

HEARING TO CONSIDER PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

JULY 13, 2022

Printed for the use of the Committee on Veterans' Affairs



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

SENATE COMMITTEE ON VETERANS' AFFAIRS

JON TESTER, Montana, *Chairman*

PATTY MURRAY, Washington	JERRY MORAN, Kansas, <i>Ranking Member</i>
BERNARD SANDERS, Vermont	JOHN BOOZMAN, Arkansas
SHERROD BROWN, Ohio	BILL CASSIDY, Louisiana
RICHARD BLUMENTHAL, Connecticut	MIKE ROUNDS, South Dakota
MAZIE K. HIRONO, Hawaii	THOM TILLIS, North Carolina
JOE MANCHIN III, West Virginia	DAN SULLIVAN, Alaska
KYRSTEN SINEMA, Arizona	MARSHA BLACKBURN, Tennessee
MARGARET WOOD HASSAN, New Hampshire	KEVIN CRAMER, North Dakota
	TOMMY TUBERVILLE, Alabama

TONY MCCLAIN, *Staff Director*

JON TOWERS, *Republican Staff Director*

C O N T E N T S

JULY 13, 2022

SENATORS

	Page
Tester, Hon. Jon, Chairman, U.S. Senator from Montana	1
Blackburn, Hon. Marsha, U.S. Senator from Tennessee	2
Rounds, Hon. Mike, U.S. Senator from South Dakota	7
Hassan, Hon. Margaret Wood, U.S. Senator from New Hampshire	9
Tuberville, Hon. Tommy, U.S. Senator from Alabama	10
Blumenthal, Hon. Richard, U.S. Senator from Connecticut	11
Sullivan, Hon. Dan, U.S. Senator from Alaska	19

WITNESSES

Panel I

Beth Murphy, Executive Director, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs; accompanied by Jocelyn Moses, Senior Principal Advisor, Compensation Service; and James Ruhlman, Deputy Director for Program Management, Education Service	2
---	---

Panel II

Kristina Keenan, Associate Director, National Legislative Service, Veterans of Foreign Wars	13
Michael McLaughlin, Legislative Chairman, National Association of County Veterans Service Officers	15
Anne Meehan, Assistant Vice President, Government Relations, American Council on Education	16

APPENDIX

HEARING AGENDA

List of Pending Bills	27
-----------------------------	----

PREPARED STATEMENTS

Beth Murphy, Executive Director, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs	31
Kristina Keenan, Associate Director, National Legislative Service, Veterans of Foreign Wars	60
Michael McLaughlin, Legislative Chairman, National Association of County Veterans Service Officers	67
Anne Meehan, Assistant Vice President, Government Relations, American Council on Education	70

IV

QUESTIONS FOR THE RECORD

	Page
Department of Veterans Affairs response to questions asked during the hearing by:	
Hon. Jon Tester	75
Hon. Tommy Tuberville	78
Hon. Mike Rounds	81
Attachment for Question 3 response—Ramseyer of Statutory Amendments	87
Hon. Marsha Blackburn	98
Attachment for Question 1 response—Disability Rating Inventory By Days Chart	99
Hon. Richard Blumenthal	100
Department of Veterans Affairs response to questions submitted by:	
Hon. Jon Tester	102
Hon. John Boozman	103
Hon. Tommy Tuberville	105
Hon. Kyrsten Sinema	109
American Council on Education response to questions submitted by:	
Hon. Jon Tester	114

STATEMENTS FOR THE RECORD

Senator Mazie Hirono	119
Daniel Horowitz, Deputy Director for Legislation, American Federation of Government Employees (AFGE), AFL-CIO	120
Shane L. Liermann, Deputy National Legislative Director, Disabled American Veterans (DAV)	124
Barbara K. Mistick, President, National Association of Independent Colleges and Universities (NAICU)	131
Diane Boyd Rauber, Esq., Executive Director, National Organization of Veterans' Advocates, Inc. (NOVA)	134
Student Veterans of America (SVA)	138
Veterans Education Success	141

HEARING TO CONSIDER PENDING LEGISLATION

WEDNESDAY, JULY 13, 2022

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3:03 p.m., via Webex and in Room SR-418, Russell Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

Present: Tester, Brown, Blumenthal, Sinema, Hassan, Rounds, Sullivan, Blackburn, and Tuberville.

OPENING STATEMENT OF CHAIRMAN TESTER

Chairman TESTER. I call this hearing to order. Good afternoon. I want to thank you for joining us to hear the views from the Veterans Affairs on 13 bills pending before this Committee. Four of those bills I am the lead on, to improve oversight of disability exams, streamline access to education benefits, veteran cemeteries, and help disabled veterans with rising costs of living.

The VA's inspector general recently found that VA spent almost \$7 billion on contract disability exams since 2017, even though contractors never met accuracy requirements. The No Bonuses for Bad Exams Act would prevent these contractors from getting bonuses for inaccurate exams and require the VA to expedite the rescheduling of new exams and processing of claims of affected veterans.

The Ensuring the Best Schools for Veterans Act will streamline the 85/15 Rule for schools, ensuring the VA does not restrict access to legitimate programs of education for student veterans.

We also have the National Cemeteries Preservation, Conservation, and Protection Act of 2022, to ensure tribal cemeteries get the resources they need to maintain national standards. That bill also closes a loophole to prevent sexual predators from being buried among our honored heroes, facilitates green burials, and authorizes land transfers to facilitate future expansions of our sacred national cemeteries.

Finally, to help with inflation, the Veterans' Compensation Cost-of-Living Adjustment Act authorizes an increase for compensation that our disabled veterans and survivors receive from the VA.

There are nine other bills on the agenda, covering issues from veteran home loans to location of rehab and education, so I want to thank the witnesses here for being here at this Committee here today and taking the time to discuss how we are going to improve services to our veterans.

[The pending bills referred to by Chairman Tester appear on page 27 of the Appendix.]

Now it is indeed my pleasure to turn it over to a much more competent Ranking Member, Senator Blackburn.

Senator BLACKBURN. Let's not tell Senator Moran you said that. Chairman TESTER. We have got to do it. I hate to waste comments.

Senator BLACKBURN. There you go.

OPENING STATEMENT OF SENATOR BLACKBURN

Senator BLACKBURN. I want to welcome our witnesses that are here today. We know that we have a little bit of a time crunch, and you all have been patient, and we are grateful for that.

As Chairman Tester said, we have 13 different bills that we are going to discuss today, and these do affect the VBA, and they do affect those disability, education benefits, survivor benefits, the burial benefits. And one of our concerns deals with workload, the current workload, being able to meet the needs of the veterans. And we are going to look at how these bills would affect the workload and thereby have an impact on the veterans, their dependents, and the survivors.

I will have a fuller statement for the record, but in the interest of time, Mr. Chairman, let us move forward.

Chairman TESTER. Thank you, Senator. I want to welcome our panel of VA witnesses to the hearing today. We have Beth Murphy, who is the Executive Director of Compensation Services at Veterans Benefits Administration. Thanks for being here, Beth. Beth is accompanied by Jocelyn Moses, Senior Principal Advisor at the Compensation Service, and James Ruhlman, Deputy Director for Program Management at Education Service.

Ms. Murphy will provide the statement for the VA, and you are recognized for five minutes. And please know that your entire statement will be a part of the record.

PANEL I

STATEMENT OF BETH MURPHY ACCOMPANIED BY JOCELYN MOSES AND JAMES RUHLMAN

Ms. MURPHY. Thank you, sir. Good afternoon, Chairman Tester, Ranking Member Blackburn, and members of the Committee. Thank you for the introduction and the invitation to discuss VA's views on pending legislation.

VA offers support for much of the proposed legislation before us today. We have provided detailed comments in the full testimony to include areas of support and areas of concern, including availability of appropriations in some instances. We have also highlighted certain provisions that could be clarified or amended in the text of the bills.

I will briefly highlight key points on these bills. First, VA supports S. 4223, the Veterans' compensation Cost-of-Living Adjustment Act, as well as S. 4308, the Veterans Marriage Recognition Act of 2022, which would codify VA's existing practice of administering spousal benefits to same-sex married couples. VA does sug-

gest Congress consider amendments to address limitations in existing law regarding marriages outside of the U.S.

VA generally supports S. 3606, to provide servicemembers more flexibility to decide the timeframe for a dependent to use transferred entitlement of education benefits, and also supports the draft bill on VA's education program, except for concerns with mandating the level of decision authority for determinations.

Largely, consistent with current VA procedures, S. 3548 would provide a presumption of service connection for hearing loss and tinnitus for certain veterans, and to establish a minimum disability rating for veterans who require a hearing aid because of service-connected disability. VA supports this bill subject to availability of appropriations and citing some concerns with the language.

VA appreciates the aim of S. 4208 to improve veterans' access to home loans by requiring VA to clarify existing requirements in the appraisal process and consider new opportunities for improvements. VA supports this bill if amended.

Regarding the draft bill to make improvements to the Native American Direct Loan Program, VA has demonstrated commitment to ongoing improvements for this program, and would support the bill if amended, as outlined in the full testimony.

Moving to S. 3994, this bill would provide an order of preference and some limitations for VA's reissuance of funds misused by a fiduciary if the beneficiary is deceased. VA support this bill in principle since the hierarchy is based on current procedures VA follows, and we would offer further technical assistance for potential amendments.

Regarding the draft bill for veteran cemeteries on trust land, VA generally supports the bill overall, but for Section 1, where we would request amendments.

Regarding the advisory committee under S. 4141 and the promotion of Chapter 31 programs under S. 4319, VA does not support these bills primarily on the basis that VA believes existing processes or structures, with some modifications, could satisfy the intents of the bills.

The full testimony does reflect VA's views and multiple comments, and we would offer additional technical assistance. And please know we are actively working to clear the views letter on the No Bonuses for Bad Exams bill, which we anticipate providing before the August recess.

Lastly, VA agrees with the purpose of S. 3372, to strengthen benefits for children of Vietnam veterans born with spina bifida or other covered birth defects. While we believe much of the legislation can be accomplished with VA's existing authorities, we have highlighted recommended changes that we believe will enhance the bill.

In closing, thank you again for the opportunity to discuss this important legislation to improve benefits and services for veterans, servicemembers, and their families, and my colleagues and I are prepared to answer your questions. Thank you.

[The prepared statement of Ms. Murphy appears on page 31 of the Appendix.]

Chairman TESTER. Yes, thank you, Ms. Murphy, and I appreciate you all being here.

The VA's Office of Inspector General's recent report on contract disability exams is another example of a program that I believe is troubled. In the OIG report, dating back to 2008, several reoccurring issues have been flagged that need to be addressed with these exams. The most recent IG report found that the contractors could be inaccurate 1 out of every 3 exams.

How can VA know veterans are getting accurate ratings if there is a potential 1 out of 3 being bad?

Ms. MURPHY. Senator, I will say that the examination is certainly a key piece of evidence in many of the claims that we process. It is very important and it is an area where we continue to do a lot of work and continue on improvements. Regarding this bill, we are just not prepared to speak to it today ahead of the views letter that should be coming before the August recess.

Chairman TESTER. Okay. But what about the fact that assuming the IG report is correct, assuming that they could be inaccurate on 1 out of 3 exams, how do you know that the veterans are getting accurate ratings?

Ms. MURPHY. Senator, I can tell you that we have multiple layers of quality reviews processes within VA, at the local level, at the national level, both on the exam piece themselves and on the overall rating that is completed in the claim, just to make sure that the proper decision and outcome for the veteran is accomplished.

Chairman TESTER. And how often are you guys finding that the exams are inaccurate?

Ms. MURPHY. Sir, I do not have information on that with me today. We could take that back.

[VA response to Chairman Tester appears on page 75 of the Appendix.]

Chairman TESTER. And what is the solution if you do find an inaccurate exam?

Ms. MURPHY. In cases where we have an inadequate or incomplete exam, there is a process to return that to the provider to add additional information, to cure that exam, so to speak, and make sure that it is usable for VA rating purposes.

Chairman TESTER. Okay. Does that add additional time as far as the claim process goes, for the veteran?

Ms. MURPHY. I would say a short amount of time, but that is a quick turnaround in most cases.

Chairman TESTER. Okay. We have heard from schools in Montana and around the country that recent changes in VA implementation of the 85/15 Rule have caused some confusion for schools and for veterans. In fact, in Montana, five schools have had programs suspended over the last year due to the 85/15 Rule, including our two major universities, Montana State and the University of Montana.

The bill on today's agenda, that I happen to be sponsoring, will clarify the 85/15 requirement and make it easier for student veterans to enroll in legitimate education programs.

So this is from me to Mr. Ruhlman. Why did the VA choose to reset the 85/15 Rule and rescind 35 percent exemptions for schools nationwide?

Mr. RUHLMAN. Thank you for that question, Senator. VA's primary purpose in putting out the new guidance in the reset was to reset the 35 percent exemption. There were a number of schools that did have 35 percent exemptions, and we had not verified and double-checked that information in quite a while. We also put out additional guidance to make sure that schools were familiar with the 85/15 requirements and making sure that they were reporting that correctly. We did provide additional training as well as new forms that were available for that reporting. But the biggest part of the reset was the 35 percent exemption.

Chairman TESTER. Have you had the opportunity to look at the bill that I am talking about, the Ensuring the Best Schools for Veterans Act?

Mr. RUHLMAN. Yes, sir, Mr. Chairman.

Chairman TESTER. Okay. And assuming it passes, would the VA have the capacity to implement the provisions quickly so the student veterans would not be turned away from programs this fall, assuming it passes?

Mr. RUHLMAN. Yes, we would. The streamlining measures are very clear, and it clarifies the effect of the 35 percent exemption as well as exempting those programs with less than 10 supported students. We feel comfortable that we could implement that within the 90 days after the date of signature by the President, and we could implement that within that timeframe.

We do have concerns, however, with the review process that is mandated because there would still be potentially hundreds of reports of 85/15 computations, and consequently there could be some number of suspensions as well, and requiring reviews at the USB and then the Secretary level could add a severe administrative burden, depending upon how many programs were still in violation.

Chairman TESTER. Okay. Thank you. Ranking Member Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Ms. Murphy, I want to talk about workforce. This is something that the Secretary and I have talked about, and about the length of time that it takes to process a claim.

Now VBA, you are taking about 100 days to process a claim. Correct?

Ms. MURPHY. Senator Blackburn, I have not looked at the numbers recently, but yes, we always aim to complete a case under 125 days, which keeps it out of the backlog.

Senator BLACKBURN. Okay. So how many cases are in that 125-day window that have not made it onto the backlog, which I understand now is 176,884? So you have got 176,000 cases.

Ms. MURPHY. Ma'am, I do not have those numbers with me.

Senator BLACKBURN. Okay. Why don't you do this. Why don't you get all of that information on the number of days and the number of claims that are in that 125-day window so that we have a better feel for where you all are with addressing the backlog. I do think it is a good thing that you are in a pilot project trying to speed up the claims processing. We are hopeful that that automated benefit

delivery is going to bring some relief to our veterans. So we are watching that very closely.

[VA response to Senator Blackburn appears on page 98 of the Appendix.]

Let me ask you this. How much of the claims process can be automated to increase your ability to process these in a more efficient manner?

Ms. MURPHY. Senator, I would say that we are going slow to eventually go fast. So we are doing it in a smart way. We are looking first at some of the provisions that would potentially be, and conditions that would be involved in the Honoring Our PACT legislation, so that we can target some of those areas where we expect a number of claims coming in, going with that volume.

Even pieces of the claims process, it does not have to be end-to-end but pieces of the process, it all adds up, and those incremental efficiencies help to keep the workload flowing and benefits going to veterans.

Senator BLACKBURN. Okay. What percentage or what number of your claims processors are working in person, and how many are still working remote?

Ms. MURPHY. Senator Blackburn, we have been working through return to the workplace. I would not say "return to work" because folks have been working full-time at home. Returning to the workplace, working through that with our labor partners in regional offices across the country, I can tell in headquarters my team, my staff has been back since about April timeframe, April-May timeframe. In the regional offices, coming back incrementally, and I think some of the big volume now—

Senator BLACKBURN. So has productivity decreased or increased?

Ms. MURPHY. Overall, I will tell you that when we first went home because of the national emergency our productivity really increased. I mean, when we had the work available, when we were able to do the exams in person and things like that, it is just the supply chain of the evidence getting to us was slowing us down.

Senator BLACKBURN. When we talk about productivity, have you hired more claims processors and are you more productive because of that, or is it because individuals are actually completing some of these claims?

Ms. MURPHY. Ma'am, I would say it is multifaceted. Yes, we have hired and trained additional.

Senator BLACKBURN. Let me ask you one more thing then. I want to talk about this hearing benefits Act. I am very hesitant to vote for things that make false promises, and I have been very concerned about the PACT Act and the implementation of that, because the VA has said they cannot implement this. So when you look at this benefit, which would provide a presumption of service connection, and it is something that is not time limited, I have serious concerns about that. And I would like to get your take, very quickly, on that bill and what we should do to fix that so that we are certain that it is service related.

Ms. MURPHY. Indeed, and those concerns would be shared by VA, that without the time-limited piece we could be overlooking other intervening factors, science, medicine, the National Academy of

Science, Engineering, and Medicine report from 2006, which was not making that connection in all cases. It is an individualized, person-by-person situation.

I will say, though, that we already do have some amount of presumption of service connection for hearing loss, particularly in that one-year window following service, discharge from service. And we also instruct our claims processors to really lean in to acknowledge acoustic trauma in combat situations and also in certain military occupation specialties, which we have listed.

So we are leaning in now. Hearing loss and tinnitus are in two of the top three most prevalent service-connected disabilities, so we already are paying a number of folks for those conditions.

Senator BLACKBURN. Okay. Thank you for your time.

Ms. MURPHY. Certainly.

Chairman TESTER. Senator Rounds.

SENATOR MIKE ROUNDS

Senator ROUNDS. Thank you, Mr. Chairman, and thank you for holding this hearing. I would like to thank all of you for being here with us today. My questions will be on the Native American Direct Loan Program, which does not have a number yet but is in draft form, and I received and I appreciate the input from the VA. And I most certainly appreciate Senator Blackburn's comments about making promises that we do not keep, and I do not want this to happen again.

In 1992, Congress required the VA to establish the Native American Direct Loan Program to increase home ownership for Native American veterans living on reservations, since trust lands are subject to legal restrictions that can make traditional mortgage lending difficult and prevent Native American veterans from using the home loan benefit that they have earned through their service.

Despite the availability of these loans, various Native American advocacy groups have identified the Native American Direct Loan, the NADL, as an underperforming program that has a long, complex application process and makes very few loans to qualified borrowers. Just as an example, between fiscal years 2012 and 2021, the NADL originated—and this is not a mistake—just 89 loans to veterans in the contiguous United States, and only 91 loans in Hawaii, and none in Alaska, indicating that the VA made loans to less than 1 percent—less than 1 percent—of the estimated 64,000 to 70,000 eligible veterans in these reservation areas.

Now I have been working on this issue with my constituents in South Dakota for years, and I have had meetings, listening sessions, and site visits with veterans, Native community development and financial institutions, and other Native home ownership providers.

In coordination with Chairman Tester, Ranking Member Moran, and other members of the Committee, I asked the GAO to review the NADL program in 2020, and identify areas of improvement. What we have learned, and what the GAO confirmed in its recent analysis of the NADL loan program, is that the program has not met its full potential to improve home ownership opportunities for very deserving and qualified Native American veterans. We are not living up to our promises. In fact, one of my constituents died be-

fore his NADL loan was closed, after working with the VA for over seven years. We have to do better.

For this reason, in partnership with Chairman Tester, I have introduced the Native American Direct Loan Improvement Act to make the NADL program more accessible and increase home ownership opportunities for Native American veterans, as the program was originally intended. I really do see a meaningful opportunity to work together to make bipartisan, meaningful reforms to this loan program, and I look forward to working with you.

I have received your comments, and I know that you have suggested in the comments that you think that rather than doing a pilot program we should move directly into a program of record, basically. But you have also suggested that rather than providing grants to local third parties that do this on the reservations right now, that we do a partnership program.

My question for you is you have the opportunity to do those partnerships in the Midwest and you have not done that. You have done some in the Pacific region, but you have done none at this point. What would change that would require you to participate and actually make the program move forward unless we separate this out as a direct grant program?

Ms. MURPHY. Thank you for your review of the bill, Senator, and we share your energy in this space, that this is a population and a type of benefit that we really want to embrace even more in VA. We have started to demonstrate that.

Just a couple quick comments about things we have done. We recently hired a dedicated team of seven employees. Before this was kind of an “other duties as assigned” among many folks. They are focusing already on strategic virtual events, outreach, in person events. They have a dedicated phone number and an email address. As a dedicated team, they are also able to start building those relationships.

Senator ROUNDS. With the third-party entities?

Ms. MURPHY. Across the board in this space, sir, yes.

Senator ROUNDS. It appears to me that you would be supportive of this approach with some modifications.

Ms. MURPHY. Yes, sir.

Senator ROUNDS. One was suggesting perhaps doing it as a permanent program rather than a pilot project, which I have no objections to. The other one would be—I would really want clear evidence in a partnership that it would proceed, and if we could have that assurance we would most certainly consider that.

[VA response to Senator Rounds appears on page 81 of the Appendix.]

The only other thing that I would be concerned with is the amount of paperwork which right now has really caused a lot of these systems to not work, and that is, is that there is, in particular, a required OMB form, such as the VA Form 26-1852, for a description of materials which places an unfair burden and an unnecessary cost on Native American veterans applying to build or to renovate a home. And it sounds like these forms may be a real significant barrier to NADL’s success in Indian Country.

Would it be feasible to either remove or to streamline this paperwork requirement or, at the very least, dedicate more of this staff that you are talking about right now to handle the construction underwriting to assist with completing these rather complicated forms for these veterans?

Ms. MURPHY. Senator, I think there is a lot of opportunity here to work together with your staff on this bill and to help the veterans that are affected and could take better advantage of the NADL program. We are committed to doing that and to working with you on this bill.

Senator ROUNDS. Thank you. Thank you, Mr. Chairman.

Chairman TESTER. Senator Hassan.

SENATOR MARGARET WOOD HASSAN

Senator HASSAN. Thank you, Mr. Chairman, and thanks to our witnesses for your work and for being here.

As you know, veterans of all backgrounds, races, genders, and sexualities have given their lives and service to our country, and we are forever indebted to them. Unfortunately, in the past, VA denied survivor benefits to same-sex surviving spouses and left them without the support that they deserve. VA has rightfully fixed its regulations to honor the service of all of our veterans, and current regulations extend survivor benefits to all surviving spouses, including those within same-sex couples.

In May, I joined Senator Peters and a bipartisan group of my colleagues in introducing the Veterans Marriage Recognition Act to codify those regulations and ensure that no future administration can roll back benefits for surviving military spouses due to sexual orientation. I understand earlier in the hearing that you indicated the VA's support for the legislation.

Can you speak to what the VA is already doing here and how this legislation would help?

Ms. MURPHY. Thank you for that. I am going to ask my colleague, Ms. Moses, to speak to that.

Senator HASSAN. Sure. Thank you.

Ms. MOSES. Thank you, Senator, for that question. As you have already indicated, the bill does provide a clear statutory basis for the practices that VA has already adopted. So following the court cases of *Obergefell* and *Windsor*, we have taken action to ensure that same-sex marriages are both counted and identified as we are providing disability compensation or additional benefits for those veterans.

I think one thing that is important to note is that—and the bill does not apply to the laws of foreign nations, specifically those that prohibit or do not recognize those same-sex marriages. So I think as we are working together, that would be the only additional comment or concern that we would have, just to make sure that the entire veteran population is taken care of, regardless of where they reside.

Senator HASSAN. Absolutely. Thank you so much and thank you for your work on this, and thanks, Mr. Chair. That is all I had.

Senator TESTER. Senator Tuberville.

SENATOR TOMMY TUBERVILLE

Senator TUBERVILLE. Thank you, Mr. Chairman. Thanks for being here today, both panels.

Mr. Chairman, I would like to first thank my Committee colleagues, Senators Blackburn, Blumenthal, and Boozman for co-sponsoring my bill, 3606, which streamlines the information a servicemember of veteran must include when transferring G.I. Bill benefits to a dependent. This simple fix will reduce any unnecessary confusion and prevent situations where a servicemember of veteran passes away and the dependent is then unable to complete the benefit transfer for their educational opportunity. It should never be the case that a veteran or a family member is unable to access a VA benefit for which they are entitled, due to a clerical error.

Second, I would like to bring up S. 3994 bill to reinstate defrauded funds to a veteran's estate, if the veteran passes away before the VA has concluded its investigation. I thank my colleague, Senator Manchin, for introducing this bill with me. This bill, along with 3606, while affecting a small minority of veterans, will create a lasting, permanent impact on veterans and their families, and I am grateful to my colleagues for supporting this effort, and I also thank you for supporting it as well.

So just a couple of questions here. Ms. Murphy, in the case of a veteran who has been defrauded of compensation by a fiduciary representative, is there more that can be done to screen or conduct a periodic assessment on the named fiduciary representatives to prevent any issues or fraud? Anything else?

Ms. MURPHY. Senator, I do not have anything in mind right now but our teams would be happy to work with your staff.

Senator TUBERVILLE. How often does the VA conclude a fiduciary's mishandling of a veteran's financial compensation?

Ms. MURPHY. I do not have those number with me today but we could take that back.

[VA response to Senator Tuberville appears on page 78 of the Appendix.]

Senator TUBERVILLE. Can you—you cannot guess that?

Ms. MURPHY. I—

Senator TUBERVILLE. Okay.

Ms. MURPHY [continuing]. I would be out of my league to do so, sir.

Senator TUBERVILLE. Okay. Thank you. In your testimony, the VA requests tweaks to the language—

Ms. MURPHY. Yes.

Senator TUBERVILLE [continuing]. Of S. 3994 to rather than preclude a fiduciary who has misused benefits from receiving payment of reissued funds instead have the funds offset by the amount misissued. The VA also requests changes to the language to allow an executor to receive and hold funds until the inheritor has been identified. Can you please talk a little bit more in depth about these concerns?

Ms. MURPHY. Certainly, Senator. I think as far as the misuse we recognize the need to not encourage this behavior or reward it in any way but also to recognize the precedential estate standards that exist. So if somebody is inheriting money from somebody, that

is important, but it is also important to make sure that the misuse is taken care of. So offsetting, making sure that we recoup that money rather than say you are not getting anything at all. So just reconciling that language.

Senator TUBERVILLE. Does the VA need statutory authority to do what this bill requires or can it be done through policy?

Ms. MURPHY. I think there is some room to do it within existing authority, but I think it would be best handled for additional technical assistance to make sure we do not miss anything.

Senator TUBERVILLE. Okay. Thank you. Thank you for what you do. Thank you, Mr. Chairman.

Chairman TESTER. Next Senator Blumenthal via Webex.

SENATOR RICHARD BLUMENTHAL

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thanks, Senator Tester and the Ranking Member for having this hearing, and thank you, Ms. Murphy and your colleagues, for being here.

I want to begin by asking a couple of questions about the bill that was the topic for Senator Blackburn, the Veterans hearing Benefits Act, S. 3548. Let me be clear. What is the VA's position on this bill, because I think it is so important to provide as much hearing benefits as possible. Although often ignored, the ability to hear is critical to so many other physical and emotional aspects of life, the sense of physical balance that prevents falls, the sense of connection to the world that prevents depression and anxiety. And so whatever the condition that prevents adequate hearing I think the VA should address it and presume that it is service-connected if there is any possibility that it results from a combat injury, invisible wounds as well as physical ones.

So perhaps, Ms. Murphy, you can tell me what the VA's position is on this bill.

Ms. MURPHY. Thank you, Senator Blumenthal. We do support this. Much of it is in line with existing policies and procedures that we are already following. As I mentioned earlier, hearing loss and tinnitus are in the top three. They are numbers one and number three of the service-connected conditions among all of our veterans. I think it is a demonstration that within the authorities we have, we have definitely leaned in to utilize the presumption that is on part of 38 CFR 3.309(a), within that one-year window after discharge from service, and also to recognize the acoustic trauma, even in combat, with certain military occupations, and particularly with combat. Even if we do not have that link to service in the service records, the lay statement or veteran statement is enough for us to be able to concede that acoustic trauma occurred in service. So it allows us to move the claim forward and evaluate the degree of disability.

Senator BLUMENTHAL. And what can the VA do to expand access to hearing care among all veterans?

Ms. MURPHY. As far as VHA, they do have some authorities based on the priority groups and the level of service connection. I know a number of veterans do take advantage of getting hearing aids through VA when they have service-connected disabilities. So I think just continued discussion, more technical assistance if we can provide it. But I just want to re-emphasize that we do embrace

this and agree with you, sir, that hearing impairment is critical and does affect employability.

Senator BLUMENTHAL. And I would like to suggest or request that perhaps if you or someone from VHA could report back to us about legislative steps, additional legislative steps that perhaps we could take, or administrative steps that the VA can take to expand access to care for hearing impairment. If you could give us a report on that issue I would really appreciate it.

Ms. MURPHY. Yes, sir. Thank you, Senator.

[VA response to Senator Blumenthal appears on page 100 of the Appendix.]

Senator BLUMENTHAL. Let me also touch on S. 4319, the Veterans Readiness and Employment Act. Actually, the VETS Act, which promotes information about the Veterans Readiness and Employment Act. The bill that I have co-sponsored with Senator Cassidy is known as the Veterans on Education for Transition Servicemen's Act. Its acronym is VETS Act. But promoting education about the provisions of that measure, because apparently so few veterans are aware of the programs that may be available.

Do you agree that more education, more outreach are desirable?

Ms. MURPHY. Senator, I would ask my colleague, Ms. Moses, to speak to that. I think that we do agree that there is always more that can be done. We certainly embrace outreach and education in this space. So I will ask Ms. Moses to elaborate.

Ms. MOSES. Thank you, Ms. Murphy, and thank you, Senator. VA does agree with the bill's intent to ensure—and, as a matter of fact, the Department has an objective to ensure that veterans are fully informed of their benefits. So we are definitely on the same page in making sure that we are informing and educating our veterans.

One of the reasons why we are not supportive of this bill, in particular, is because we feel that there is much redundancy here. For example, when it comes specifically to Chapter 31 and Chapter 33, and the comparison, and ensuring that our veterans and servicemembers know the differences between the benefits that are available to them, we have notification within the Disability Compensation Notice letter. Also, when veterans apply and are deemed eligible for VR&E services, they have an initial evaluation with a counselor where they can receive one-on-one guidance.

Additionally, we have an existing online presence which is a side-by-side comparison tool. That website is also 508-compliant and it provides those veterans and those servicemembers who are potentially veterans with information of what kind of services they can get. And for that transitioning servicemember who had not yet come out of the service, there is information that is provided within our Transition Assistance Program, or TAP, and they also have the opportunity to meet one-on-one with a benefits advisor. And the key here is making sure that veterans are getting the information that is particular or specific to them for their scenario.

And then finally, for those individuals who are discharging through the medical separation process, through IDES, they too have opportunity to meet with a counselor to have one-on-one advice provided to them.

Senator BLUMENTHAL. Thank you for your response, Ms. Moses. My time has expired so I am not in a position to go back with a response to you, but I would like my staff to work with you. I think there may be less redundancy than perhaps is indicated. But one way or the other, if we can move forward without redundancy, so much the better.

VA Response: This was a request for a call. Call completed on August 10, 2022.

Mr. Chairman, I thank you and the staff for accommodating my absence through this Webex connection. I really do appreciate it, both you and the staff. And if I am not a co-sponsor of 3548, I ask to be added, without objection.

Chairman TESTER. Without objection, so ordered, and we always appreciate your input. Senator Blumenthal adds a lot to this Committee.

As we set up for the second panel I just want to thank all three of you for being here. I want to thank all three of you for the work that you do every day. We can do the best work in the world, but if it is not implemented in the best way it does not do what we want it to do. And so thank all three of you for your great work that you do for the veterans of this Nation.

And with that you can be excused and we will get the second panel up. Thank you.

The second panel consists of Kristina Keenan, who is Associate Director of National Legislative Service at the Veterans of Foreign Wars, it consists of Michael McLaughlin, who is Legislative Chairman of the National Association of Count Veterans Service Offices, and it consists of Anne Meehan, who is Assistant Vice President of Government Relations from the American Council on Education.

I want to welcome all three of you here today. We appreciate your perspectives on these bills. And Ms. Keenan, we will start with you. You may proceed.

PANEL II

STATEMENT OF KRISTINA KEENAN

Ms. KEENAN. Chairman Tester, Ranking Member Moran, and members of the Committee, on behalf of the men and women of the Veterans of Foreign wars and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this Committee. The VFW's view on all 13 bills can be found in my written testimony. I will take the opportunity to highlight a few of them.

The VRW supports the No Bonuses for Bad Exams Act, which aims to resolve issues identified in a June 2022 VA OIG report. The OIG found deficiencies in VA's governance and oversight of its contract medical exam program, specifically that VA did not hold vendors accountable for correcting exams, nor did vendors meet the 92 percent exam accuracy requirements. This is very concerning for the VFW and the veterans that we represent, primarily because exams were not corrected prior to final rating decisions.

The VFW appreciates that this legislation would establish transparent annual training requirements, it would create incentives for vendors to reach or exceed a 95 percent exam accuracy rate, it would require monthly reporting on exam quality, and would provide priority processing of exams of claims when exams are found to have errors.

Also something to note, since VA eliminated the 48-hour review, VSOs have lost the ability to intervene when errors and claims are discovered. The VFW recommends restoring a pre-decisional review period so that VSOs can assist in catching errors before final rating decisions are made, reducing the need for veterans to appeal.

The VFW supports S. 4458, the Ensuring the Best Schools for Veterans Act of 2022, to improve the process by which the VA determines whether an educational institution meets certain requirements for enrollment. VA's 85/15 Rule was not meant to prevent veterans from using their education benefits. However, due to recent changes that had unintended consequences, certain schools were unsure if they could enroll veterans in courses. This proposal takes input from schools and veteran advocates to make sure veterans can use the benefits they have earned while schools can maintain quality standards.

The VFW supports S. 4319, the Informing VETS Act of 2022, to better inform veterans about the opportunities offered through the Veteran Readiness and Employment, or VR&E, program. The Bureau of Labor Statistics found the unemployment rate for veterans in June of this year was 2.7 percent, and while this is good news, the VFW understands that this situation can be cyclical. If we do not put proper tools in place, we could see these numbers rise again in the future. VR&E offers a proven system that enables veterans to train for their next career, allowing them to thrive and prosper in their communities.

The VFW supports S. 3548, the Veterans Hearing Benefits Act of 2022, which would require VA to recognize tinnitus and hearing loss as presumptive conditions for service in combat or military occupational specialties with exposures to acoustic trauma. Service in the military is often accompanied by activities during training, deployments, and everyday options that can put servicemembers' hearing at risk. The VA also acknowledges that hearing problems, including tinnitus, are the most prevalent service-connected disabilities among veterans. VFW members feel strongly about this, and through a VFW resolution urge Congress to pass this legislation.

And lastly, the VFW supports S. 4308, the Veterans Marriage Recognition Act of 2022, which would update the definition of surviving spouse within Title 38 USC to include same-sex marriages. The VFW also recommends an update within the same section of law, striking the language that a surviving spouse may not live with another person or hold themselves out to be married. This is outdated language and should be removed to reflect the marriage requirements of the current area.

Chairman Tester, Ranking Member Moran, thank you for the opportunity to provide my remarks. I look forward to answering any questions you may have.

[The prepared statement of Ms. Keenan appears on page 60 of the Appendix.]

Chairman TESTER. Ms. Keenan, I appreciate your remarks, and there will be questions.

You are up next, Mr. McLaughlin.

STATEMENT OF MICHAEL MCLAUGHLIN

Mr. MCLAUGHLIN. Thank you. Good afternoon, Chairman Tester, Ranking Member Moran, and members of this Committee. My name is Michael McLaughlin and I serve as County Veterans Service Officer in Blue Earth County, Minnesota, and I am the Legislative Chairman for the National Association of County Veterans Service Officers, or NACVSO. It is my honor to testify before this Committee about pending legislation, and in particular the draft bill known as No Bonuses for Bad Exams.

For those who are unfamiliar, NACVSO has over 1,700 veteran service officer members and represents the interests of over 5,000 county, city, tribal, and State governmental employees who work tirelessly to ensure veterans in their local communities receive the benefits they have earned. State and local county-employed veteran service officers account for over two-thirds of all veteran service officers accredited by VA, and often are the first point of contact veterans have with VA. We assist veterans by guiding them through the long and sometimes stressful benefits process.

Through our work, we understand veterans' needs and the daily challenges they encounter. Our policy platform is largely based on these experiences. I hope my testimony will give the Committee a frontline perspective so that the pending legislation you are considering today can move forward.

NACVSO fully supports the No Bonuses for Bad Exams legislation. CVSOs work hard with our VSO partners to catch some of the issues that stem from unnecessary or inadequate exams performed by examiners who are not up-to-date on the latest standards. In many cases, these issues are not identified until an initial claim is denied and a supplemental or a higher-level review must be submitted. In one example identified by one of our members, a veteran's disability claim was denied based on an inadequate exam performed by an experienced contracted examiner. A higher-level review was submitted for the denied claim, and a VA Decision Review Officer, or DRO, found multiple errors and that this exam was so inadequate the DRO felt it necessary to define what an adequate medical opinion was in their instructions back to the examiner.

NACVSO is grateful for the efforts that this individual DRO took to educate the examiner, but this sort of education should happen before any examiner performs an exam. This is just one example, but if a seasoned examiner like this can be so far from the standard, we know that this is more commonplace than we would hope.

NACVSO has also long advocated for improving transparency of medical disability examinations. Requiring the VA to provide the examiner's credentials to the veteran and their representative as part of this proposed legislation is a step toward that greater transparency. In many instances, the veteran is under the incorrect impression that the assigned examiner is a specialist in the relevant medical field. For example, a veteran may think that their heart

condition will be examined by a cardiologist, but in all actuality they may receive their examination from a general practitioner. Knowing this information in advance prepares the veteran to articulate their symptoms in specific detail to document their full health picture.

Additionally, NACVSO fully supports the requirement to remove inadequate or unnecessary examinations from a veteran's VA file. Our CVSOs have seen instances where the inadequate exams are cited by future examiners and the bad exams are not purged from the file.

I am here today because NACVSO sees this legislation as a good start toward addressing some of the shortcomings of the disability examination process. We encourage VA to consider implementing a policy that gives veterans greater flexibility when scheduling their contracted exams, because currently the VA gives a veteran no expectation about when a contracted company will reach out to schedule that exam. When that crucial call finally comes, the veteran is offered only a short window in which they can schedule their exam.

One recent example of this case is when a young National Guard soldier, returning home from a deployment to a full-time job and his family, submitted a claim and was contacted by a VA-contracted company to set up his exams but with only an eight-day window to do so. However, this veteran was leaving the next day on a family vacation. The veteran provided the dates he would be available but was told by this contractor that he would have to contact the VA. That very same day, the veteran's entire exam scheduling request was canceled and the veteran was deemed unavailable by the contractor. A month later, the veteran received a letter from VA stating that he had expressed desire to withdraw his claim. What should have been a simple accommodation for the scheduling conflicts has now turned into a lengthy and unnecessary clarification process for the veteran.

Chairman Tester, Ranking Member Moran, and members of the Committee, NACVSO and its members deeply appreciate the important work you are doing to ensure America's veterans receive the respect and benefits they have earned, and working together with VA and all of its stakeholders we can make this process better. Thank you.

[The prepared statement of Mr. McLaughlin appears on page 67 of the Appendix.]

Chairman TESTER. Yes, once again I want to say thank you for your testimony, and I look forward to my questions.

Ms. Meehan, you are up.

STATEMENT OF ANNE MEEHAN

Ms. MEEHAN. Chairman Tester and members of the Committee, thank you for inviting me to speak at this hearing. My name is Anne Meehan, and I am the Assistant Vice President of Government Relations at the American Council on Education. ACE represents approximately 1,800 public and private two-year and four-year colleges and universities.

I have been asked to speak about S. 4458, the Ensuring the Best Schools of Veterans Act of 2022. This bill would clarify the 35 per-

cent exemption to the 85/15 Rule and restore it to its original intent. In so doing, it will also ensure that veterans can continue to enroll in the quality programs of their choosing. We strongly support this bipartisan legislation and thank Chairman Tester and Ranking Member Moran for its introduction.

The 85/15 Rule provides important safeguards for veterans and their G.I. Bill benefits against waste, fraud, and abuse. At its core, the law seeks to ensure that at least 15 percent of students in any education program are not using G.I. Bill benefits to pay for the program. The rationale for this rule was that the enrollment of at least some non-veteran students provided important evidence of program value and quality because the non-veterans were willing to pay out of their own pockets to attend.

While, in general, the rule requires institutions to report 85/15 ratios for each of their programs, the statute also includes an important exception. Institutions with a low percentage of enrolled veterans, less than 35 percent, are exempt from providing these ratios. As the legislative history makes clear, requiring 85/15 ratios from institutions with a low percentage of enrolled veterans would “result in burdensome and costly recordkeeping requirements with little tangible demonstration that accountability had been ensured or abuse has been curbed.”

Unfortunately, as part of the 85/15 policy reset, the VA has required institutions to reapply for their 35 percent exemption and to submit 85/15 ratios for every program, which is contrary to the letter of the law and its legislative history. This interpretation has placed institutions in a Catch-22, unable to receive the exemption without first completing the ratios.

As a result, campuses spent multiple days computing 85/15 ratios for hundreds of programs, most of which did not have any veterans enrolled. Compounding these challenges, as a result of VA’s changes to the definition of a supported student, campuses also found that they had many programs that now exceeded 85/15, even though there was not a single veteran enrolled in the program.

At almost all public and nonprofit institutions the total veteran enrollment is below 35 percent, and at most it is in the low single digits, but because of VA’s changes a growing number of campuses have been informed that their programs are no longer eligible for G.I. Bill benefits. This includes programs popular with veterans, such as programs in computer science, cybersecurity, health care, nursing, and business administration, to name a few.

By clarifying the 35 percent exemption, S. 4458 would undo the negative impacts of this policy change on institutions with low total veterans and the veterans they serve. It will also ensure that veterans who attend these institutions can enroll in the program of their choice. Because registration for the fall term typically begins in August, we hope S. 4458 will be passed quickly by Congress to help minimize disruptions for veterans this fall. Without this critical fix institutions will be forced to deny veterans from enrolling in certain programs or may have to turn them away entirely.

We thank Chairman Tester and Ranking Member Moran for crafting legislation that addresses these unintended consequences and restores the original intent of the law. The legislation has our

full support and we look forward to working with you to help ensure a swift passage.

I would be pleased to answer any questions.

[The prepared statement of Ms. Meehan appears on page 70 of the Appendix.]

Chairman TESTER. Thank you for your testimony. We appreciate all three of you.

I just want to tell you that the fact that everybody is not here is for a number of reasons, and it is not because you are not important. Let us just put it that way. It is because there is a lot of stuff going on right now.

I am going to start with you, Mr. McLaughlin, and that is that you have got to educate me a little bit. When we are talking about exams, I am assuming they do not all go to contracted folks, that there are some done by VA employees. But could you tell me if they are all contracted?

Mr. MCLAUGHLIN. There is still a small amount that are done by VA employees. What we see, and what our members see, is that tends to be more audiology along those lines, tinnitus and hearing. But most of the general exams we are seeing are being done by contracted examiners.

Chairman TESTER. Okay. And you saw the statistics of potentially 1 out of 3. I would assume that that may be a worst-case scenario, but maybe it is not. What do you think?

Mr. MCLAUGHLIN. As far as the full volume of those contracted claims of being 1 out of 3, it is hard for me to speak to that. But what I can say, the claims that we are seeing go to a higher-level review or a supplemental review, a higher portion of those and the most common reason for those getting sent back to be reworked is because of a duty to assist or exam issues that are found.

Chairman TESTER. You talked about a seasoned, experienced examiner that you dealt with. What is your definition of “seasoned”?

Mr. MCLAUGHLIN. Several hundred exams.

Chairman TESTER. Okay. And the last question is, even though it is a very small percentage that VA employees are doing of these exams, are you seeing the same kind of problems with VA exams as you are with the contracted one, or are they even too few to even make that analysis?

Mr. MCLAUGHLIN. I would say what we hear from our CVSOs out in the field is that more often on the hearing claims we are seeing less of these issues, but also that is usually less of a technical claim and exam that you are looking at too, in a lot of those scenarios. So it is kind of an unfair comparison, I would say.

Chairman TESTER. Apples and oranges.

Ms. Keenan, I asked this question of the previous panel, but with bad exams, is it resulting in—are you hearing from your members, the VFW membership, that this is resulting in claims being extended out and not getting the timely benefits they need?

Ms. KEENAN. Thank you for the question. Yes, and the VFW has advocated for priority processing for these claims because veterans should not have to experience delays in their claims because of a VA or contract exam error.

Chairman TESTER. That is a fact. From your membership, is this a high-priority item, Ms. Keenan?

Ms. KEENAN. This is a high-priority item. It is very concerning, the data from the OIG report. We have requested from VA data on their exam quality, which we have not received. So this bill would help provide some additional oversight to the quality of the exams, and to provide that monthly reporting would be extremely helpful.

Chairman TESTER. Okay. Ms. Meehan, on the 85/15 bill, you had said that if this bill does not pass and if it does not get implemented appropriately before the beginning of the school year it could have an effect on veterans who want to go to school. I am always looking for numbers. What kind of numbers are we talking about—a third? A half? All that could be kept from furthering their education if we do not do something on this ASAP?

Ms. MEEHAN. One data point I have is that a recent survey, 20 percent of the institutions had already heard back from VA that they had at least some programs that were denied. I have heard of one institution where virtually every program on the campus had exceeded the ratios. So it is going to be a range.

One other challenge to getting you that number is that right now the VA is still processing 35 percent exemptions. So until they come through we will not know for sure which programs will be denied.

Chairman TESTER. In Ms. Murphy's testimony, if my notes are correct, she said that, in the case of this bill—you can shake your head "no" if I did not read this right, by the way—that in the case of this bill that the VA had the capacity to fix this without legislation. Do you see it the same way?

Ms. MEEHAN. I would hope so. I will tell you they do have the 35 percent number. They know the percentage of veterans because every school that submitted their application would have given them the total number of veterans on campus out of their population. So that data should already be in their hands.

Chairman TESTER. Okay. Senator Sullivan.

SENATOR DAN SULLIVAN

Senator SULLIVAN. Thank you, Mr. Chairman. I appreciate the witnesses here.

Ms. Keenan, I want to just make a quick statement. You can just take it back to your leadership. I am a proud member of the VFW myself. I worked hard with this Committee on the PACT Act. I was voting on some procedural things to make it stronger. VFW official went up to my State, to the VFW convention, clueless, and talked to my veterans—my veterans—about how I was not being supportive of priority. It really pissed me off, Okay?

So send that back to the VFW, whoever that guy was, talking to my veterans. I probably do more to support veterans, care about veterans, am a veteran, am a member of the VFW. So I just do not appreciate people going up to Alaska and not knowing what they are talking about, from your organization. Let them know that. Let them know that.

Anyways, my legislation on the home loan issues, Improving Access to the VA Home Loan Act of 2022, as you know, the home loan is one of the most important and useful of all military benefits. It

ensures our military members are able to afford housing, regardless of their ability to save up for a down payment, and it is a well-earned benefit.

One of the big issues that you see, particularly in rural States like Alaska or Montana, is that the appraisal process often takes much longer in rural communities because the VA does not have enough VA appraisal officials. So what my bill does is it focuses on making sure that veterans in rural areas and the VA have the ability to do those appraisals in a much more timely way, like they would in more urban or suburban areas. The average wait time for a VA appraisal nationally is 10 days. In Alaska it is over 30 days, and you can lose out on getting a house during that time.

So, Ms. Keenan, I appreciate the VFW's support for S. 4208, which is my bill, Improving Access to the VA Home Loan Act. It is meant to address this challenge. It is also meant to address some of the housing shortages that you see in rural States like Alaska. I just want to thank you for the support, and I want to see if there are other panelists, Mr. McLaughlin, you as well, have views on this. And in particular, are rural members of the VFW, or your other organizations, are you hearing from rural members who also have had difficulties with these appraisal issues that are impacting their ability actually get VA home loans?

Ms. KEENAN. Thank you for the question. Yes, we have heard feedback that the appraisals can take longer, and sometimes the VA-approved appraisers are not as well-informed about the housing costs and comparing rates within certain rural areas. So this would take a look at that process and even potentially add desktop appraisers to try to facilitate additional options for veterans in rural areas, which we support.

Senator SULLIVAN. Just to be clear, and I know you have already stated but I want you to state it again in the hearing, the VA has some issues with the bill. We are still trying to get their support. But the VFW does support S. 4208. Correct?

Ms. KEENAN. Correct.

Senator SULLIVAN. Mr. McLaughlin, do you have any views on that?

Mr. McLAUGHLIN. Yes. I would say we do see veterans in rural settings have issues with getting homes through the VA home loan process. When things were in a seller's market and it was a quick turnaround time, when bids were coming in, a lot of times veterans were not utilizing the VA home loan as an option, and were trying to self-finance or find other ways.

Senator SULLIVAN. For that reason, right?

Mr. McLAUGHLIN. Correct.

Senator SULLIVAN. That is what we saw.

Mr. McLAUGHLIN. I run a CVSO office in a small, rural county in southern Minnesota, and even talking to some of the realtors in that area, I mean, they were not even bringing up the issue of VA home loans with those veterans when they were talking with them, just because of the way the market was, and it was so noncompetitive to the private site.

Senator SULLIVAN. So have you taken a view on this legislation, or if you have, I would like to have you kind of submit for the record taking a look at S. 4208.

Mr. McLAUGHLIN. Yes. Any NACVSO would be glad to take a look at that and look at it for our support.

Senator SULLIVAN. Great. Good. Thank you, Mr. Chairman.

NACVSO Response: Yes, NACVSO supports Senator Sullivan's legislation S. 4208.
--

Chairman TESTER. Thank you, Senator Sullivan.

I want to thank both panels. I want to thank the VA for being here. Thanks to you guys, to the VFW, to NACVSO and to ACE for being here. In my memory I do not ever remember NACVSO being in front of this Committee or ACE. So I just want to thank you guys for being here. And if you have and I have forgotten about it, shame on me, okay?

I think both panels gave us valuable insight as we move forward with these bills.

The record will be kept open for a week, and with that this hearing is adjourned.

[Whereupon, at 4:10 p.m., the Committee was adjourned.]

A P P E N D I X

Hearing Agenda

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

Hearing: Pending Legislation

July 13, 3:00 p.m.
Russell Senate Office Building, Room 418

1. S. 3372 (Braun), A bill to amend title 38, United States Code, to strengthen benefits for children of Vietnam veterans born with spina bifida, and for other purposes.
2. S. 3548 (Smith), Veterans Hearing Benefits Act of 2022
3. S. 3606 (Tuberville), A bill to amend title 38, United States Code, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a dependent, and for other purposes.
4. S. 3994 (Manchin), Restoring Benefits to Defrauded Veterans Act of 2022
5. S. 4141 (Hirono), A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs as Advisory Committee on United States Outlying Areas and Freely Associated States, and for other purposes.
6. S. 4208 (Sullivan), Improving Access to the VA Home Loan Act of 2022.
7. S. 4223 (Tester), Veterans' Compensation Cost-of-Living Adjustment Act of 2022
8. S. 4308 (Peters), Veterans Marriage Recognition Act
9. S. 4319 (Cassidy), Informing VETS Act of 2022
10. S. 4458 (Tester), Ensuring the Best Schools for Veterans Act of 2022
11. S. ____ (Rounds), Native American Direct Loan Improvement Act
12. S. ____ (Tester), A bill to amend title 38, United States Code, to address the operation and maintenance of veterans' cemeteries on trust land owned by, or held in trust for, tribal organizations, and for other purposes.
13. S. ____ (Tester), No Bonuses For Bad Exams Act

Prepared Statements

**STATEMENT OF
BETH MURPHY
EXECUTIVE DIRECTOR, COMPENSATION SERVICE,
VETERANS BENEFITS ADMINISTRATION,
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE SENATE COMMITTEE ON VETERANS' AFFAIRS**

JULY 13, 2022

Good afternoon, Chairman Tester, Ranking Member Moran and other Members of the Committee. Thank you for inviting us here today to present our views on bills affecting VA's programs and Veterans' benefits. Joining me today from the Veterans Benefits Administration (VBA) are Jocelyn Moses, Senior Principal Advisor, Compensation Service, and James Ruhlman, Deputy Director for Program Management, Education Service.

S. 3372 – Spina Bifida and Other Birth Defects

This bill is intended to strengthen benefits for children of Vietnam Veterans born with spina bifida and children of women Vietnam Veterans born with other birth defects. Section 1(a) would amend 38 U.S.C. § 1831 by adding new definitions of the terms “covered child” and “covered Veteran” for purposes of chapter 18. The term “covered child” would mean a child who is eligible for health care and benefits under this chapter. The term “covered Veteran” would mean an individual whose children are eligible for health care and benefits under this chapter.

Section 1(b) would add new sections 1835, 1836 and 1837 to title 38. The proposed section 1835 would require VA to establish an advisory council on health care and benefits for covered children. The advisory council would solicit feedback from covered children and covered Veterans on the health care and benefits provided under

this chapter and communicate such feedback to the Secretary. The proposed section 1836 would require VA to establish care and coordination teams for covered children. These teams would contact each covered child not less frequently than once every 180 days to ensure the continued care of the child and assist with any changes in care needed due to a changed situation of the child. These teams would also have to contact each covered child as soon as practicable after the identification of a condition listed in a report to Congress, due not later than 180 days from enactment, setting forth the conditions that would trigger outreach to covered children. The proposed section 1837 would require VA to provide a covered child with health care and benefits under chapter 18 for the duration of the life of the child and notwithstanding any death of a parent of the child that precedes the death of the child.

Section 1(c) would require the Under Secretary for Benefits and the Under Secretary for Health to enter into a memorandum of understanding (MOU) within 90 days of enactment. The MOU would address improved assistance for covered children and establish conditions to be included in the report to Congress under the proposed section 1836.

Section 1(d) would require VA, not later than 90 days after enactment, to establish the advisory council required by section 1835 and the care and coordination teams required by section 1836.

VA agrees with the purpose of this bill but has concerns with its terms as written. In particular, we believe the 90 days provided for implementation in section 1(d) would be insufficient. We would be unable to set up an advisory council within this period of time, or hire staff to comprise the care and coordination teams. Without these teams in

place, we also do not believe the outreach requirement within 180 days would be practical.

The proposed section 1835, requiring the establishment of an advisory council, is unclear as to who would be appointed to this council, and consequently, whether the Federal Advisory Committee Act would apply. In accordance with the Federal Advisory Committee Act, if the council members are Federal employees, VA does not have to establish a Federal Advisory Committee. Therefore, we recommend that the bill state that the council be comprised of Federal Government employees only.

In terms of the care and coordination teams under proposed section 1836, it is unclear what the bill intends for how these teams would be formed and operated. We do not believe that placing these teams at the facility level would be appropriate because we do not provide direct care to these beneficiaries, and authorizations for covered care in the community are centralized under the Office of Integrated Veteran Care. For these reasons, we would recommend including them in the national program office as part of the customer service team, as this would better facilitate case management between patients and the non-Department providers furnishing their care. Also, regarding the proposed section 1836, the event that would seemingly trigger outreach would be a change in the patient's condition; however, it is unclear what is meant by the term "condition." VA could, and does, conduct outreach when a child beneficiary develops a need for additional care (such as the need for a ventilator or a new need for a home health aide). In this context, it is not clear that identifying outreach requirements or reporting requirements would be particularly helpful.

We are also unclear as to the intended effect of the proposed section 1837, as the definition of "child" in current 38 U.S.C. § 1831(1) does not condition eligibility on having a living parent; further, these beneficiaries retain eligibility regardless of age or marital status. VA has, therefore, considered this to be a life-long benefit.

We generally believe much of this legislation can be accomplished within VA's existing authorities. We have worked with Senator Braun's staff to provide technical assistance on earlier drafts of this bill, and we would welcome the opportunity to continue these discussions and to confer with the Committee on this legislation before further action on this bill is taken.

We estimate this bill would cost \$1.53 million in fiscal year (FY) 2023, \$8.25 million over 5 years, and \$18.24 million over 10 years.

S. 3548 – Veterans Hearing Benefits Act of 2022

This bill would provide a presumption of service connection for hearing loss and tinnitus for certain Veterans and establish a minimum disability rating for Veterans who require a hearing aid because of a service-connected disability. More specifically, section 2 of the bill would establish a presumption of service connection for the diagnosed hearing loss, tinnitus or both of a Veteran who served in combat or a Veteran assigned to a military occupational specialty (MOS) or equivalent who was likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus or both, as determined by the Secretary. Section 3 of the bill would require VA to adjust the schedule of rating disabilities to establish a minimum disability rating for a Veteran who requires a hearing aid because of a service-connected disability.

VA supports this bill, subject to the availability of appropriations, but notes several areas of concern. As of May 31, 2022, of the more than 5 million Veterans receiving service-connected disability compensation benefits, more than 2.6 million Veterans are service-connected for tinnitus and more than 1.4 million Veterans are service-connected for hearing loss. According to the FY 2021 [Annual Benefits Report](#), tinnitus and hearing loss are the number one and three most prevalent disabilities among compensation recipients, respectively.

VA notes that establishing a presumption of service connection that is not time-limited following separation from service presents the risk that the decision may be inconsistent with the current state of scientific and medical findings on these conditions.

VA notes that the language in section 3 of the bill is unclear. It is unclear if the intent of S.3548 would be to allow for multiple, separate compensable ratings if more than one service-connected disability requires hearing aids. If a hearing aid is required for more than one service-connected disability, would there be a preclusion against compensating for the same functional impairment under different diagnoses?

Additionally, clarification is needed on the definition of "minimum disability rating," i.e., whether that phrase refers to a non-compensable rating or a 10% rating. It is unclear if the intent of S.3548 is to include a 0% service connection (minimum disability rating) for any Veteran with clinical hearing loss incurred in service that does not meet the level of disabling (and thus, nonservice connected), but requires a hearing aid for treatment of their hearing loss. Currently, the Veteran may have a significant change in hearing threshold in service, but it does not meet the criteria to be considered a disability for VA purposes.

If the intent of S.3548 is to increase 0% service connection to 10% service connection based on a requirement for a Veteran to obtain a hearing aid, this would place an undue burden on the Veterans Health Administration (VHA), VBA and, most importantly, the Veteran who must have a hearing aid as a requirement for application for increased disability. Additionally, there are other types of assistive technologies, and some Veterans choose to use no technology at all.

If passed as written, the required changes to the VA Schedule for Rating Disabilities would depend on whether the Veteran will require a hearing aid (responsiveness to treatment) rather than the level of their hearing impairment (medical diagnostics and expertise). This requirement for a hearing aid device for rating purposes will increase the demand for audiology services within VHA by Veterans who are seeking a hearing aid for rating purposes only, rather than because they perceive their hearing loss to be creating activity limitations or participation restrictions. The impact on access would be significant. As a result, this additionally generated demand could severely impede access to necessary assistive technologies for all Veterans seeking audiology care.

VHA does not interpret the intent of S.3548 as restricting a Veteran's eligibility for hearing aids based on a minimum level of disability. Currently, hearing aids are available based on clinical need to Veterans who are eligible and enrolled for VA health care. If the intent of S.3548 is to restrict hearing healthcare, VHA would not concur with section 3.

VA also notes that, although the presumption created by the bill is broader than the existing presumption, a presumption for hearing loss and tinnitus currently exists in

regulation. Hearing loss and tinnitus are considered organic diseases of the nervous system and are already subject to presumptive service connection under 38 C.F.R. § 3.309(a) for chronic diseases if the condition manifests to a degree of 10% or more within 1 year following separation from service (38 C.F.R. § 3.307(a)(3)). VA notes that the extension of the presumption period may lead to service connection for hearing loss that is unrelated to military service exposure.

In addition, current statutory, regulatory and procedural guidance requires VA to liberally consider evidence of noise exposure in service. The provisions of 38 U.S.C. § 1154(a) require considerations of the time, place and circumstances of service. Section 1154(b) requires that, for combat Veterans, satisfactory lay or other evidence that an injury or disease was incurred in or aggravated by combat service will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardship of such incurrence or aggravation, notwithstanding the fact that there is no official record of such incurrence or aggravation. This statute is implemented in regulation in 38 C.F.R. § 3.304(d).

In considering claims outside the presumptive period, VA already considers the Veteran's MOS. In VA's Adjudication Procedures Manual, M21-1 V.iii.2.B.1.b claims processors are advised to review the Duty MOS Noise Exposure Listing, which includes a list of MOS's for officers and enlisted members that have a high, moderate or low probability of hazardous noise exposure. When the MOS is shown to have a high, moderate or low probability of hazardous noise exposure, claims processors will concede exposure to hazardous noise for the purposes of establishing an event in service. Claims processors also review the Veteran's records for evidence that the

Veteran engaged in combat with the enemy in active service during a period of war, campaign, or expedition. If the evidence establishes that the Veteran was engaged in combat, claims processors will concede exposure to hazardous noise for the purposes of establishing an event in service.

However, the Duty MOS Noise Exposure Listing is not an exclusive means of establishing a Veteran's in-service noise exposure. Claims processors evaluate claims for service connection for hearing loss in light of the circumstances of the Veteran's service and all available evidence, including treatment records and examination results.

Significant mandatory and discretionary costs are associated with this bill, and additional time would be needed to estimate costs.

S. 3606 – Educational Assistance

This bill would eliminate the requirement to specify an effective period of a transfer of post-9/11 educational assistance to a dependent. VA supports this bill, subject to the availability of appropriations, as it would remove the requirement for a Service member to decide the timeframe for a dependent to use transferred entitlement and prevent the negative impact of certain decisions. Mandatory costs associated with this bill are estimated to be insignificant at \$7,000 in 2023, \$38,000 over 5 years and \$85,000 over 10 years. Discretionary costs are not anticipated for the bill.

S. 3994 – Restoring Benefits to Defrauded Veterans Act of 2022

This bill would provide an order of preference for VA's reissuance of funds that were misused by a fiduciary if the beneficiary is deceased. The bill would require VA to pay those funds to the estate of the deceased beneficiary, to a successor fiduciary serving the beneficiary when the beneficiary died or to the next inheritor determined by

a court, in that order, but it would not allow VA to reissue funds to a fiduciary who misused the benefits of the beneficiary.

VA supports the bill, if amended, and subject to the availability of appropriations. Currently, VA must evaluate various factors when determining to whom to reissue misused benefits when the beneficiary is deceased. Updating legislative language to more clearly identify the prioritization of who may receive reissued funds on behalf of a deceased beneficiary would provide greater consistency and legal basis for making such a determination. Incorporating an order-of-priority would also align this bill with other title 38 statutes.

Existing VA procedures allow for an executor identified by a court of competent jurisdiction to receive and hold the funds pending final disposition determinations if there is no estate on file with VA prior to the beneficiary's death and if there is no successor fiduciary serving the beneficiary at the time of the beneficiary's death to identify an estate. The bill's current language would preclude an executor from receiving the funds and require VA to hold the funds until such time that the inheritor(s) have been identified. Therefore, VA recommends that the bill be amended in proposed subsection (c)(1)(C) to allow an executor to receive the funds until the inheritor(s) have been identified.

Moreover, the bill's current language would preclude a fiduciary who misused benefits from receiving payment of reissued funds even if that fiduciary is a beneficiary of the Veteran's estate.

VA recommends that the Committee consider language that would, instead of precluding payment in these situations, offset the amount misused by a fiduciary. For

instance, proposed section 6107(c)(2) could read as follows: "The Secretary may deduct any amount due VA prior to making a payment under this subsection to a fiduciary who misused benefits of the beneficiary." This amendment would allow VA to ensure that fiduciaries are not benefiting from their misuse, while maintaining precedential estate standards. VA is willing to provide further technical assistance and continued collaboration with the Committee on this bill.

Benefit costs are estimated to be insignificant at \$141,000 in 2023, \$740,000 over 5 years, and \$1.7 million over 10 years. Discretionary costs are not anticipated for the bill.

S. 4141 – Advisory Committee on United States Outlying Areas and Freely

Associated States

This bill would require VA to establish an advisory committee to provide advice and guidance to the Secretary on matters related to covered Veterans residing in United States Outlying Areas and Freely Associated States. Covered Veterans would include Veterans residing in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. In carrying out this section, VA would be required to consult with Veterans Service Organizations serving covered Veterans.

VA strives to serve all Veteran populations equitably, including Veterans residing in United States Outlying Areas and Freely Associated States. However, for the reasons discussed below, the Department does not support this bill. Per the Federal Advisory Committee Act Final Rule, VA believes its established Advisory Committee on Minority

Veterans (ACMV) would best represent the covered Veteran constituency group identified in S. 4141 (i.e., Veterans who reside in United States Outlying Areas and Freely Associated States). Accordingly, while VA believes that these commitments could be accomplished in minimal time and longitudinally, realizing the intent more by utilizing an already active committee whose expertise already encompasses the subject matter of interest, Congress' assistance is required in expanding the statutory language of the ACMV committee to encompass these groups. VA believes that such an amendment to the statutory authority of the existing committees, rather than establishing a new advisory committee, would be the most holistic and Veteran-centric resolution. Additionally, the Secretary has appointed a career VA senior executive to serve full-time for up to 3 years as the Senior Advisor for Pacific Strategy, paying particular attention to the needs of Veterans living in the U.S. territories in the Pacific and in the Freely Associated States.

S. 4208 – Improving Access to the VA Home Loan Act of 2022

This bill would require VA to clarify existing requirements in the home loan program's appraisal process and consider new opportunities for improvements. Specifically, section 2(b) would direct the Secretary to consider changing appraiser certification requirements, minimum property requirements, processes related to comparable sales, quality control processes, use of the Assisted Appraisal Processing Program and waivers or other alternatives to existing appraisal processes. Section 2(c) would require the Secretary to provide guidance on desktop appraisals, taking into consideration situations where a desktop appraisal would provide a borrower with cost savings and would eliminate appraisal delays that jeopardize a sales transaction.

VA would support the bill, if amended. VA shares the Committee's concerns about Veterans needing to compete in the homebuying market and is committed to making ongoing improvements to VA's appraisal procedures. VA has already begun reevaluating its processes to enable appraisers to leverage technology, including desktop appraisals, in the valuation process. As such, VA has no objection to reviewing and clarifying, within 90 days of enactment, VA's program requirements regarding desktop appraisal procedures. VA also supports evaluating other aspects of the appraisal program, including those outlined in section 2(b) of the bill. However, VA cannot complete a more comprehensive review and prescribe updated regulations or program requirements within 90 days of enactment.

VA recognizes that the appraisal industry is overstrained in many areas and that improvements are essential to help Veterans use their benefits in highly competitive markets. VA also recognizes the dwindling number of qualified appraisers in certain areas of the country may make traditional appraisals impracticable (for example, in Fairbanks, Alaska, there are seven VA panel appraisers). During the COVID-19 national emergency, VA revised its procedures to expand use of innovative appraisal technologies. The multiple approaches allowed appraisers and Veterans to safely and timely complete the appraisal process and spurred VA to continue exploring how these tools might lead to long-term efficiencies in the appraisal process. At a recent hearing before the Economic Opportunity Subcommittee of the House Committee on Veterans' Affairs, VA noted that within 90 days of that May 18, 2022 hearing, the issuance of a new procedural waterfall for appraisal assignments that incorporates use of innovative

appraisal tools, including VA's Assisted Appraisal Processing Program and desktop appraisals was expected. VA remains on track to release that procedural waterfall.

VA is continuing to research and evaluate other measures that will make it easier for Veterans and other participants to complete loan transactions in VA's program. This includes considering changes to certification requirements for appraisers, minimum property requirements, the process for selecting and reviewing comparable sales, quality control processes and the use of waivers or other alternatives to existing appraisal processes. VA supports a long-range review of VA's appraisal program as necessary to ensure the VA home loan guaranty remains a competitive earned benefit for the Nation's Veterans.

That said, VA does not believe that VA's appraisal process causes homebuyers such significant issues as to necessitate a revamping of its program within 90 days. From an internal perspective, VA would not be able to develop a well-reasoned, evidence-based public policy in that timeframe. The effort would also divert the home loan guaranty program's resources from other mission-critical functions. From an external perspective, a massive overhaul of VA's program would be premature and could disrupt larger, industry-wide efforts that are already underway. For example, the Property Appraisal and Valuation Equity (PAVE) Task Force recently submitted to the President an action plan that would change the landscape of the valuation industry. As a member of the PAVE Task Force, VA will continue working with the collaborating Federal agencies to implement this action plan.

Like any organization striving to provide world-class service, VA is always looking for ways to better serve Veterans. VA has already begun reevaluating and realizes

there is more work to be done. VA is committed to the improvement process and welcomes an ongoing dialogue with the Committee about how to accomplish that. However, VA cannot support a requirement to overhaul within 90 days its longstanding, time-tested appraisal model, especially to address a volatile, unsustainable market abnormality. If a rulemaking is required, VA would expect for the public to have the advantage of a full 60-day comment period and would hope for responses from a wide range of stakeholders. VA would also expect the interagency clearance process to bring substantial input from other Federal programs. VA would need time to evaluate all comments and interagency input and perhaps even solicit additional public comment if new issues were to surface from the initial round of comments. VA could support this bill if the 90-day requirement were removed.

VA does not anticipate any costs associated with this bill, if amended.

S. 4223 – Veterans’ Compensation Cost-of-Living Adjustment Act of 2022

This bill would increase the rates of compensation (for Veterans with service-connected disabilities) and dependency and indemnity compensation (for survivors of certain disabled Veterans) to keep pace with increases in consumer prices.

VA supports the bill because it would 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 it would ensure that the value of their benefits keeps pace with increases in consumer prices.

VA estimates the mandatory cost of this bill to be \$4.2 billion in FY 2023, \$26.1 billion over 5 years, and \$57.2 billion over 10 years. However, the cost of these increases is included in VA’s baseline budget because VA assumes Congress will enact

a cost-of-living adjustment each year. Therefore, enactment of this bill would not result in additional mandatory costs, beyond what is included in VA's baseline budget. Discretionary costs are not anticipated for the bill.

S. 4308 – Veterans Marriage Recognition Act of 2022

This bill would amend the definition of "surviving spouse" and "spouse" in 38 U.S.C. § 101 to remove the requirement that a spouse or surviving spouse be a member of the opposite sex.

VA supports this bill, subject to the availability of appropriations. On June 26, 2013, the U.S. Supreme Court held, in *United States v. Windsor*, 570 U.S. 744 (2013), that section 3 of the Defense of Marriage Act, 1 U.S.C. § 7, violates Fifth Amendment principles by discriminating against legally married same-sex couples. On September 4, 2013, the Attorney General announced that the President had directed the Executive Branch to cease enforcement of similar provisions in 38 U.S.C. §§ 101(3) and 101(31), defining surviving spouse and spouse to the extent that they limit Veterans' benefits to opposite sex couples. VA has been administering spousal benefits to same-sex married couples since that time, provided their marriages otherwise meet the requirements of 38 U.S.C. § 103(c). On June 26, 2015, the U.S. Supreme Court also held, in *Obergefell v. Hodges*, 576 U.S. 644 (2015), that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendments, same-sex couples may not be deprived of that right and that liberty. Following *Obergefell*, VA amended its policies and procedures to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. This bill would eliminate potential confusion and

provide clear statutory basis for the practices VA has adopted to conform with the Court's rulings in *Windsor* and *Obergefell*.

VA notes that, while the Supreme Court's decision in *Obergefell* allows it to recognize the same-sex marriage of most Veterans, the decision arguably does not apply to the laws of foreign nations and specifically to the laws of foreign nations that prohibit and do not recognize same-sex marriage. This bill has similar limitations because, as amended, 38 U.S.C. § 101(3) would still define a "surviving spouse" as someone who was "lawfully married to a Veteran." Pursuant to 38 U.S.C. § 103(c), a Veteran's marriage is to be recognized "according to 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." Under the plain text of 38 U.S.C. § 103(c), VA would be required to apply the law of the jurisdiction in which the Veteran and spouse resided to determine the validity of their same-sex marriage. Accordingly, if the intent of this bill is to remove the requirement that a spouse or surviving spouse of a Veteran be a person of the opposite sex in all cases, VA suggests that consideration be given to amending 38 U.S.C. § 103(c) to specifically address marriages occurring outside the United States.

This bill would not result in any additional costs to VA.

S. 4319 – Informing VETS Act of 2022

This bill would require VA to send a letter to each Veteran entitled to a chapter 31 program that explains education benefits under chapter 31 and provides a side-by-side comparison between chapter 31 benefits and educational assistance under chapter 33.

VA does not support this bill because it would result in actions that VA deems redundant. When Veterans receive notification of VA disability compensation decisions, VA sends out information regarding the Veteran Readiness and Employment (VR&E) chapter 31 program. When a Veteran applies and is determined eligible for services, an initial evaluation is scheduled for the Veteran to meet one on one with a Vocational Rehabilitation Counselor. During this meeting, the Veteran is provided benefits counseling regarding the benefits and services provided under chapter 31 and chapter 33. Furthermore, a side-by-side comparison of VA education benefits is available on the VR&E program website under the heading "What kind of VR&E services can I get."

VBA's external-facing website and printed materials provide an overview of the chapter 31 program. Additionally, the services VA provides Veterans are individualized to each participant. VA looks forward to the opportunity to discuss these issues in greater detail with the Committee.

S. XXXX – Native American Veterans Direct Housing Loans

This bill would amend VA's Native American Direct Loan (NADL) program by providing Native American Veterans with more refinance options, requiring the Secretary to award grants to local service providers that specialize in Native American lending and authorizing a new pilot program to assess the feasibility and advisability of a relending program to community development financial institutions (CDFI) that specialize in Native American lending.

VA would support the bill, if amended, subject to the availability of appropriations. VA is committed to making ongoing improvements to the NADL program.

Section 2(a) of the bill would allow Native American Veterans to use the NADL program to refinance their non-NADL mortgage loans. VA notes that there are significant technical issues that would have to be resolved for the bill to accomplish its intended purpose. Under current law, the refinancing of a NADL program loan is limited to a streamline refinance known in VA's program as an Interest Rate Reduction Refinance Loan (commonly called an IRRRL). VA believes the purpose of the subsection would be to eliminate this limitation and expand Native American Veterans' opportunities to take advantage of the NADL program. But the bill text, as drafted, would fail to accomplish that intent. For instance, as the bill is drafted, Native American Veterans would still be unable to use the NADL program to repair, alter or improve their homes in conjunction with the refinance of a non-NADL program loan. Additionally, technical amendments to 38 U.S.C. § 3729 would be required to ensure that Native American Veterans would be charged the correct statutory loan fee depending on the refinancing loan type. VA would be pleased to work with the Committee to resolve these and other technical matters to ensure that the bill would address unique issues facing Native American Veterans who want to participate in the NADL program.

Section 2(a) loan subsidy cost savings is estimated to be \$103,000 in 2023, \$536,000 over 5 years, and \$1.1 million over 10 years.

Section 2(b) would require VA to make grants to local service providers for conducting outreach, homebuyer education, housing counseling, risk mitigation and other technical assistance as needed to assist Native American Veterans seeking to qualify for mortgage financing. Section 2(c) would amend 38 U.S.C. § 3765 to define terms introduced in section 2(b), including CDFI, Native CDFI and tribally designated

housing entity. Although VA supports the intent behind section 2(b), VA does not support the requirement that VA make grants for such services, as the staffing resources necessary to implement and oversee the grant program would deplete VA's ability to carry out the other NADL program functions. VA would instead support an amendment, subject to the availability of appropriations, that would require VA to partner with local service providers for conducting homebuyer education and housing counseling to assist Native American Veterans seeking to qualify for mortgage financing. Such amendment would provide flexibility for VA to further the mission of assisting Native American Veterans with opportunities to achieve economic success through housing, with less impact on the limited staff who specialize in the NADL program.

Section 3 of the bill would require the Secretary to establish a pilot program to assess the feasibility and advisability of making direct housing loans to Native CDFIs to allow them to relend to qualified Native American Veterans and qualified non-Native American Veterans. The bill would establish application and lending requirements, interest rates for loans made to Native CDFIs, non-Federal cost share requirements and repayment requirements. The bill would also authorize VA to use \$5 million to carry out the pilot program in the fiscal year following the fiscal year in which the bill is enacted. VA notes that the bill would not make the re-lending requirements specific to Native American Veterans. Also, VA believes that a pilot program, rather than a permanent one, would be counterproductive. VA would need additional enforcement mechanisms to ensure that funds would be used for the statutory purpose and that Native American Veterans would obtain loans on favorable terms. VA further notes there are numerous

technical concerns (for example, definitional consistency), both within the bill text and across 38 U.S.C. chapter 37.

Accordingly, VA would support section 3, with amendments, subject to the availability of appropriations. Such amendments would include provisions to: (1) ensure that the respective CDFIs are limited to making loans to Native American Veterans; (2) establish the program as a permanent one, rather than a pilot program; (3) provide the Secretary with flexibility and discretion to establish additional program requirements, including terms and conditions both for loans from VA to CDFIs and for loans from CDFIs to Veterans; (4) outline the Secretary's oversight authorities; and (5) address other technical concerns (for example, consistency of definitions for terms). VA looks forward to working with the Committee to further develop this legislation and address our concerns.

Section 3 loan cost subsidy savings is estimated to be \$2.2 million in 2023 over 5 and 10 years.

VA general operating expense NADL program estimate for FY 2023 is \$2 million and includes salary, benefits, rent, travel, supplies, other services, and equipment. Five-year costs are estimated at \$10.4 million and 10-year costs are estimated to be \$22 million.

S. XXXX – Ensuring the Best Schools for Veterans Act of 2022

This bill would amend 38 U.S.C. § 3680A(d), the section which sets forth the law known colloquially as the "85/15 rule" for VA approval of programs of education. In doing so, the bill would require VA to establish a process for an educational institution to request a review of a determination that the educational institution does not meet the

85/15 requirement. VA's Under Secretary for Benefits would be required to issue an initial decision for each request, within 30 days to the extent feasible, and an educational institution could request the Secretary to review the decision of the Under Secretary.

VA would support the bill, if amended, and subject to the availability of appropriations. 85/15 reports, and therefore suspensions, happen at the start of each term and are reported and adjudicated individually for each approved program. This means there are hundreds of 85/15 calculations and potential suspensions for lack of compliance with the 85/15 rule annually. This large volume of continuous adjudications would add sizeable administrative burdens at both the Under Secretary and the Secretary levels. Therefore, VA recommends that the bill not mandate the level of decision authority for these determinations, to allow VA the ability to manage the adjudicatory workload. No mandatory costs are associated with this bill.

S. XXXX – Veterans' Cemeteries on Trust Land

Section 1 of the draft bill would amend 38 U.S.C. § 2408(g) by adding a new paragraph (3) to address cases where a tribal organization is not operating or maintaining a covered (grant-funded) Veterans' cemetery in accordance with standards established by VA. As drafted, new paragraph (3)(A) would authorize the Secretary to choose among a variety of measures with regard to the cemetery ranging from providing funding for the education and training of the cemetery staff to determining that the cemetery is no longer eligible to receive grants under this subsection. Paragraph (3)(B) would require VA to prescribe regulations establishing a process to make determinations as to whether a grant-funded tribal Veterans' cemetery is being operated

and maintained in accordance with established standards. Paragraph (3)(C) would define "covered veterans' cemetery" to mean a Veterans' cemetery on trust land owned by, or held in trust for, a tribal organization for which the tribal organization has received a grant under section 2408(g)(1).

As drafted, section 1 would require VA to establish a process to determine whether a tribal organization is operating and maintaining a tribal Veterans' cemetery, which was the subject of a grant under section 2408(g), in accordance with established standards. In a case in which VA determines that a tribal organization is not meeting the standards, section 1 would authorize VA to: "provide funding to such entities as the Secretary determines appropriate for the education and training of the staff of the cemetery;" "make grants for the operation and maintenance of the cemetery;" "assume responsibility for costs associated with the operation and maintenance of the cemetery;" or "determine that the cemetery is no longer eligible to receive grants under this subsection."

VA does not support this section of the draft bill for several reasons. First, VA notes section 2408(c) currently authorizes grant funds to be used for training costs for employees of Veterans' cemeteries on trust land owned by, or held in trust for, a tribal organization. Also, VA already has authority to make operations and maintenance grants to tribal organizations for operating and maintaining a cemetery under 38 U.S.C. § 2408(g)(1) and (2) and such grants are conditional on the cemetery complying with VA standards under section 2408(d). Thus, the training and operations and maintenance grants provisions of the bill appear to be redundant with existing law.

VA defines an operation and maintenance project in regulation (38 C.F.R. § 39.2) as a project that “assists a State or Tribal Organization to achieve VA’s national shrine standards of appearance in the key cemetery operational areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites and turf conditions.” It is unclear if Congress’ intent is to create a new type of grant that would support interment and daily maintenance and administrative activities at tribal cemeteries. VA does not provide grant funds for daily operations activities, such as conducting interments or mowing the grass. If the intent is to provide such funds, VA strongly recommends revising for clarity to distinguish Congress’ intent from VA’s long-standing practice and current regulatory use of the term “operations and maintenance”. However, VA strongly opposes extending the grant program in this way.

Assuming responsibility for costs of a cemetery on trust land owned by, or held in trust for, a tribal organization is an expansive departure from providing a construction or an operations and maintenance grant upon request from the tribe. It would entail using federally appropriated funds for a cemetery that is not federally owned or operated. VA makes clear in 38 C.F.R. § 39.11 that neither the Secretary nor any employee of VA shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any grant funded cemetery, except as specifically prescribed within the regulation which governs the grant program. Assuming responsibility for costs would mean exercising direct Federal supervision and control over activities of a sovereign entity.

In addition, the underlying concept of this proposed provision would put VA in a position of providing additional Federal funding to a tribal organization that has already

received Federal grant funds under an agreement to operate and maintain the Veterans' cemetery in accordance with VA's national shrine standards yet is failing to do so. The result would be that tribal organizations that are not meeting their commitment would potentially receive additional funds while those that do meet their commitment do not receive additional resources. In addition, limiting this provision to tribal organizations while excluding States creates the appearance of inequitable oversight and inequitable consideration for funding and could considerably diminish the grant funding available to establish, expand and improve other cemeteries.

VA already requires, in 38 C.F.R. § 39.121, that grant-funded cemeteries be inspected for compliance with such standards at the completion of the initial project, and every 3 years subsequent to completion. Grant-funded cemeteries on trust land owned by, or held in trust for, a tribal organization are subject to these inspections by VA's Compliance Review Program and are already subject to agreements that require such cemeteries be operated and maintained in compliance with such standards.

Finally, the language would create ambiguity as to whether the tribal organization would need to apply for grant funding provided in accordance with the bill, as is generally required in section 2408(a)(2) for cemetery grant funding. Section 2408(a)(2) indicates that such grants may be awarded only upon submission of an application. VA has existing regulations governing the application process and the prioritization process for making grant awards with limited grant funds.

VA is unable to provide a cost estimate for section 1 as written. VA is unable to distinguish Congress' intent from VA's long-standing practice and current regulatory use of the term Operations and Maintenance.

Section 2 of the bill would require the Secretary of Veterans Affairs to submit to Congress a report detailing the number of Veterans buried in a cemetery or section of a cemetery that is on trust land owned by or held in trust for a tribal organization who meet the requirements for a plot or interment allowance under 38 U.S.C. § 2303(b)(1) but for whom the Secretary has not paid such allowance.

VA would support section 2 of this bill, if amended. VA notes that section 2 does not specify which Veterans shall be included within the report. Payment for a plot or interment allowance per 38 U.S.C. § 2303(b)(1) for a Veteran buried in a cemetery, or a section of a cemetery, located on trust land owned by, or held in trust for, a tribal organization was not available before enactment of the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2002, Pub. L. 117-103, Div. CC, § 102(c). As such, VA requests clarification on the exact metric for which Veterans to include within the report to Congress. VA offers the following non-exhaustive list of possible interpretations:

- All Veterans who have been buried on land specified within the draft bill and for which a plot or interment allowance has not been paid, regardless of the date of interment or if a plot or interment allowance benefit has been claimed;
- All claims for a plot or interment allowance which have been denied for Veterans on land specified within the draft bill to include the time period prior to the enactment of Public Law 117-103; or
- Only Veterans whose burial should have been eligible for a plot or interment allowance under 38 U.S.C. § 2303(b)(1) beginning on March 15, 2022, upon

enactment of Public Law 117-103, which have been denied or are currently pending.

VA is open to providing additional technical assistance and working with Congress regarding this portion of the draft bill. VA notes that any data for Veterans who have been buried on tribal land as specified within Public Law 117-103 for which a claim for plot or interment allowance has not yet been filed would not be available within VBA data resources.

Section 3 of the draft bill would amend 38 U.S.C. § 2404(c)(2) to authorize the Secretary to designate one or more sections in any national cemetery as green burial sections and to provide for grave markers of such type as the Secretary considers appropriate. The provision includes a definition of the term "green burial section," which would be a section in which remains of individuals have been prepared for interment in a manner that does not involve chemicals or embalming fluids and have been interred in a natural manner or in completely biodegradable burial receptacles. Section 3(b) of the bill seeks to remove an apparent requirement in section 2306(e) for use of outer burial receptacles; however, the term "shall" in subsection (e)(1)(A) has already been replaced by "may" in Public Law 116-315, § 2203 (2021) and will be effective January 5, 2023, so this provision may not be necessary.

VA supports the amendment to section 2402(c) and is appreciative of Congress' support of green burial sections in VA's national cemeteries. This provision reflects the content of the National Cemetery Administration's (NCA) legislative proposal requesting authorization to designate sections of national cemeteries for green burial.

Regarding the amendment to section 2306(e), VA supports the concept of this provision insofar as it advances the effective date of the amendment in Public Law 116-315, § 2203, which authorized replacing “shall” with “may” in subsection (e)(1)(A), effective January 5, 2023. However, we oppose the addition of the paragraph (5) language since it would limit this discretionary authority to apply to green burial sections only. The pending discretionary authority under Public Law 116-315 will apply to casketed burials in any VA national cemetery section instead of just to green burial sections, and will allow VA to honor the wishes of families to forego a burial receptacle for other reasons (e.g., to allow for observance of religious customs among observant Muslim and Jewish Veterans and their dependents). There would be no costs associated with this provision.

Section 4 of the draft bill would authorize the Secretary of the Army to convey to the Secretary of Veterans Affairs approximately two acres of land near the national cemetery at Fort Bliss, Texas, for the purpose of expanding that cemetery. This provision reflects NCA’s legislative proposal requesting authorization for this land transfer.

VA supports this provision, subject to the availability of appropriations, and is appreciative of Congress’ support of this land transfer. However, the provision excludes much of VA’s proposed legislative language that would be critical to the conveyance, particularly provisions regarding conditions of conveyance; responsibility for any environmental conditions; and payment of costs of conveyance. VA would appreciate the opportunity to discuss the legislative details further with the Committee.

Section 5 of the draft bill would authorize the Secretary of the Interior to transfer to VA administrative jurisdiction over eligible Bureau of Land Management (BLM) land for use as a national cemetery. This provision is a general authorization to allow transfer of jurisdiction of eligible BLM land as needed and appropriate upon agreement by the Secretaries of Interior and Veterans Affairs. This provision is similar to NCA's legislative proposal requesting authorization for such transfers.

VA supports this provision and is appreciative of Congress' support of this authority to transfer jurisdiction of land from BLM to VA. However, the provision does not include some legislative specifics that VA included in our legislative proposal, which would remove ambiguity of the applicability of 43 U.S.C. § 1714. VA would appreciate the opportunity to discuss the legislative details further with the Committee.

Section 6 of the draft bill would amend 38 U.S.C. § 2411 by adding new subsection (b)(5), which would prohibit the interment or memorialization in a VA national cemetery or Arlington National Cemetery of a person who is found to have committed a Federal or State crime that would cause the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (34 U.S.C. 20901 et seq.), but has not been convicted by reason of not being available for trial due to death or flight to avoid prosecution. Section 6 would include several amendments to include a reference to "a Federal or State crime that would cause the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (34 U.S.C. 20901 et seq.," rather than referring only to "a Federal capital crime or a State capital crime." This provision mirrors NCA's legislative proposal requesting such clarifications.

VA supports this provision and is appreciative of Congress' support in clarifying the prohibition against interment or memorialization of persons committing certain Federal or State crimes. There would be no costs associated with this provision.

Conclusion

This concludes my statement. My colleagues and I would be happy to answer any questions you or other Members of the Committee may have.

STATEMENT OF
KRISTINA KEENAN, ASSOCIATE DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

WITH RESPECT TO

Pending Legislation

WASHINGTON, D.C.

July 13, 2022

Chairman Tester, Ranking Member Moran, and members of the Senate Committee on Veterans' Affairs, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on these important pieces of legislation pending before this committee.

S. 3372, A bill to amend title 38, United States Code, to strengthen benefits for children of Vietnam veterans born with spina bifida, and for other purposes.

The VFW supports this legislation which would strengthen benefits for children of Vietnam veterans born with spina bifida by establishing an advisory council, care and coordination teams, and policy to delineate the duration of care and benefits.

Since the 1990s, the VFW advocated from the beginning for benefits and health care for veterans' children with spina bifida when legislation requested research into the harmful Agent Orange effects on veterans and their families. The connection between spina bifida in children with paternal Agent Orange exposure was linked by the National Academy of Sciences in 1995. This research was the foundation of the language in the *Agent Orange Benefits Act*, Public Law 104-204, which required the Department of Veterans Affairs (VA) to establish a health care and benefits package for those individuals. Living with spina bifida since birth creates daily challenges and care needs. VA needs to ensure those challenges are overcome or made easier and those needs are met.

Sixty years ago, one in three children with spina bifida died before their fifth birthday. Today, ninety percent of individuals with spina bifida live past their thirtieth birthday. An advisory council can bridge the communication gap between this distinct group of veterans, their children, and VA to share knowledge of VA's services and benefits, and innovation of care and research as treatments improve and life expectancy lengthens.

A February 2021 VA Office of Inspector General (OIG) report identified that more outreach and coordination was needed to support spina bifida beneficiaries. The report stated that most of these Veterans Benefits Administration (VBA) beneficiaries have been assigned a disability level of III, meaning the most disabling. Therefore, many of these individuals require around-the-clock care and assistance. According to title 38, United States Code, Chapter 18, VA defines health care for these children as home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care. Individuals and families can also benefit from a care coordinator who can assist in organizing a patient's care activities to identify possible challenges, develop a care plan, monitor and adjust care when needed, and evaluate outcomes. The care coordinator provides clinical expertise to help facilitate and communicate the child's care and needs between parents, VA providers, VA community care providers, and other health care professionals to offer the best possible quality of life.

According to the OIG report, as of May 2020, overpayments of VBA monthly compensation benefits to three eligible individuals after they died totaled well over half a million dollars. Since then, VBA and the Office of Community Care have taken swift action to ensure death notification data is shared. This legislation would clearly outline the duration of health and benefits to title 38, United States Code, for children with spina bifida to eliminate overpayment in the future.

S. 3548, Veterans Hearing Benefits Act of 2022

Service in the military is often accompanied by activities during training, deployments, and everyday operations that can put service members' hearing at risk. A 2005 Institute of Medicine (now known as the National Academy of Medicine) report titled "Noise and Military Service: Implications for Hearing Loss and Tinnitus" found that based on the available data since World War II, "the evidence is sufficient to conclude that hazardous noise levels are and have been present in many military settings." In addition, the VA website states that hearing problems, including tinnitus, are the most prevalent service-connected disability among American veterans.

The VFW supports this legislation which would require VA to recognize tinnitus and hearing loss as presumptive conditions for service in combat or in military occupational specialties with exposure to acoustic trauma. Our members continue to support a VFW Resolution that urges Congress to pass legislation to this effect.

S. 3606, A bill to amend title 38, United States Code, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a dependent, and for other purposes.

The VFW supports this bill, which would eliminate the requirement to specify an effective period of a transfer of Post-9/11 educational assistance to a dependent. In cases where a service member dies before the educational assistance is used, unnecessary red tape is a hurtful barrier if the surviving family is unavailable to clarify clerical errors. The process of transferring education benefits to a dependent should be as transparent and seamless as possible, and this bill would

help eliminate a field which serves no real utility. This legislation would make it easier for all veteran and military families using VA education benefits and would be of significant importance to Gold Star Families.

S. 3994, Restoring Benefits to Defrauded Veterans Act of 2022

The VFW supports this legislation which would ensure that if a fiduciary misuses a veteran's VA benefits they were entrusted to manage, whenever the Secretary of Veterans Affairs determines repayment of those funds must be issued to the veteran but the veteran has passed away, the funds would be paid to the veteran's estate. These benefits may be critical for the veteran's surviving spouse, next of kin, or caregiver. The VFW appreciates that language was included which specifies that no fiduciary who misused benefits of a veteran would receive these payments, even if that person is in control of the late veteran's estate.

S. 4141, A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Advisory Committee on United States Outlying Areas and Freely Associated States, and for other purposes.

For veterans residing in U.S. territories and freely associated states, access to their earned VA medical care and benefits can be challenging. The VFW supports this legislation which would create an Advisory Committee on United States Outlying Areas and Freely Associated States to identify and communicate the needs of veterans in these areas to the Secretary of Veterans Affairs and to develop appropriate solutions.

S. 4208, Improving Access to the VA Home Loan Act of 2022

The Department of Veterans Affairs Loan Guaranty Service has long been providing opportunities for upward economic mobility to the military community by opening the doors to homeownership. For over seventy years, the VA Home Loan program, established through the *Servicemen's Readjustment Act of 1944*, has provided a means to obtain and adapt homes, in recognition of the dedication and sacrifice of service members. For eligible veterans who have served on active duty and in the National Guard or Reserve forces, this program has been one of the most significant benefits offered through VA.

Veterans using VA-guaranteed loans sometimes face difficulties associated with this program's appraisal process. While conventional loans provide flexibility in choosing appraisers, VA-guaranteed loans require VA-approved appraisers. In addition to their reputation for being more stringent, these appraisals have been associated with longer wait times. Data from ICE Mortgage Technology indicates that on average for the first three months of 2021, these loans took fifty-five days to close compared to forty-nine days for conventional loans. Although the difference is less than one week, some buyers are either unaware of wait times based on the current market, or do not find a twelve percent difference to be negligible. Sellers want to close quickly on the sale of their homes. In light of the high demand for appraisals, VA has responded by increasing

timeliness requirements as well as appraisal fees for VA-approved loan appraisers, while stipulating that these increases are temporary.

The VA appraisal process also has an established reputation for strict home value assessments. This can often pose a challenge for rural veterans when comparable homes are not available to accurately assess the true value of a home. Some veterans report the lack of a local VA-approved appraiser who understands the nuances of the community that factor into home values. The VFW supports this proposal to review and possibly amend appraisal practices for a VA home loan to make this great program more user friendly, without diminishing its value or security.

S. 4223, Veterans' Compensation Cost-of-Living Adjustment Act of 2022

The VFW supports this legislation which would provide a cost-of-living increase for wartime disability compensation, additional compensation for dependents, clothing allowances, and dependency and indemnity compensation for surviving spouses and children. These benefits would receive the same percentage increase as is granted for Social Security benefits. The VFW would like to see cost-of-living increases for these benefits every year so that veterans, dependents, and survivors are able to maintain financial stability.

S. 4308, Veterans Marriage Recognition Act of 2022

The VFW supports this legislation which would update the definition of surviving spouse within title 38, United States Code. The last time the definition was updated was in 1962 and much has changed in the last sixty years. The change would remove the currently restrictive language that describes a surviving spouse as a person of the opposite sex. The proposed language would state that a surviving spouse is someone who was lawfully married to a veteran, including a marriage between two persons of the same sex. The VFW also recommends consideration of another update in the same section of the law (Section 101 of title 38, United States Code) by striking the language that states a surviving spouse may not live with another person or hold themselves out to be married. This is outdated language and should be updated to reflect marriage requirements of the current era.

S. 4319, Informing VETS Act of 2022

The VFW supports this proposal to better inform veterans about the opportunities offered through the Veteran Readiness and Employment (VR&E) program. Currently, according to data released by the Bureau of Labor Statistics, the unemployment rate for all veterans in America in June of this year was 2.7 percent. While this is good news regarding veteran employment, the VFW understands this situation can be cyclical. If we do not put proper tools in place, we could see these numbers rise again during this country's next period of financial instability. VR&E offers a proven system that enables veterans to retrain for their next career, allowing them to continue participating in the American dream of prosperity.

S. 4458, Ensuring the Best Schools for Veterans Act of 2022

The VFW supports this bill to improve the process by which the Secretary of Veterans Affairs determines whether an educational institution meets certain requirements for enrollment. VA's 85-15 rule is not meant to prohibit veterans from utilizing their earned education benefits. However, due to recent changes that had unintended consequences, certain schools were unsure if they could enroll veterans in courses. This proposal takes input from schools and veteran advocates to make sure veterans are able to use the benefits they have earned while schools still maintain quality standards.

Discussion Draft, Native American Direct Loan Improvement Act

The VFW supports this draft proposal to carry out a pilot program to offer direct housing loans to Native community development financial institutions and to expand outreach and grants to local service providers. The VFW believes stable housing is a key protective factor against veteran suicide, and improving and expanding resources like the Native American Direct Loan program is helpful to make sure veterans, regardless of where they live, can purchase a home of their own.

Discussion Draft, To amend title 38, United States Code, to address the operation and maintenance of veterans' cemeteries on trust land owned by, or held in trust for, tribal organizations, and for other purposes.

The VFW supports the scope and intent of this legislation which aims to provide additional resources to veteran cemeteries on tribal lands or operated by a tribal organization that have received VA cemetery grants or grants from already existing "Operations and Maintenance" funds, but are not maintaining or are incapable of maintaining the cemeteries in accordance with the standards set by VA's National Cemetery Administration. The VFW believes the Secretary of Veterans Affairs already has the authority and budgeted resources to direct additional funding for the training of cemetery staff, provide grants or other funding for cemetery operations and maintenance, and the ability to determine when cemeteries are no longer eligible to receive grants. VA has an effective structure to provide these resources to cemeteries that are in need and are willing to use the benefits.

The VFW is supportive of the provisions in this legislation that ensure VA reports to Congress the number of interments on tribal lands or managed by tribal organizations that are eligible for plot or interment allowance but for which VA has not paid such allowance. The VFW supports that this bill would give VA the ability to create "green" burial sections at national cemeteries that include biodegradable burial receptacles, and that it would provide additional resources for the expansion of National Cemetery Administration lands.

Discussion Draft, No Bonuses For Bad Exams Act

The VA OIG report from June 2022 titled “Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions” found deficiencies in VBA’s governance and oversight of its contract medical disability examination program. OIG reported that VBA “did not hold vendors accountable for correcting errors and improving exam accuracy” and stated that improvements to the program are necessary to ensure that contractors conduct accurate examinations that lead to the correct outcomes for veterans’ disability claims. OIG found that VBA conducted quality reviews correctly during the 2020 review period, but also found that all three vendors failed to meet the ninety-two percent accuracy requirement from 2017 to 2020. One vendor’s accuracy rate was as low as sixty-six percent in 2018 and had only improved to seventy-one percent by 2020. Though VBA identified these errors through its quality review, this information was not shared with claims processors and may have led to inaccurate rating decisions. Of the 12,152 quality reviews that VBA conducted in 2020, OIG estimates that 2,700 examinations had errors and 690 of those were not corrected before decisions were made on the disability claims. OIG estimates that approximately thirty-five percent of the potentially insufficient examinations had errors that were not corrected prior to the claims processors decisions. Contract examinations also represent a significant financial investment as VA has spent nearly 6.8 billion dollars since fiscal year 2017.

The VFW supports this legislation which aims to resolve the issues reported by OIG. Though much of what is being proposed already exists within VA policy, the VFW believes there are several areas in which codification may be more effective. First, regarding the training requirements within Title I, VA has required training for its staff and for contractors, though has not shared with Veterans Service Organizations (VSOs) how often that training is required. VA uses the Talent Management System as an online learning center, and the employee’s job title and duties determine which courses are required. The types of training mentioned in Section 101 (b) of this legislation are current training requirements for all VA Veterans Service Representatives and Rating Veterans Service Representatives. The VFW supports requiring the existing training to be completed not less than once per year.

The VFW supports restricting bonuses for contractors that do not meet the ninety-two percent examination accuracy requirement. This may already exist within the current contracts between VA and vendors, though proof of this has not been made available. The VFW has made requests in the past for details on contracts regarding compensation and pension examinations and quality assurance reports, but VA has refused to share that information. This legislative proposal would establish an accuracy requirement of ninety-five percent or higher to qualify for bonuses. While the VFW would like to see one hundred percent accuracy, ninety-five percent is an achievable benchmark and incentive for contractors to ensure examinations are completed with the highest level of quality.

The VFW supports Section 103 within Title I of this legislation which would ensure data is collected and analyzed for all Veterans Health Administration and contract medical examinations

on a monthly basis. VA's Medical Disability Examination Office (MDEO) should be conducting that reporting, but has admittedly lapsed on generating quality reports in the past. As the OIG report indicates, MDEO also failed to take corrective actions when it did find discrepancies in examinations. The VFW also supports priority processing for claims where the examination was identified as inadequate. VA has often failed to make these corrections, possibly due to contractual timelines and the added cost of delays, even though this is part of the existing adjudication procedures.

In addition, since VA eliminated the use of pre-decisional review, known as "48-hour review," VSOs have lost the ability to intervene when errors in examinations or other aspects of a claim are discovered. VA-Accredited Service Officers can be effective in catching these errors, and reestablishing a pre-decisional review option would serve to reduce the need for veterans to appeal. The VFW believes that the ability for VSOs to intervene in a veteran's claim prior to final rating decision is a key part of title 38, United States Code, which authorizes accredited representatives to assist with the preparation, presentation, and prosecution of claims.

Regarding Title II of this legislation, the VFW supports veterans and their representatives receiving the credentials of the contractor or employee of the Department that provided such examination. Currently, VA's Disability Benefits Questionnaire includes general credentials such as the physician number and specialty. The VFW recommends clarifying these added credentials and including the training components listed in Section 101 of this proposal.

The VFW supports Section 202 of Title II which would require that VA corrects examination errors within seven days or schedules a replacement examination and, in certain cases, removes inadequate examinations from a veteran's claim record and prohibits their use for adjudication. The VFW suggests using the definition of "insufficient" as is currently in the M21-1 Adjudication Procedures Manual for consistency in the quality of contract disability medical examinations.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you or the committee members may have.

**NATIONAL ASSOCIATION OF
COUNTY VETERANS SERVICE OFFICERS**



Senate Committee on Veterans' Affairs

Hearing on Pending Legislation

July 13, 2022

Presented by

Mr. Michael McLaughlin

Legislative Chairman, National Association of County Veterans Service Officers

CVSO Blue Earth County, Minnesota

Chairman Tester, Ranking Member Moran, and distinguished members of the committee, my name is Michael McLaughlin. I currently serve as a County Veterans Service Officer in Blue Earth County, Minnesota, and I am the Legislative Chairman for the National Association of County Veterans Service Officers, or NACVSO. It is my honor to testify before this committee about the pending legislation, and in particular the draft bill known as *No Bonuses for Bad Exams*.

For those who are unfamiliar, NACVSO has over 1,700 accredited veteran service officer members and represents the interests of over 5,000 county, city, tribal and state government employees who work tirelessly to ensure veterans in their local communities receive the benefits they have earned through their service and sacrifice to our nation. State and local government-employed veteran service officers account for over two-thirds of all veteran service officers accredited by VA, and often are the first point of contact veterans have with VA. We assist veterans by guiding them through the long and sometimes stressful benefits claim process.

Through our work, we understand veterans' needs and the daily challenges they encounter. We also see the frustration and confusion veterans and their family members sometimes feel when dealing with the VA claims process. Our policy platform is largely based on these experiences. In short, I hope my testimony will give the committee a "front line" perspective so that the pending legislation you are considering today can move forward.

"No Bonuses for Bad Exams Act of 2022"

NACVSO fully supports the "No Bonuses for Bad Exams" legislation. CVSOs work hard with our VSO partners and VA staff to catch some of the issues that stem from unnecessary or inadequate exams performed by examiners who are not up to date on the latest standards, but in many cases these issues are not identified until a claim is denied, and a Supplemental or Higher-Level Review (HLR) is submitted. In one example identified by an NACVSO member, a veteran's disability claim was denied based on an inadequate exam performed by an experienced contracted medical examiner. A Higher-Level Review was submitted for the denied claim. A VA Decision Review Officer (DRO) found multiple errors and that the exam was so inadequate, the DRO felt it necessary to define what an adequate medical opinion was in their instructions to the examiner. NACVSO is grateful for the efforts that this individual DRO took to educate the examiner, but this sort of education should happen before any medical disability examiner performs an exam. This is just one example, but if a seasoned examiner like this can be so far from the standard, we know that it is more commonplace than we would hope.

NACVSO has long advocated for improving transparency of medical disability examinations for veterans and their representatives. Requiring VA to provide the examiner's credentials to the veteran and their representative as part of this proposed

legislation is a step towards greater transparency. In many instances, the veteran is under the incorrect impression that an assigned examiner is a specialist in the relevant medical field. For example, a veteran may think their heart condition will be examined by a cardiologist, but they'll actually be evaluated by a general practitioner. Knowing this information in advance prepares the veteran to articulate their symptoms in specific detail to better document their full health picture.

Additionally, NACVSO fully supports the requirement to remove inadequate or unnecessary medical examinations from veterans' VA records. Our CVSOs have seen instances where inadequate exams are cited by future examiners when the bad exams are not purged.

I'm here today because NACVSO sees this legislation as a good start toward addressing some of the shortcomings of the medical disability examination process. We also encourage VA to consider implementing policy that gives veterans greater flexibility when scheduling contracted medical exams. Currently, the VA gives veterans no expectation about when a contracted company will reach out to schedule an exam. When that crucial call finally comes, the veteran is offered a short window in which they can schedule their exam, and many miss that call, and subsequently, the deadline. One recent example of this challenge is in the case of a young National Guard Soldier returning home to his family and full-time job as an EMT after completing an Active-Duty deployment abroad. He submitted a claim and was contacted by a VA contracted company to set up his medical disability exams with an eight-day window to do so, however the veteran was leaving the next day on a family vacation. The veteran provided dates when he would be available, but was told by the contractor that he would have to contact the VA. That very same day, the veteran's entire exam scheduling request was canceled, and the veteran was deemed "unavailable". A month later the veteran received a letter from VA that said he "expressed a desire to withdraw his claim". What should have been a simple accommodation for scheduling conflicts, has now turned in to a lengthy and unnecessary clarification process for the veteran.

Chairman Tester, Ranking Member Moran, and distinguished Members of the committee, on behalf of NACVSO and its members we deeply appreciate the important work you are doing to ensure America's veterans receive the respect and benefits they have earned. Working together, with VA and all its stakeholders, we can make this process better.

Thank you.

STATEMENT OF ANNE H. MEEHAN
ASSISTANT VICE PRESIDENT, GOVERNMENT RELATIONS
AMERICAN COUNCIL ON EDUCATION
BEFORE THE
UNITED STATES SENATE COMMITTEE ON VETERANS' AFFAIRS
HEARING ON PENDING LEGISLATION

July 13, 2022

Chairman Tester, Ranking Member Moran, and members of the Committee, thank you for inviting me to speak at this hearing on pending legislation. My name is Anne Meehan, and I am the Assistant Vice President of Government Relations at the American Council on Education (ACE). ACE represents approximately 1,800 public and private, two-year and four-year colleges and universities and related higher education associations. I submit this testimony on behalf of ACE and the higher education associations listed at the end.

I have been asked to speak about S. 4458, the "Ensuring the Best Schools for Veterans Act of 2022," legislation to address the unintended consequences stemming from the Department of Veterans Affairs' (VA) recent 85-15 policy reset. We strongly support this legislation, which clarifies the 35 percent exemption to the 85-15 rule and ensures that veterans can continue to enroll in quality programs of their choosing. We thank Chairman Tester and Ranking Member Moran for introducing this bipartisan legislation, which would address the concerns raised by college and university leaders and other campus officials regarding this policy reset.

The 85-15 rule provides important safeguards for veterans and their GI bill benefits against waste, fraud, and abuse. At its core, the law seeks to ensure that at least 15 percent of students in any education program are not using GI bill benefits to pay for the program. The rationale for the rule was that the presence of non-veterans in a given program provides important evidence of value and quality, because these non-veterans are willing to pay out of their own pockets to attend. By requiring the presence of non-veteran students, the rule also protects against the creation of programs designed exclusively to target and exploit veterans and the generous benefits they have earned through their service.

Under the 85-15 rule, institutions with less than 35 percent total veteran enrollment are, in general, exempt from providing 85-15 ratios on a program-by-program basis.¹ As the legislative history of the 35 percent exemption makes clear, requiring 85-15 ratios from institutions with a low percentage of enrolled veterans would "result in burdensome and

¹ 38 U.S.C. 3680A(d)(1)

costly recordkeeping requirements with little tangible demonstration that accountability has been assured or abuse has been curbed.”²

Unfortunately, as part of the 85-15 reset, the VA has required institutions to “reapply” for their 35 percent exemption, submitting 85-15 ratios for every program. In addition to being contrary to the statute and legislative history, this interpretation has placed institutions in a Catch 22—unable to receive an exemption from computing 85-15 ratios without first computing these ratios.³ For institutions with a low percentage of veterans, the reset has resulted in campuses spending multiple days computing 85-15 ratios for hundreds of programs, most of which do not have a single veteran enrolled.

Further compounding these challenges, VA’s policy reset also significantly expanded the definition of when a non-veteran student would be considered “supported” for 85-15 purposes. These changes have resulted in a number of programs exceeding 85-15 ratios—not because of the presence of a large number of veterans, but because of confusing and misguided rules about when non-veteran students must be considered “supported.” In many cases, programs exceeded the 85-15 ratio and lost GI bill eligibility *even though there was a not a single veteran enrolled in the program*—a result that turns the purported rationale of the 85-15 rule on its head.

² 123 Cong. Rec. 23254 (1977).

³ When passing the GI Bill Improvement Act of 1977, Congress specifically considered, and rejected, prior VA attempts to require institutions with a 35 percent exemption to submit 85-15 ratios on a program-by-program basis. As the Senate report language explains:

“The Committee, however, believes that, in educational institutions where 35 percent or less of the total enrollment are veterans in receipt of educational assistance allowance under title 38, the imposition of the requirement of computation on a course-by-course basis can result in burdensome and costly recordkeeping requirements with little tangible demonstration that accountability has been assured or abuse has been curbed. The Committee has thus acted to codify in law this current regulatory waiver, thus eliminating the Veterans’ Administration discretion in this regard. . . . The Committee points out, however, an important distinction between the current [VA policy] and the amendment being made by the Committee bill. Under the bill, there is no need for an educational institution to certify that no course has an enrollment of greater than 85 percent veterans. As a result of the current [VA] regulatory requirement, many educational institutions find themselves in a “Catch 22” position, where, as a result of having fewer than 35 percent enrollment of veterans, such institutions are supposedly exempt from the obligation of making course-by-course computations. At the same time, however, these institutions are required to certify that no course—for which they have been waived from making a computation, had an enrollment of greater than 85 percent veterans. The Committee bill does not require such institutions to certify that no course has greater than 85 percent enrollment of veterans. Rather, if an institution is waived from having to make the computations as a result of having an enrollment of veterans totaling 35 percent or less of total enrollment, then such institution will not be required to make such computations, unless the Administrator has reason to believe that a specific course has greater than 85 percent enrollment of assisted veterans.”

123 Cong. Rec. 23254 (1977) (emphasis added).

Based on available Department of Education and other data, it appears that only a small number of nonprofit and public institutions have veteran enrollments above 35 percent. For most of these institutions, the percentage of veterans hovers in the low single digits.

According to a recent survey of private nonprofit colleges, more than 20 percent of survey respondents had already been informed by VA that certain programs would be ineligible for future veteran enrollments. These include programs popular with student veterans, such as programs in computer science, information systems, cybersecurity, criminal justice, liberal arts, teaching, healthcare, nursing, and master's programs in leadership and business administration, to name a few. We expect more institutions to learn that they have programs that are no longer eligible for GI bill benefits as VA continues to process applications for the 35 percent exemption.

By clarifying the 35 percent exemption, S. 4458 would undo the negative impacts of VA's recent policy change on institutions with low total veteran populations and the veterans they serve. It will also ensure that veterans who attend these institutions will be able to enroll in their program of choice. For many institutions, registration for the fall term begins in August. We appreciate that S. 4458 would become effective upon enactment and hope that the legislation might be cleared before the August recess. This would help eliminate any disruptions for student veterans this fall. Without this critical fix, institutions will be forced to deny veterans from enrolling in certain programs, and in some cases, may have to turn them away entirely.

Colleges and universities greatly appreciate Congress' efforts to address the unintended consequences brought on by these recent policy changes. We thank Chairman Tester and Ranking Member Moran and their staff for their efforts in crafting legislation that reflects a balanced approach and restores the original intent of the law. The legislation has our full support, and we look forward to working with you to help move the bill swiftly to final passage.

We thank the Committee for its efforts on behalf of our nation's veterans. I would be pleased to answer any questions.

American Council on Education
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
National Association of Independent Colleges and Universities

Questions for the Record

**Department of Veterans Affairs (VA)
SVAC Legislative Hearing
July 13, 2022
Due-Outs for Chairman Tester**

Draft, No Bonuses For Bad Exams Act

Question 1: The Chairman was concerned about the impact of the Veterans Benefits Administration (VBA) relying on bad exams for claims decisions. How are you guys finding that the exams are inaccurate? How often do VBA raters find they cannot use an exam (as received by those raters), requiring clarifications or even re-examinations? As part of this:

- a) What proportion of contract exams over a particular period of time?
- b) What is that in absolute numbers, both in # of exams and # of Veterans?
- c) What is the average additional time added to process a claim as a result?

VA Response:

- a) What proportion of contract exams over a particular period of time?
 - In fiscal year (FY) 2021, 6.71% of contract exams required rework for clarification or insufficient results.
 - Original exams (Exam Scheduling Requests [ESRs]) with clarifications required (5.2%)
 - Original exams (ESRs) with rework for insufficient results (1.9%)
 - In FY 2022 (data through July 31, 2022), 5.36% of contract exams required rework for clarification or insufficient results.
 - Original exams (ESRs) with clarifications required (4.2%)
 - Original exams (ESRs) with rework for insufficient results (1.4%)

Notes:

 1. The period of performance is defined by when the original exam (ESR) was completed.
 2. Original exams (ESRs) can have rework required for clarification or insufficient results or both.
- b) What is that in absolute numbers, both in # of exams and # of Veterans?
 - In FY 2021:
 - 104,881 original contract exams (ESRs) out of 1,563,067 original contract exams (ESRs) completed required rework for clarification or insufficient results
 - 100,447 Veterans (9.85%) out of 1,019,947 Veterans receiving original contract exams (ESRs) had a completed rework exam (ESR)
 - In FY 2022 (data through 7/31/22):

- 75,149 original contract exams (ESRs) out of 1,402,945 original contract exams (ESRs) completed required rework for clarification or insufficient results
- 71,902 Veterans (7.59%) out of 947,727 Veterans receiving original contract exams (ESRs) had a completed rework exam (ESR)
- Notes:
 1. The period of performance is defined by when the original exam (ESR) was completed.

c) What is the average additional time added to process a claim as a result?

Rework exams are requested by the VA claims processor when there is clarification needed based on the results provided by the vendors, or when there is insufficient information to rate the claim. The data below only addresses the additional time added to a claim because of the exam rework process with contract vendors. However, other required development actions may be processed in parallel or serial with the rework exam (ESR), adding to the time for the claim to be completed. With partial and full ratings utilized in support of claims processing during the COVID-19 pandemic, vendors may complete a subset of the contentions prior to others and provide Disability Benefits Questionnaires (DBQ) results as they are available. This allows for partial ratings on the completed contentions, while other contentions are awaiting other exams/reworks from vendors or any additional development actions that may be required.

- In FY 2021, the average number of days to complete a rework exam (ESR) was 29.85 days.
- In FY 2022 (data through 7/31/22), the average number of days to complete a rework exam (ESR) was 23.96 days.

Note: Rework exam timeliness has been impacted by the COVID-19 pandemic in FY 2021 and FY 2022.

Question 2: While #1 requires raters to seek clarifications or re-examinations during the processing, what efforts has VA made to assess the quality of exams after a decision, e.g., Systematic Technical Accuracy Review (STAR) reviews, remands from Board of Veterans' Appeals (BVA) or Court of Appeals for Veterans Claims (CAVC) referencing bad exams, etc.? What are those results?

VA Response: VA Compensation Service provides oversight of the delivery of disability compensation benefits to Veterans. The STAR program is one part of VA's multifaceted quality assurance program that provides quality review and analyses of all elements of processing a specific claim to include quality of exams. STAR quality reviews are performed on individual, randomly selected claims from across the country. The STAR national quality review checklist has a specific question regarding whether an insufficient exam or medical opinion has been found during the quality assessment. FY

2022 through July 2022, STAR data shows 0.00506% exam-specific errors have been cited. VA reviews error trends and identifies training needs monthly. Currently, the training staff has identified three exam-related courses that are being updated for claims processor dissemination.

Additionally, VA Office of Administrative Review has built-in feedback loops to assist with error identification and to provide oversight of remands issued from the BVA and CAVC. Through the feedback loops, VA collects data relevant to adequate and sufficient examinations and medical opinions, identifies error trends, develops and implements remediation efforts for reducing errors. For the period of October 1, 2019 through January 31, 2022, the top reason for remands was a failure to obtain adequate and sufficient examinations and medical opinions. To remediate this trend, VA conducted monthly mentoring programs, initiated special focus reviews, conducted train-the-trainer trainings, refreshed existing training and created additional training regarding sufficient examinations and medical opinions. FY 2022 through July 2022, failure to obtain adequate and sufficient examinations and medical opinions account for 34% of the total remand reasons. However, notably, this percentage reflects a 5% decrease in errors (or, conversely a 5% increase in accuracy) from FY 2019.

**Department of Veterans Affairs (VA)
SVAC Legislative Hearing
July 13, 2022
Due-Outs for Sen. Tuberville**

S. 3994, Restoring Benefits to Defrauded Veterans Act of 2022

Question 1: In the case of a veteran who has been defrauded of compensation by a fiduciary representative, is there more that can be done to screen, or conduct periodic assessments, on the named fiduciary representative to prevent any issues of fraud? How often does the VA conclude a fiduciary is mishandling a veteran's financial compensation?

VA Response: The Veterans Benefits Administration (VBA) conducts a wide range of oversight activities to prevent and investigate potential fiduciary misuse but searches continuously for new ways to improve fiduciary oversight. VBA's fiduciary program provides a rigorous upfront vetting process during fiduciary appointment and then conducts ongoing oversight procedures to protect the beneficiary from fraud that minimizes unnecessary, disruptive contact for an incompetent beneficiary. This oversight includes required regular follow-up field examinations; fund usage reviews and examinations; and accountings. Fiduciaries who are required to provide an accounting must do so on an annual basis. In addition, fiduciaries who do not meet specific exemptions are required to provide a fund usage report once every 2 years consisting of 3 months of all financial statements containing VA funds for a beneficiary and supporting documents.

Misuse allegations may originate from a myriad of different sources, including a beneficiary, a third-party and/or VA discovery. In response to such allegations, VA conducts unscheduled field examinations as due diligence within its misuse investigation process. VA notes that internal discovery leading to a misuse allegation can be found in a variety of ways, including identification of red flag indicators such as where the fiduciary:

- Charged fees not authorized by VA or a court.
- Is unable to account for questionable expenditures.
- Fails to provide complete bank financial statements that match the appropriate VA accounting form.
- Is unable to provide documentation of supporting assets previously documented in a field examination or accounting.
- Accepted payments on behalf of a deceased beneficiary.

VA documents allegations of misuse for all instances where a fiduciary's accounting or fund usage report contains any red flags that cannot be resolved.

During the misuse investigation process, VA distinguishes between misuse and improper use. Improper use of benefits results when a fiduciary uses benefits in a

manner that, while benefiting the beneficiary, is not in the beneficiary's best interest. Improper use is generally a result of poor judgment. If the beneficiary benefits from the expense, the expense would likely fall within the category of improper use. On the other hand, misuse of benefits occurs when a fiduciary uses any part of the beneficiary's VA benefits for a purpose that is not for the use and benefit of the beneficiary or the beneficiary's dependents or for the improvement of their standard of living. VA considers use and benefit to apply to expenses reasonably associated with the intended care, support or maintenance of the beneficiary or the beneficiary's dependents.

Following the misuse investigation process, VA determines if misuse did indeed occur based on the evidence of record. From October 1, 2021, through June 30, 2022, VBA completed 2,212 misuse determinations in which 258 instances of misuse were found. As of July 31, 2022, there were 109,567 beneficiaries and 85,730 fiduciaries participating in the fiduciary program. The fiduciary population fluctuates due to the varying reasons for removal and entry of an individual into the program.

Question 2: In your testimony, the VA requests tweaks to the language of S.3994 to, rather than preclude a fiduciary who misused benefits from receiving payment of reissued funds, instead have the funds offset by the amount misused. The VA also requests changes to the language to allow an executor to receive and hold funds until the inheritor has been identified. Can you please talk a little bit more in depth about these concerns? Does the VA need statutory authority to do what this bill requires or can it be done through policy?

VA Response: VA recommends against including language which fully precludes a misusing fiduciary from the receipt of funds to which they are legally entitled under laws and court decisions governing inheritance. VA proposes amendments to (c)(2) which would result in the language within page 2, lines 23-25 to read:

“(2) The Secretary may not make a payment under this subsection to a fiduciary who misused benefits of the beneficiary, except that, if such fiduciary is a member of the estate of the beneficiary or an executor or inheritor as determined by a court of competent jurisdiction, VA may make payment to such individual, provided that VA shall offset any funds due to be reissued to, but not paid to, such fiduciary by any debt established from the misuse.”

These modifications would allow VA to ensure that misusing fiduciaries are not benefiting from their actions of misuse, while ensuring that the individual is also not precluded from their inheritance rights under state laws. Should the beneficiary pass away before VA reissues any misused funds, it would not be uncommon for the misusing fiduciary to be a valid member of an estate under State law, who then would be eligible to receive a portion of the funds due to be reissued. In these scenarios, the use of misused funds could be interpreted as a pre-spending of what the fiduciary would have expected to inherit from the estate of the deceased beneficiary. In such a case, it would be proper to limit reissuance to the misusing fiduciary to only funds which exceed

an offset of the debt owed to VA. In practice, VA would first apply the amount to be reissued to the misusing fiduciary towards any established debt, and then provide any excess amount after the fulfillment of the debt to the misusing fiduciary.

VA would benefit from having this debt offset incorporated within statutory and derivative regulatory authorities. Currently, there is no direct ability for VA to apply a reissuance amount first to a misusing fiduciary's debt prior to the distribution of any funds. In addition, VA is required to release the entirety of the amount determined to be due to the beneficiary's estate without first offsetting the debt. Without a statutory foundation, there is the likely potential that VA would face an uncertain path if it were to address this issue via rulemaking.

VA also has concerns that the current language of the bill in (c)(1)(C) would preclude an executor identified by a court from receiving the funds, which would require VA to hold the funds until such time that the inheritor(s) have been identified by a court. The intent of the revision is to make it clear that when (c)(1)(A) and (B) do not apply to a case, then VA will hold funds until an executor who has the appropriate legal authority to hold and distribute funds is identified. Therefore, VA proposes amending (c)(1)(C) on page 2, lines 21 and 22 to read:

“(C) An executor or the next inheritor as determined by a court of competent jurisdiction, or held by the Department of Veterans Affairs until an executor or next inheritor is identified by a court of competent jurisdiction.”

VA notes that additional statutory authority is not necessarily needed to fulfill the bill's intended result of allowing for the reissuance of funds for a deceased beneficiary because existing authority in 38 U.S.C. § 6107(a)(1) and (b)(1) already requires VA to reissue funds “to the beneficiary or the beneficiary's successor fiduciary.” Although neither the statute nor the legislative history explicitly addresses the scenario involving a beneficiary's death, the plain language of the statutes makes clear that the benefits at issue belong to the beneficiary, and that VA's role in recouping or reissuing benefits is to provide them to the beneficiary. Also, 38 U.S.C. § 5506(1) defines the term “fiduciary” as “a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a *beneficiary (or a beneficiary's estate)*” (emphasis added). Therefore, in the fiduciary context, we believe the statutory references to “beneficiary” strongly indicate that they include the beneficiary's estate. However, this bill would clarify Congressional intent with regard to reissuance if a beneficiary dies prior to reissuance and the hierarchy of payment recipients. In any instance where a beneficiary passes away with VA funds under management, the fiduciary who was managing the funds at that time would hold the funds to distribute to an executor or inheritor when or if identified. VA recommends revising the language in (c)(1)(C) to allow VA to hold the funds to be reissued until an executor or inheritor is identified, if one has not been identified already, when the other payee types identified within (c)(1)(A) and (B) are not available.

**Department of Veterans Affairs (VA)
SVAC Legislative Hearing
July 13, 2022
Due-Outs for Sen. Rounds**

Draft Bill: Native American Direct Loan (NADL) Improvement Act

Question 1: Provide clear evidence that a partnership will succeed, instead of providing grants to local third parties.

VA Response: VA believes that partnerships with, rather than grants to, local third parties present a more fiscally responsible path to helping Native American Veterans qualify for VA financing. As noted in VA's written testimony, VA estimates 10-year general operating expenses of \$22 million, which includes additional full-time employees (and associated expenses), to implement a grant program. VA also believes that partnerships will succeed based on recent organizational changes, evidence of successful partnerships/outreach under these changes, and opportunities within this bill that would enhance future partnerships.

In FY 2022, VA established a seven-person NADL team within VA Loan Guaranty Service (LGY). This team represents a renewed prioritization of the NADL program, including outreach activities, within VA and moves NADL activities from a collateral duty to the primary function and purpose of an employee's position. VA notes that NADL outreach activities have increased significantly since the formation of this team. Between October 1, 2021, and July 19, 2022, the NADL team completed 22 outreach events (including seven in-person events and 15 webinar events) across the United States.

Early indications demonstrate increased satisfaction with and success of the NADL team's outreach and partnership activities. For example, members of the South Dakota Housing Coalition were pleased with VA's creation of a dedicated 1-800 telephone number based on their suggestion and feedback. Increased communication, through both outreach and partnerships, also resulted in NADL marketing fact sheets specialized to geographic regions and further reductions to VA's already low closing costs for NADL program loans.

Regarding homebuyer education and housing counseling, specifically, VA is already successfully partnering with certain tribal organizations that would likely receive grants under the bill. For example, the NADL team recently participated in helping six out of 14 registered Native American Veterans obtain their certificate of completion for the Cheyenne River Housing Authority Homebuyer Readiness Class of 2022. Each class in this 12-part series focused on a different topic of homebuyer education, with VA providing specific expertise in four separate classes on the NADL program regarding how to contact VA and how to complete the application – including loan application

package, underwriting, and construction requirements – and appraisal processes. VA is considering how to expand these activities and partnerships to maximize success.

Finally, VA believes that partnerships will succeed because of the relationships that will be formed through the re-lending program outlined in section 3 of the bill. Implementation of the re-lending program will provide VA with increased opportunities to partner with Native community development financial institutions (CDFIs) to help ensure that the re-lending program is successful.

Question 2: What VA would be open to doing to streamline the application paperwork requirements – e.g. the VA Form 26-1852 for description of materials – that our constituents have noted are incredibly difficult?

VA Response: VA understands the concerns raised by Senator Rounds on behalf of Native American Veterans, tribal organizations, and tribally designated housing entities and is committed to streamlining the application paperwork requirements associated with the NADL program. As part of VA's ongoing modernization efforts to improve process through technology, VA is reviewing existing requirements and forms to ensure that VA is minimizing burdens to Veterans.

VA notes that VA Form 26-1852 is not a required form within the NADL program. Rather, VA sees it as a resource that tribally designated housing entities, building contractors, and others can use when developing estimates for the costs of construction. Often, a building contractor prepares a basic, high-level materials list for the purpose of estimating a construction bid. This type of materials list does not provide adequate detail for justifying the anticipated loan amount. VA Form 26-1852 can help stakeholders better understand the cost approach to valuation. Nevertheless, VA acknowledges that the form's material list is perhaps too detailed for the NADL context and can lead to some confusion among stakeholders. VA is taking a closer look at the current process to improve the overall NADL program experience for Native American Veterans.

Consistent with Office of Management and Budget Memorandum M-22-10, *Improving Access to Public Benefits Programs Through the Paperwork Reduction Act*, VA will consult with and solicit input from Native American Veterans, tribal organizations, tribally designated housing entities, and other related parties to understand how best to obtain the information needed to complete a NADL program loan. VA will also explore whether there are opportunities to align VA's requirements, when appropriate, with the requirements of other federal agencies that lend funds for residential construction on tribal lands.

Question 3: We are going to be working on amendments to this bill and I know VA's written testimony mentioned some technical amendments and other proposed changes to the language, so I would also appreciate getting some actual TA/suggested edits to our bill from the Department so we can work on addressing those.

VA Response: VA is pleased to provide Senator Rounds with technical amendments and other proposed changes to address the concerns outlined in VA's written testimony. VA's technical comments are outlined below and have been incorporated into a Ramseyer of statutory amendments (attached). VA welcomes further discussion with the Senator and his staff to resolve any outstanding questions, as noted below, and provide updated technical language, if necessary.

Section 2(a)

Section 2(a) of the bill would allow Native American Veterans to use the NADL program to refinance their non-NADL mortgage loans.

VA comments:

Under current law, the refinancing of a NADL program loan is limited to a streamline refinance known in VA's program as an Interest Rate Reduction Refinancing Loan (commonly called an IRRRL). See 38 U.S.C. § 3762(h). VA believes the purpose of this subsection would be to eliminate this limitation and expand Native American Veterans' opportunities to take advantage of the NADL program. This would include the opportunity to: (1) refinance an existing non-NADL mortgage loan using the NADL program; (2) refinance an existing NADL program loan to repair, alter, or improve the home; and (3) refinance an existing non-NADL mortgage loan using the NADL program to repair, alter, or improve the home. But the bill text, as drafted, would fail to accomplish that intent.

Additionally, VA notes that it is not clear from the bill text, as drafted, whether Congress intends a requirement for a new determination of reasonable value and/or a limit on the maximum loan amount when refinancing an existing non-NADL mortgage loan or refinancing to repair, alter, or improve the property. In both VA's guaranteed and NADL loan programs, VA has waived this requirement for IRRRLs because the reasonable value of the property was previously determined by VA, and the IRRRL does not affect a Veteran's existing home equity position. See 38 U.S.C. §§ 3710(e)(1)(C) and 3762(h)(2)(A). However, to protect Veterans, taxpayers, and the program generally, Although section 3762(d)(2) already authorizes VA to establish valuation requirements for property that will serve as security in the NADL program, not explicitly tying the new types of refinances to reasonable value could create unnecessary ambiguity. Congress has, in the guaranteed loan program, limited similar types of refinances (that is, a refinance of a non-VA loan to a VA-guaranteed loan) to 100% of the reasonable value of the property. See 38 U.S.C. § 3710(b). A similar requirement in the NADL context would keep more parity with the VA-guaranteed loan program and help Veterans more easily understand NADL program requirements.

VA has therefore provided technical amendments to 38 U.S.C. § 3762(h) that would clarify the following purposes for a NADL refinancing program loan, as well as the corresponding program requirements for such refinancing loan purposes:

1. Refinance an existing NADL program loan as an IRRRL (see TA Ramseyer paragraph (h)(1));
2. Refinance a non-NADL mortgage loan in a manner similar to an IRRRL (see TA Ramseyer paragraph (h)(2)); or
3. Refinance an existing NADL program loan or a non-NADL mortgage loan to repair, alter, or improve the property (see TA Ramseyer paragraph (h)(3)).

Finally, VA notes that technical amendments to 38 U.S.C. § 3729 would be necessary to ensure that Native American Veterans would be charged the correct statutory loan fee, depending on the refinancing loan type. Current section 3729(b)(2)(H) provides that a Native American Veteran must be charged a statutory loan fee of 1.25% of the loan amount except in the case of an IRRRL. The IRRRL statutory loan fee, which under current law includes all NADL refinances, is set at 0.50%. See 38 U.S.C. § 3729(b)(2)(E), (b)(4)(F). As VA's technical edits would expand section 3762(h) to include new paragraphs (1) through (3), VA recommends a conforming amendment to section 3729(b)(4)(F), ensuring that NADL IRRRLs provided under section 3762(h)(1) would continue to be charged the 0.50% statutory loan fee, but the non-IRRRL refinances described in new subsections (h)(2) and (h)(3) would be charged at the rate of 1.25%, like other NADL program loans.

Section 2(b)

Section 2(b) would require VA to make grants to local service providers for conducting outreach, homebuyer education, housing counseling, risk mitigation, and other technical assistance, as needed, to assist Native American Veterans seeking to qualify for mortgage financing.

VA comments:

As noted in VA's written testimony, VA has a number of technical concerns with this section's requirement that VA make grants. VA instead recommended a technical amendment that would require VA to partner with local service providers.

From an implementation perspective, VA does not have the capacity to develop and oversee a grant program without disrupting VA's ability to conduct other statutorily-mandated NADL outreach activities. See 38 U.S.C. § 3762(i)(2). If VA were required to issue grants, there would be less opportunity for VA input and participation, as well as less visibility into the information shared with Native Americans about the NADL program. As the lender and policy-making entity responsible for the NADL program, VA needs the opportunity to help educate individual Veterans based on their unique circumstances.

Also, providing outreach grants to the same entities as those participating in section 3's relending program means they would receive unprecedented amounts of subsidy layering for VA's home loan benefits programs. VA would essentially pay for a non-Governmental entity's marketing efforts and subsidize that same lenders' lending operations at a below-market, fixed interest rate of 1%. Additionally, Veterans could perceive the grant not only as an endorsement but also as an implied program requirement of borrowing from the subsidized entity, rather than VA or another lender of the Veteran's choice. A partnership would help alleviate these concerns.

VA notes that the inclusion of terms such as "outreach," "risk mitigation," and "other technical assistance" in section 2(b) of the bill would make implementation of this section difficult, whether as a grant or partnership. Terms like "risk mitigation" and "other technical assistance", for example, may be misinterpreted as a substitute for VA's own program and contractual responsibilities, whether in assisting Native American Veterans applying for NADL program loans, supporting Native American Veterans who may fall behind in their mortgage payments, or working with VA's loan servicing contractor. To avoid confusion and ensure smoother implementation of this section of the bill, VA recommends a technical amendment to remove the ambiguous terms. Alternatively, VA suggests providing the Secretary with express authority to define these terms by adding the following sentence to the end of subparagraph (G): "For purposes of this subparagraph, the terms "outreach," "risk mitigation," and "other technical assistance" shall be defined by the Secretary."

Section 2(c)

Section 2(c) would amend 38 U.S.C. § 3765 to define terms introduced in section 2(b), including CDFI, Native CDFI, and tribally designated housing entity.

VA comments:

The term "Native community development financial institution" would exclude CDFIs specific to Pacific Islanders. Pursuant to 38 U.S.C. 3765(3), the term "Native American" includes "a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. § 2991 et seq.)." If Congress' intent is to include CDFIs that could support all Native American Veterans eligible for the NADL program, VA recommends technical amendments to replace the specific references to certain Native American groups with the term "Native Americans" for consistency within the subchapter.

Section 3

Section 3 of the bill would require the Secretary to establish a pilot program to assess the feasibility and advisability of making direct housing loans to Native CDFIs to allow them to relend to qualified Native American Veterans and qualified non-Native American Veterans. The bill would establish application and lending requirements, interest rates for loans made to Native CDFIs, non-Federal cost share requirements, and repayment requirements. The bill would also authorize VA to use \$5 million to carry out the pilot program in the fiscal year following the fiscal year in which the bill is enacted.

VA comments:

During the July 13, 2022 hearing, Senator Rounds indicated that he had no objection to VA's recommendation to make the relending program described in section 3 of the bill a permanent program, rather than a pilot program. Accordingly, VA has provided technical recommendations that would authorize a permanent relending program, result in improved consistency between the bill and the current authorizing statutes, and provide clearer oversight authority. VA would be pleased to meet with the Committee and Senator Rounds to explain the recommendations.

§3762. Direct housing loans to Native American veterans; program administration

- (a) The Secretary may make a direct housing loan to a Native American veteran under this subchapter if-
- (1)(A) the Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; or
 - (B) the tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to direct housing loans to Native Americans that the Secretary determines substantially complies with the requirements of subsection (b); and
 - (2) the memorandum is in effect when the loan is made.
- (b)(1) Subject to paragraph (2), the Secretary shall ensure that each memorandum of understanding that the Secretary enters into with a tribal organization shall provide for the following:
- (A) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this subchapter-
 - (i) holds, possesses, or purchases using the proceeds of the loan a meaningful interest in a lot or dwelling (or both) that is located on trust land; and
 - (ii) will purchase, construct, or improve (as the case may be) a dwelling on the lot using the proceeds of the loan.
 - (B) That each such Native American veteran will convey to the Secretary by an appropriate instrument the interest referred to in subparagraph (A) as security for a direct housing loan under this subchapter.
 - (C) That the tribal organization and each such Native American veteran will permit the Secretary to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary determines are necessary-
 - (i) to evaluate the advisability of the loan; and
 - (ii) to monitor any purchase, construction, or improvements carried out using the proceeds of the loan.
 - (D) That the tribal organization has established standards and procedures that apply to the foreclosure of the interest conveyed by a Native American veteran pursuant to subparagraph (B), including-
 - (i) procedures for foreclosing the interest; and
 - (ii) procedures for the resale of the lot or the dwelling (or both) purchased, constructed, or improved using the proceeds of the loan.
 - (E) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary may require in order to ensure that loans under this subchapter are made in a responsible and prudent manner.
- (2) The Secretary may not enter into a memorandum of understanding with a tribal organization under this subsection unless the Secretary determines that the memorandum provides for such standards and procedures as are necessary for the reasonable protection of the financial interests of the United States.

(c)(1) Loans made under this section shall bear interest at a rate determined by the Secretary, which rate may not exceed the appropriate rate authorized for guaranteed loans under section 3703(c)(1) or section 3712(f) of this title, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as the Secretary may prescribe.

(2) Notwithstanding section 3704(a) of this title, the Secretary shall establish minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section.

(d)(1) The Secretary shall establish credit underwriting standards to be used in evaluating loans made under this subchapter. In establishing such standards, the Secretary shall take into account the purpose of this program to make available housing to Native American veterans living on trust lands.

(2) The Secretary shall determine the reasonable value of the interest in property that will serve as security for a loan made under this section and shall establish procedures for appraisals upon which the Secretary may base such determinations. The procedures shall incorporate generally the relevant requirements of section 3731 of this title, unless the Secretary determines that such requirements are impracticable to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

(e) Loans made under this section shall be repaid in monthly installments.

(f) In connection with any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction. The Secretary shall determine the amount of any expenses incident to the origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

(g) Without regard to any provision of this chapter (other than a provision of this section), the Secretary may-

(1) take any action that the Secretary determines to be necessary with respect to the custody, management, protection, and realization or sale of investments under this section;

(2) determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

(3) make such rules, regulations, and orders as the Secretary considers necessary for carrying out the Secretary's functions under this section; and

(4) in a manner consistent with the provisions of this chapter and with the Secretary's functions under this subchapter, employ, utilize, and compensate any persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out such functions.

(h) ~~(4)~~ The Secretary may make direct loans to Native American veterans in order to enable such veterans to refinance existing mortgage loans made under this section, for the following purposes—

~~(12) To refinance an existing loan made under this section, provided that the loan—~~

~~(A) The Secretary may not make a loan under this subsection unless the loan meets the requirements set forth in subparagraphs (B), (C), and (E) of paragraph (1) of section 3710(e) of this title;—~~

~~(B) The Secretary may not make a loan under this subsection unless the loan will bear an interest rate at least one percentage point less than the interest rate borne by the loan being refinanced; and—~~

~~(C) Complies with p~~Paragraphs (2) and (3) of ~~such~~ section 3710(e) ~~shall apply to any loan made under this subsection~~, except that for the purposes of this subsection the reference to subsection (a)(8) of section 3710 of this title in such paragraphs (2) and (3) shall be deemed to be a reference to this subsection.

(2) To refinance an existing mortgage loan not made under this section on a dwelling owned and occupied by the veteran as the veteran's home, provided all of the following requirements are met:

(A) The loan will be secured by the same dwelling as was the loan being refinanced.

(B) The loan will bear an interest rate at least one percentage point less than the interest rate borne by the loan being refinanced.

(C) The term of the loan may not exceed the original term of the loan being refinanced by more than 10 years.

(D) The nature and condition of the property is such as to be suitable for dwelling purposes.

(E) The amount of the loan must not exceed either of the following—

(i) 100 percent of the reasonable value of the dwelling, with such reasonable value determined under the procedures established by the Secretary pursuant to section 3762(d)(2).

(ii) An amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount points) as may be authorized by the Secretary to be included in the loan.

(F) Notwithstanding subparagraph (E), if a loan is made for both the purpose of this paragraph and to make energy efficiency improvements, the loan must not exceed either of the following:

(i) 100 percent of the reasonable value of the dwelling as improved for energy efficiency, with such reasonable value determined under the procedures established by the Secretary pursuant to section 3762(d)(2).

(ii) The amount referred to under subparagraph (E)(ii), plus the applicable amount specified under section 3710(d)(2) of this title.

(G) The loan meets all other requirements the Secretary may establish pursuant to this subchapter.

(H) The existing mortgage being refinanced must be a first lien on the property and secured of record.

(3) To refinance an existing mortgage loan to repair, alter, or improve a dwelling owned by the veteran and occupied by the veteran as the veteran's home, provided all of the following requirements are met:

(A) The loan will be secured by the same dwelling as was the loan being refinanced.

(B) The nature and condition of the property is such as to be suitable for dwelling purposes, and the repair, alteration, or improvement substantially protects or improves the basic livability or utility of such property.

(C) The amount of the loan, including the costs of repairs, alterations, improvements must not exceed either of the following:

(i) 100 percent of the reasonable value of the dwelling as repaired, altered, or improved, with such reasonable value determined under the procedures established by the Secretary pursuant to section 3762(d)(2) of this title.

(ii) An amount equal to the sum of the balance of the loan being refinanced; the actual cost of repairs, alterations, or improvements; and such closing costs (including any discount points) as may be authorized by the Secretary to be included in the loan.

(D) The loan meets all other requirements the Secretary may establish pursuant to this subchapter.

(E) The existing mortgage loan being refinanced must be a first lien on the property and secured of record.

(i)(1) The Secretary shall, in consultation with tribal organizations (including the National Congress of American Indians and the National American Indian Housing Council), carry out an outreach program to inform and educate Native American veterans of the availability of direct housing loans for Native American veterans who live on trust lands.

(2) Activities under the outreach program shall include the following:

(A) Attending conferences and conventions conducted by the National Congress of American Indians in order to work with the National Congress in providing information and training to tribal organizations and Native American veterans regarding the availability of housing benefits under this subchapter and in assisting such organizations and veterans with respect to such housing benefits.

(B) Attending conferences and conventions conducted by the National American Indian Housing Council in order to work with the Housing Council in providing information and training to tribal organizations and tribal housing entities regarding the availability of such benefits.

(C) Attending conferences and conventions conducted by the Department of Hawaiian Homelands in order to work with the Department of Hawaiian Homelands in providing information and training to tribal housing entities in Hawaii regarding the availability of such benefits.

(D) Producing and disseminating information to tribal governments, tribal veterans service organizations, and tribal organizations regarding the availability of such benefits.

(E) Assisting tribal organizations and Native American veterans with respect to such benefits.

(F) Outstationing loan guarantee specialists in tribal facilities on a part-time basis if requested by the tribal government.

(G) Partnering with local service providers, such as tribal organizations, tribally designated housing entities, Native community development financial institutions, and nonprofit organizations, for conducting homebuyer education and housing counseling to assist Native American veterans qualify for mortgage financing.

(j) The Secretary shall include as part of the annual benefits report of the Veterans Benefits Administration information concerning the cost and number of loans provided under this subchapter for the fiscal year covered by the report.

§3765. Definitions

For the purposes of this subchapter-

(1) The term "trust land" means any land that-

(A) is held in trust by the United States for Native Americans;

(B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);

(C) ~~is is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j))~~ located within a region established pursuant to section 7(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(a)); or

(D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

(2) The term "Native American veteran" means any veteran who is a Native American.

(3) The term "Native American" means-

(A) an Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)); ¹

(B) a native Hawaiian, as that term is defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 (Public Law 67-34; 42 Stat. 108);

(C) an Alaska Native, within the meaning provided for the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

(D) a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

(4) The term "tribal organization" shall have the meaning given such term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) ¹ and shall include the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.

(5) The term "qualified non-Native American veteran" means a veteran who-

(A) is the spouse of a Native American, but

(B) is not a Native American.

(6) The term “community development financial institution” has the meaning given that term in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(7) The term “Native community development financial institution” means any entity—

(A) that has been certified as a community development financial institution by the Secretary of the Treasury;

(B) that is not less than 50 percent owned or controlled by Native Americans; and

(C) for which not less than 50 percent of the activities of the entity serve Native Americans.

(8) The term “tribally designated housing entity” has the meaning given that term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

§37XX. Native Community Development Financial Institution Relending Programs.

(a) Purpose.—The Secretary may make a loan to a Native community development financial institution for the purpose of allowing such institution to relend those amounts to qualified Native American veterans, subject to the requirements of this section.

(b) Application Requirements.—(1) The Secretary shall establish standards to be used in evaluating whether to make a loan to a Native community development financial institution. In establishing such standards, the Secretary shall ensure that such institution—

(A) can provide the non-Federal cost share required under paragraph (2) of this subsection;

(B) is able to originate and service loans for single-family homes;

(C) demonstrates financial responsibility and operates the relending program in a manner consistent with the Department’s mission to serve veterans; and

(D) uses amounts received under this section only for the purpose of relending, as described in subsection (c), to Native American veterans.

(2)(A) Except as provided in subparagraph (B), a Native community development financial institution that receives a loan under this section shall be required to match not less than 20 percent of the amount received under subsection (a).

(B) In the case of a loan for which amounts are used to make loans to Native American veterans who are residing on priority Tribal land, the Secretary shall waive the non-Federal cost share requirement described in paragraph (1) with respect to those loan amounts.

(c) **Relending Requirements.**—(1) A Native community development financial institution that receives a loan under this section shall use those amounts to make loans to Native American veterans. Such a loan to a Native American veteran must—

(A) be limited to the purpose of purchasing, constructing, or improving a dwelling; or to the refinancing of an existing mortgage loan consistent with the requirements of section 3762(h); and

(B) comply with terms and conditions, as established by the Secretary.

(2) In making loans under paragraph (1), a Native community development financial institution shall give priority to Native American veterans described in that paragraph who are residing on priority Tribal land.

(d) **Repayment.**—Loans made under this section shall be payable to the Secretary upon such terms and conditions as may be agreed upon by the parties thereto, subject to the provisions of this subchapter and regulations of the Secretary issued pursuant to this subchapter, and shall bear interest at a rate of 1 percent.

(e) **Oversight.**— Subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to loans made under subsections (a) or (c) that any Native community development financial institution has failed to maintain adequate loan accounting records, to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or that such Native community development financial institution has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may take such actions as the Secretary determines necessary to protect veterans or the Government, such as requiring immediate repayment of any loans made under subsection (a) and the assignment to the Secretary of loans made under subsection (c).

(f) **Definitions.**—For purposes of this section, the term "priority Tribal land" means any trust land (as defined in section 3765 of this subchapter) and those areas or communities designated by the Assistant Secretary of Indian Affairs of the Department of the Interior that are adjacent or contiguous to reservations where financial assistance and social service programs are provided to Indians, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)), because of their status as Indians.

§3763. Native American Veteran Housing Loan Program Account

(a) There is hereby established in the Treasury of the United States an account known as the "Native American Veteran Housing Loan Program Account" (hereinafter in this subchapter referred to as the "Account").

(b) The Account shall be available to the Secretary to carry out all operations relating to the making of direct housing loans to Native American veterans under this subchapter, including any administrative expenses relating to the making of such loans. Amounts in the Account shall be available without fiscal year limitation.

(c) Of amounts made available, the Secretary may use up to \$5,000,000 in any fiscal year for loans made under section 37XX of this title.

§3729. Loan fee

(a) Requirement of Fee.-(1) Except as provided in subsection (c), a fee shall be collected from each person obtaining a housing loan guaranteed, insured, or made under this chapter, and each person assuming a loan to which [section 3714](#) of this title applies. No such loan may be guaranteed, insured, made, or assumed until the fee payable under this section has been remitted to the Secretary.

(2) The fee may be included in the loan and paid from the proceeds thereof.

(b) Determination of Fee.-(1) The amount of the fee shall be determined from the loan fee table in paragraph (2). The fee is expressed as a percentage of the total amount of the loan guaranteed, insured, or made, or, in the case of a loan assumption, the unpaid principal balance of the loan on the date of the transfer of the property.

(2) The loan fee table referred to in paragraph (1) is as follows:

Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before January 1, 2020)	2.15	2.40	NA
(A)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2020, and before April 7, 2023)	2.30	2.30	NA
(A)(iii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after April 7, 2023, and before January 14, 2031)	2.15	2.15	NA
(A)(iv) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 14, 2031)	1.40	1.40	NA
(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2004, and before January 1, 2020)	3.30	3.30	NA
(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other	3.60	3.60	NA

subsequent loan described in section 3710(a) (closed on or after January 1, 2020, and before April 7, 2023)			
(B)(iii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after April 7, 2023, and before January 14, 2031)	3.30	3.30	NA
(B)(iv) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 14, 2031)	1.25	1.25	NA
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before January 1, 2020)	1.50	1.75	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 1, 2020, and before April 7, 2023)	1.65	1.65	NA
(C)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after April 7, 2023, and before January 14, 2031)	1.50	1.50	NA
(C)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 14, 2031)	0.75	0.75	NA
(D)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before January 1, 2020)	1.25	1.50	NA
(D)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 1, 2020, and before April 7, 2023)	1.40	1.40	NA
(D)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after April 7, 2023, and before January 14, 2031)	1.25	1.25	NA
(D)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 14, 2031)	0.50	0.50	NA
(E) Interest rate reduction refinancing loan	0.50	0.50	NA
(F) Direct loan under section 3711	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan)	1.00	1.00	NA
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan)	1.25	1.25	NA
(I) Loan assumption under section 3714	0.50	0.50	0.50
(J) Loan under section 3733(a)	2.25	2.25	2.25

(3) Any reference to a section in the "Type of loan" column in the loan fee table in paragraph (2) refers to a section of this title.

(4) For the purposes of paragraph (2):

(A) The term "active duty veteran" means any veteran eligible for the benefits of this chapter other than a Reservist.

(B) The term "Reservist" means a veteran described in section 3701(b)(5)(A) of this title who is eligible under section 3702(a)(2)(E) of this title.

(C) The term "other obligor" means a person who is not a veteran, as defined in section 101 of this title or other provision of this chapter.

(D)(i) The term "initial loan" means a loan to a veteran guaranteed under section 3710 or made under section 3711 of this title if the veteran has never obtained a loan guaranteed under section 3710 or made under section 3711 of this title.

(ii) If a veteran has obtained a loan guaranteed under section 3710 or made under section 3711 of this title and the dwelling securing such loan was substantially damaged or destroyed by a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), the Secretary shall treat as an initial loan, as defined in clause (i), the next loan the Secretary guarantees or makes to such veteran under section 3710 or 3711, respectively, if-

(I) such loan is guaranteed or made before the date that is three years after the date on which the dwelling was substantially damaged or destroyed; and

(II) such loan is only for repairs or construction of the dwelling, as determined by the Secretary.

(E) The term "subsequent loan" means a loan to a veteran, other than an interest rate reduction refinancing loan, guaranteed under section 3710 or made under section 3711 of this title that is not an initial loan.

(F) The term "interest rate reduction refinancing loan" means a loan described in section 3710(a)(8), 3710(a)(9)(B)(i), 3710(a)(11), 3712(a)(1)(F), or 3762(h)(1) of this title.

(G) The term "0-down" means a downpayment, if any, of less than 5 percent of the total purchase price or construction cost of the dwelling.

(H) The term "5-down" means a downpayment of at least 5 percent or more, but less than 10 percent, of the total purchase price or construction cost of the dwelling.

(I) The term "10-down" means a downpayment of 10 percent or more of the total purchase price or construction cost of the dwelling.

(c) Waiver of Fee.-(1) A fee may not be collected under this section from a veteran who is receiving compensation (or who, but for the receipt of retirement pay or active service pay, would be entitled to receive compensation), from a surviving spouse of any veteran (including a person who died in the active military, naval, air, or space service) who died from a service-connected disability, or from a member of the Armed Forces who is serving on active duty and who provides, on or before the date of loan closing, evidence of having been awarded the Purple Heart.

(2)(A) A veteran described in subparagraph (B) shall be treated as receiving compensation for purposes of this subsection as of the date of the rating described in such subparagraph without regard to whether an effective date of the award of compensation is established as of that date.

(B) A veteran described in this subparagraph is a veteran who is rated eligible to receive compensation-

- (i) as the result of a pre-discharge disability examination and rating; or
- (ii) based on a pre-discharge review of existing medical evidence (including service medical and treatment records) that results in the issuance of a memorandum rating.

**Department of Veterans Affairs (VA)
SVAC Legislative Hearing
July 13, 2022
Due-Outs for Sen. Blackburn**

Discussion Topic: Workforce to Process Claims

Question 1: So how many cases are in that 125-day window that have not made it onto the backlog, which I understand now is 176,884? The Senator would like to know the status of the claims in the 125-day plus backlog window. We want a more detailed look at the pending workload. Specifically, we would like a breakdown of how many claims are pending per day, from 125 days to the oldest claim in the Veterans Benefits Administrations (VBA)'s queue.

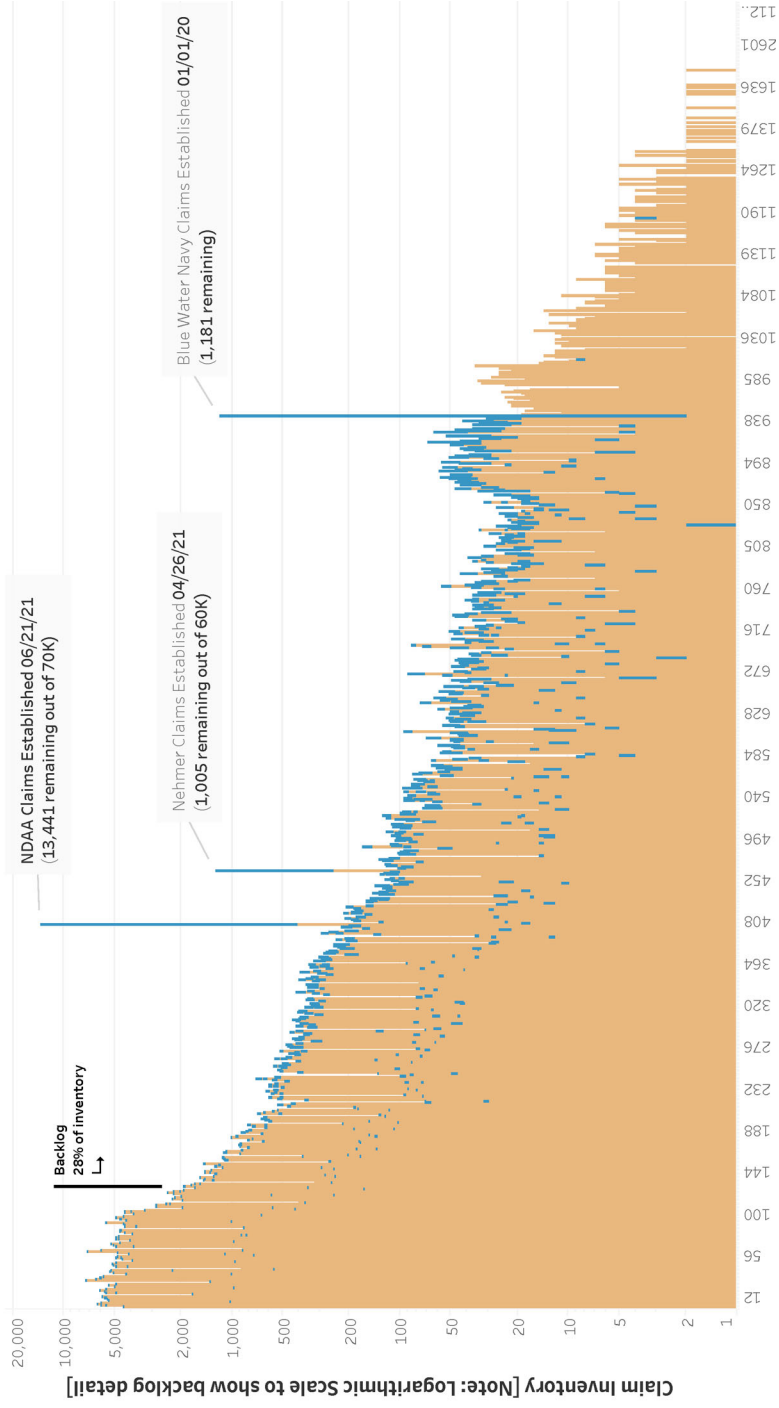
VA Response: Please see the attached chart, which shows VBA's entire claims inventory and those pending over 125 days as of July 31, 2022. Approximately 28% of VBA's claims inventory is older than 125 days, a 14-percentage point improvement since January 2022. VBA established approximately 130,000 Nehmer/Blue Water Navy claims (to include NDAA claims) in two batches in 2021, and all became backlogged by November 2021. These claims take, on average, approximately 4 times longer to complete than other compensation claims. From January 31, 2022, to July 26, 2022, VBA has reduced the claims backlog from 260K to 168K and continues to make progress towards restoring timely service to all Veterans. VA is working these claims aggressively and expect to resolve them in 2023. Note that the scale is logarithmic to allow visualization of very large numbers alongside very small numbers.

Question 2: We would also like to know the number/percentage of claim processors working in person and how many are working remotely?

VA Response: Through the majority of the pandemic, VBA had employees in its offices as needed to provide in-person services, while also providing virtual options, to Veterans and their families. VBA continues to provide in-person services and those employees are in the office as the mission dictates. At 93% of regional offices (Ros), claims processors are returning to the offices at least two days per pay period, per Office of Personnel Management guidance. Two ROs continue to work with American Federation of Government Employees on impact and implementation and two ROs have construction issues preventing claims processors from returning.

■ Nehmer/Blue Water/NDAA
 ■ All Other Rating

Disability Rating Inventory By Days (as of July 31, 2022)



**Department of Veterans Affairs (VA)
SVAC Legislative Hearing
July 13, 2022
Due-Outs for Sen. Blumenthal**

Discussion Topic: Expand Access to Care for Hearing Impairment

Question 1: And I would like to suggest or request that perhaps if you or someone from VHA could report back to us about legislative steps, additional legislative steps that perhaps we could take, or administrative steps that the VA can take to expand access to care for hearing impairment. If you could give us a report on that issue I would really appreciate it. What administrative and/or legislative steps the VA can take to expand access to care for hearing impairment?

VA Response: The Department of Veterans Affairs (VA) offers comprehensive care to Veterans, providing services related to hearing impairment, as well as tinnitus and balance disorders. Auditory system disabilities (including hearing loss and tinnitus) are among the most common service-related disabilities in every period of service since the Second World War (WWII).

Services related to hearing impairment are available to all eligible Veterans.¹ Eligible Veterans may contact the Audiology Clinic directly to schedule an appointment for services related to hearing impairment. Eligible Veterans do not need a consult from a physician to schedule an initial hearing test or any follow up services related to hearing impairment.

There are no barriers to an eligible Veteran receiving hearing impairment services. All eligible Veterans can receive comprehensive audiology diagnostic evaluations and, if the treatment plan so indicates, hearing aids and other assistive listening devices. The audiologist and Veteran make the decision together regarding hearing aids and other rehabilitative technology.

In addition to hearing aid fittings, VA audiologists provide a range of services related to hearing impairment including screening for hearing loss; diagnostic hearing evaluations; education on hearing loss and communication strategies; tinnitus assessment and rehabilitation; monitoring for ototoxic effects from drug therapies (e.g., chemotherapy); and education on hearing loss prevention.

The most common treatment for hearing loss caused by noise exposure, age, or both, is hearing aids or cochlear implants once the hearing loss exceeds the benefits of a hearing aid. Through national contracts, VA provides state-of-the-art technology to eligible Veterans with hearing loss. Devices include hearing aids, frequency modulation

¹ Prior to scheduling an appointment at a VA health care facility, Veterans generally must enroll in VA health care, unless they are receiving treatment for a service-connected disability, in which case they only need to register for their care.

systems, cochlear implants, bone-anchored auditory implants, tinnitus maskers and sound generators, and assistive and alerting devices. Audiologists provide extensive counseling to Veterans and their families in order to improve communication with these advanced technologies.

Many VA medical centers currently provide audiology telehealth services, connecting patients at either a VA community-based outpatient clinic (CBOC), or at their home, with audiologists at the medical center. Services for hearing impairment available through audiology telehealth include hearing testing, hearing aid fittings and related follow up appointments, and hearing loss education.

VA offers a robust complement of audiology services to address the needs of our Veterans. VA is one of the largest employers of audiologists in the United States, employing approximately 1,400 Audiologists, over 400 Hearing Health Technicians, and 94 Graduate Trainees. Audiology Services are found in over 450 sites of care in the VA health care system including medical centers, outpatient clinics, and CBOCs. Eligible Veterans may directly contact their local VA facility to schedule an appointment for services related to hearing impairment.

Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation

July 13, 2022

Questions for the Record from Chairman Jon Tester

DRAFT, Ensuring the Best Schools for Veterans Act of 2022

Question 1: How long after passage into law does VA anticipate it can implement the Ensuring the Best Schools for Veterans Act (S.4458)?

VA Response: VA anticipates S. 4458, Ensuring the Best Schools for Veterans Act, could be implemented within 90 days after enactment.

Question 1a: How long will it take to implement the parts of this legislation related to the 35% exemption?

VA Response: VA anticipates that the 35% exemption provision could be implemented within 90 days after enactment of the proposed legislation.

Question 1b: How long will it take for VA to implement the parts of this legislation related to the review process to VA leadership?

VA Response: While VA has concerns with the mandated review process and the potential for hundreds of reports of 85/15 computations and potential suspensions for lack of compliance with the 85/15 rule, VA anticipates this provision could be implemented within 90 days of enactment.

Question 1c: Does VA anticipate any need for additional funding or staffing to implement this legislation?

VA Response: VA does not anticipate additional funding or staffing will be required to implement the proposed legislation and there would be no mandatory costs or savings associated with this bill.

However, VA remains concerned about the administrative burdens related to decision-making by the Under Secretary for Benefits and Secretary. VA recommends abstaining from mandating the level of decision authority to allow VA the ability to manage the adjudicatory workload.

Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation

July 13, 2022

Questions for the Record from Senator John Boozman

Topic: Compensation and Pension Examinations (C&P)

Question 1: A recent VA OIG report raised concerns regarding the accuracy of C&P exams. How does the VA monitor the quality and accuracy of contracted exams?

VA Response: VA is committed to quality and excellence. The Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) are collaborating and have established a work group to focus on quality. All contract medical examiners must hold an active state license to practice, with no pending disciplinary proceedings involving professional conduct. VBA's Medical Disability Examinations Office (MDEO) has a contract with a third-party vendor to audit and ensure that providers have current and appropriate licenses to practice.

All contract examiners must complete the same C&P Certification Training as VHA's examiners prior to completing an exam. C&P Certification Training includes general certification, which all examiners complete, as well as additional specialty certifications based on specific examination types. VBA develops and provides additional training to address hot topics and error trends. (VA uses error trends as a proactive monitoring technique to inform future actions.) Examples include training on Acceptable Clinical Evidence and Tele-C&P examinations; Suicide Prevention; Military Sexual Trauma; and Musculoskeletal Examinations.

VBA completes routine training validations to confirm compliance with contractual training requirements. VBA also launched a learning management system that allows it to distribute on-demand vendor examiner training.

VBA conducts oversight audits on examination reports completed by vendor examiners. VBA identifies a statistically valid sample for each contract, resulting in approximately 1,100 quality reviews conducted by VBA each month. VBA provides feedback on quality in various ways, to include monthly Error Citation Reports for each contract, vendor-specific monthly quality calls, vendor-specific monthly clinician calls and ad hoc questions and answers. In addition, VBA conducts special focused reviews on specific examination types and providers or based on error trends to provide additional oversight and feedback.

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

Question 2: What are some of the challenges in monitoring the quality of contracted exams?

VA Response: The primary challenge in monitoring the quality of contracted exams is the number and diversity of examination types and the complexity of the information examiners must provide to ensure VBA has the required information to make a claims decision. VBA has worked to mitigate this challenge by providing the referenced training and feedback sessions. In addition, VBA is in the process of collecting exam results as data, which will enhance monitoring capabilities to improve overall quality for contracted exams. This process involves modernizing the way in which Disability Benefits Examinations (DBQs) are received by VBA so that examination findings are reported as data. VBA will be able to leverage automated system quality checks when VA systems receive the data and better identify examination deficiencies via analysis of aggregate data reports once complete.

Question 3: Does the VHA apply quality assurance standards to C&P exams it performs? If so, can the VBA apply the same quality assurance standards to contracted C&P examiners?

VA Response: Yes. VHA through the Office of Disability and Medical Assessment (DMA) applies quality standards by conducting audits of C&P examinations completed by VHA C&P examiners. DMA and VBA leaders tasked their respective C&P exam quality staff to identify quality metrics that could be applied to C&P disability exams completed by VHA and VBA Medical Disability Examination contractors. Creation and implementation will be extensive as this work group is addressing differing VHA and VBA information technology (IT) systems; adjustments to audit language needed that could affect existing contractual agreements; and audit training development and delivery to ensure consistency, which would need to be established in a multi-year phased approach by region. Both VHA and VBA are working to ensure that quality metrics are more uniformly reviewed across both departments.

Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation

July 13, 2022

Questions for the Record from Senator Tommy Tuberville

S. 3994, Restoring Benefits to Defrauded Veterans Act of 2022

Question 1: Ms. Murphy: In the case of a veteran who has been defrauded of compensation by a fiduciary representative, is there more that can be done to screen, or conduct periodic assessments, on the named fiduciary representative to prevent any issues of fraud?

How often does the VA conclude a fiduciary is mishandling a veteran's financial compensation?

VA Response: The Veterans Benefits Administration (VBA) conducts a wide range of oversight activities to prevent and investigate potential fiduciary misuse but searches continuously for new ways to improve fiduciary oversight. VBA's fiduciary program provides a rigorous upfront vetting process during fiduciary appointment and then conducts ongoing oversight procedures to protect the beneficiary from fraud that minimizes unnecessary, disruptive contact for an incompetent beneficiary. This oversight includes required regular follow-up field examinations; fund usage reviews and examinations; and accountings. Fiduciaries who are required to provide an accounting must do so on an annual basis. In addition, fiduciaries who do not meet specific exemptions are required to provide a fund usage report once every 2 years consisting of 3 months of all financial statements containing VA funds for a beneficiary and supporting documents.

Misuse allegations may originate from a myriad of different sources, including a beneficiary, a third-party and/or VA discovery. In response to such allegations, VA conducts unscheduled field examinations as due diligence within its misuse investigation process. VA notes that internal discovery leading to a misuse allegation can be found in a variety of ways, including identification of red flag indicators such as where the fiduciary:

- Charged fees not authorized by VA or a court.
- Is unable to account for questionable expenditures.
- Fails to provide complete bank financial statements that match the appropriate VA accounting form.
- Is unable to provide documentation of supporting assets previously documented in a field examination or accounting.
- Accepted payments on behalf of a deceased beneficiary.

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

VA documents allegations of misuse for all instances where a fiduciary's accounting or fund usage report contains any red flags that cannot be resolved.

During the misuse investigation process, VA distinguishes between misuse and improper use. Improper use of benefits results when a fiduciary uses benefits in a manner that, while benefiting the beneficiary, is not in the beneficiary's best interest. Improper use is generally a result of poor judgment. If the beneficiary benefits from the expense, the expense would likely fall within the category of improper use. On the other hand, misuse of benefits occurs when a fiduciary uses any part of the beneficiary's VA benefits for a purpose that is not for the use and benefit of the beneficiary or the beneficiary's dependents or for the improvement of their standard of living. VA considers use and benefit to apply to expenses reasonably associated with the intended care, support or maintenance of the beneficiary or the beneficiary's dependents.

Following the misuse investigation process, VA determines if misuse did indeed occur based on the evidence of record. From October 1, 2021, through June 30, 2022, VBA completed 2,212 misuse determinations in which 258 instances of misuse were found. As of July 31, 2022, there were 109,567 beneficiaries and 85,730 fiduciaries participating in the fiduciary program. The fiduciary population fluctuates due to the varying reasons for removal and entry of an individual into the program.

Question 2: Ms. Murphy: In your testimony, the VA requests tweaks to the language of S.3994 to, rather than preclude a fiduciary who misused benefits from receiving payment of reissued funds, instead have the funds offset by the amount misused. The VA also requests changes to the language to allow an executor to receive and hold funds until the inheritor has been identified.

Can you please talk a little bit more in depth about these concerns?

Does the VA need statutory authority to do what this bill requires, or can it be done through policy?

VA Response: VA recommends against including language which fully precludes a misusing fiduciary from the receipt of funds to which they are legally entitled under laws and court decisions governing inheritance. VA proposes amendments to (c)(2) which would result in the language within page 2, lines 23-25 to read:

“(2) The Secretary may not make a payment under this subsection to a fiduciary who misused benefits of the beneficiary, except that, if such fiduciary is a member of the estate of the beneficiary or an executor or inheritor as determined by a court of

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

competent jurisdiction, VA may make payment to such individual, provided that VA shall offset any funds due to be reissued to, but not paid to, such fiduciary by any debt established from the misuse."

These modifications would allow VA to ensure that misusing fiduciaries are not benefiting from their actions of misuse, while ensuring that the individual is also not precluded from their inheritance rights under state laws. Should the beneficiary pass away before VA reissues any misused funds, it would not be uncommon for the misusing fiduciary to be a valid member of an estate under State law, who then would be eligible to receive a portion of the funds due to be reissued. In these scenarios, the use of misused funds could be interpreted as a pre-spending of what the fiduciary would have expected to inherit from the estate of the deceased beneficiary. In such a case, it would be proper to limit reissuance to the misusing fiduciary to only funds which exceed an offset of the debt owed to VA. In practice, VA would first apply the amount to be reissued to the misusing fiduciary towards any established debt, and then provide any excess amount after the fulfillment of the debt to the misusing fiduciary.

VA would benefit from having this debt offset incorporated within statutory and derivative regulatory authorities. Currently, there is no direct ability for VA to apply a reissuance amount first to a misusing fiduciary's debt prior to the distribution of any funds. In addition, VA is required to release the entirety of the amount determined to be due to the beneficiary's estate without first offsetting the debt. Without a statutory foundation, there is the likely potential that VA would face an uncertain path if it were to address this issue via rulemaking.

VA also has concerns that the current language of the bill in (c)(1)(C) would preclude an executor identified by a court from receiving the funds, which would require VA to hold the funds until such time that the inheritor(s) have been identified by a court. The intent of the revision is to make it clear that when (c)(1)(A) and (B) do not apply to a case, then VA will hold funds until an executor who has the appropriate legal authority to hold and distribute funds is identified. Therefore, VA proposes amending (c)(1)(C) on page 2, lines 21 and 22 to read:

“(C) An executor or the next inheritor as determined by a court of competent jurisdiction, or held by the Department of Veterans Affairs until an executor or next inheritor is identified by a court of competent jurisdiction.”

VA notes that additional statutory authority is not necessarily needed to fulfill the bill's intended result of allowing for the reissuance of funds for a deceased beneficiary because existing authority in 38 U.S.C. § 6107(a)(1) and (b)(1) already requires VA to

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

reissue funds "to the beneficiary or the beneficiary's successor fiduciary." Although neither the statute nor the legislative history explicitly addresses the scenario involving a beneficiary's death, the plain language of the statutes makes clear that the benefits at issue belong to the beneficiary, and that VA's role in recouping or reissuing benefits is to provide them to the beneficiary. Also, 38 U.S.C. § 5506(1) defines the term "fiduciary" as "a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a *beneficiary (or a beneficiary's estate)*" (emphasis added). Therefore, in the fiduciary context, we believe the statutory references to "beneficiary" strongly indicate that they include the beneficiary's estate. However, this bill would clarify Congressional intent with regard to reissuance if a beneficiary dies prior to reissuance and the hierarchy of payment recipients. In any instance where a beneficiary passes away with VA funds under management, the fiduciary who was managing the funds at that time would hold the funds to distribute to an executor or inheritor when or if identified. VA recommends revising the language in (c)(1)(C) to allow VA to hold the funds to be reissued until an executor or inheritor is identified, if one has not been identified already, when the other payee types identified within (c)(1)(A) and (B) are not available.

Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation

July 13, 2022

Questions for the Record from Senator Krysten Sinema

Topic: Veteran Homeownership

Question 1: GAO issued recommendations to bolster the Native American Direct Loan program. If the Native American Rural Homeownership Improvement Act passes, what steps will you take to ensure this program is a success?

VA Response: VA is committed to implementing recommendations from the Government Accountability Office (GAO) to enhance the effectiveness of the Native American Direct Loan (NADL) program. As noted in VA's response to the GAO report, VA anticipates completing all 10 recommendations by end of calendar year 2022.

While there are no specific VA mandates set forth in the Regarding the Native American Rural Homeownership Improvement Act (S. 2092), VA is committed to ensuring this population of Veterans is supported with excellence. We will be proactive and collaborative in working with the U.S. Department of Agriculture as implementation proceeds.

Question 2: The standard VA home loan program does not allow for the use of funds towards the purchase of items such as appliances for the home if the loan is at the current market value. What steps could be taken to allow for this type of option for a buyer?

VA Response: Current statute generally limits the loan amount for purchase and cash-out refinancing loans to the reasonable value of the property. See 38 U.S.C. § 3710(b). As such, a statutory amendment would be required to enable Veterans to include amounts for purchase of appliances for the home in the loan amount when the loan is at the current market value.

Question 3: Currently, the only program the VA allows to purchase and refurbish a home is through the VA Renovation Loan. This option does not allow the buy to do any of the renovations and instead requires the use of a contractor. What options can we create or adjust to allow a homebuyer to do the renovations to lower the associated costs?

VA Response: VA regulations and policies do not prohibit a Veteran from acting as their own general contractor, where permissible under state and local requirements, when purchasing and refurbishing a home through the VA Renovation Loan. Any VA-backed property to be altered, improved or repaired must satisfy certain appraisal and

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

inspection requirements (see, for example, 38 U.S.C. § 3710(b)(4)-(6) and [VA Pamphlet 26-7, Lenders Handbook, Chapter 10, topic 9.m](#)). While current VA guidance clearly indicates a Veteran may act as a general contractor to build their own home, VA is working to clarify that a Veteran may act as a general contractor when purchasing and refurbishing a home through the VA Renovation Loan.

Question 4: I have been hearing from Veterans Service Organizations (VSOs) that the current appraisal system related to the VA home loan is too ridged and causes unnecessary delays in the loan process. What recommendations do you have to lessen this burden? Do you feel Congress needs to correct any procedures to assist you further?

VA Response: VA also is concerned about difficulties Veterans may be experiencing using their earned home loan benefit and is committed to improving Veterans' opportunities to use their benefit, especially in competitive housing markets. The VA Home Loan program, in many instances, has greater flexibility in qualifying guidelines than most other mortgage programs, such as more accommodating credit and income requirements. The fact that Veterans may purchase a home with no down payment is also a significant advantage. In addition, VA's allowance of higher loan limits and greater control over the appraisal process has expanded the program for buyers and sellers alike.

VA understands that certain features of VA's program, such as the appraisal process, might be mischaracterized as overly stringent, especially during competitive market cycles. However, such features often provide critical property and valuation information for Veterans and crucial protections for taxpayers. VA's time-tested approach was a key factor that led to VA-guaranteed loans outperforming the conventional market during recent economic downturns, including during the Great Recession.

VA currently is reviewing ways to optimize its appraisal procedures to help ensure Veterans can use their earned benefits, especially in competitive markets. VA is evaluating changes to the appraisal process, including updates to minimum property requirements that would allow Veterans increased discretion to repair certain conditions that do not implicate minimum safety, habitability and marketability concerns. VA notes that it recently published a new recently published new procedures for appraisals that would include tools such as desktop appraisals. See VA Circular 26-22-13, Procedures for Alternative Valuation Methods (July 27, 2022), which is available at https://www.benefits.va.gov/HOMELOANS/resources_circulars.asp. VA also is making technology improvements to streamline its uniquely flexible Tidewater and Reconsideration of Value (ROV) procedures, which give Veterans the opportunity to

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

present additional information (including additional comparisons and/or external appraisals) to the fee panel appraiser, when necessary to assist in the homebuying process. VA believes that focus on appraiser recruitment and tailored appraisal fees has also improved appraisal timeliness.

VA is encouraged that its efforts are making a significant difference in improving the appraisal process for Veterans. Between October 2021 and June 2022, average timeliness from appraisal request to upload of completed appraisal report was 9.6 business days. In June 2022 alone, average timeliness was 8.7 business days. VA notes these timeliness averages are comparable to other (non-VA) loan products available to Veterans. VA appreciates Congress's interest in supporting VA's efforts to improve the program's competitiveness. However, VA is not seeking Congressional action at this time to correct any appraisal-related procedures. VA welcomes continued collaboration with Congress on the VA Home Loan program and would be happy to discuss our efforts in more detail with the Senator.

Topic: Disability Compensation

Question 5: Do you feel that the VA has the appropriate technical systems in place to assist with back logs of disability compensation claims? Do you have the appropriate systems and support in place to assist with an influx of claims due to presumptive conditions?

VA Response: In preparation for implementation of P.L. 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 or the Honoring our PACT Act of 2022 (PACT Act), the Veterans Benefits Administration (VBA) is conducting extensive outreach to ensure Veterans, families and survivors know what benefits they may be eligible for and how to apply. With this new law, VA will establish more than 20 new presumptions of service connection for toxic exposure-related conditions—removing the burden of proof from Veterans to get the care and benefits they deserve and delivering benefits to many additional survivors of Veterans who passed away from toxic exposure. To prepare for PACT Act claim processing in January of 2023, VBA has created interim guidance for PACT Act claims. For streamlined and expedited service delivery, the guidance provides instructions to quickly identify PACT Act claims in January 2023. In addition, VBA continues to grant PACT Act related conditions under existing procedures and authorities when possible (direct, secondary, aggravation, or established presumptions other than those specified by the PACT Act). Given this, as well as the actions listed below, VBA is working diligently to ensure the agency is equipped and prepared for the influx of claims due to these new presumptive conditions.

**Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation**

July 13, 2022

VA recognizes the importance and magnitude of implementing and executing the PACT Act. To ensure all Veterans and their family members receive the benefits they have earned, VBA is implementing additional tools to support and enhance the overall claims process.

To help prepare for the PACT Act's influx of new claims, VA is:

- Hiring and training more than 2,000 individuals for new positions to process and support Veterans' claims for disability benefits.
- Establishing a new Military Exposures Team under the Compensation Service business line to provide a dedicated focus and resources to issues related to military environmental exposures.
- Using American Rescue Plan funds to keep funding overtime for those processors and driving our digital scanning of Federal records through FY 2023.
- Requesting 795 additional personnel in VBA's FY 2023 budget.
- Using data-driven automation to speed up processing for compensation, education, pension, and insurance claims.
- Proactive record scanning of claims files and military records for all identified PACT Act eligible Veterans.
- Development of automation for all PACT Act disabilities to support more efficient claims processing.
- Addressing electronic notice to Veterans through the expansion of the eCommunications Pilot while concurrently working to develop a long-term solution and supporting policy updates.
- Expanding utilization of intelligent character recognition and robotic process automation for Private Medical Record retrieval, to keep up with increased demand and concurrently reduce the average time to fulfill requests. Integrating key systems with VA authoritative data sources which will improve customer service, reduce errors and prevent rekeying. VBA is also requesting funding for additional data quality and data management staff to ensure Veteran, claimant and beneficiary information are captured accurately and synchronized across VA.
- Retiring or decommissioning legacy systems and consolidating their functionality to reduce the need for employees to switch between applications.
- Upgrading outdated hardware and software on key infrastructure platforms to eliminate performance bottlenecks and ensure VBA systems can handle the additional load of claims and users.

Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Hearing to Consider Pending Legislation

July 13, 2022

Topic: Information on Veteran Homeownership

Question 6: Do you feel that veterans are given all of the appropriate information regarding VA home loans from a lender when applying for a home loan? What steps could we take to include a comparison tool for the various types of home loans a veteran is eligible for?

VA Response: Lenders produce websites, informational materials and marketing materials. They meet with Veterans in person, on the phone and via electronic messaging. These means of communication make it almost impossible for VA to state with certainty whether lenders provide Veterans with all of the appropriate information regarding VA home loans. That said, VA supports continued efforts to increase transparency and informed decision making in the homebuying process, including the home loan application process. VA notes that lenders generally are required under Consumer Financial Protection Bureau (CFPB) regulations to provide borrowers with at least three loan options. See 12 C.F.R. § 1026.36(e). VA is unaware of any requirement that one of these options include a VA home loan when a borrower-applicant self-identifies as a Veteran or Service member but notes that real estate professionals often advise buyers about financing options before a lender is involved. VA also is adding additional resources for its training staff to help mitigate these types of scenarios. VA would be happy to work with the Senator to better understand how a comparison tool may help a Veteran discern among loan options, to include a VA home loan, during the application process.

Senator Tester
Questions for the Record
Senate Veterans' Affairs Committee
Hearing on Pending Legislation
July 13, 2022

Questions for Anne Meehan, American Council on Education

1. Please explain the recent concerns with how VA is implementing the 85-15 Rule and why it is necessary for Congress to address these issues through legislation?

Chairman Tester, thank you for this question and providing me with an opportunity to clarify my oral testimony on this topic.

As a result of VA's recent 85-15 policy reset, the VA has made a two changes that have resulted in concerns for many campuses and are likely to result in negative consequences for veterans this fall.

First, the VA changed its process for an institution to receive a "35 percent exemption." Under current statute, if an institution has a total veteran population on campus of less than 35 percent, the institution is exempt from calculating and submitting program-level 85-15 ratios to the VA. Unfortunately, as part of VA's recent reapplication process, VA has required all institutions seeking a 35 percent exemption to submit 85-15 calculations for each and every program on campus.

Second, VA's policy reset changed the definition of a "supported student" in ways that significantly expand the number of non-veterans who are considered "supported" for 85-15 purposes. These changes have resulted in a number of programs exceeding 85-15 ratios—not because of the presence of a large number of veterans, but because of confusing and misguided rules about when non-veteran students must be considered "supported." In many cases, programs exceeded the 85-15 ratio and lost GI bill eligibility *even though there was a not a single veteran enrolled in the program*—a result that turns the purported rationale of the 85-15 rule on its head. Moreover, these policies have the effect of penalizing colleges and universities who provide generous institutional financial aid to their students and create a disincentive for institutions to participate in the Yellow Ribbon program.

While efforts have been made to encourage VA to step back from these problematic changes, it is our understanding that VA believes that its recent policies are required by statute. Therefore, it is critical for Congress to pass S. 4458 to clarify the requirements of the law and to ensure veterans can enroll in quality education programs of their choosing.

2. What does the *Ensuring the Best Schools for Veterans Act* (S.4458) do to solve the concerns with the 85-15 Rule and how will it benefit student veterans?

Chairman Tester, The Ensuring the Best Schools for Veterans Act (S. 4458) would address these concerns by clarifying that institutions with less than 35 percent veteran enrollment are not required to compute or report 85-15 ratios. Provided that the institution has less than 35 percent total veteran enrollment, and the majority of the institution's programs are accredited standard degree programs, the institution would be exempt from computing 85-15 ratios. In addition, because at most traditional colleges and universities, veterans make up only a small percentage of the total population of students, this change would ensure that these institutions do not need to comply with VA's problematic "supported student" definition.

By providing clarity about Congress' intent regarding the 85 15 rule and the 35 percent exemption, the legislation will ensure that veterans will not be prohibited from enrolling in their program of choice. It will also help institutions in their efforts to provide generous institutional aid to veterans through a Yellow Ribbon program agreement.

Statements for the Record

STATEMENT FOR THE RECORD

**Senator Mazie K. Hirono
Wednesday, July 13, 2022**

S. 4141, A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Advisory Committee on United States Outlying Areas and Freely Associated States, and for other purposes.

Mr. Chairman, S. 4141 would create an Advisory Committee at the Department of Veterans Affairs on the U.S. Outlying Areas and Freely Associated States. This legislation will improve the lives of veterans in these areas, many of whom face an outsized burden when it comes to accessing the benefits they have earned through service to our country.

The U.S. Outlying Areas include American Samoa, Guam, Puerto Rico, Northern Mariana Islands, and the Virgin Islands. These territories are a part of the United States and the people who live there are Americans. The Freely Associated States include the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau. The FAS are independent nations who rely on the U.S. for defense, and in turn their citizens serve in our military.

Ensuring veterans from these territories and independent nations have advocates at VA is critically important, because unlike their counterparts on the U.S. mainland or in states and territories that have VA facilities, many of them have no access to VA services at home and must fly across the Pacific or take private boat transportation to access care.

This legislation would establish a fifteen-member committee to help the Department identify ways to better serve this community of veterans, and hopefully serve as the first step toward resolving their longstanding concerns.

The willingness of generations of veterans from the Outlying Areas and Freely Associated States to serve on behalf of the American people should be recognized and their needs should be heard within VA. This bill will help ensure they are.



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Eric Bunn Sr.
National Secretary-Treasurer

Dr. Everett B. Kelley
National President

Jeremy A. Lannan
NVP for Women & Fair Practices

July 13, 2022

The Honorable Jon Tester
Chairman
Senate Veterans' Affairs Committee
United States Senate
Washington, DC 20510

The Honorable Jerry Moran
Ranking Member
Senate Veterans' Affairs Committee
United States Senate
Washington, DC 20510

Dear Chairman Tester, Ranking Moran, and Members of the Committee:

On behalf of the American Federation of Government Employees, AFL-CIO, and its National Veterans Affairs Council (AFGE), which represents approximately 700,000 federal and District of Columbia government employees in 70 agencies, including 283,000 employees of the Department of Veterans Affairs (VA), I write to express our positions on the following bills being considered by the Committee today:

S. 3372, To amend title 38, United States Code, to strengthen benefits for children of Vietnam veterans born with spina bifida, and for other purposes

S. 3372 would expand the benefits and level of care for the dependents of veterans who were born with spina bifida, a neurological condition linked to parental exposure to herbicides such as Agent Orange. Specifically, the bill would ensure that care for this condition lasts the duration of the patient's life regardless of whether the child's parents predecease the covered dependent. The bill would also establish an advisory council on "health care and benefits for covered children" and "care and coordination teams for covered children" to help set up and maintain needed care for the covered child.

AFGE is proud to represent over 100,000 VA clinicians, and strongly believes that the best way to provide care to veterans and their eligible dependents is through the specialized, comprehensive, integrated VA health care system. AFGE supports this legislation and urges the committee to amend the bill to require the VA to hire additional FTE internally within the VA to help staff the "care and coordination teams" for covered children mandated in the legislation.

S. 3548, the "Veterans Hearing Benefits Act of 2022"

S. 3548, the "Veterans Hearing Benefits Act of 2022," if enacted, would grant a presumption of service connection to certain veterans who suffer from specified audiological conditions. These veterans may then be eligible for VA health care and disability benefits.

1



AFGE endorses this bill for two key reasons. First, AFGE strongly believes that veterans should receive these specialized health care services through the VA's own comprehensive, integrated approach to care. This bill would make it easier for more veterans to receive their care for audiological conditions directly from the VA from providers who understand their unique service-connected conditions.

Second, by creating the presumption of service connection, the VA can streamline the claims process and allow employees to process claims more accurately and efficiently. AFGE is proud to represent the Veterans' Benefits Administration (VBA) employees who process these claims, many of whom are veterans themselves. AFGE urges the VA, after the enactment of this bill, to include AFGE representatives in a working group tasked with developing and implementing an effective training program on these new processes and ensuring that new trainings and procedures are followed consistently at each VBA Regional Office.

S. 4141, A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Advisory Committee on United States Outlying Areas and Freely Associated States, and for other purposes

S. 4141 would establish an advisory committee that would provide guidance to the VA on the unique issues facing veterans residing in "outlying Areas and Freely Associated States" including "American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau."

AFGE supports the underlying bill and recommends a minor amendment to better help achieve the bill's intent. In Section 1 of the bill, under the proposed 38 U.S.C. 548(b)(4), we recommend adding the "duly appointed labor representatives of VA employees" to the list of groups who can participate in the forum established by the section. This would ensure that the unique perspective of frontline VA employees who care for veterans in these locations is considered, which will allow the VA to better serve the unique needs of this group of veterans.

S. 4308, the "Veterans Marriage Recognition Act"

S. 4308, the "Veterans Marriage Recognition Act," would codify the requirement that the VA recognize the marriage of veterans to same sex individuals. This would correct current law to reflect the progress the VA has made and operated under since the Supreme Court made its landmark rulings in *United States v. Windsor*, (2013) and *Obergefell v. Hodges*, (2015), as well as a 2013 Executive Order from President Obama requiring agencies to stop discriminating against same sex couples.

AFGE is a longtime supporter of the LGBTQ+ Community and is proud to support this legislation. As a union, we will always fight for the rights of all of our members, many of whom are both veterans and members of the LGBTQ+ community. If enacted this bill will right a

historical wrong and demonstrate that the VA and federal law respect the marriages of same sex couples.

Draft Legislation, the “No Bonuses for Bad Exams Act of 2022”

The draft bill, the “No Bonuses for Bad Exams Act of 2022” would enable the VA to more effectively administer and manage disability exams for veterans’ benefits, as well as improve oversight on exams performed by both VA personnel and VA contractors.

AFGE supports the underlying bill as it will improve the administration of these critical exams and expand much needed oversight on inferior contract exams. Additionally, we have several suggestions for strengthening the bill and fulfilling its objectives.

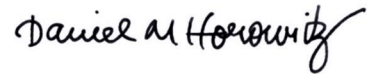
In Section 101 of the bill, the legislation mandates increased training for “each contractor and employee of the Department who conducts or reviews covered medical disability examinations or uses covered medical disability examinations to evaluate a claim for benefits...” It also requires updated reports from the Board of Veterans’ Appeals as well as the Court of Appeals for Veterans Claims, requiring both entities to create a “summary of recurring issues that the [Chairman or Chief Judge of the Court respectively] believes could be resolved by better training for employees of the Department, increased oversight, or clarification from either the Department or Congress.” AFGE supports the increased training and reporting, but also urges that the committee mandate that the VA consult with the duly appointed labor representatives of the covered employees when designing and implementing the specified training and reports. All too often, the VA is ordered to create training for its employees, and then creates training modules with little or no input from the frontline employees who will receive it. This wastes the opportunity to hear from the workers who regularly encounter the problems the VA is attempting to rectify, and who would provide valuable input into what training would help these employees improve performance and better serve veterans. Instead, we often hear from employees that they are more confused after a new training than before it. Inclusion of frontline worker input and ongoing collaboration with their representatives directly improves performance and the quality of services provided to veterans.

Section 102 of the bill prohibits contractors from “receiv[ing] a monetary incentive, in whole or in part, unless a statistically significant sample of all covered medical disability examinations completed by that contractor over the period evaluated for such an incentive are of contractor bonus quality.” “Bonus quality” is later defined at “95 percent.” AFGE supports this provision in the bill as contractors failing to meet a bonus quality standard should not be rewarded. The inclusion of this provision also begs the question of what the VA can do to improve the financial incentives and bonuses for VA medical disability examiners who meet the same threshold, including utilizing awards that are already established in statute.

123

Thank you for considering AFGE's views on these important pieces of legislation. For additional information or questions, please contact Elliot Friedman at Elliot.Friedman@afge.org.

Sincerely,

A handwritten signature in black ink that reads "Daniel M. Horowitz". The signature is written in a cursive style with a large, stylized 'D' and 'H'.

Daniel Horowitz,
Deputy Director for Legislation



National Service & Legislative Headquarters
 807 Maine Avenue SW
 Washington, DC 20024-2410
 tel 202-554-3501
 fax 202-554-3581

**STATEMENT OF
 SHANE L. LIERMANN
 DAV DEPUTY NATIONAL LEGISLATIVE DIRECTOR
 FOR THE RECORD OF
 COMMITTEE ON VETERANS' AFFAIRS
 UNITED STATES SENATE
 JULY 13, 2022**

Chairman Tester, Ranking Member Moran and members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Senate Veterans' Affairs Committee. As you are aware, DAV is a non-profit veterans service organization (VSO) comprised of one million wartime service-disabled veterans and dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

We are pleased to offer our views on the bills that impact service-disabled veterans, their caregivers and families and the programs administered by the Department of Veterans Affairs (VA) that are under consideration by the Committee.

S. 3372, A bill to amend title 38, United States Code, to strengthen benefits for children of Vietnam veterans born with spina bifida

Currently title 38, United State Code, subsections 1801 to 1834 directly codify the benefits and hospital care for children of Vietnam veterans who have been diagnosed with spina bifida. This bill would add to section 1831 by defining a covered child and a covered veteran.

Additionally, this bill would require the Secretary to establish an advisory council on health care and benefits for covered children. The advisory council shall solicit feedback from covered children and covered veterans on the health care and benefits and communicate such feedback to the Secretary. Also, the bill would create care and coordination teams for covered children.

The bill requires the VA Under Secretary for Benefits and Under Secretary for Health to enter into a memorandum of understanding to better assist covered children and to establish conditions to be included in the required report.

We understand the importance of caring for those exposed to toxins, especially Agent Orange. However, DAV, a resolution-based organization, does not have a specific resolution for the proposed changes as annotated by the bill and DAV does not take a position.

S. 3548, Veterans Hearing Benefits Act of 2022

The Veterans Hearing Benefits Act of 2022 would provide presumptive service connection for hearing loss and tinnitus and a minimum evaluation for the required use of hearing aids.

VA does not provide a presumption of service connection for hearing loss or tinnitus. All veterans must establish exposure to acoustic trauma in service, provide a diagnosis of hearing loss or tinnitus, and a medical opinion linking them together. However, this can be difficult to overcome as in many cases acoustic noise exposure in service is not documented or hearing examinations were not provided.

The Veterans Hearing Benefits Act would consider hearing loss, tinnitus, or both, incurred in or aggravated by active military service for a veteran who served in combat and for veterans in certain military occupational specialties who were likely exposed to sufficient high levels of acoustic trauma to result in permanent hearing loss, tinnitus, or both.

Veterans can be rated at 0% disabling for hearing loss and be required to use hearing aids. Additionally, this bill would require the VA Schedule of Rating Disabilities to establish a minimum compensable disability rating for a veteran who requires a hearing aid for a service-connected disability.

DAV strongly supports the Veterans Hearing Benefits Act, in accordance with DAV Resolution Nos. 035 and 047, as it would provide presumptive service connection or hearing loss and tinnitus, while also providing a compensable evaluation for service-connected hearing loss that requires a hearing aid.

S. 3606, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a dependent

Currently VA and the Department of Defense (DOD) cannot amend the information required on the official forms to elect the transfer of Post-9/11 GI Bill benefits to a dependent, without statutory authority. S. 3606 would require VA and the DOD to change the language used on the forms to clarify the information when a service member elects to have their Post-9/11 GI Bill benefit transferred to a dependent.

Many times, service members misread the information requested in the GI Bill benefit transfer forms. This results in eligible dependents being barred from educational benefits. S. 3606 would correct this issue impacting surviving families and dependents.

DAV supports S. 3606, in accordance with DAV Resolution No. 174, which supports legislation that would improve and protect the VA's education and employment benefits for service-disabled veterans and their survivors.

S. 3994, Restoring Benefits to Defrauded Veterans Act of 2022

Under current statute, if a defrauded veteran dies before their case with VA is resolved, the veteran's family cannot seek reimbursement for the defrauded funds.

S. 3994 would require VA to reissue misused benefits to a beneficiary's estate in cases where the beneficiary predeceased reissuance and would provide reissued benefits to either the veteran's estate, successor, or next inheritor. Most importantly, the Restoring Benefits to Defrauded Veterans Act would not allow the VA to make any reissuance to any family member who was the fiduciary and was misusing the veteran's benefits.

DAV supports S. 3994, as it is in alignment with DAV Resolution No. 036, which calls for meaningful claims reform. The Restoring Benefits for Defrauded Veterans Act will not allow family members who defrauded the veteran to receive any of the reissued benefits, which is a significant reform to the claims process.

S. 4141, to establish in the Department of Veterans Affairs an Advisory Committee on United States Outlying Areas and Freely Associated States

S. 4141 requires the VA to establish an Advisory Committee on United States Outlying Areas and Freely Associate States. The purpose of the Committee would be to provide VA advice and guidance for veterans residing in American Samoa, Guam, Puerto Rico, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

This advisory committee can be critical to specifically address the needs of veterans living in these remote locations that have a small VA presence. For example, out of all of the locations noted, only one, Puerto Rico, has an actual VA medical center. Some of the other locations have VA Clinics, but not all. VA must do better in providing vital services to all veterans, especially remote and underserved populations.

DAV supports S. 4141, in accordance with DAV Resolution No. 020, which calls for the right of rural veterans to be served by the VA to the maximum extent practicable, but urges the VA to develop training materials and conduct training and outreach to its community and federal partners in rural areas to ensure that these providers have understanding of veteran-specific exposures, risks and evidence-based practices to best address their needs.

S. 4208, Improving Access to the VA Home Loan Act of 2022.

The Improving Access to the VA Home Loan Act would update the appraisal requirement for loans guaranteed by VA. This bill will would allow for a modern, digital appraisal process, which will expedite the appraisal process and not place veterans at a disadvantage during the entire home buying process.

We understand the positive impact the VA Home Loan gives veterans. However, DAV, a resolution-based organization, does not have a specific resolution for the proposed changes as annotated by the bill and DAV does not take a position.

S. 4223, Veterans' Compensation Cost-of-Living Adjustment Act of 2022

DAV Supports S. 4223, the Veterans' Compensation Cost-of-Living Adjustment (COLA) Act of 2022. It would increase compensation rates for VA benefits, including clothing allowance, and dependency and indemnity benefits paid to survivors and families of service members who died in the line of duty or suffer from a service-related injury or disease.

This increase in compensation rates is based on the same percentage that Social Security benefits are increased for 2023. If passed, these rates would be effective December 1, 2022, and most importantly, would be realized in compensation benefits paid on January 1, 2023.

With inflation reaching a 40-year high, we must ensure that veterans' benefits keep pace for the many veterans and survivors who are on fixed incomes and largely rely on their compensation payments. For those, a COLA can be the difference between providing for their families or not. Consistent with DAV Resolution No. 070, we support S. 4223.

Mr. Chairman, we appreciate you and Ranking Member Moran introducing this important bill. To demonstrate the importance of a COLA for veterans' benefits, in the past 16 days, DAV members have sent over 30,000 emails to Congress in support of the Veterans' Compensation Cost-of-Living Act. We look forward to quick passage in the Senate.

S. 4308, Veterans Marriage Recognition Act

On June 26, 2015, the Supreme Court held in *Obergefell v. Hodges* that the Fourteenth Amendment of the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

Accordingly, VA now recognizes all same-sex marriages without regard to a veteran's state of residence. However, 38 U.S.C. 101(3) and § 101(31) define "surviving spouse" and "spouse" as persons "of the opposite sex." These definitions were not specifically addressed in the Supreme Court's decision or by a subsequent statute.

The Veterans Marriage Recognition Act would amend the existing statutes and define a spouse as "who was lawfully married to a veteran, including a marriage between two persons of the same sex." This bill would also remove the requirement "of the opposite sex."

DAV supports S. 4308, the Veterans Marriage Recognition Act of 2022, which would codify the VA's current practice of recognizing same-sex marriages into law. This would provide protection of same-sex marriages within the VA and not allow a change based on policy.

S. 4319, Informing VETS Act of 2022

The Informing Veterans on Educations for Transitioning Servicemembers (VETS) Act would require the VA to promote all the programs under Chapter 31 of title 38, United States Code.

The July 28, 2021 GAO report found when given the choice between the Post-9/11 GI Bill and the Veteran Readiness and Employment (VR&E) program, veterans with disabilities will base their choice on which program best suits their unique goals, preferences, and circumstances. For example, certain veterans may prefer the GI Bill's flexibility to independently select courses of study, whereas others may prefer to have the assistance of a counselor to select a course of study as part of an employment plan, as provided under VR&E. However, most officials GAO interviewed said veterans with disabilities often use the GI Bill for education benefits without knowing that the VR&E program exists, or that it can pay for education, provide assistive equipment for their disability, or offer unique benefits of working with a counselor.

The GAO report recommended VA to take steps to provide veterans with more information about VR&E's education benefits and to inform veterans about the comparative program features of the GI Bill and VR&E. VA concurred with the recommendations.

S. 4319 addresses both of the recommendations as it will require the VA to inform, by letter, each veteran entitled to the program that explains the educational benefits of the program, and to provide in each letter and online a side-by-side comparison of benefits between the program and Post-9/11 GI Bill educational assistance.

DAV supports the Informing VETS Act as it is in direct alignment with DAV Resolution No. 174. This will help to ensure that disabled veterans can take full advantage of the multiple benefits of utilizing VR&E.

S. 4458, Ensuring the Best Schools for Veterans Act of 2022

The Ensuring the Best Schools for Veterans Act would streamline VA's 85/15 Rule, a school reporting requirement that prohibits VA from paying benefits to students enrolling in education programs where more than 85% of the students in that program use the G.I. Bill or other funding from the Department.

VA recently rescinded all exemptions for schools where the number of students receiving VA assistance is less than 35% of the total campus population, placing many

schools' ability to enroll veterans in jeopardy due to burdensome administrative red tape. The Ensuring the Best Schools for Veterans Act of 2022 will clarify the requirements of the 85/15 rule, ensuring education programs can continue accepting veterans while maintaining oversight to prevent fraudulent programs from taking advantage of veterans.

DAV supports S. 4458, the Ensuring the Best Schools for Veterans Act, as aligns with DAV Resolution No. 174 which supports legislation that would improve and protect the VA's education benefits for service-disabled veterans.

Discussion Draft, Native American Direct Loan Improvement Act

This discussion draft proposes to improve to title 38, United States Code, Section 3762, "Direct housing loans to Native American Veterans; program administration." This would include awarding grants to local service providers such as tribal organizations, tribally designated housing entities, Native Community development financial institutions and nonprofit organizations. Additionally, the discussion draft would create a pilot program on relending of direct housing loans by Native community development financial institutions.

For many veterans, homeownership is an essential part of the American dream and a benefit they have earned. However, DAV, a resolution-based organization, does not have a specific resolution for the proposed changes as annotated by the discussion draft and DAV does not take a position.

Discussion Draft, to address the operation and maintenance of veterans' cemeteries on trust land owned by, or held in trust for, tribal organizations

Currently title, 38, United States Code, Section 2408(g), notes the Secretary may make grants to any tribal organization to assist the tribal organization in establishing, expanding, or improving veterans' cemeteries, or in operating and maintaining such cemeteries, on trust land owned by, or held in trust for, the tribal organization.

The discussion draft would amend this statute by adding that if the Secretary determines that a tribal organization is not operating or maintaining a covered veterans' cemetery in accordance with such standards as the Secretary determines appropriate, the Secretary may provide funding to such entities as the Secretary determines appropriate for the education and training of the staff of the cemetery; make grants for the operation and maintenance of the cemetery; assume responsibility for costs associated with the operation and maintenance of the cemetery; or determine that the cemetery is no longer eligible to receive grants.

DAV would be supportive of this potential legislation, based on DAV Resolution No. 293, which calls for increases to cover improvements, operations and maintenance of veterans' cemeteries that are owned and operated by a state, federally recognized tribal government or U.S. territory.

Discussion Draft, No Bonuses for Bad Exams Act

The discussion draft, No Bonuses for Bad Exams Act, seeks to improve the quality and transparency of contracted medical disability examinations overseen by the Veterans Benefits Administration (VBA).

This proposal addresses training requirements for those conducting VA examinations. Specifically, the training instruction would include: the duty to assist; the relevance of causation compared to other evidentiary standards; well supported medical opinions; and the relevance of a lack of statutory or regulatory presumption of service connection. In addition, the discussion draft would require all VA personnel that conduct or review medical examinations completes similar training annually. The Board of Veterans' Appeals (the Board) and the U.S. Court of Appeals for Veterans Claims (the Court) are included in this training requirement.

VBA oversees and reviews the quality of these contracted examiners. Of note is that this proposal states that no contractor that provides medical disability examinations shall receive a monetary incentive or bonus, unless 95% or more of the provided examinations are adequate for rating purposes.

Further, this draft would require VBA to provide the credentials of the contractor examiner to the claimant and the claimant's representative. If an examination is determined to be inadequate by the Board or the Court, and the claimant or the representative request to have the examination removed, VBA must remove said evidence and not be able to use in further adjudicative actions.

DAV would be supportive of such a legislative proposal, as VA should get examinations and decisions correct the first time around to improve timeliness and potentially reduce the need to resolve issues by appeal. DAV Resolution No. 036 supports legislation that would provide meaningful claims and appeals reform, strengthen training, testing and quality control, as well accountability on VBA.

Mr. Chairman, this concludes my testimony. I will be pleased to answer any questions you or members of the Committee may have.



National Association of
Independent Colleges and
Universities

1025 Connecticut Ave. N.W.
Suite 700
Washington, DC 20036-5405

Tel: (202)785-8866
Fax: (202)835-0003
www.naicu.edu

July 12, 2022

Honorable Jon Tester, Chair
Senate Veterans' Affairs Committee
United States Senate
Washington, DC 20510

Honorable Jerry Moran, Ranking Member
Senate Veterans' Affairs Committee
United States Senate
Washington, DC 20510

Dear Chairman Tester and Ranking Member Moran:

On behalf of the members of the National Association of Independent Colleges and Universities (NAICU), and the associations signed below, I write to ask you to support the *Ensuring the Best Schools for Veterans Act of 2022*, ([H. R. 8198 /S. 4458](#)).

NAICU serves as the unified voice for the nation's 1,700 private, nonprofit colleges and universities and has a membership that reflects the diversity of independent higher education across the U.S. Our member institutions include major research universities, faith-based colleges, Historically Black Colleges and Universities, Minority-Serving Institutions and Tribal Colleges and Universities, art and design colleges, traditional liberal arts and science institutions, women's colleges, work colleges, two-year colleges and schools of law, medicine, engineering, business and other professions. Each year, private, nonprofit colleges and universities graduate more than 1.1 million students.

Throughout their history, private, nonprofit colleges have been serving our nation's veteran students. Currently, our institutions provide a broad array of support services to veteran students, including programs focused on academics, counseling, transition to career and civilian life, and other areas to ensure their success. In addition to providing dedicated staff and central veteran services offices, 89% of respondents in a recent [NAICU membership survey](#) participate in the Yellow Ribbon Program, providing institutional matching dollars to GI Bill benefits to help students pay for tuition.

This bipartisan, bicameral bill will fix the regulatory problems institutions have had with the recent policy changes to the 85/15 rule from the Department of Veterans Affairs (VA) by creating a true 35% waiver. Without this bill, new veteran students will be ineligible to enroll in many majors at colleges and universities.

Specifically, the bill reverses the VA's "reset" of the 35% waiver and eliminates the need for institutions with less than 35% veteran student enrollment to calculate, maintain or submit 85/15 reports. Institutions would be required to report veteran student enrollment percentages every two years to maintain the 35% waiver, ensuring only qualifying institutions continue to receive the waiver.

The 85/15 rule has been in law for decades and serves its purpose as a quality metric by ensuring that at least 15% of students in a major pay for the program using benefits other than the GI Bill. However, the new policy from the VA has institutions counting many students who are not veterans but are receiving institutional financial aid on the GI Bill benefit side of the equation.



Honorable Jon Tester
 Honorable Jerry Moran
 July 12, 2022

As a result, a multitude of programs have been deemed ineligible for veteran enrollment, including some programs without any current veteran students. This was borne out in NAICU's membership survey.

If this rule is not changed before the fall semester, institutions will have to tell many new veteran students they cannot enroll in the majors they prefer.

The unintended consequence of the new regulation is that it is blocking access to the very programs veterans are interested in, such as cybersecurity, IT, business management, criminal justice or health care fields, and is a disservice to them and our communities.

The 35% waiver has also been in law for decades, with the congressional intent that if an institution serves veteran students that represent fewer than 35% of its total enrollment, then the 85/15 programmatic calculation is unnecessary. This bill makes clear that the 35% waiver is a true exemption from calculating and reporting on program-level 85/15 ratios.

I encourage you to support this bill and pass it as quickly as possible so new veteran students can enroll in their preferred courses this fall.

Sincerely,

A handwritten signature in cursive script that reads "Barbara K. Dickel".

President,
 National Association of Independent Colleges and Universities

On behalf of the following organizations and associations:

Alabama Association of Independent Colleges and Universities
 Asociación de Colegios y Universidades Privadas de Puerto Rico (ACUP) [Association of Private Colleges and Universities of Puerto Rico]
 Association for Biblical Higher Education
 Association of Catholic Colleges and Universities
 Association of Independent California Colleges and Universities
 Association of Independent Colleges and Universities in Pennsylvania
 Association of Independent Colleges and Universities of Ohio
 Association of Independent Colleges and Universities of Rhode Island
 Association of Independent Colleges of Art & Design
 Association of Jesuit Colleges and Universities
 Association of Vermont Independent Colleges
 CCCU - Council for Christian Colleges & Universities



Honorable Jon Tester
 Honorable Jerry Moran
 July 12, 2022

Conference for Mercy Higher Education
 Connecticut Conference of Independent Colleges
 Consortium of Hospital-Affiliated Colleges and Universities (CHACU)
 Consortium of Universities of the Washington Metropolitan Area
 Council of Independent Colleges in Virginia
 Federation of Independent Illinois Colleges and Universities
 Georgia Independent College Association
 Independent Colleges & Universities of Florida (ICUF)
 Independent Colleges and Universities of Missouri
 Independent Colleges and Universities of Texas
 Independent Colleges of Washington
 International Association of Baptist Colleges and Universities
 Iowa Association of Independent Colleges and Universities
 Kansas Independent College Association
 Louisiana Association of Independent Colleges and Universities
 Michigan Independent Colleges & Universities
 Minnesota Private College Council
 New American Colleges and Universities
 North Carolina Independent Colleges and Universities
 Oklahoma Independent Colleges and Universities-OICU
 Oregon Alliance of Independent Colleges and Universities
 South Carolina Independent Colleges & Universities
 Tennessee Independent Colleges and Universities
 Transnational Assoc. of Christian Colleges and Schools - TRACS
 Wisconsin Association of Independent Colleges and Universities

NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.



Statement for the Record

Before the

Senate Committee on Veterans' Affairs

Concerning Pending Legislation

To Include Discussion Draft, S. ____, No Bonuses for Bad Exams Act of 2022

July 13, 2022

Chairman Tester, Ranking Member Moran, and members of the Committee, the National Organization of Veterans' Advocates (NOVA) thanks you for the opportunity to offer our views on pending legislation, to include a discussion draft entitled, "No Bonuses for Bad Exams Act of 2022." Our statement will focus on this bill.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents more than 750 accredited attorneys, agents, and qualified members assisting tens of thousands of our nation's military veterans and families seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for persons seeking VA benefits.

NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC) and U.S. Court of Appeals for the Federal Circuit. In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. As an organization, NOVA advances important cases and files amicus briefs in others. *See, e.g., Henderson v. Shinseki*, 562 U.S. 428 (2011) (amicus); *NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013) (addressing VA's failure to honor its commitment to stop applying an invalid rule); *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019) (amicus); *NOVA v. Secretary of Veterans Affairs*, 981 F.3d 1360 (Fed. Cir. 2020) (M21-1 rule was interpretive rule of general applicability and agency action subject to judicial review); *Buffington v. McDonough*, No. 21-972 (February 7, 2022) (amicus in support of petition for writ of certiorari before U.S. Supreme Court).

BACKGROUND

VA examinations are frequently part of the disability claims process. "When there is a claim for disability compensation or pension but medical evidence accompanying the claim is not adequate for rating purposes, a Department of Veterans Affairs examination will be authorized." 38 C.F.R. § 3.326. VA will obtain a medical opinion or examination when there is insufficient medical evidence of record to decide the claim and (1) there is competent lay or medical evidence of a currently diagnosed disability; (2) the veteran suffered an event, injury, or disease in service or has a diagnosis or symptoms of a recognized presumptive condition; and (3) the evidence indicates the claimed condition may be associated with the event, injury, or disease in service or with another service-connected condition. 38 C.F.R. § 3.159(c)(4); M21-1, IV.i.1.A.1.b.

The CAVC has repeatedly emphasized VA's role in obtaining examinations and ensuring those examinations are adequate. *See, e.g., McLendon v. Nicholson*, 20 Vet.App. 79, 81 (2006) (outlining when VA must obtain an examination); *Barr v. Nicholson*, 21 Vet.App. 120, 123 (2007) (when VA seeks an opinion, the Secretary must ensure it is adequate);

Acevedo v. Shinseki, 25 Vet.App. 286, 293 (2012) (adequate medical report must be based on correct facts and reasoned medical judgment).

During stakeholder discussions leading up to the passage of the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), NOVA testified on the importance of adequate examinations and the problems created when claims are sent back time and again for new examinations when the first examination or subsequent ones are deficient. Even with the passage and 2019 implementation of the AMA, NOVA members continue to report a significant number of cases remanded due to inadequate examinations in both the legacy and AMA systems. NOVA members also report that VA frequently orders examinations when adequate medical evidence of record exists, to include private medical opinions.

VA exams are conducted by Veterans Health Administration employees and, more often, by contract examiners. In a June 2022 report, the VA Office of Inspector General noted that “[r]esults of medical exams are critical pieces of evidence in supporting veterans’ claims for benefits, and the exams represent a significant investment by VBA.” Department of Veterans Affairs, Office of Inspector General, *Veterans Benefits Administration: Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions* i, June 8, 2022 (<https://www.va.gov/oig/pubs/VAOIG-21-01237-127.pdf>). The report found, among other things, that “[a]ll three vendors failed to consistently provide VBA with the accurate exams required by the contracts” and “vendor exam accuracy has not improved and exam errors have not been resolved.” *Id.* at 8; 10. Contract examiners must comply with the terms of their contracts and be held accountable when they fail to do so. Furthermore, contractors must correct errors and provide adequate examinations to reduce repeated remands, which result in continuing delay and backlogs.

S. ____, No Bonuses for Bad Exams Act of 2022

NOVA supports this draft legislation as an important step in improving VA examinations. This bill takes critical steps to ensure inadequate examinations do not adversely impact veterans’ claims, e.g., by prioritizing new exams and subsequent claims processing when a veteran has received an inadequate examination (section 103), by permitting reports of inadequate or unnecessary examinations to be removed from the veteran’s record (section 202), and by ensuring inadequate or unnecessary examinations are not used for adjudication, review, or litigation purposes (section 202).

We offer the following suggestions to strengthen this legislation:

Section 2. Definitions. Congress should provide definitions for “inadequate examination” and “unnecessary examination.”

Section 101. Improvements to Training for Processing Medical Disability Examinations. Under Section 101(b)(3), a subsection (E) should be added to specifically require training on the acceptance of private physician examinations under 38 U.S.C. § 5125.

Section 101. Improvements to Training for Processing Medical Disability Examinations. Under Section 101(d), subsection (2) should be stricken since the CAVC is able to address recurring issues in precedential opinions and should not be compelled to issue advisory opinions through a reporting requirement. In addition, subsection (2) should be stricken because it is inconsistent with the purpose of 38 U.S.C. § 7288(a), which is to summarize the “workload of the Court.”

Section 202. Correction of Veteran Records. Section 202(a)(1) should be amended to clarify that a veteran can request any VA examination, even one added to the record prior to enactment, to be removed from the record. This action is necessary to ensure adjudicators do not consider inadequate and unnecessary examinations in appeals that sometimes linger for years or revive them as a basis for a decision in a related claim(s) filed at a future date.

Section 202. Correction of Veteran Records. Language should be added at section 202(b) to provide a veteran, and his or her representative, with notice and an opportunity to respond to any correction of an error proposed by the Secretary.

Title II. Improvement of Transparency of Medical Disability Examinations. A new section should be added to require VA to automatically mail a copy of the veteran’s examination report to the veteran and his or her accredited representative (if one has been appointed by the veteran). This amendment is necessary given the CAVC’s recent unfavorable interpretation of the statute. *See, e.g., Martinez v. Wilkie*, 31 Vet.App. 170 (2019) (VA not required to provide copy of examination report under 38 U.S.C. § 5103A).

CONCLUSION

Thank you again for allowing us to present our views on this important legislation. If you have questions or would like to request additional information, please feel free to contact:

Diane Boyd Rauber, Esq.
Executive Director
National Organization of Veterans’ Advocates, Inc.
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(202) 587-5708
drauber@vetadvocates.org



**STATEMENT OF
STUDENT VETERANS OF AMERICA**

**BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. SENATE**

**HEARING ON THE TOPIC OF:
PENDING LEGISLATION**

July 13, 2022

1012 14th Street NW, 12th Floor
Washington, DC 20005

Phone: (202) 223-4710
Email: contact@studentveterans.org

studentveterans.org



Chairman Tester, Ranking Member Moran, and Members of the Committee: Thank you for inviting Student Veterans of America (SVA) to submit a statement on the legislation pending before you today.

With a mission focused on empowering student veterans, SVA is committed to providing an educational experience that goes beyond the classroom. Through a dedicated network of on-campus chapters, SVA aims to inspire yesterday's warriors by connecting student veterans with a community of like-minded chapter leaders. Every day these passionate leaders work to provide the necessary resources, network support, and advocacy to ensure student veterans can effectively connect, expand their skills, and ultimately achieve their greatest potential.

S.4458, the *Ensuring the Best Schools for Veterans Act of 2022*.

SVA supports this bill, which would amend title 38, United States Code, to streamline the 85-15 rule and 35 percent waiver process for both institutions of higher learning and the Department of Veterans Affairs (VA), ensuring that student veterans are not harmed by VA's recently changed interpretation of this long-standing rule.

The central tenet of the 85-15 rule is simple: No program of education may be approved for Title 38 benefits if more than 85 percent of the students within it are using VA education benefits. This rule protects student veterans from fly-by-night schools seeking to take advantage of VA education benefits by requiring a percentage of students not supported by the VA to be enrolled in the program. However, if an institution has an overall student veteran enrollment of 35 percent or less, they may apply for and be granted a waiver from these 85-15 reporting requirements.

Recently, VA has made two decisions that have thrown the understanding of 85-15 into a tailspin. First, VA adjusted the definition of which students count as "supported", bringing more non-VA students into this category and further complicating the compliance requirements placed upon schools. As a result, programs are now at risk of violating the 85-15 rule without enrolling a single student veteran. While this has always been technically possible under the rule, the recent changes VA implemented have increased the number of programs being deemed ineligible, including those that do not have a single student veteran enrolled.¹

Second, VA decided to reset the 35 percent waiver for all schools and require them to resubmit all their 85-15 calculations under an abbreviated timeline. While this deadline has been extended, it is important to recognize that, for many schools, this decision amounted to hundreds of hours of extra work as these calculations are required for every program major, minor, and concentration combination. This work must be repeated, at a minimum, every two years to maintain the waiver. And though VA has distributed guidance on these changes in multiple formats, most of them differed in slight but important ways, only adding to schools' confusion and making it extraordinarily difficult to ensure compliance.

The *Ensuring the Best Schools for Veterans Act of 2022* settles these complications and eliminates the negative trickle-down impacts for student veterans by requiring that VA adjust their procedures to match Congress' original intent of the law. We thank the Committee for its steadfast commitment to veterans in higher education and hope that we can continue to be a resource for its Members on this legislation, and others going forward.

In addition to the bill above, SVA also supports S.3994, the *Restoring Benefits to Defrauded Veterans Act of 2022*; S.4308, the *Veterans Marriage Recognition Act*; S.3606, a bill to amend title 38, United States Code, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a

¹ American Council on Education, Letter to Congress on Ensuring the Best Schools for Veterans Act, June 23, 2022.
<<https://www.acenet.edu/Documents/Letter-VA-Committees-85-15-Bill-062322.pdf>>



dependent; and S.4319, the *Informing VETS Act of 2022*.

o

The continued success of veterans in higher education in the Post-9/11 era is no mistake or coincidence. In our Nation's history, educated veterans have always been the best of a generation and the key to solving our most complex challenges. This is the legacy we know today's student veterans carry.

We thank the Chairman, Ranking Member, and Committee Members for your time, attention, and devotion to the cause of veterans in higher education.



STATEMENT FOR THE RECORD
COMMITTEE HEARING ON PENDING LEGISLATION
SUBMITTED TO THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

July 13, 2022

Chairman Tester, Ranking Member Moran, and Members of the Committee:

We thank you for the opportunity to share our perspective on the legislation before this body. Veterans Education Success is a nonprofit organization with the mission of advancing higher education success for veterans, service members, and military families, and protecting the integrity and promise of the GI Bill and other federal education programs.

Below we provide feedback on legislation before the Committee. Thank you for your consideration of our perspective on these important issues, and for your commitment to the success of veterans in higher education.

S. 4458 - Ensuring the Best Schools for Veterans Act of 2022

We thank the Committee for developing a measured and meaningful bill that we believe will substantially address ongoing concerns with the current guidance on the "85/15 Rule." Over the course of the past year, school officials have expressed outspoken concerns about a new interpretation of the statutory 85/15 Rule by the U.S. Department of Veterans Affairs (VA).

Background

The rule stipulates that to maintain eligibility for participation in Title 38 educational benefit programs, at least 15 percent of institutional enrollments must consist of students who are paying for their education with something other than the GI Bill, Tuition Assistance funds from the U.S. Department of Defense (DoD), or institutional aid. It is rooted in concerns that came about from the Original GI Bill of 1944, when shoddy schools, which only enrolled VA-financed veterans, multiplied across the country.

The rule has always counted not only students using GI Bill benefits, but also students using certain types of institutional aid, as "supported students" who count as part of the institutions' 85 percent cap. The reason for inclusion of institutionally-aided students is to prevent gaming by unscrupulous institutions, which could enroll 15 non-veteran students with free scholarships in order to maintain access to VA funds, which would still represent almost their entire source of revenue.

In response to concerns about the inclusion of institutionally aided students on the 85-percent side of the calculation, VA issued revised guidance last September that clearly excludes students from being counted as “supported students” if they receive institutional grants and scholarships that are equally available to student veterans and student non-veterans alike.

A second source of concern and confusion about VA’s 2020 interpretation focused on its treatment of tuition payment plans. That interpretation severely limited the types of payment plans that would qualify their users as non-supported, and caused alarm for institutions using such plans. As a result of extensive outreach and engagement with veteran service organizations and institutions, VA published updated guidelines in February to set reasonable criteria for qualified tuition payment plans.¹

We thank the Committee for diligently working to develop this legislation, which we believe will be responsive to school concerns about administrative burden, while most importantly also protecting student veterans from unscrupulous actors and practices.

We applaud the approach of this legislation on exemption of installment plans, “at an educational institution that the Secretary determines has a history of offering payment plans that are completed not later than 180 days after the end of the applicable term, quarter, or semester.”

We believe this appropriately recognizes legitimate payment plans consistent with the intent of VA’s definition of “supported student,” while reducing overall burden on institutions who rely on this flexibility as a payment mechanism for students. Schools that apply hollow payment plans – essentially false institutional loans – with the intent to manipulate their calculation will be unable to use this as an accounting ploy for the purposes of the 85/15 calculation.

Recommendations

Based on the proposed legislation, we offer three recommendations for consideration by this Committee:

1. *Exemptions.* Exempting institutions with 35% or fewer veterans and service members from calculating programmatic 85/15 ratios is a reasonable policy, but we believe the Secretary should have authority to verify that institutions claiming the 35% exemption are correctly reporting that enrollment statistic. The 35% exemption does present the risk of being a loophole for filling certain low-quality, yet low-cost, programs with student veterans while maintaining overall percentages below the 35% threshold. This is ultimately something that VA must be cautious of in the long-run.

¹ Department of Veterans Affairs Policy Interpretation, Clarification Concerning Tuition and Fees Payment Plans for Standard Terms and 85/15 Calculations, February 4, 2022, <https://www.federalregister.gov/documents/2022/02/04/2022-02305/clarification-concerning-tuition-and-fees-payment-plans-for-standard-terms-and-8515-calculations>.

2. *Spot-Checks.* The Secretary should have the ability to perform periodic checks on specific programs at all institutions, including the ones eligible for this exemption, for 85/15 compliance on a case-by-case basis. As noted, we maintain some reservation with the approach based on the emergence of complex mega-universities that may fill predatory programs with student veterans, yet still maintain institutional enrollments below 35%.
3. *Accountability.* We additionally believe having State approving agencies (SAA) monitor compliance would be the most effective approach for monitoring 85/15 nationwide, and this could take two distinct forms of oversight:
 - o Certification Periods. For schools taking advantage of the 35% exemptions, that statistic should be certified every term for standard calendar institutions and biannually for others. The intent should be to prevent schools from falsely or evasively claiming the exemption if they do not genuinely qualify for it. We believe this is a reasonable approach, and would not present an overly burdensome administrative requirement to schools.
 - o Intermittent Reviews. SAAs should review programmatic compliance with the 85-15 calculation to ensure that schools below the 35% threshold are not segregating veterans in low-quality programs on a case-by-case basis. Schools should not be expected to calculate 85-15 compliance ratios on a constant basis; however, if selected for an intermittent review, the school should be able to produce a calculated ratio for specific programs. The SAA should be able to disqualify these institutions if they find reasons for concern, such as a pattern of program as being low-quality or high-cost.

We look forward to working closely with you on the implementation of this legislation.

S. 4319 - Informing VETS Act of 2022

The "Informing Veterans on Education for Transitioning Servicemembers Act of 2022," otherwise known as the "Informing VETS Act of 2022," would seek to greatly increase awareness of veterans' eligibility for services under Veteran Readiness and Employment (VR&E), the program formerly known as Vocational Rehabilitation and Employment.

This legislation would focus on three specific areas to educate those who may be eligible on the benefits of the VR&E services, including:

1. Sending a letter to each veteran entitled to such a program that explains the educational benefits of such programs;
2. Providing a side-by-side comparison of benefits between such programs and educational assistance under Chapter 33 of Title 38; and
3. Publish this information on a publicly accessible website of the Department.

We applaud this legislation for taking steps to increase awareness about VR&E. We share the Committee's view that any veteran who is eligible for this program is entitled to be aware of the related services and opportunities. In addition, we would like to raise four previous recommendations about the VR&E program, noting greater program awareness will inherently increase program participation rates.^{2,3}

1. *VR&E Improvements.* As we have requested in the past, we call on Congress to further decrease the number of clients per counselor from 125 clients to around 85 clients per counselor. While VA has worked to reduce the number of clients per counselor, we believe it would be beneficial to further decrease the Congressionally mandated ratio to a maximum of 85 clients per counselor. The current threshold of 125 is too high for counselors to adequately address the individual needs of student veterans, and students often complain about the lack of responsiveness of their counselors.
2. *Counselor Consistency.* We continue to recommend increased training for VR&E counselors that includes comprehensive information for all five tracks in the VR&E program, consistent expectations, and requirements for quality to help improve veteran outcomes and overall customer experience. There are too many complaints from VR&E students that indicate the VR&E counselors lack sufficient training.
3. *Housing Allowance.* We urge Congress to establish a Monthly Housing Allowance (MHA) for VR&E students at rates similar to the Post-9/11 GI Bill to keep pace with the rising cost of living.
4. *System Modernization.* Finally, we believe it is imperative for VA to continue to focus on improving and modernizing the current case management system, so that payments to students are not delayed is vital given the dire financial situations many veterans are currently facing. As program participation rates rise, we feel these suggestions should be considered for future legislation to provide veterans with the world-class experience they deserve.

We thank the Members and their staff for diligently working to provide greater awareness and access to programs student veterans have earned the right to use.

² Veterans Education Success, *Congressional Testimony submitted on the Topic of Congressional and Administrative Priorities for the Next Congress*, Submitted to the Subcommittee on Economic Opportunity, Committee on Veterans Affairs, U.S. House of Representatives, December 8, 2020, <https://vetsedsuccess.org/our-written-testimony-for-the-house-veterans-affairs-economic-opportunity-subcommittee-hearing-on-2021-legislative-priorities/>.

³ Veterans Education Success, Statement for the Record, House Committee on Veterans' Affairs Economic Opportunity Subcommittee Hearing, *Getting Veterans to Work after COVID-19*, July 21, 2020, <https://vetsedsuccess.org/our-sfr-for-july-21-hvac-economic-opportunity-subcommittee-hearing-getting-veterans-to-work-after-covid-19/>.

S. 3606 - A bill to amend title 38, United States Code, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a dependent, and for other purposes.

We applaud the Committee for proposing this legislation, which would remove the current statutory requirement that beneficiaries “specify the period for which the transfer shall be effective for each dependent designated” of section (e), “Designation of Transferee.”⁴ This requirement is arbitrary, and leads to unnecessary logistical hardship for families of service members. We are proud to support this legislation.

○

Veterans Education Success sincerely appreciates the opportunity to express our views before the Subcommittee today. We look forward to working with you and members of your staff on these important issues.

⁴ Title 38, US Code Section 3319, [https://uscode.house.gov/view.xhtml?req=\(title:38%20section:3319%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title38-section3319\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:38%20section:3319%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3319)&f=treesort&edition=prelim&num=0&jumpTo=true).

○