know how much funding VA could apply towards administering the program. Because we cannot predict the scope and size of the program at its outset, The Administration has already undertaken numerous efforts to address unemployment among our Nation's veterans. Online resources including the Veterans Job Bank and My Next Move for Veterans help match unemployed veterans with jobs best suited to their unique skill sets. With the new Veterans Gold Card, Post-9/11 veterans are entitled to enhanced services and personalized case management, assessment, and counseling at the roughly 3,000 One-Stop Career Centers located nationwide. VA and DOL are currently piloting a newly enhanced Transition Assistance Program designed to make sure newly separating servicemembers never become unemployed.

VA will provide a cost estimate for S. 922 at a later date.

S. 928

S. 928, the "Claims Processing Improvement Act of 2013" would amend title 38, United States Code, to improve the processing of claims for compensation under laws administered by the Secretary of VA, and for other purposes. VA will provide later for the record its views on sections 101,102, 104, 105, 106, and 203 of the draft bill.

Currently, section 5103A(c)(2) of title 38, United States Code, requires VA, when requesting records on a claimant's behalf from a Federal department or agency, to continue to request records until VA obtains them or it is reasonably certain that such records do not exist or that further efforts to obtain them would be futile. VA is rarely able to determine with certainty that particular records do not exist or that further efforts to obtain them would be futile. Under current law, VA regional offices experience significant challenges and delays in their attempts to obtain certain non-VA Federal records, particularly service treatment records for National Guard and Reserve members who have been activated. While VA is currently working with other Federal agencies to improve the process of procuring non-VA federal records, past efforts to obtain records from other government agencies have significantly delayed adjudication of pending disability claims.

Section 103 of this draft bill would provide that, when VA attempts to obtain records from a Federal department or agency other than a component of VA itself, it shall make not fewer than two attempts to obtain the records, unless the records are obtained or the response to the first request makes evident that a second request would

be futile. Section 103 would also ensure that if any relevant record requested by VA from a Federal department or agency before adjudication is later provided, the relevant record would be treated as though it was submitted as of the date of the original filing of the claim. This provision would streamline the process for obtaining non-VA Federal records, would further balance the responsibilities of VA and Veterans to obtain evidence in support of a claim, and would allow VA to better address its pending inventory of disability claims. Section 103 would provide a more feasible and realistic standard in this time of limited resources and burgeoning claim inventory, which would help ensure valuable resources are focused most effectively on what will make a difference for faster more accurate adjudications of Veterans' claims.

VA supports section 103 of this bill, which is similar to one of VA's legislative proposals in the FY 2014 budget submission.

No benefit costs or savings would be associated with this section.

Section 104 would amend section 5902(a)(1) of title 38, United States Code, to include "Indian tribes" with the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, and the Veterans of Foreign Wars as an enumerated organization whose representatives may be recognized by the Secretary in the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

VA does not support section 104 of S. 928. With the exception of the American National Red Cross, which provides services generally as a charitable organization, the organizations listed in current section 5902(a)(1) have as a primary purpose serving Veterans. Indian tribes are not charitable organizations, nor do they have as a primary

purpose serving Veterans; therefore, VA does not believe Indian tribes should be named among these organizations in the statute. Under this bill as drafted, all Indian tribes, regardless of their size, capability, and resources to represent VA claimants, would essentially receive similar treatment as organizations recognized by VA for the purpose of providing representation to VA claimants. In other words, under section 14.629(a) of title 38, Code of Federal Regulations, Indian tribes could certify to VA that certain members are qualified to represent claimants before VA for the purpose of obtaining VA accreditation for those members, despite the tribes not meeting all the requirements for recognition under section 14.628 of title 38, Code of Federal Regulations.

Pursuant to the authority granted in section 5902(a), VA has established in section 14.628 of title 38, Code of Federal Regulations, the requirements for recognition of organizations to assist claimants in the preparation, presentation, and prosecution of claims under laws administered by the Secretary. Under this regulation, the organization must, among other requirements, have as a primary purpose serving veterans, demonstrate a substantial service commitment to Veterans, and commit a significant portion of its assets to Veterans' services. VA believes these are necessary characteristics of an organization whose representatives will be recognized in providing such assistance to Veterans. Indian tribes necessarily engage in a much broader scope of governance activities and operations and, therefore, generally do not have the Veteran-specific focus that is common to the organizations (save for the American Red Cross) recognized pursuant to section 5902(a)(1) of title 38, United States Code, and the VA regulations implementing that statute.

Currently, a member of an Indian tribe may request accreditation to assist Veterans in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney under section 14.629(b) of title 38, Code of Federal Regulations, or as a representative of a currently recognized Veterans Service Organization. Thus, a member of an Indian tribe may be individually recognized by the Secretary to assist Veterans despite "Indian tribes" not being included among the enumerated organizations in section 5902(a)(1) of title 38, United States Code.

Section 201 of the bill would amend section 7105(b)(1) of title 38, United States Code, to require persons seeking appellate review of a VA decision to file a notice of disagreement (NOD) within 180 days from the date VA mails such decision to the claimant. Currently, persons challenging a decision of a VA agency of original jurisdiction (AOJ) have one year from the date the AOJ mails the decision to initiate an appeal to the Board of Veterans' Appeals (Board) by filing a NOD. This provision would reduce the time period for initiating appellate review from one year to 180 days.

The intent behind this provision is to allow VA to more quickly resolve claims and appeals. Currently, VA must wait up to one year to determine if a claimant disagrees with a decision on a claim for benefits. If a claimant waits until the end of the 1-year period to file a NOD, VA is often required to re-develop the record to ensure the evidence of record is up to date. Data support the conclusion that such late-term development delays the resolution of the claim. If the period in which to file a NOD were reduced, VA could more quickly finalize the administrative processing of claims not being appealed and focus resources on the processing of new claims and appeals.

Accordingly, adoption of this proposal would allow VA to more actively manage cases and work toward a faster resolution of claims and appeals.

Because most claimants are able to quickly determine if they are satisfied with VA's decision on their claims and because the NOD is a relatively simple document, enactment of this provision would not adversely affect claimants for VA benefits. The average filing time for NODs demonstrates that most claimants file their NOD shortly after receiving notice of VA's decision, and, consequently, claimants would not be adversely affected by this amendment.

VA supports this provision. VA submitted a similar proposal with the FY 2014 budget request. While this proposal is clearly a step in the right direction, VA believes that further changes are needed in what currently is an extraordinarily lengthy and cumbersome appellate process in order to provide Veterans with timely resolution of their appeals. VA believes there is a need to further shorten the timeframe for Veterans to initiate appellate review to 60 days. Data show that most appeals are filed within the first 30 days following notice to a claimant of VA's decision on a claim. We therefore believe this 60-day time period would still protect Veterans' rights to appeal VA's decisions while bringing the appeal filing period more in line with that of Federal district courts and the Social Security Administration, which allows 60 days for appeal of the initial agency decision.

This proposal has no measurable monetary costs or savings. However, VA estimates that enactment of the proposal would result in more expeditious adjudication of claims because VA would not have to wait one year from the date of an adverse decision to determine whether a claimant intended to file an appeal. Under this

proposal, VA would have to wait only 180 days for such determination and could therefore more timely process the appeal.

Section 202 would allow for greater use of video conference hearings by the Board, while still providing Veterans with the opportunity to request an in-person hearing if they so elect. This provision would apply to cases received by the Board pursuant to a NOD submitted on or after the date of the enactment of the Act. VA fully supports section 202 as drafted, as this provision would potentially decrease hearing wait times for Veterans, enhance efficiency within VA, and better focus Board resources toward issuing more final decisions.

The Board has historically been able to schedule video conference hearings more quickly than in-person hearings, saving valuable time in the appeals process for Veterans who elect this type of hearing. In FY 2012, on average, video conference hearings were held almost 100 days sooner than in-person hearings. Section 202 would allow both the Board and Veterans to capitalize on these time savings by giving the Board greater flexibility to schedule video conference hearings than is possible under the current statutory scheme.

Historical data also shows that there is no statistical difference in the ultimate disposition of appeals based on the type of hearing selected. Veterans who had video conference hearings had an allowance rate for their appeals that was virtually the same as Veterans who had in-person hearings, only Veterans who had video conference hearings were able to have their hearings scheduled much more quickly. Section 202 would, however, still afford Veterans who want an in-person hearing with the opportunity to specifically request one.

Enactment of section 202 could also lead to more final decisions for Veterans as a result of increased productivity at the Board. Time lost due to travel and time lost in the field due to appellants failing to show up for their hearing would be greatly reduced, allowing Veterans Law Judges (VLJs) to better focus their time and resources on issuing decisions. The time saved for VLJs could translate into additional final Board decisions for Veterans.

Major technological upgrades to the Board's video conference hearing equipment over the past several years have resulted in the Board being well-positioned for the enactment of section 202. These upgrades include the purchase of high-definition video equipment, a state-of-the art digital audio recording system, implementation of a virtual hearing docket, and significantly increased video conference hearing capacity. These upgrades also include expanding the video conferencing system to other strategic satellite sites in the continental United States, Puerto Rico, Guam, American Samoa, and the Philippines to support Veterans living in remote areas. Section 202 would allow the Board to better leverage these important technological enhancements.

In short, section 202 would result in shorter hearing wait times, better focus Board resources on issuing more decisions, and provide maximum flexibility for both Veterans and VA, while fully utilizing recent technological improvements. VA therefore strongly endorses this proposal.

Section 301 of the bill would extend the authority currently provided by section 315(b) of title 38, United States Code, to maintain the operations of VA's Manila RO from December 31, 2013, to December 31, 2014. Maintaining an RO in the Philippines has two principal advantages. First, it is more cost effective to maintain the facility in

Manila than it would be to transfer its functions and hire equivalent numbers of employees to perform those functions on the U.S. mainland. Because the Manila RO employs mostly foreign nationals who receive a lower rate of pay than U.S. Government employees, transferring that office's responsibilities to a U.S. location would result in increased payroll costs. Second, VA's presence in Manila significantly enhances its ability to manage potential fraud. In an FY 2002 study of Philippine benefit payments, the VA Inspector General stated: "VA payments in the Philippines represent significant sums of money. That, coupled with extreme poverty and a general lack of economic opportunity, fosters an environment for fraudulent activity." Relocation of claims processing for VA benefits arising from Philippine service would result in less control of potential fraud. VA would lose the expertise the Manila staff applies to these claims and would need time to develop such expertise at a mainland site. Relocation would also diminish the RO's close and effective working relationship with the VHA's Outpatient Clinic, which is essential for the corroboration of the evidentiary record. Based on these factors, VA could not maintain the same quality of service to the beneficiaries and the U.S. Government if claims processing were moved outside of the Philippines.

VA supports this provision and submitted a similar proposal with the FY 2014 budget request. VA's version of the proposal would extend operating authority for 2 years rather than 1 year.

There would be no significant benefits costs or savings associated with this proposal.

Section 302 of the draft bill would amend section 1156(a)(3) of title 38, United States Code, to extend from 6 months to 18 months the deadline after separation or

discharge from active duty by which VA must schedule a medical examination for certain Veterans with mental disorders.

Section 1156(a)(3) currently requires VA to schedule a medical examination not later than 6 months after the date of separation or discharge from active duty for each Veteran "who, as a result of a highly stressful in-service event, has a mental disorder that is severe enough to bring about the veteran's discharge or release from active duty." However, an examination a mere six months after discharge may lead to premature conclusions regarding the severity, stability, and prognosis of a Veteran's mental disorder. Six months is a relatively short period of treatment, and the stresses of active-duty trauma and the transition to civilian life may not fully have manifested themselves after 6 months. An examination conducted up to 18 months after discharge is more likely to reflect an accurate evaluation of the severity, stability, and prognosis of a Veteran's mental disorder.

VA supports section 302 of the bill, which is identical to one of VA's legislative proposals in the FY 2014 budget submission.

This provision will not result in cost savings or benefits.

Section 303 of the draft bill would amend section 1541(f)(1)(E) of title 38, United States Code, to extend eligibility for death pension to certain surviving spouses of Persian Gulf War Veterans who were married for less than 1 year; had no child born of, or before, the marriage; and were married on or after January 1, 2001.

Section 1541 authorizes the payment of pension to the surviving spouse of a wartime Veteran who met certain service requirements or of a Veteran who was entitled to receive compensation or retirement pay for a service-connected disability when the

Veteran died. Section 1541(f) prohibits the payment of such a pension unless: (1) the surviving spouse was married to the Veteran for at least 1 year immediately preceding the Veteran's death; (2) a child was born of the marriage or to the couple before the marriage; or (3) the marriage occurred before a delimiting date specified in section 1541(f)(1). The current delimiting date applicable to a surviving spouse of a Gulf War Veteran is January 1, 2001. Section 303 would eliminate those restrictions and extend that delimiting date.

The Persian Gulf War Veterans' Benefits Act of 1991 established the delimiting marriage date of January 1, 2001, when pension eligibility was initially extended to surviving spouses of Veterans of the Gulf War. However, due to the duration of the Gulf War, this date is no longer consistent with the other marriage delimiting dates in section 1541(f)(1). Generally, these delimiting dates are set for the day following 10 years after the war or conflict officially ended, (e.g., the Korean War officially ended on January 31, 1955; the applicable delimiting date is February 1, 1965). As provided in section 101(33) of title 38, United States Code, the official Persian Gulf War period, which began on August 2, 1990, is still ongoing and will end on a date to be prescribed by Presidential proclamation or law. Revising the marriage delimiting date for surviving spouses of Gulf War Veterans to 10 years and 1 day after the end of the war as prescribed by Presidential proclamation or law would make that delimiting date consistent with the other dates in section 1541(f)(1) and would prevent any potentially incongruous results in death pension claims based on Gulf War service compared to claims based on other wartime service. Furthermore, because the Gulf War has not yet ended, the language in this amendment would ensure that a standing 10-year qualifying

period will be in place for surviving spouses seeking pension based on Gulf War service.

VA supports section 303 of the bill, which is identical to one of VA's legislative proposals in the FY 2014 budget submission.

There would be no significant benefit costs or savings associated with this proposal.

Section 304 of the draft bill would amend section 5110(l) of title 38, United States Code, to make the effective date provision consistent with section 103(e), which provides: "The marriage of a child of a veteran shall not bar recognition of such child as the child of the veteran for benefit purposes if the marriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Secretary determines that the annulment was secured through fraud by either party or collusion." Section 103(e) implies that a child's marriage that is not void and has not been annulled does bar recognition of the child as a child of the Veteran for VA benefit purposes, even if the marriage was terminated by death or divorce. In fact, section 8004 of the Omnibus Budget Reconciliation Act of 1990 repealed a prior provision in section 103(e) that "[t]he marriage of a child of a veteran shall not bar the recognition of such child as the child of the veteran for benefit purposes if the marriage has been terminated by death or has been dissolved by a court with basic authority to render divorce decrees unless the Veterans' Administration determines that the divorce was secured through fraud by either party or collusion."

Nevertheless, no amendment has been made to the corresponding effective date provision in section 5110(l), which still provides an effective date for an award or

increase in benefits “based on recognition of a child upon termination of the child’s marriage by death or divorce.” Section 304 of the bill would delete that provision from section 5110(l) and make section 5110(l) consistent with section 103(e).

VA supports section 304 of the bill, which is identical to one of VA’s legislative proposals in the FY 2014 budget submission.

There would be no costs or savings associated with this technical amendment.

Section 305 of the draft bill would amend section 704(a) of the Veterans Benefits Act of 2003, Public Law 108-183, which authorizes VA to provide for the conduct of VA compensation and pension examinations by persons other than VA employees by using appropriated funds other than mandatory funds appropriated for the payment of compensation and pension. In accordance with section 704(b), VA exercises this authority pursuant to contracts with private entities. However, under section 704(c), as amended by section 105 of the Veterans’ Benefits Improvement Act of 2008, by section 809 of the Veterans’ Benefits Act of 2010, and by section 207 of the VA Major Construction Authorization and Expiring Authorities Extension Act of 2012, this authority will expire on December 31, 2013.

Section 305(a) of the bill would extend VA’s authority to provide compensation and pension examinations by contract examiners for another year. The continuation of this authority is essential to VA’s ability to continue to provide prompt and high-quality medical disability examinations for our Veterans. If this authority is allowed to expire, VA will not be able to provide contracted disability examinations to Veterans in need of examinations. Extending the authority for another year would enable VA to effectively utilize supplemental and other appropriated funds to respond to increasing demands for

medical disability examinations. Contracting for examinations is essential to VA's objective of ensuring timely adjudication of disability compensation claims and allows the VHA to better focus its resources on providing needed heath care to Veterans.

Section 305(b) of the bill would require VA to provide to the House and Senate Committees on Veterans' Affairs a report within 180 days of enactment of the bill. The report would have to include extensive information regarding medical exams furnished by VA from FY 2009 to FY 2012. Similarly, section 305(c) would require VA to provide a report to the same committees in the same timeframe regarding Acceptable Clinical Evidence.

VA supports section 305(a) of this bill and submitted a similar proposal with the FY 2014 budget request. VA's version of the proposal would extend operating authority for five years rather than one year.

VA does not oppose the reporting requirements of sections 305(b) and 305(c); however, one year rather than 180 days would provide adequate time to compile the data needed to comply with the detailed reporting requirements and to adequately coordinate review of the report before submission.

No benefit or administrative costs would result from enactment of this provision.

S. 939

Section 1 of this draft bill would amend section 7103 of title 38, United States Code, to provide that the Board of Veterans' Appeals (Board) or Agency of Original Jurisdiction (AOJ) shall treat any document received from a person adversely affected by a decision of the Board expressing disagreement with that Board decision as a

motion for reconsideration when that document is submitted to the Board or AOJ not later than 120 days after the date of the Board decision and an appeal with the United States Court of Appeals for Veterans Claims (Veterans Court) has not been filed. The section would further explain that a document will not be considered as a motion for reconsideration if the Board or AOJ determines that the document expresses an intent to appeal the decision to the Court and forwards the document to the Court in time for receipt before the appeal filing deadline. As explained below, VA has several concerns with the draft legislation.

Proposed new section 7103(c)(1) would state that a document filed within 120 days of a Board decision that "expresses disagreement with such decision" shall be treated as a motion for reconsideration. We believe this draft standard would prove too vague and would result in an excessive amount of uncertainty for reviewers determining how to classify a piece of correspondence. The Board and AOJ receive a significant amount of correspondence on a regular basis. The fact that a piece of correspondence is received at the Board or AOJ after a Board decision does not necessarily mean that the appellant intends to challenge that Board decision, nor does it necessarily indicate an expression of disagreement with a Board decision. An appellant could be contacting VA to challenge a Board decision by way of a motion to vacate the decision, a motion to revise the decision based on clear and unmistakable error, or a motion for reconsideration – all types of motions that imply some level of disagreement. Additionally, an appellant could be contacting VA after a Board decision to file a new claim, reopen an old claim, check on the status of a claim, or simply express a generalized complaint, without intending to initiate an appeal. In order for Board or AOJ

correspondence reviewers to be able to properly identify an appellant's intent from a piece of correspondence, it is not unreasonable to require the appellant to articulate the purpose of his or her correspondence and the result he or she is seeking. Allowing an appellant to seek reconsideration by merely expressing disagreement with a final Board decision would not provide reviewers with sufficient ability to distinguish whether the appellant is seeking a motion for reconsideration or some other legitimate action, such as a motion to vacate a Board decision or a motion to challenge based on clear and unmistakable error. This broad standard would, in turn, result in greater uncertainty and delay in an already heavily burdened system while benefiting few Veterans. The current proposal's broad language will likely lead to reconsideration rulings in cases where the appellant was not seeking further appellate review and would occupy limited adjudicative resources, thus delaying the claims of other Veterans.

Under section 20.1001(a) of title 38, Code of Federal Regulations, a motion for reconsideration must "set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration." Further, the discretion of the Chairman or his delegate to grant reconsideration of an appellate decision is limited to the following grounds: (a) upon allegation of obvious error of fact or law; (b) upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or (c) upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant. Although VA construes all claimants' filings liberally,

under these governing regulations, a document that expresses general disagreement with a Board decision would not be construed a motion for reconsideration.

The draft legislation would, however, require VA to consider such general statements of dissatisfaction or disagreement to be motions for reconsideration, thereby considerably broadening and weakening the standard required to render a Board decision nonfinal. This could cause confusion among correspondence reviewers. In fact, the standard contemplated by the draft legislation would be lower than the standard used to determine whether a document is a notice of disagreement (NOD) with an AOJ decision, pursuant to section 20.201 of title 38, Code of Federal Regulations. Moreover, the language of proposed new section 7103(c)(1) indicates that the lower standard would only apply to documents submitted within the 120-day period for appeal to the Veterans Court. This would essentially result in two standards being applied to motions for reconsideration based on whether the appellant submits the motion before or after the 120-day appeal period. Such different standards would understandably result in confusion in determining whether a document is a reconsideration motion.

Proposed new section 7103(c)(2) indicates that VA will not treat a submitted document as a motion for reconsideration if VA determines that the document expresses an intent to appeal the Board decision to the Veterans Court and forwards that document to the court, and the court receives the document within the statutory deadline to appeal the Board decision. The draft legislation appears to make VA's determination of whether a document is a motion for reconsideration or a notice of appeal (NOA) to the Veterans Court partially contingent upon whether VA forwards the document to the court and the court timely receives it. Yet court decisions have found

equitable tolling may apply in situations where VA timely received a misfiled NOA, but the Veterans Court did not timely receive it. The bill would give VA the authority to potentially take away a course of action from an appellant. The legislation would essentially provide VA with the authority to determine whether a document is an NOA based in part on whether VA can timely forward the document to the Veterans Court. This would prevent an appellant who timely misfiled an NOA with VA from having an opportunity to have the court determine whether equitable tolling applies and whether the court will accept the misfiled submission as timely. Further, an appellant may have been seeking to file a motion for reconsideration with the Board. However, if VA determines that a document is an NOA instead of a motion for reconsideration, VA may inadvertently prevent an appellant from having the Board consider his or her motion for reconsideration. Consequently, the proposed legislation would pose a number of legal and practical difficulties.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. I would be pleased to respond to questions you or the other Members may have.