

**STATEMENT OF JOSEPH GARCIA  
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DEPARTMENT OF VETERANS AFFAIRS (VA)  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. SENATE**

**April 26, 2023**

Chairman Tester, Ranking Member Moran, and other Members of the Committee, thank you for inviting us here today to present our views on several bills that would affect VA programs and services. Joining me today are Nick Pamperin, Executive Director, Veteran Readiness and Employment Service; Kevin Friel, Deputy Director, Pension and Fiduciary Service; and David Barrans, Chief Counsel, Benefits Law Group.

**S. 280 “Better Examiner Standards and Transparency for Veterans Act of 2023”  
 (“BEST for Vets Act of 2023”)**

S. 280 would amend Public Law 104-275, § 504(a) (38 U.S.C. § 5101 note), as amended by Public Law 116-315, § 2002, to ensure that only licensed health care professionals furnish contract medical examinations for VA disability benefits.

**VA supports this bill, if amended.** VA suggests revising section 504(c)(2) and (c)(2)(A) of Public Law 104-275, as amended by Public Law 116-315, § 2002 to describe a “health care professional” as any health care professional as deemed appropriate by the Secretary to conduct medical disability examinations, who has a current unrestricted license to practice a health care profession deemed appropriate by the Secretary to conduct medical disability examinations.

VA suggests expanding the definition in section 504(c)(2) of a health care professional to include *any* health care professional as determined appropriate by VA, to conduct VA medical disability examinations.” This current definition is currently limited to a “physician, physician assistant, nurse practitioner, audiologist, or psychologist” and does not include other specialty health care professionals including but not limited to, dentists, optometrists, and advanced practicing nurses.

Expanding the definition of a health care professional currently found in section 504(c)(2) to any health care professional deemed appropriate by VA to conduct medical disability examinations would provide VA with greater flexibility to complete such examinations.

VA suggests removing section 2002(a)(4) of Public Law 116-315 to eliminate the sunset date on the licensure requirements (portability) for contractor medical professionals to perform medical disability examinations and revising section 2002(a)(2) to state that the purpose of the amendment made by subsection (a)(1) is to expand the

license portability for any health care professional as deemed appropriate by the Secretary to supplement the capacity of employees of the Department to provide medical examinations.

Currently, license portability for non-physician medical professionals to conduct medical disability examinations at any location within the continental U.S. and its territories is permitted, however, section 2002(a)(4) sunsets three years after the date of enactment, which is January 5, 2024. VA recommends eliminating the sunset date to ensure that this expansion remains permanent resulting in shorter wait times and faster examination completion times for Veterans.

The removal of the sunset date and expansion of how a health care professional is defined are critical to continuous completion of thorough, accurate, and timely medical disability examinations to Veterans, thereby leading to timely and accurate rating decisions associated with VA benefit entitlement. Additionally, these suggested amendments would allow the Veterans Benefits Administration the flexibility to utilize a wider range of qualified medical professionals and reach more Veterans.

No mandatory or discretionary costs are associated with this bill.

## **S. 291 Establishment of Veterans Economic Opportunity and Transition Administration**

Section 1 of this bill would create a new chapter 80 in title 38, United States Code, and establish within VA a new Veterans Economic Opportunity and Transition Administration (VEOTA) with the function of administering VA programs that provide assistance related to economic opportunity to Veterans and their dependents and survivors, outline its functions and the programs it would administer, set annual reporting requirements to Congress, provide appropriations for VEOTA, and ensure the maintenance of labor rights of employees transferred to VEOTA. Section 2 would establish the position of Under Secretary for VEOTA (appointed by the President and directly responsible to the Secretary), outline the Under Secretary's responsibilities, and establish the procedures under which the position would be filled. Section 3 would require VA to submit a report to Congress on the progress toward establishing VEOTA within 180 days of enactment and prevent the transfer of functions to VEOTA until VA certifies to Congress that the transition of services to VEOTA will not negatively affect the services provided and that services are ready to be transferred.

**VA does not support this bill.** The current Veterans Benefits Administration (VBA) structure appropriately reflects the Under Secretary for Benefits' overall responsibility for Veterans benefits programs that include programs related to economic opportunity and transition, as well as compensation, pension, survivors' benefits, and insurance. VA appreciates the Committee's focus on improving services and resources offered by these programs, however, does not support this bill for the following reasons. First, as written, the structure of the administration conflicts with current statute and creates span of control issues, Second, layering an additional administration and

executive leadership would limit efficiencies by creating duplicative and redundant structures. Third, the bill presents compliance issues with the Federal Advisory Committee Act (FACA), requiring either an exemption or establishment of a new committee to carry out the provision. Finally, the specified timeframe for implementation and certification would negatively impact VA's ability to deliver timely and quality services to Veterans.

There are several provisions in this bill that conflict with existing structure. First, section 8002(4) proposes to move the Office of Small and Disadvantaged Business Utilization's (OSDBU) Center for Verification and Evaluation (CVE) program to the new administration. OSDBU's mission is to advocate for the maximum practicable participation of small, small-disadvantaged, Veteran-owned, women-owned, and empowerment-zone businesses in contracts awarded by VA and in subcontracts awarded by VA's prime contractor. The unique nature of OSDBU's mission necessitates a direct report to the Secretary or Deputy Secretary. Second, this bill would move OSDBU's CVE program, which, according to this bill, administers the verification program required for Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses and maintains the vendor information page database, to the new administration. However, the verification program is no longer with VA and was transferred to the Small Business Administration as of January 2023, by the Fiscal Year (FY) 2021 National Defense Authorization Act, and 38 U.S.C. § 8127(f) is now obsolete.

In order to support the adjudication and delivery of Veteran- and Servicemember-earned benefits, VBA also has many enabling staff offices, such as finance, Human Resources (HR), facilities, production optimization, outreach and engagement, field operations, business process integration, strategic program management, performance analyses, communications, and executive review. These enabling organizations would have to be recreated within the new administration in order to effectively operate, requiring additional executive leadership and replicated structures. The addition of another administration would increase the leadership oversight for programs that are currently in place, contrary to the modernization efforts that are underway.

Section 306A(c), as created by section 2 of the bill, would require VA to create a commission to recommend individuals to the President for appointment to the new Under Secretary position and would establish membership requirements and the function of the commission, which would implicate the Federal Advisory Committee Act (FACA). Therefore, unless Congress specifically exempts the commission from compliance with FACA in the statute, a new VA federal advisory committee would have to be established to carry out the provision.

Moreover, VA would require ample time to plan for this considerable transition to ensure services are not negatively affected. Therefore, while VA remains committed to communicating closely with the Committees, it does not support the specified timeframe for reporting or certification.

The VBA portfolio of benefits is thriving. The Education, Loan Guaranty, Veteran Readiness and Employment (VR&E), and Outreach, Transition, and Economic Development (OTED) programs are part of an integrated suite of interdependent services and benefits that includes compensation, pension, and insurance programs. Together, they form a suite of benefit-related resources that Veterans can rely on.

In FY 2022, VA processed over 3.5 million education claims in an average of 6.7 days. Over 1.3 million claims were automated, delivering real-time benefit decisions to Veterans and their dependents. VA paid over \$9.9 billion in education benefits for 834,460 Veterans and their beneficiaries. VA guaranteed 746,091 loans worth \$256.6 billion in FY 2022. Loan Guaranty also assisted 205,702 borrowers retain homeownership and/or avoid foreclosure, resulting in a \$3.99 billion savings in estimated foreclosure costs to the Government. VR&E helps Servicemembers and Veterans with service-connected disabilities and a barrier to employment prepare for, find, and maintain suitable jobs through counseling and case management. There were over 124,400 VR&E participants in FY 2022, with more than 30,500 new plans developed to assist Veterans, and over 11,800 Veteran rehabilitations.

For those Servicemembers transitioning out of the military, VBA OTED offered additional support to facilitate a smoother transition into civilian life, both socially and economically. VA's commitment to support Veterans' transition from the military through the VA Solid Start (VASS) program realized successful connections with over 175,000 recently separated Veterans. The goal of the VASS program is to provide seamless access to mental health and suicide prevention resources, including care for substance use disorders. VASS representatives proactively call newly separated Veterans over their critical first year (three key stages from 0–90, 90–180, and 180–365 days post-transition) to discuss their transition experiences, available benefits, and any challenges they may be facing.

VA continues to partner with the Department of Defense to ensure separating Service members are focused on their transition as early as possible and begin civilian life on the right foot.

General Operating Expense costs would result from enactment of this bill for Management Direction and Support for enabling staff offices (aforementioned finance, HR, facilities, outreach and engagement, field operations, business process integration, strategic program management, performance analyses, communications, and executive review), which would include payroll and non-pay costs (travel, contract support, centralized payments, etc.). No mandatory costs would be associated with the proposed legislation. While there is no benefit cost associated with the bill, the appropriation language for the Readjustment Benefits account and the Credit Reform account would have to change to reflect the title of the new administration.

## **S. 350 “Fry Scholarship Enhancement Act of 2023”**

S. 350 would amend 38 U.S.C. § 3311(b)(8) to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to a child or spouse of an individual who, on or after September 11, 2011, dies from a service-connected disability during the 120-day period beginning on first day of their discharge or release from active duty as a member of the Armed Forces or duty other than active duty as a member of the Armed Forces. Additionally, the individual must have an honorable discharge or service characterized by the Secretary as honorable. This bill would apply to deaths that occurred before, on, or after the date of enactment and would apply to a quarter, semester, or term beginning on or after August 1, 2024.

**VA supports this bill, if amended, and subject to appropriations.** VA supports expanding eligibility for the Fry Scholarship, assuming Congressional appropriation of the resources to fund these requirements. However, VA recommends several key amendments to the bill as written.

Currently, under 38 U.S.C. § 3311(b)(8), the Fry Scholarship is available to children or spouses of individuals who die on or after September 11, 2001, while serving on active duty. This bill would expand eligibility to children or spouses of individuals who died prior to September 11, 2001, because it includes “before” in the phrase “before, on, or after the date of enactment” in the applicability section. For clarity and consistency, VA recommends revising section 2(b)(1) of the bill language to apply either to deaths that occur on or after date of enactment or to deaths that occur on or after September 11, 2001.

Additionally, the bill contains language in section (a)(3) that would require an individual who died from a service-connected disability to have had an honorable discharge or service in the Armed Forces that was characterized as honorable. While section 3311(c) contains similar language regarding “characterized as honorable,” that language is restricted to Servicemembers discharged to serve in the Reserves or discharged due to disability pre-existing service, hardship, or due a disability interfering in service. For clarity and consistency, VA recommends, in proposed section 3311(b)(8)(B), replacing the language “but only if—” and clauses (i) and (ii) that follow with “as described in subsection (c)”. This change would make the provision consistent with other provisions in section 3311(b), see 38 U.S.C. §§ 3311(b)(3)-(7) and (11), and make clear that the discharge or release described in subsection (b)(8)(B) must meet the requirements described in subsection (c). Otherwise, it would be unclear whether the covered discharges and releases described in subsection (c) would apply to subsection (b), because the plain language of subsection (c) provides that “[a] discharge or release from active duty of an individual described in *this subsection* [i.e., subsection (c), not subsection (b)] is a discharge or release as follows.” (Emphasis added.)

Mandatory costs associated with S. 350 are estimated to be relatively small at \$0 in 2023, \$488,000 over five years, and \$1.3 million over 10 years. No administrative costs for VBA are associated. Discretionary IT costs are \$3.1 million in 2023.

#### **S. 414 “Caring for Survivors Act of 2023”**

Section 2(a) of the bill would increase the dependency and indemnity compensation (DIC) rate in 38 U.S.C. § 1311(a)(1) from \$1,154 (\$1,562.74 effective December 1, 2022) to 55 percent of the rate of monthly compensation in effect under 38 U.S.C. § 1114(j) (\$1,992.07 based on the \$3,621.95 rate in effect as of December 1, 2022, under 38 U.S.C. § 1114(j)). Section 2(b)(1) would make section 2(a)'s amendments applicable for months beginning after the date that is six months after the date of enactment. Section 2(b)(2) would require VA, for months beginning after the date that is six months after the date of enactment, to pay DIC benefits predicated on the death of a Veteran before January 1, 1993, in a monthly amount that is the greater of: (1) the amount determined under section 1311(a)(3), as in effect on the day before the date of enactment; and (2) the amount determined under section 1311(a)(1), as amended by section 2(a).

**VA supports section 2, if amended, and subject to the availability of appropriations.** Under 38 U.S.C. § 1311(a)(1), DIC is paid to a surviving spouse at the monthly rate of \$1,154. Per the rate increase under Public Law 117-191, the current rate paid under section 1311(a) (effective December 1, 2022) is \$1,562.74. See Veterans' Compensation Cost-of-Living Act of 2022, § 2(b)(4) (Oct. 10, 2022). The bill specifies that the provision would apply to 38 U.S.C. § 1311. VA would interpret the bill to also provide for increased rates for DIC granted under 38 U.S.C. § 1318, which authorizes DIC to be paid, in certain circumstances, as if the Veteran's death had been service connected.

VA notes that Public Law 117-191 requires VA to increase the rate paid under 38 U.S.C. § 1114 in addition to the rates paid under section 1311. VA views section 2(a) of this bill as allowing for the use of the current rate paid under section 1114(j) of \$3,621.95 in calculating the benefit provided under proposed section 1311(a)(1), as well as any future increases to section 1114(j).

VA further notes that section 2(b)(2) of this bill would require VA to pay the greater of the benefit under proposed section 1311(a)(1) and “[section 1311(a)(3)], as in effect on the day before the date of the enactment of this Act.” The apparent intent is to use the rates under section 1311(a)(3) at that fixed point in time, even if those statutory rates are later changed.

However, the statutory language is potentially ambiguous because the rates payable under section 1311(a)(3) may change even if the text of that provision remains unchanged. Congress routinely enacts annual cost-of-living adjustments (COLA) increasing DIC rates, including the section 1311(a)(3) rates. See, e.g., Public Law 117-191. We believe the intent of the bill is to use the rate that would have been payable on

the day before the date of enactment under section 1311(a)(2) and any COLAs in effect on that date. However, the bill language as drafted would also be susceptible to the interpretation that the rate should be increased by any subsequent COLAs because such rate would still be predicated on section 1311(a)(3) “as in effect on the day before the date of the enactment of this Act.” This ambiguity could be resolved by adding language at the end of section 2(b)(2)(A)(i) of the bill saying, “including any applicable statutory cost-of-living increases in effect as of that day.”

Due to the extensive information system updates that would be required for implementation and the necessary oversight of such implementation, VA recommends that section 2(b)(1) be amended with an effective date of one year after the date of enactment.

Section 3 of the bill would amend 38 U.S.C. § 1318(b)(1) to reduce, from ten years to five years, the period in which a Veteran must have been rated totally disabled due to service-connected disability in order for a survivor to qualify for DIC benefits. It would further add a new subsection (a)(2) to state: “In any case in which the Secretary makes a payment under paragraph (1) of this subsection by reason of subsection (b)(1) and the period of continuous rating immediately preceding death is less than 10 years, the amount payable under paragraph (1) of this subsection shall be an amount that bears the same relationship to the amount otherwise payable under such paragraph as the duration of such period bears to 10 years.” The meaning of proposed section 1318(a)(2) is unclear.

**VA supports section 3, if amended, and subject to the availability of appropriations.** VA views proposed section 1318(a)(2) as supporting the families of Veterans who die with a total disability rating that existed for more than five years but less than ten years immediately preceding death. For individuals who qualify for DIC under proposed section 1318(b)(1) due to a Veteran’s disability continuously rated totally disabling for a period of more than five years but less than ten years immediately preceding death, VA views the proposed statute as more generous than existing law in that VA may provide DIC benefits to such individuals. However, VA views the proposed language in section 3(1)(B) of the bill as incorporating an unclear and potentially overly complex application for survivor beneficiaries, the agency, and external partners. The proposed language of section 1318(a)(2) would create a relationship between a ten-year rating requirement for full benefit entitlement and a five-year rating requirement for baseline entitlement, per amendments to section 1318(b)(1). The apparent effect would allow for DIC benefits to be granted based on a shortened duration of time that a Veteran must be continuously rated totally disabled, but then disallow full benefit entitlement through the utilization of an unclear payment structure.

Specifically, the benefit provided by VA to the families of Veterans with more than five years, but less than ten years of disability rated as totally disabling under the proposed statute (proposed beneficiaries) would “bear[] the same relationship” to the full benefit amount as the length of totally disabling rating “bears to 10 years.” Using a Veteran with exactly five years of total disability rating as an example, exactly five years

is half of ten years, meaning a DIC benefit based on exactly five years of total disability rating would have exactly the same relationship to half of the benefit paid based on ten years of total disability.

However, it is unclear how precisely VA should calculate the relationship. Using a Veteran with five years and six months of total disability rating as an example, should VA provide 55% of the benefits it would provide based on ten years of total disability? Or should VA round up to 60%? If the Veteran has five years and seven months, should VA provide 55.8% of full DIC benefits? Or should VA round up to 56%? VA requests that Congress provide clear standards to avoid potential confusion and litigation.

VA does not currently reduce DIC benefits in any scenario along the lines it would be required to under the proposed language. This novel adjudication would be operationally difficult and would appear to preclude automation, at least initially.

The calculation would be further complicated by the incremental structure of section 1311 used to calculate DIC benefits, which allows VA to supplement the base rate when a number of different conditions are met. VA would be unsure if the application of “bears the same relationship to” language would apply to solely the underlying DIC benefit rate, or if VA is meant to extend such application of benefit reduction to any additional supplemental allowance. For example, section 1311(a)(2) allows VA to pay an additional \$246 per month of DIC if the deceased Veteran received a total disability for eight years before death *and* was married to the surviving spouse for those eight years. Sections 1311(a)(2) and 1318(b)(1) currently operate separately and apply separate standards, and not all proposed beneficiaries would qualify for DIC benefits under section 1311(a)(2). Section 1311(a)(2) is not the only potential supplement to which VA would have to apply the reduction. *See, e.g.,* 38 U.S.C. § 1311(b) (allowing VA to provide an increase of \$286 per month per child under 18 years old).

VA views the potential application of the proposed language for section 1318(a)(2) as being inconsistent with the benefit’s current intent and program integrity. As such, VA recommends removal of section 3(1) of the bill to allow the proposed amendment under section 3(2) to achieve the primary intent of DIC expansion. The effect of the proposed amendment under section 3(2) of the bill, on its own, would result in clearer and more consistent program application. Removing the novel adjudication calculations and solely retaining the amendment to section 1318(b)(1) is sufficient to fulfill the intended purpose of expanding DIC benefits to survivors of Veterans with a totally disabling disability rating by shortening the duration of time required for the disability to have been continuously rated. It would also allow VA to quickly implement the expansion while retaining the existing automation that allows the families of deceased Veterans to receive DIC benefits as quickly and accurately as possible.

VA recommends the bill be amended to add an explicit effective date. As written does not contain an effective date for section 3. VA would likely interpret any new benefit eligibility created by this section to be effective based on the date of enactment



of the bill, but not authorize retroactive payments. This outcome is complicated by the timeline for applying to receive DIC benefits. An application received more than a year after death cannot result in VA providing benefits retroactive to the date of death, but the applicant would qualify for DIC benefits from the date of application forward. 38 U.S.C. § 5110(d).

Mandatory costs associated with S. 414 are estimated to be \$0 in 2023, \$12.8 billion over five years, and \$37.1 billion over 10 years.

#### **S. 498 “Veteran Education Empowerment Act”**

This bill would amend 20 U.S.C. § 1161t to reauthorize and improve a grant program to assist institutions of higher education or consortia of institutions of higher education to assist in the establishment, maintenance, improvement, and operation of Student Veteran Centers. **VA defers to the Department of Education on this bill.**

#### **S. 656 “Veteran Improvement Commercial Driver License Act of 2023”**

S. 656 would amend 38 U.S.C. § 3680A(e) to modify the rules for approval of commercial driver education programs. Currently, under section 3680A(e), the Secretary may not approve the enrollment of an eligible Veteran in a course not leading to a standard college degree offered by a for-profit or non-profit educational institution if the educational institution has been operating for less than two years. This bill would exempt a commercial driver education program from this requirement if the commercial driver education program at a branch of an educational institution is appropriately licensed and uses the same curriculum as a commercial driver education program offered by the educational institution at another location that is approved under chapter 36 by a State approving agency (SAA) or the Secretary when acting in the role of an SAA.

To be exempt, the educational institution for the commercial driver education program offered at a branch would have to submit a report to VA each year that demonstrates the curriculum at the new branch is the same as the curriculum at the primary location. The report would have to be submitted in accordance with requirements established by VA in consultation with the SAA. VA must establish the report requirements not later than 180 days after the date of enactment.

VA could withhold an exemption for any educational institution or branch of an educational institution as the VA considers appropriate. In making such a determination, VA could consult with the Secretary of Transportation on the performance of a provider of a commercial driver program, including the status of the provider within the Training Provider Registry of the Federal Motor Carrier Safety Administration, when appropriate.

The amendments made by this bill would apply to commercial driver education programs on and after the date that is 180 days after the date VA establishes the exemption reporting requirements.

**VA supports this bill.** VA believes revising the approval criteria would provide more training opportunities for Veterans and boost employment in this occupational area. No mandatory costs are associated with this bill, which would expand the number of education programs offered but would not change entitlement to benefit payments. No discretionary costs are associated with this bill.

**S. 740 “Governing Unaccredited Representatives Defrauding VA Benefits Act of 2023” (“GUARD VA Benefits Act of 2023”)**

S. 740 would essentially reinstate language imposing criminal penalties that was removed from 38 U.S.C. § 5905 in 2006. This bill would address the absence of criminal penalties in the current statutes governing the conduct of individuals who provide assistance with claims for VA benefits. Under current law, VA’s enforcement mechanisms are constrained to suspending or canceling the accreditation of an accredited individual or, for an unaccredited individual or organization, sending a warning letter requesting that they cease their illegal activities and then referring those matters to Federal or State enforcement entities for possible prosecution under other laws, such as consumer protection, elder protection, or deceptive advertising laws. This bill would create a single, national standard to serve as a general deterrent against bad actors and would allow for more meaningful enforcement against unaccredited individuals who are currently not subject to any Federal punishment for violations of VA law with respect to the preparation, presentation, or prosecution of claims before VA.

**VA supports this bill.** There are no costs associated with this legislation.

**S. 774 “Veterans Border Patrol Training Act”**

This bill would require the Secretary of Homeland Security, in collaboration with the Secretary of Defense and the Secretary of Veterans Affairs, within 180 days after the date of enactment, to establish an interdepartmental pilot program through which the Department of Homeland Security (DHS) must use the Department of Defense (DoD) SkillBridge Program to train and hire transitioning Servicemembers as Border Patrol agents for U.S. Customs and Border Protection.

**VA defers to DHS and DoD on this bill.**

**S. 897 “Expedite Veteran Appeals Act of 2023”**

This bill would increase the maximum number of judges that may be appointed to the U.S. Court of Appeals for Veterans Claims from seven judges to nine judges.

**VA takes no position on this legislation.**

**S. XXXX “Student Veterans Transparency and Protection Act of 2023”**

This draft bill would improve how VA discloses to individuals entitled to VA educational assistance risks associated with using such assistance at particular educational institutions and to restore entitlement of students to such assistance who are pursuing programs of education and educational institutions that are subject to Federal or State civil enforcement action.

Section 2(a) of this bill would require VA to maintain VA's GI Bill Comparison Tool, as established by Executive Order 13607, or a successor tool, to provide relevant and timely information about programs of education approved under chapter 36 and the educational institutions that offer such programs. VA would be required to ensure that historical data that is reported via the tool is easily and prominently accessible on the [benefits.va.gov](https://benefits.va.gov) website, or a successor website, for at least seven years from the date of initial publication.

Under section 2(b), VA would be required, not later than one year after the date of the enactment, and in coordination with the Department of Education (ED), to make changes to the tool as determined appropriate to ensure that such tool is an effective and efficient method for providing information pursuant to 38 U.S.C. § 3698(b)(5) regarding postsecondary education and training opportunities. Section 2(b) of this bill would modify 38 U.S.C. § 3698(a) and (b)(5) to make them applicable to individuals entitled to educational assistance instead of only to Veterans and members of the Armed Forces. This section of the bill would also require several additional disclosures related to various aspects of educational programs including a requirement for more information to be disclosed about the Federal student aid program pursuant to 38 U.S.C. § 3698(c).

Section 2(c) of this bill outlines additional improvements that VA would be required to make to the GI Bill Comparison Tool regarding feedback from schools, including providing institutions of higher learning with up to 90 days to review and respond to feedback and address issues regarding the feedback before it is published.

Finally, section 2(d) would require VA, not less than one year after the date of enactment, to ensure that personnel employed or contracted to provide counseling, vocational or transition assistance, or similar functions, including VA employees or contractors who provide counseling or assistance as part of the Transition Assistance Program, are trained on how to properly use the GI Bill Comparison Tool or a successor tool and to provide appropriate educational counseling services to individuals entitled to educational assistance.

Section 3 would amend section 38 U.S.C. § 3699(b)(1) to preclude a charge against entitlement to educational assistance for payments made to an individual who is pursuing a course or program at an educational institution under 38 U.S.C. chapter 30, 31, 32, 33, or 35 or 10 U.S.C. chapter 1606 or 1607 of title 10, if the Secretary determines that the individual was unable to complete a course or program as a result of a Federal or State civil enforcement action against the educational institution or an action taken by VA. Lastly, VA would be required to establish a mechanism that could

be used by an individual approved under this provision to obtain relief under 38 U.S.C. § 3699(a).

**VA supports section 2(a), subject to the availability of appropriations.** This section would codify the GI Bill Comparison Tool as a valuable source of information for prospective and current GI Bill beneficiaries. Moreover, VA supports the provision as it would expand the information available to users of the tool.

VA would require additional resources to implement and conduct oversight of the provisions in this section. Implementing the provision outlined in section 2(b) of the bill would require significant technical changes to the tool in order to provide the required information and significant support from other partners, in particular ED, to locate the required information and receive regular updates. Moreover, the bill would create a more labor-intensive role on the part of VA regarding oversight and maintenance of the complaint referral process, the GI Bill Comparison Tool, and the GI Bill Feedback tool.

**VA has no objection to section 2(d)(1)(A).** Contracted VA Benefits Advisors are trained to provide a demonstration of the GI Bill Comparison Tool during the VA Benefits and Services course.

**VA cites concerns with section 2(d)(1)(B).** This would require VA contractors and employees to provide educational counseling services. VA Benefits Advisors are not education counselors who can provide educational counseling services beyond the curriculum that directs transitioning Servicemembers, Veterans and their families to resources for VA educational assistance. Additionally, education counseling is beyond the scope of the contract and training requirements. In order to facilitate this provision in the bill, VA would require an expansion of the contract scope and additional funding to develop hire and train educational counselors.

**VA supports section 3(a).** This provision would expand restoration of entitlement to include protection for when an individual is unable to complete a course or program due to a Federal or State civil enforcement action against the educational institution. Additionally, under section 3(b), VA would be required to establish a mechanism that would allow individuals eligible under this provision to obtain relief for restoration of entitlement. This would require VA to establish a system that can accept these requests on the date of enactment of the bill.

No costs are associated with section 2 of this bill. None of the changes in this section would impact entitlement to benefits or payment amounts. VA is unable to estimate the cost of section 3 due to insufficient data. Section 3 would allow VA to restore entitlement to individuals who are adversely affected and unable to complete a course or program because of a Federal or State civil enforcement action against the education institution. This may result in education trainees utilizing additional entitlement. However, historical data on the number of schools that have had Federal or State civil enforcement action is unavailable.

## **S.XXXX Payment of VA Educational Assistance Via Electronic Fund Transfer to a Foreign Institution of Higher Education**

The proposed legislation would require VA, within 90 days of enactment, to update its payment system to allow for electronic fund transfer of educational assistance to a foreign institution of higher education that provides an approved course of education to an eligible recipient of such assistance and does not have an employer identification number (EIN) or U.S. domestic bank account.

**VA does not support this bill.** This bill would create a duplicative system to what already exists and is unwarranted. VA currently has processes in place to make payments to foreign institutions of higher education by Electronic Funds Transfer, regardless of whether the institution has an EIN or a domestic bank account. No mandatory or discretionary costs are associated with this bill.

### **S. XXXX “Love Lives On Act of 2023”**

**VA supports section 2.** Section 2 of this bill would remove the delimiting date for spouses under the Marine Gunnery Sergeant John David Fry Scholarship by removing paragraph (2) from 38 U.S.C. § 3311(f). Section 3(a) of this bill would amend 38 U.S.C. § 103(d) to allow a surviving spouse to retain dependency and indemnity compensation (DIC) even after remarriage. Section 3(b) would provide that, beginning the first day of the first month after the date of the enactment of this bill, VA shall resume payment of DIC under 38 U.S.C. § 1311 to an individual who: (1) is the surviving spouse of a Veteran; and (2) remarried before reaching age 55 and the date of the enactment of this Act. Section 7 would amend the definition of a surviving spouse for Veterans benefits under 38 U.S.C. § 101(3) by removing the language that requires a marriage be between members of the opposite sex and removing the language stating that “...or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.”

**VA supports section 3(a), with amendments, and subject to the availability of appropriations.** VA supports removing the remarriage restriction requirements for surviving spouses. The bill specifies that the removal of the remarriage restriction would apply to 38 U.S.C. § 1311 but does not address whether it would also apply to other provisions in chapter 13 authorizing benefits to surviving spouses. See 38 U.S.C. §§ 1310, 1312, and 1318.

VA recommends modifying the language specifying that the provision would apply to benefits under 38 U.S.C. § 1311 to instead provide that the provision would apply to chapter 13 generally to ensure consistent application among that benefit type, if that is Congress’s intent. VA notes that the bill would create a greater disparity for survivor pension beneficiaries under chapter 15 who would remain precluded from benefit entitlement if they remarry at any age. Further, the bill would create a greater

disparity for survivors who qualify for Medal of Honor special pension under chapter 15, as that benefit entitlement is restricted to remarriage after age 57.

**VA cites concerns with section 3(b).** VA recommends deleting the proposed language in section 3(b)(2)(A) stating that the resumption of DIC payments for the surviving spouse of a Veteran be restricted to remarriages that occurred prior to the surviving spouse reaching age 55. That requirement would create a disparate impact for surviving spouses who, for example, became eligible to have DIC benefits granted or restored based on the reduction of remarriage age restrictions from 57 to 55 per Public Law 116-315. See Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, § 2009 (Jan. 5, 2021). The main concern for the disparate impact would be that Public Law 116-315 did not incorporate language similar to that of this bill regarding the express requirement to resume DIC payments for all potentially affected individuals. Instead, those surviving spouses who were previously subject to either DIC benefit denial or termination due to a remarriage between the ages of 55 and 57 would have to reapply to have their benefits granted or restored. As such, the current language of the bill would continue to disadvantage that population. The removal of the bill's language within section 3(b)(2)(A) would not detract from the intent of the bill and would result in a more clear and consistent application.

VA also raises concerns regarding the implementation of section 3(b) generally. The bill as written implies that VA would be responsible for identifying all potential claimants who were either denied or terminated eligibility for DIC due to remarriage. This would require extensive outreach efforts and the implementation of methodologies that would require significant implementation time to address the lack of personally identifiable information available to VA regarding an individual who is not currently in receipt of benefits.

#### **VA defers to the Department of Defense on sections 4 through 6.**

**VA supports section 7.** VA views section 7's amendments to 38 U.S.C. § 101(3) as being supportive to the surviving spouses of our Veterans. The removal of "a person of the opposite sex" conforms with the Supreme Court decision in *Obergefell v. Hodges*, which ruled that marriage is a fundamental right under the Fourteenth Amendment to be afforded to same-sex couples, 576 U.S. 644 (2015). VA also supports the bill's proposed removal of language that currently results in the denial or termination of benefits for a survivor who lives with another person and holds themselves out to the public as being the spouse of such other person, without necessarily being legally married to said individual. The language under 38 U.S.C. § 101(3) as currently written has resulted in many survivors electing to be in a committed relationship but choosing not to hold themselves out as the spouse of another individual in order to maintain benefit eligibility. The removal of the specified language supports the overall intent of the bill to be more claimant friendly. VA notes as a technical matter that conforming changes within title 38 (such as 38 U.S.C. § 103(d)(3)) may be necessary, and VA can provide technical assistance as needed.

No mandatory costs are associated with section 2. Mandatory costs associated with section 3 are estimated to be \$10.8 million in 2023, \$147.9 million over five years, and \$354.5 million over 10 years. No mandatory costs or savings are associated with section 7. The amendment in section 7 regarding marriage between members of the same sex is consistent with current practice; therefore, no costs are associated. The amendment in section 7 regarding remarriage is for consistency with section 3 of this bill; any impact resulting from this amendment is captured in the cost of section 3 of this bill.

**S. XXXX “Ensuring Access to Department of Veterans Affairs Information Necessary for Oversight Act of 2023” (“Ensuring Access to VA INFO Act of 2023”)**

This draft proposal would require VA, to the maximum extent practicable, to provide an answer to a question submitted for the record to VA by a member of the Senate or House Committee on Veterans’ Affairs within 45 days of when VA receives the question. If VA anticipates being unable to provide a timely answer, VA shall submit to the member notice that VA anticipates being unable to provide the answer by the deadline, with a justification for the inability to meet the deadline, an estimate of when an answer will be provided, and a description of the steps VA needs to take in order to provide the answer. If VA requires the assistance of another Federal agency to provide an answer, the other agency Federal agency would be required to provide such assistance in a timely manner.

**VA does not support this proposal.** VA endeavors to ensure timely, accurate and comprehensive communication to Congress, to include post-hearing actions. VA does not support this bill for three reasons. First, legislating a 45-day timeline would place unnecessary constraints on VAs ability to deliver accurate and comprehensive data and information, particularly on complex policy issues that require extensive analysis and evaluation. Second, the 45-day mandate and provision requiring Member notification when a deadline cannot be met would layer an administrative standard on VA that is not universally applied across the Executive Branch. Finally, section 2(c) does not clearly define “timely manner” and VA has no authority to compel compliance by another Federal agency to meet the intent of the bill.

No mandatory or discretionary costs are associated with this draft bill.

**S. XXXX “Veterans 2<sup>nd</sup> Amendment Protection Act of 2023”**

This bill would create a new 38 U.S.C. § 5501B that would prohibit VA from transmitting a beneficiary’s personally identifiable information, based on a determination to pay benefits to a VA-appointed fiduciary under 38 U.S.C. § 5502, to the Department of Justice (DOJ) for use by the national instant criminal background check system (NICS), unless there is an order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others. While the underlying reporting requirements of the Brady Handgun Violence Prevention Act (Brady Act) and associated regulations would remain, the bill would prevent VA from complying with those requirements absent the required judicial order.

**VA does not support this legislation.** VA recognizes the important policy considerations underlying the Brady Act, see 34 U.S.C. § 40901, and this bill, and defers to DOJ on the central policy and public safety issues associated with this bill. Any further discussion should also include DOJ (specifically ATF and FBI).

Currently, VA reports all individuals determined unable to manage their funds to NICS based on regulations issued by the Bureau of Alcohol Tobacco and Firearms (ATF) (see 27 C.F.R. § 478.11(a)) and guidance provided by DOJ (see March 2013 Guidance to Agencies Regarding Submission of Relevant Federal Records to NICS).

VA understands this bill to support a separate judicial evaluative consideration regarding whether a beneficiary is a danger to themselves or others, which has no relation to VA's fundamental role in providing fiduciary services and delivering monetary benefits. VA adjudications concerning the need for the appointment of a fiduciary are based on whether a beneficiary can manage their VA benefits and handle their own financial affairs.

A VA determination that a beneficiary cannot manage their own VA benefits is based upon a definitive finding regarding that fact by a responsible medical authority or medical evidence that is clear, convincing, and leaves no doubt as to the person's inability to manage their affairs, including disbursement of funds without limitation, or a court order finding the individual to be incompetent. See 38 C.F.R. § 3.353(c) and (e). VA's reporting to NICS based on regulations currently in place allows for VA to operate out of an abundance of caution regarding protections offered to our beneficiaries who are deemed to be incompetent. However, VA provides VA beneficiaries who have been determined to be unable to manage their VA funds the ability to request relief from NICS restrictions. When deciding a request for relief, VA considers not only the beneficiary's desire to own firearms and/or ammunition, but also the safety of the beneficiary, their family, and the community.

No mandatory or discretionary costs are associated with this draft bill.

## **Conclusion**

This concludes my statement. We thank the committee for your continued support of programs that serve our Nation's Veterans and look forward to working together to further enhance delivery of benefits and services.