STATEMENT OF

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DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
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Good afternoon Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA benefits programs and services. Joining me today are Robert Worley, Director of the Education Service in the Veterans Benefits Administration, Catherine Mitrano, Deputy Assistant Secretary for Resolution Management, and Susan Blauert and Kim McLeod, who are both Deputy Assistant Counsels in VA's Office of General Counsel

S. 290 Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015

S. 290 the "Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015," would amend chapter 7 of title 38 by adding new sections 715, 717, and 719. These sections would affect Senior Executives, defined as career Senior Executive Service (SES) or Title 38 SES-equivalent employees, who work at VA.

VA has policy concerns about the implementation of sections 715, 717, and 719, as added by S. 290. VA is concerned that the provisions in this bill would impede VA's ability to recruit, retain, reward, and manage world-class talent to lead and sustain a transformed VA.

VA has made it clear that it intends to transform VA into an organization that focuses on Veterans. This transformation depends on expert career Senior Executives who are trained and motivated to lead the VA workforce in better, more effective ways. VA Senior Executives include highly-qualified individuals with private-sector business backgrounds, medical doctors and public health care professionals with specialty care and research backgrounds, Veterans, and dedicated employees who have worked their way up through the Civil Service to the senior-most career leadership positions in VA.

VA already is challenged to recruit and retain highly-qualified Senior Executives, in that many Senior Executives take a pay cut to join or stay at VA. For instance, the salary and benefits offered to most VA medical center directors are lower than the compensation package offered for a comparable position in the private sector. This bill, as currently drafted, would compound the challenges facing VA by arbitrarily capping VA Senior Executives' performance ratings, requiring VA to deliver those ratings to Congress while other agencies' executive ratings remain confidential, and requiring VA Senior Executives to change locations and programs every 5 years. Even the bill's reduction of retirement benefits for VA Senior Executives convicted of certain crimes singles out VA Senior Executives for treatment unparalleled in other agencies. Highly-qualified professionals are less likely to join or stay with VA as Senior Executives when they could serve elsewhere with higher pay and less punitive treatment.

In general, section 715 would reduce the annuity paid to VA Senior Executives who are removed from their senior executive position under 38 U.S.C. 713, or who leave VA while removal proceedings under section 713 are pending, if they have been convicted of a felony that influenced their performance while employed as a VA Senior Executive.

There are practical concerns regarding implementation of section 715 that we believe would prove impractical for VA and the Government. First, section 715 does not specify whether it would apply to felony convictions in Federal or State court. Assuming section 715 will only to apply to convictions in Federal court, the section does not specify the roles and responsibilities of the various Government components that investigate (e.g., VA's Office of Inspector General, Federal Bureau of Investigation) and prosecute (e.g., DOJ) Federal criminal matters. The section also does not address the roles and responsibilities of OPM, the agency that administers Federal retirement systems.

In order for section 715 to work properly, VA would have to be notified that an individual who was removed from VA under section 713 was convicted of a felony. VA would then have to determine that the former employee's conviction influenced his or her performance while employed at VA and also determine the "covered period" applicable under section 715. Next, VA would need to notify OPM, which would have to exclude the "covered period" from the individual's annuity, and recalculate the annuity. Assuming that the individual retired a number of years ago, OPM may also need to collect annuity payments that have already been made to the individual. Further complicating this matter, an annuity may need to be recalculated by OPM if an individual's conviction is overturned on appeal.

Section 715 also raises a number of legal issues, including concerns arising under the Due Process, Takings, and Ex Post Facto Clauses of the U.S. Constitution. Several of VA's concerns are shared by the U.S. Department of Justice (DOJ) and the U.S. Office of Personnel Management (OPM). . The bill raises substantive due process concerns if interpreted to have a retroactive effect. Additionally, OPM might need to collect annuity payments that have already been paid to a retired senior executive.

Such collections would implicate the Fifth Amendment's Takings Clause. Finally, the legislation may raise concerns under the Ex Post Facto Clause, which are raised when a law would make punishable acts taken that were not punishable at the time they were committed.

VA is unable to determine the costs for section 715, based on some of the implementation concerns expressed above. Significantly, whatever costs would be incurred by VA in making a determination under this section would also result in costs to DOJ, which would have to defend the Government in litigation before the courts, and OPM, which would have to adjust the pension of a VA Senior Executive, and defend its adjustment, if appealed by the employee, before the U.S. Merit Systems Protection Board.

Section 717 would essentially require a forced distribution by limiting the number of individuals who can receive the top two rating levels ("outstanding" and "exceeds fully successful"). Section 717 would require VA to consider complaints and reports (including pending reports) from various Government agencies when determining the rating of a VA Senior Executive. Section 717 would also require the Secretary to reassign VA Senior Executives once every 5 years to a position at a different location that does not include the supervision of the same personnel or programs. Under the proposed bill, VA would also be required to contract with a nongovernmental entity to prepare a report on management training for VA Senior Executives. The bill would mandate that VA prepare a plan for implementing the findings in the nongovernmental entity's report.

VA Senior Executive performance ratings must be based on an individual's performance in order to maintain VA's OPM performance management certification. Limiting outstanding performance ratings to only 10 percent of VA Senior Executives, as proposed in the bill, would draw an arbitrary line for Senior Executive performance that is not based on individual performance. It would require the Department to rank executives against each other, rather than individual and organizational standards that are clearly established at the beginning of a performance period. VA's concerns are shared by OPM, which accredits SES performance management systems for the Government. OPM's current regulations prohibit assigning candidates to categories based on percentages.

By capping the number of individuals who can receive outstanding performance ratings, the bill would also prevent the Secretary from making meaningful distinctions in performance and from appropriately assessing and rewarding individual executives' innovations and leadership achievements. Considering complaints and pending reports when reviewing Senior Executive performance also raises concerns about the ability of the employee to respond to management's review of his or her performance, since these complaints or pending reports may not be available to the employee. Moreover, complaints may later be unsubstantiated, and pending reports may be changed before they become final.

Requiring all Senior Executives to rotate to different positions every 5 years would broaden the experience base of our executives. However, legislating this particular approach may prevent key Senior Executives identified by the Secretary from fully mastering strategic positions, and may hinder the recruitment and retention of highly qualified SES and title 38 SES-equivalent employees. In requiring periodic rotation, the bill constrains the Secretary's ability to determine which executives to reassign based on VA's needs. The legislation could further hinder the Secretary's efforts to create continuity and stability within VA's operations.

Under section 3(b) of the bill, VA must prepare and report to Congress a plan to implement the recommendations of a report issued by a nongovernment contractor on management training for VA Senior Executives. If the expectation is that VA subsequently will implement this plan, section 3(b) might raise non-delegation doctrine concerns, because it would give a nongovernmental contractor authority to implement changes in Government policy and decide which policies should be changed. To avoid these concerns, we would construe section 3(b) as not necessarily requiring VA to implement the plan.

There may also be little value for VA to enter into a contract with a nongovernmental entity to review and report on VA's management training programs. VA already has a robust portfolio of learning and development offerings available to its executives, including executive coaching, onboarding and orientation programs, and just-in-time workshops, which develop the critical skills required to address VA's current challenges. In addition, VA works with OPM, which offers cost-free guidance to Federal agencies on management training.

The costs associated with this section are as follows:

- Initial year/first year costs:
  Performance Appraisal System:
  - SES Automated System: $18,000
  - GS Automated System: $3,000,000
  - Nongovernment Independent Training (one time cost): $1,250,000

- Five Year Costs:
  Performance Appraisal System:
  - SES Automated System: $90,000
  - GS Automated System: $5,000,000

  SES Relocation:
  - Relocation Costs (negotiable per contract) $21,000,000
  - Relocation Costs (required by regulation) $90,000,000

- Ten Year Costs:
  Performance Appraisal System:
  - SES Automated System: $180,000
  - GS Automated System: $7,500,000

SES Relocation

- Relocation Costs (negotiable per contract): $42,000,000
- Relocation Costs (required by regulation): $180,000,000

Section 719 would limit the Secretary's authority to place VA Senior Executives on administrative leave or in any other type of paid non-duty status for more than 14 days during a 365-day period.

While VA does not object to the purpose of section 719, it does have significant concerns about the section, as currently drafted. VA recommends removing "any other type of paid non-duty status" from section 719(a), as this could be construed to mean that sick leave, earned annual leave, and excused absences for other purposes (such as weather-related closures), which are types of paid non-duty status, would also be subject to the limitations in this section. VA also recommends that the limitation of 14 days be increased to 60 days, as most administrative investigations that form the basis for disciplinary action take at least 30 days to complete.

VA is unable to determine the costs for this section.

For the reasons stated above, VA has major legal and policy concerns with S. 290.

S. 563 Physician Ambassadors Helping Veterans Act

S. 563 would create a new section 7405A in title 38 establishing the Physician Ambassadors Helping Veterans Program. The bill would require VA to use its authority under 38 U.S.C. 7405 to seek to employ physicians on a without-compensation basis in any practice area where the average wait time for veterans seeking care exceeds VA's wait time goals or in any medical facility with demonstrated staffing shortages. The bill would also require the appointment of a volunteer coordinator, who would seek to establish relationships with local medical associations, recruit physicians for employment under this Program, and serve as the initial point of contact for physicians seeking employment on a without-compensation (WOC) basis in the facility. The bill would require that physicians appointed on a WOC basis agree to commit to serving a minimum of 40 hours in a year in the facility where they have been appointed. VA would be required to provide a credential or privilege, or decide within 60 days that such credentials or privileges will not be granted, for physicians who seek non-compensation employment under this Program. VA would be required to submit an annual report to Congress on physicians employed under this Program; the report would be required to include the number of physicians employed on a WOC basis in each Veterans Integrated Service Network (VISN) and information about staffing levels and appointment waiting times for facilities in each VISN.

VA greatly values the services of WOC physicians, and will continue to leverage existing authorities to encourage WOC physicians to provide additional clinical capacity

and expertise, but VA does not support S. 563 because VA already has authority to appoint WOC physicians under 38 U.S.C. 7405. Under current practice, the facility Chief of Staff, Physician Recruiter, or another member of the Human Resources Office coordinates WOC physician recruitment efforts, while the legislation would require a new position, the Volunteer Coordinator, to handle these responsibilities. Additionally, the legislation directs the Medical Facility Director to grant credentials or privileges to practice medicine within 60 days, but there may be circumstances in which a determination could not be made within that time period. For example, if there was a pending investigation underway, a history of patient complaints, or a refusal or inability to comply with VA standards or protocols, it could be difficult to make a determination in the allotted time. Similarly, it may be particularly difficult to make these determinations for international medical graduates. Furthermore, the bill's reporting requirements would be resource intensive because VA does not currently have an automated system to track or monitor appointees in WOC status.

VA estimates the costs of this bill would be negligible and would only be required for administration of the bill's requirements.

S. 564 Veterans Hearing Aid Access and Assistance Act

S. 564 would amend VA's appointment authority to include licensed hearing aid specialists and would require an annual report on the provision of hearing aid services to Veterans. Section 2(a) of S. 564 would amend 38 U.S.C. 7401(3) to include "licensed hearing aid specialists," and would include "licensed hearing aid specialists" among those whose qualifications can be prescribed by the Secretary.

VA does not support section 2(a) of S. 564 because we do not believe it is necessary. VA already has authority under 38 U.S.C. 7401(3) to appoint health care occupations it considers "necessary for the recruitment and retention needs of the Department." Additionally, VA has authority under 38 U.S.C. 7402(b)(14) to establish qualification standards for health care occupations. Further, VA has concerns about the lack of standardized educational or professional health licensure requirements for hearing aid or instrument specialists. If this employee category is added to title 38, it could fragment hearing health care services and limit the delivery of comprehensive hearing health care.

VA provides comprehensive hearing health care services and employs both audiologists and audiology health care technicians who, in collaboration, deliver high quality and efficient care. VA audiologists are doctoral-level professionals trained to diagnose and treat hearing loss, acoustic trauma and ear injuries, tinnitus, auditory processing disorders, and patients with vestibular complaints. VA currently employs 320 audiology health technicians (commonly known as audiology assistants) who function under the supervision of audiologists. Some of these audiology health technicians are licensed as hearing aid specialists, although they are hired as health technicians whether or not they are licensed as hearing aid specialists. VA can appoint

hearing aid specialists as audiology health technicians under title 5. Audiology health technicians have a broader scope of practice than the typical hearing aid specialist. VA developed this position associated core competencies for health technicians to provide efficient support services and assist audiologists in providing comprehensive hearing care. VA audiology health technicians have duties and responsibilities beyond that allowed by State law for hearing aid specialists. The majority of states (33) only require a high school education, while nine states have no educational requirement and eight states require an associate degree. Hearing instrument specialists are licensed to sell hearing aids and are regulated primarily for their hearing aid sales roles. The license does not require professional education, clinical training, or experiential health care apprenticeships. Using occupations with limited or inconsistent educational and licensing requirements would fragment VA's current high quality health care delivery system.

Section 2(b) of S. 564 would require VA, not later than 1 year after the date of the enactment of this Act and not less frequently than once every year thereafter, to report to Congress on several matters. First, VA would be required to report on timely access to Veterans to hearing health services furnished directly by VA, and VA's contracting policies for providing health care services to Veterans at non-VA facilities. VA would be required to report on staffing levels of audiologists, hearing aid specialists, and health technicians in audiology; a description of performance metrics with respect to appointments and care; the average wait times for appointments for disability rating evaluations, hearing aid evaluations, dispensing of hearing aids, and any follow-up hearing health appointments; and the percentage of Veterans whose waits times fell within certain defined time periods. Each report would also be required to include the number of Veterans who received care in the community for hearing health care appointments, the number of Veterans referred for certain identified services, and the policies of the Veterans Health Administration regarding the referral of Veterans to care in the community, and a description of how such policies will be applied under the Patient-Centered Community Care (PC3) program.

VA does not support section 2(b) of S. 564 because it is unnecessary. The requested data and information are already compiled as part of an ongoing and automated process. VA would be happy to brief the Committee on the various types of information currently compiled and disseminated on staffing levels and access to care.

Furthermore, VA recommends against requiring in statute reporting standards specific to the PC3 program. Under the VA Budget and Choice Improvement Act, Public Law 114-41, VA is required to review the full range of its current Care in the Community program, including PC3, and submit a report to Congress with recommendations for how to consolidate these authorities and programs into a single program to be known as the "Veterans Choice Program." Until such a review and plan is complete, we believe it would be inappropriate to institute a reporting requirement that may have little purpose or value in the future if the PC3 program is modified.

VA cannot estimate the cost of this provision at this time because we cannot know at what grade these positions would be classified, so we cannot determine the average salary or benefits for these positions.

S. 1450 Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

S. 1450 would allow VA to arrange flexible physician and physician assistant work schedules to allow for the hiring and full implementation of a hospitalist physician system and to accommodate the unusual work schedule requirements for Emergency Medicine (EM) Physicians.

VA supports increased flexibility for critical medical personnel. Hospitalist physicians and EM physicians specialize in the care of patients in the hospital, often working irregular work schedules to accommodate the need for continuity of efficient hospital care. VA believes that increased scheduling flexibility would align VA practice with the private sector, facilitating the recruitment, retention of emergency physicians and the recruitment, retention and operation of a hospitalist physician system at VA medical centers (VAMC). We note concerns that the Office of Personnel Management will provide in its statement for the record with respect to certain of the bill's provisions. The Administration looks forward to working with the Congress and our agency partners to finalize language on these provisions.

VA believes S. 1450 would be cost neutral in terms of impact on salaries as it merely authorizes flexibility in physician and physician assistant work schedules to allow for the hiring and full implementation of a hospitalist physician system and improvements in EM physician coverage and enhanced ability to recruit EM trained and experienced physicians.

S. 1451 Veterans' Survivors Claims Processing Automation Act of 2015

S. 1451, the "Veterans' Survivors Claims Processing Automation Act of 2015," would authorize VA to pay benefits to a survivor of a Veteran who has not filed a formal claim if the record contains sufficient evidence to establish the survivor's entitlement to such benefits. The bill would specify that the date on which a survivor notifies VA of the Veteran's death would be treated as the date of receipt of the survivor's application for benefits. S. 1451 would be applicable to claims based on a death occurring on or after the date of enactment of this legislation.

VA supports S. 1451. The Department submitted a similar legislative proposal for the Fiscal Year (FY) 2016 Budget. Under 38 U.S.C. 5101(a), a claimant must file a formal claim as a condition of receiving benefits. However, when a survivor of a Veteran files a claim for VA benefits based upon the Veteran's death, the information and evidence necessary to decide the claim is often contained in the Veteran's claims

file. As a result, it is not necessary from a practical standpoint for a claimant to file a formal claim in such circumstances. Elimination of the formal-claim requirement would automate the delivery of uninterrupted benefits to qualifying survivors.

VA has one technical comment. VA would prefer to change the language from "the date on which a survivor of a Veteran notifies the Secretary of the death of the Veteran," to "the date on which the Secretary is notified of the Veteran's death." The modified language would allow VA to be more liberal when providing benefits in instances where the survivor is not the individual notifying VA of the Veteran's death.

VA estimates that there would be no benefit or general operating expenses (GOE) associated with S. 1451.

S. 1460 Fry Scholarship Enhancement Act of 2015

S. 1460 would allow recipients of the Marine Gunnery Sergeant John David Fry Scholarship to be eligible for the Yellow Ribbon program under the Post-9/11 GI Bill. The Yellow Ribbon program is currently available to Veterans and most transfer-of-entitlement recipients receiving Post-9/11 GI Bill benefits at the 100% benefit level attending institutions of higher learning. The program provides payment for up to half of the tuition-and-fee-charges that are not covered by the Post-9/11 GI Bill, such as charges that exceed an academic year cap or out-of-state charges, if the institution enters into an agreement with VA to pay or waive an equal amount of the charges that exceed Post-9/11 GI Bill coverage. This bill would take effect for the academic year (August 1) beginning after the date of enactment.

VA does not object to S. 1460, subject to Congress identifying acceptable offsets for the additional benefit costs. VA would need to make modifications to its existing information technology (IT) systems to implement this legislation. Specifically, VA would need to modify the Benefits Delivery Network (BDN), the VA-Online Certification of Enrollment (VA-ONCE), and the Post-9/11 GI Bill Long-Term Solution (LTS), to calculate eligibility and award Yellow Ribbon program payments for Fry Scholarship beneficiaries. VA estimates that it would require 1 year from the date of enactment to make the IT system changes necessary to implement the proposed legislation.

VA estimates the benefit costs associated with enactment of the bill to be $492,000 in FY 2016, $2.7 million over 5 years, and $6.2 million over 10 years. Although VBA administrative costs are estimated to be insignificant, IT costs are estimated to be $5 million. This IT estimate consists of the design, development, testing, and deployment of the new functionality that would be needed to meet the requirements of this legislation.

S. 1693 Expanding Emergency Treatment for Certain Veterans

Today, only Veterans who are "active Department health-care participants" (as defined by 38 U.S.C. § 1725(b)) and who meet all of the other administrative and clinical eligibility criteria of section 1725 are eligible to receive reimbursement under this section for the reasonable value of (unauthorized) non-VA emergency treatment of non-service connected disabilities furnished them by non-VA emergency providers. To be such a participant, a Veteran, in addition to being enrolled in VA's health care system, must, pursuant to section 1725(b)(2)(B), have received care under 38 U.S.C. chapter 17, within the 24-month period preceding the furnishing of the non-VA emergency treatment. S. 1693 would amend section 1725(b)(2)(B) to include Veterans who have been unable to receive care under chapter 17 within the mandated 24-month period because of a waiting period imposed by the Department with respect to a new patient examination of such Veterans.

VA supports S. 1693 but, as discussed below, requests that no further action be taken at this time. We recognize that some Veterans have been enrolled in VA's health care system but unable to become actual users of the system because they have not been able to receive their "new patient examination" due to waiting periods (in appointment scheduling) for care in VA. As a result, although enrolled, they fail to meet the full statutory definition of an "active Department health-care participant" for purposes of being able to receive reimbursement under section 1725. The bill would provide a fair remedy for those whose section 1725 claims are denied solely because VA scheduling procedures and wait times prevented them from receiving VA care within the 24-month period preceding their receipt of non-VA emergency treatment.

While the goal of this bill is well-intentioned, we believe it premature for Congress to take any action on this measure until VA has completed its comprehensive review of the Department's Care in the Community programs, which includes a review of the monetary benefits available under section 1725. For that reason, we respectfully request that the Committee forbear consideration of S. 1693 (and any similar measure) until VA has an opportunity to complete its review and share the results, including recommendations, with the Committee.

VA estimates that the cost associated with enactment of S. 1693 would be $2.86 million in FY 2017, $3.0 million in FY 2018, $15.8 million over 5 years, and $35.8 million over 10 years.

S. 1856 VA Equitable Employee Accountability Act of 2015

S. 1856, the "Department of Veterans Affairs Equitable Employee Accountability Act of 2015," would amend chapter 7 of title 38 of the United States Code by adding new sections 715, 709A, 717, and 719. It would also amend chapter 73 of Title 38 by adding a new section 7324A. These sections would affect all VA employees occupying a position under a permanent or indefinite appointment who are not on a probationary or trial period.

S. 1856 is a more measured alternative to a series of recent legislative proposals targeting VA employees by providing extraordinary authority to sanction them, not available in other Federal agencies. However, VA has legal and policy concerns with S. 1856.

Section 2(a) of S. 1856 would amend chapter 7 of Title 38 by adding in a new section 715, which would give the Secretary authority to suspend a VA employee without pay if the Secretary determines the performance or misconduct of the employee is a clear and direct threat to public health or safety. The Secretary would be authorized to remove an employee so suspended after providing a written statement of charges, allowing the employee not less than 7 business days to respond to the charges, and, at the request of the employee, providing a formal review of the proposed removal action within 15 business days of the employee's request. A decision to remove an employee under section 715 could be appealed to the Merit Systems Protection Board (MSPB) under section 7701 of Title 5, and employees may seek judicial review of an MSPB decision under section 7703 of Title 5. If the Secretary determines a suspension or removal under this provision is unwarranted, illegal, violates a collective bargaining agreement, or is a prohibited personnel action, the employee is entitled to back pay for the time the employee was suspended or removed. At this time the Department does not have costs associated with this section.

Section 715 raises a number of policy concerns. Under section 715, an employee would be able to have his or her proposed removal reviewed by a "Department authority duly constituted for purposes of this section," before the Secretary can make a determination on the removal. An employee would also be entitled to appeal a removal decision to the MSPB and subsequently to the U.S. Court of Appeals for the Federal Circuit. Typically, an employee who is removed from the government receives notice of a proposed removal, an opportunity to respond, and a decision on the proposed removal. If entitled, the employee may appeal the removal action to the MSPB, or the employee may file a discrimination or whistleblower retaliation complaint. If the employee appeals to the MSPB, the employee may seek judicial review of the MSPB decision before the U.S. Court of Appeals for the Federal Circuit. By adding in a new departmental review, section 715 would add in an unnecessary new process, because a removal proposed under this section is already subject to review by the Secretary, and subsequently, if the action is taken, by the MSPB and the U.S. Court of Appeals for the Federal Circuit. Section 715 would also add to the cost of the agency to litigate and adjudicate the personnel action, as the section requires a new "Department authority duly constituted for purposes of this section." To remedy this policy problem, VA recommends eliminating the departmental review in section 715(b)(3).

VA also recommends that section 715 apply in cases where the Secretary determines the performance or misconduct of an employee "significantly or adversely impacts Veteran health care or benefits." This standard, in lieu of the proposed "clear and direct threat to public health or safety" standard is more particularly suited to the

mission of VA and will provide the Secretary better flexibility in addressing its unique mission needs. In addition, it will avoid the application of case law decided in other contexts that have previously interpreted "clear and direct threat to public safety" in a manner that could restrict the Secretary's ability to invoke section 715. Similarly, VA recommends the proposed standard for removal in section 715(a)(2) be changed from "is necessary in the interests of public health or safety," to " is necessary in the interests of providing quality veteran health care and benefits."

The back pay provision in section 715(e) provides a modicum of protection for employees who ultimately have their suspensions or removals under this section reversed. However, VA recommends clarifying that the determination that triggers back pay can be made by the Department, the Secretary, or by the courts on appeal. As currently drafted, the back pay provision is limited to determinations made only by the Secretary. Finally, to clarify the Secretary's authority when section 715 is invoked, VA recommends adding the clause, "Notwithstanding any other provisions of law," to subsections 715(a), (b), and (c).

Section (2)(c) of S. 1856 would require the Inspector General to submit, no later than one year after S. 1856 is enacted, a report to Congress on the number of suspensions or removals taken pursuant to section 715. The Inspector General's report must include, among other things, the number of "suspensions or removals that the Inspector General considers to be retaliation for whistleblowing." VA recommends removing section 2(c)(2)(E), as the Inspector General is not involved in taking disciplinary actions under section 715 and, moreover, may not be able to make a finding of whistleblower retaliation.

Section 3 of S. 1856 would amend chapter 7 of Title 38 by adding in a new section 709A, which would require the Secretary to annually assess the performance of political appointees in a manner similar to the assessment of career Senior Executive Service employees.

Section 4 requires managers to determine, not later than 30 days before the end of the probationary period, whether the employee has demonstrated successful performance. Probationary employees can be terminated for performance or conduct deficiencies and as such, it is recommended that the language be amended to require managers to also determine if the employee's conduct warrants continued employment past the probationary period. It should be noted that some probationary employees may meet the definition of "employee" as outlined in 5 U.S.C. 7511, and if a probationer meets the definition of "employee", management can no longer terminate during the probationary period with limited due process and appeal rights. Therefore, in some cases, even if a manager were to determine that a probationary employee was not suitable for continued employment, an employee who is serving a probationary period but has completed more than 1 year of current continuous service would be entitled to due process, including, if applicable, a performance improvement plan or application of

progressive discipline, 30-days advanced notice, a right to review evidence, application of mitigating and aggravating factors, etc., prior to separation.

Section 5 of S. 1856 requires that VA evaluate managers, as part of their annual performance plans, on actions that they have taken to address poor performance and misconduct among subordinate employees and steps that that the manager has taken to improve or sustain high-levels of employee engagement. VA is already committed to the principles of section 5 of S. 1856 and supports this section.

Section 6 of S. 1856 would require VA to provide all managers with periodic training on whistleblower rights and managing and motivating employees. VA already offers managers the training discussed in section 6. Moreover, some training, such as whistleblower rights and protections, is already required for all managers. Nevertheless, VA is committed to the principles of section 6 of S. 1856 and supports this section.

Section 7 of S. 1856 would require VA to develop a promotional track, which does not involve a transition to a management position, for employees who are considered technical experts. VA is committed to ensuring that its employees are allowed to advance in their careers, regardless of whether the employee wants to be a manager. Consequently, VA supports this section.

Section 8 of S. 1856 would amend Title 5 to expand the definition of "personnel action" under 5 U.S.C. 2302, which addresses prohibited personnel practices, to include performance evaluations under Title 38. VA is committed to ensuring that all performance evaluations are based on merit. Consequently, we do not have any legal or policy concerns with section 8.

Section 9 of S. 1856 would require that any VA employee who participated personally and substantially in a VA acquisition over $1,000,000 or held a key position relating to acquisition obtain a written opinion from an ethics counselor regarding restrictions on activities that the official may undertake on behalf of a VA contractor or subcontractor within a 2 year period beginning on the date that the employee terminates his or her employment with VA.

VA has some legal and policy concerns about section 9. The $1,000,000 threshold under section 9 would seemingly encompass a large number of VA's acquisitions. Moreover, this threshold falls below the $10,000,000 threshold set under the Procurement Integrity Act. To that extent, VA recommends that the acquisition threshold for section 9 be set at $10,000,000. Section 9, as currently drafted, would also encompass *all* acquisitions that an employee worked on during their career at VA. Because this number can be significant, VA recommends that language be inserted to section 9 that triggers the requirement under that section to acquisitions in which the employee participated during his or her last year of employment with VA. Limiting section 9 to the employee's last year of employment with VA also mirrors the criminal conflict of interest statute, 18 U.S.C. 207, which prohibits employees from representing

any non-Federal parties in connection with any specific party matters that were under their official responsibility during the last year of employment. Assuming that VA's recommended changes to section 9 are incorporated, similar changes should also be made to section 10 of S. 1856.

Section 11 of S. 1856 stipulates that the Secretary may not place any covered individual on administrative leave for more than a total of 14 business days during any 365 day period without notification to the Committees on Veterans' Affairs of the Senate and the House of Representatives. A covered employee is one who is subject to investigation or for whom any disciplinary action is proposed or initiated. An investigation conducted by local VA employees typically takes a minimum of 60 calendar days to complete and 45 calendar days for Department employees from outside the local facility. Therefore, VA suggests that this language be modified to allow the Secretary to approve 30 business days of administrative leave under the circumstances described in this section.

In section 719(c)(1) and (2), administrative leave includes "leave to which an employee of the Department is otherwise entitled, or credit for time or service" and "includes any type of paid non-duty status." Based on this language, the Secretary would be required to report to Congress any annual leave, sick leave, leave without pay, credit hours, compensatory hours, or excused absence for weather related events, for example, taken by an employee in excess of 7 business days. Therefore, VA suggests modifying the in section 719(c)(1) to language used by OPM, which is "an administratively authorized absence from duty without loss of pay or charge to leave for which the employee is placed due to an investigation or for whom any disciplinary action is proposed or initiated." It is also suggested that section 719(c)(2) be modified to include the clause "without a charge to leave" to clarify the definition of administrative leave..

Section 12 of S. 1856 would amend chapter 73 of Title 38 by adding in a new section 7324A to Title 38, which would require, within 60 days of the date of enactment of S. 1856 and periodically thereafter, VA's Office of Medical Inspector (OMI) to submit "a report on any problems or deficiencies encountered by the Department in carrying out the programs and operations of the Veterans Health Administration, including any recommendations for corrective action." Under section 7324A, OMI's report must be submitted to the Secretary, the Under Secretary for Health, and Congress.

VA does not support section 7324A(a), as OMI's work would be duplicative of reports produced by VA's Office of Inspector General's (OIG), Office of Healthcare Inspection. OIG's Office of Healthcare Inspection routinely prepares reports on deficiencies within the Veterans Health Administration, and these reports include recommendations for corrective actions. OIG submits these reports to the Secretary and the Under Secretary for Health, in addition to both the House and Senate Committees on Veterans' Affairs.

However, VA supports section 7234A(b), which would require OMI to provide their reports to Congressional oversight committees, as this would promote transparency, ensuring that Members of Congress are apprised of the issues encountered in the conduct of OMI's investigations. It will also help to restore trust in OMI and in VHA's broader quality assurance mission.

However, only a small percentage of OMI's work in recent years consists of internal reviews requested by the Secretary or Under Secretary for Health, or so-called "blue cover" reports requested by Members of Congress. Approximately 95 percent of OMI's current work involves investigating whistleblower allegations that are referred to the Secretary by the U.S. Office of Special Counsel (OSC) for review. The Office of the Secretary releases VA's report of investigation to OSC, which then provides un-redacted copies (along with its determination whether each report meets statutory requirements) to the House and Senate oversight committees when OSC eventually closes the case.

VA also supports section 7234A(c), which requires protecting any medical or other personally identifiable information contained in its reports. Currently, VA redacts such information from reports before they are shared with the public.

If enacted, VA anticipates the cost for implementing section 7324A would be approximately $150,000 during the first year, $750,000 for the first 5 years, and $1,500,000 for 10 years.

Section 13 of the bill would require a report from the Comptroller General on the implementation of these provisions and as assessment of the effects of these provisions. We defer to the U.S. Government Accountability Office on this provision.

VA is unable to determine costs for the remainder of the legislation. However, there could be significant costs to VA to defend the Government in litigation over the legislation in courts.

VA also has policy concerns about the implementation of section S. 1856; however, these concerns are more limited than our concerns with other pending legislation. VA is concerned that the provisions in this bill would impede VA's ability to recruit, retain, reward, and manage world-class talent to lead and sustain a transformed VA.

The Secretary has made it clear that he intends to transform VA into an organization that focuses on Veterans. This transformation depends on a world-class workforce who are trained and motivated to contribute their talents to the VA and our Veterans in better, more effective ways. VA fully supports the concept that employees whose performance and conduct does not meet the standards our Veterans deserve must be held accountable. However, by singling out VA employees, many of whom are Veterans themselves, with legislation that provides them fewer protections and subjects them to greater scrutiny, a clear message is sent that VA employees are in a different,

inferior class within the Federal workforce—a class that needs very close oversight with rapid and severe penalties for misdeeds or poor performance. This will hinder the Secretary's efforts to make the "VA class" of employees the very finest employees to serve our Veterans and ensure that they timely receive the benefits and care to which they are entitled.

S. 1938 Career Ready Student Veterans Act of 2015

S. 1938, the "Career-Ready Student Veterans Act of 2015," would amend title 38, United States Code, to improve the approval of certain VA programs of education for purposes of educational assistance.

This bill would amend 38 U.S.C. 3676(c), pertaining to the approval of non-accredited courses, by adding new requirements to the criteria that must be met for State approving agencies to approve institutions' written applications for approval of non-accredited courses. First, in the case of a program designed to prepare an individual for licensure or certification in a State, the program would need to meet any instructional curriculum licensure or certification requirements of that State. Second, in the case of a program designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that would require approval or licensure, the program would need to be approved or licensed by such board or agency of the State.

The bill also would add subsection (f) to section 3676 to permit VA to waive the aforementioned requirements in the case of a program of education offered by an educational institution if VA determined:

- The educational institution was accredited by an agency or association recognized by the Department of Education;
- The program did not meet the requirements at any time during the two-year period preceding the date of the waiver;
- The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs;
- The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

Subsection (d) of the proposed legislation would add a new subsection to section 3679 of title 38 to require VA to disapprove a non-accredited course of education designed to prepare an individual for licensure or certification in a State or for

employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval or licensure, if the educational institution providing the course of education does not publicly disclose any conditions or additional requirements, including training, experience, or exams, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation.

Subsection (e) of this bill would amend section 3672(b)(2)(A)(i) to include the new approval requirements for non-accredited courses in the approval requirements for "deemed approved" accredited programs.

The bill would also amend 38 U.S.C. 3675, to apply the new requirements in section 3676(c), to the approval conditions for accredited courses offered by private for-profit institutions.

VA supports the intent behind this bill. However, we do not support the bill as currently drafted for a number of reasons.

If enacted, the bill would ensure that non-accredited courses pursued by GI Bill beneficiaries meet all of the State requirements for licensure or certification in a given occupation or career field and would be approved by the State board or agency that developed the standards. VA does not oppose the concept of additional criteria for the approval of non-accredited courses. However, we note that, as written, the bill would not allow the Secretary to waive the requirement for non-accredited courses, as the institution must be accredited in order to meet the criteria for a waiver. VA is unclear as to the reason why an accreditation requirement would be inserted in the approval criteria for non-accredited programs. In general, an institution's accreditation applies to all of the courses offered by the institution, and accredited courses have different approval requirements.

Additionally, the bill would ensure that accredited courses at private, for-profit institutions meet all State requirements for certification and licensure. VA supports efforts to ensure that Veterans and other GI Bill beneficiaries are well-trained and adequately equipped to obtain employment and achieve economic success. However, we note that the proposed licensure and certification requirements would not be applied to similar programs at public and private, not-for-profit institutions. Consequently, the bill does not ensure that <u>all</u> Veterans and beneficiaries would receive all of the training required for licensure or certification in their chosen occupational fields.

VA also has concerns about the language in the new section 3679(d), which would require the disapproval of waived programs if the educational institution does not publicly disclose the additional conditions or requirements needed in order to meet licensing or certification requirements. VA believes "the Secretary or the appropriate State approving agency" should be substituted for "the Secretary", as the State approving agencies are responsible for the approval of non-accredited courses. As State employees, they have subject matter expertise with regard to the specific State

requirements for licensure or certification and, consequently, are better-positioned to determine the gaps in training or conditions that must be publicized. In addition, to be consistent with approval authorities in other sections of chapter 36, VA believes that both the Secretary and the SAA should have this authority.

VA is unclear as to the intent underlying the proposed amendment to 3672(b)(2)(A)(i). As written, it could be interpreted to include non-accredited programs in a "deemed approved" category. However, if the intent is to make the proposed paragraphs (14) and (15) of section 3676(c) apply to accredited programs at public and proprietary not-for-profit institutions of higher learning as well, then it should be reworded to read, "Subject to paragraphs (14) and (15) of section 3676(c) of this title, an accredited." In addition, we note that, as currently drafted, the licensure and certification requirements could not be waived for these programs. VA believes that the waiver authority should apply to accredited programs at public and proprietary not-for-profit institutions of higher learning as well as to accredited courses at private, for-profit institutions and non-accredited programs.

VA estimates that there would be no additional mandatory or discretionary cost requirements associated with the enactment of this bill.

Draft Bill Regarding Improvements in Educational Assistance

Section 1 of the proposed legislation would add a new section (3326) under subchapter III of chapter 33, title 38 U.S.C. Specifically, this section proposes to recodify the provisions of Public Law (Pub. L.) 110-252, section 5003(c), to bring those requirements into title 38, and it proposes a few amendments to those requirements.

The Post-9/11 GI Bill (or chapter 33) requires individuals to relinquish eligibility to some other VA education benefit, as applicable, in order to receive the chapter 33 benefits.

Subsection (a) of the proposed 38 U.S.C. 3326 would define the eligibility requirements for individuals to elect chapter 33 educational benefits. Individuals would be able to elect to receive chapter 33 benefits if, as of August 1, 2009, they were entitled to the MGIB-AD, MGIB–Selected Reserve (SR), or the Reserve Educational Assistance Program, and had some or all of their entitlement remaining under those programs. Individuals would be able also to elect chapter 33 if they are making contributions to receive MGIB-AD, or previously declined participation in the MGIB-AD program.

Subsection (b) of the proposed 38 U.S.C. 3326 would call for the cessation of contributions toward MGIB-AD if an individual elects to receive chapter 33 while still making contributions to MGIB-AD. The obligation to make contributions would cease the first month after the individual elects chapter 33 benefits.

Subsection (c) of the proposed 38 U.S.C. 3326 would address the revocation of remaining entitlement transferred to a dependent under MGIB-AD, if the individual who transferred the benefit elects to receive chapter 33 benefits instead. The proposed legislation would allow the transferor to revoke any unused benefits that have been transferred to a dependent. If the transferor revoked the transferred benefits from his or her dependent, then the remaining entitlement would be available for the transferor to use under chapter 33. If the transferor did not elect to revoke the transferred MGIB-AD benefits, then those benefits would remain available to the dependent under MGIB-AD.

Subsection (d) of the proposed 38 U.S.C. 3326 would state that individuals who make an election would be eligible for benefits under chapter 33, rather than under the relinquished benefit. It also would state that if individuals elected to receive chapter 33 in lieu of MGIB-AD, and had previously used entitlement under MGIB-AD, they would have eligibility under chapter 33 for the number of months of entitlement that were remaining under MGIB-AD, plus any entitlement that was revoked from a dependent in accordance subsection (c).

Subsection (e) of the proposed 38 U.S.C. 3326 would allow individuals who elect to receive educational assistance under chapter 33 to receive payments at the rate available under the relinquished benefit if their educational pursuit is authorized under the relinquished benefit, but not under chapter 33. Any entitlement used would be charged against chapter 33 in the same manner as it would be charged against the relinquished benefit.

Subsection (f) of the proposed 38 U.S.C. 3326 would outline additional chapter 33 assistance for members who made contributions toward the MGIB-AD program. A refund of MGIB-AD contributions would be issued to a qualifying Veteran as an increase to the last monthly housing stipend when benefit entitlement is exhausted. The amount of the refund would be calculated by taking the remaining months of entitlement under MGIB-AD, at the time of the chapter 33 election, plus the number of months, if any, of entitlement under chapter 30 that were revoked by the individual and dividing that number by 36. The result would be multiplied by the dollar amount that the Veteran contributed toward the MGIB-AD, and the resulting amount would be issued in conjunction with the final monthly housing stipend. This proposed legislation would also change the corresponding language currently contained in section 5003(c) of Pub. L. 110-252 by also authorizing refunds to individuals pursuing programs at non-degree granting institutions.

Subsection (g) of the proposed 38 U.S.C. 3326 would provide for continued entitlement to additional assistance for critical skills, specialty, and/or service (i.e., a college fund or kicker) to which an individual was entitled under MGIB-AD or MGIB-SR prior to relinquishing one of those benefits and establishing eligibility under chapter 33. The additional assistance would be paid in conjunction with the individual's monthly housing stipend.

Subsection (h) of the proposed 38 U.S.C. 3326 would provide VA with the authority to make an alternative election for an individual if the election submitted by the applicant is not in his or her best interest. If an individual elected to receive a benefit that would be clearly not in his or her best interest on or after January 1, 2016, VA would be able to change the election and would be required to notify the individual of the change within 7 days. The individual would be allowed 30 days from the date he or she received the VA notification to modify or revoke the election made by VA. In addition, VA would notify the individual of the change of election by electronic means whenever possible. These provisions are not included in section 5003(c) of Pub. L. 110-252; therefore, they would constitute a new authority.

Subsection (i) of the proposed 38 U.S.C. 3326 would provide that any election made under section 3326 would be irrevocable.

Finally, this section would repeal subsection (c) of section 5003 of the Post-9/11 Veterans Educational Assistance Act of 2008 (Pub. L. 110-252; 38 U.S.C. 3301 note).

VA does not object to (a) through (g) of the proposed 38 U.S.C. 3326 because these provisions are, generally, identical to those that were enacted in section 5003(c) of Pub. L. 110-252, with the exception of one minor change in the proposed section 3326(f), which would also authorize refunds of MGIB-AD contributions to individuals receiving monthly stipend payments for pursuit of non-degree programs under 38 U.S.C. 3313(g).

However, VA has concerns with subsection (h) of the proposed 38 U.S.C. 3326, which would allow VA to make an alternative election on behalf of the Veteran that VA determines is in his or her best interests. As individuals' situations are different, elections made in the best interest of a Veteran would be highly subjective. While one claims examiner might view an election option as being the best, another might disagree. Therefore, VA recommends specific criteria for an election be added to the legislation that would eliminate subjectivity. For example, in some instances, a Veteran elects to relinquish MGIB-AD to receive chapter 33 benefits when he or she has only a few months of MGIB-AD entitlement remaining. If the individual has more than one qualifying period of service, it may be in that individual's best interest to finish 36 months of entitlement under MGIB-AD before beginning to receive chapter 33 benefits – the individual could then receive up to 12 months of entitlement under chapter 33. If this situation met the criteria in the legislation as enacted, the Veteran's claim would be processed under the chapter 30 program until his or her entitlement under that program ends.

VA also recommends that the proposed legislation include language to allow VA to make an election in cases where a Veteran or Servicemember applies for chapter 33 benefits and does not elect to relinquish any benefit. This would allow VA to maximize automation, improve processing times, and obviate the need to contact the Veteran for an election.

Further, VA has concerns with the impact this subsection would have on the automation of original claims using LTS. If VA has to make an alternative election under chapter 33 when a Veteran is eligible for more than one benefit, claims' examiners would have to review the majority of chapter 33 original claims. The need for this review would limit the number of original claims that could be automated through LTS without human intervention, increasing the length of time that Veterans would be waiting to receive their benefits.

VA estimates the cost of this section would be insignificant because subsections (a) through (g) of the proposed 38 U.S.C. 3326 are provisions that are already in place under section 5003(c) of Pub. L. 110-252 and, therefore, would result in no additional cost. In some cases, subsection (h) may result in a Veteran receiving a better benefit that would increase costs to VA. However, due to VA's current outreach efforts, such as the GI Bill Comparison Tool, and the amount of information available to assist Veterans in making informed decisions on education benefits, VA does not anticipate making a significant number of alternative elections. Therefore, anticipated costs to the readjustment benefits account are insignificant.

Section 2 would amend 38 U.S.C. 3684(a) to define the term "educational institution" to include a group, district, or consortium of separately accredited educational institutions located in the same State, and which are organized in a manner that facilitates the centralized reporting of their enrollments. This legislation would also amend section 3684(a) to include individuals enrolled under chapters 32 and 33.

The proposed legislation would apply to any reports of enrollment submitted on or after the date of enactment.

VA supports section 2. This legislation would allow each institution in a district/consortium to certify a student's enrollment regardless of where the student is matriculated. Furthermore, since school certifying officials at "District" institutions have access to student records and all courses have universal numbering, VA compliance visits could be done at any institution and records would be available for students who attend any of the institutions included in the group, district, or consortium.

There would be no additional cost for implementing this provision because the reporting fees would be paid to the school that is certifying the enrollment, regardless of the location of the institution.

Section 3 would amend subsection 38 U.S.C. 3313(c)(1)(A) to limit the benefits paid for pursuit of certain degree programs at a public institution of higher learning (IHL). It would limit the amount of tuition and fees payable for certain programs at IHLs, specifically those that involve a contract or agreement with an entity (other than another public IHL) to provide a program of education or a portion of a program of education, to the same amount per academic year that applies to programs at private or foreign IHLs. This section would be effective the first day of a quarter, semester, or term (whatever is applicable) after the legislation's enactment.

VA supports legislation that would limit the amount of tuition and fee payments at public IHLs that involve contracted training. VA is concerned about high tuition and fee payments for enrollment in degree programs involving flight training at public IHLs. Education benefit payments for these types of programs have increased tremendously with the implementation of P.L. 111-377, and in some cases, public institutions seem to be targeting Veterans for their flight-related training programs.

There has been a significant increase in flight training centers, specifically those that offer helicopter training, that have contracted with public IHLs to offer flight-related degrees. Sometimes these programs charge higher prices than those that would be charged if the student had chosen to attend the vocational flight school for the same training.

Additionally, VA has also noticed a growing number of VA beneficiaries are taking flight courses as electives. VA allows for "rounding out," whereby non-required courses may be taken to bring a student's course load up to full-time status in the student's last term. Based on anecdotal evidence, some schools are enrolling students in these very expensive flight courses when "rounding out" is applicable. In most cases, these courses are not specifically required for the Veteran's degree.

VA is still determining the costs associated with this provision.

Section 4 would add a new section 3699 to title 38, U.S.C., requiring VA to make available to educational institutions information about the amount of educational assistance to which a Veteran or other individual is entitled under chapter 30, 32, 33, or 35. This information would be provided to the educational institution through a secure information technology system accessible by the educational institution and updated regularly to reflect any amounts used by the Veteran or other individual.

VA supports the intent behind providing educational institutions with the number of months of educational assistance to which a Veteran is entitled. Currently, VA provides the amount of a Veteran's entitlement (original and remaining) and other information (i.e., the delimiting date) to the educational institution through the VA Online Certification of Enrollment (VA-ONCE) system. The educational institution in which the student is enrolled can view this information for individuals training under chapters 30, 1606, and 1607 after VA processes an award for education benefits. This functionality is not currently available for Veterans or other individuals training under chapters 32, 33, or 35; therefore, VA would need to make programming changes to VA-ONCE in order to make this information available as well.

VA recommends removing the requirement to provide information for individuals training under chapter 32 from the proposed legislation. Chapter 32 usage has decreased from 560 beneficiaries in FY 2008 to 2 beneficiaries for fiscal year 2015 through June 30, 2015. Because eligibility for chapter 32 ends 10 years after an

individual's release from active duty, the majority of those with remaining entitlement are likely also eligible for benefits under chapter 33.

VA estimates the administrative costs for developing the functional requirements of this section to be $500,000, and the information technology (IT) costs associated with this section to be $5 million to make enhancements to VA-ONCE to provide newly required information to educational institutions.

Section 5 would amend 38 U.S.C. 3672(b)(2)(A) to authorize State Approving Agencies (SAA) to determine if a program of education is deemed to be approved for purposes of this chapter if the program is one of the following:

- An accredited standard college degree program offered at a public or not-for-profit proprietary educational institution that is accredited by an agency or association recognized for that purpose by the Secretary of Education.
- A flight training course approved by the Federal Aviation Administration (FAA) that is offered by a certified pilot school that possesses a valid FAA pilot school certificate.
- An apprenticeship program registered with the Office of Apprenticeship, Employment Training Administration, Department of Labor; or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (popularly known as the "National Apprenticeship Act"; 29 U.S.C. 50, *et seq.*).
- A program leading to a secondary school diploma offered by a secondary school approved in the state in which it is operating.
- A licensure test offered by a Federal, state, or local government

This legislation also would amend 38 U.S.C. 3675(a)(1) to substitute "A State approving agency, or the Secretary when acting in the role of a State approving agency" for "the Secretary or a State approving agency." Further, this legislation proposes to amend section 3675 to expand the approval of other courses by authorizing an SAA, or the Secretary when acting in the role of a SAA, to approve accredited programs (including non-degree accredited programs) not covered by section 3672 of title 38.

VA supports the clarification of the approval requirements codified in 38 U.S.C. 3672(b)(2)(A), as detailed in section 2(a) of the proposed legislation. To be "deemed approved," accredited programs must meet the requirements of a number of provisions in chapter 36 of title 38. Consequently, compliance with those provisions must be verified, which the proposed change will make more explicit. However, to be consistent with approval authorities in other sections of chapter 36, VA believes that both the Secretary and the SAA should have approval authority.

VA also supports the proposed change to 38 U.S.C. 3675 in section 5(b) of the bill, to make those approval provisions apply to accredited non-degree programs at public and private non-profit IHLs that are not covered by section 3672 or by any of the approval requirements currently contained in chapter 36 of title 38. However, VA does not support modifying the current language that grants approval authority to both the

Secretary and the SAA. The Secretary was granted authority under P.L. 111-377 to approve those programs, if necessary. While VA has no plans to take over approvals of all educational programs, it does appreciate this flexibility of authority.

VA estimates there are no costs associated with this section.

Section 6 would amend 38 U.S.C. 3676(c)(14) as it pertains to the criteria used to approve non-accredited courses. Under the proposed legislation, VA, in consultation with the SAA and pursuant to regulations, would determine if additional criteria may be deemed necessary for the SAA to approve an institution's written application for a course of education. VA and the SAA must treat public, private, and private for-profit educational institutions equitably.

The legislation would also amend 38 U.S.C. 3675(b)(3) to include this requirement as part of the approval conditions for accredited courses offered by private for-profit institutions.

This change would apply with respect to criteria developed pursuant to 38 U.S.C. 3676(c)(14) on or after January 1, 2013, and an investigation conducted under 38 U.S.C. 3676(c) that is covered by a reimbursement of expense paid by VA to a state, pursuant to 38 U.S.C. 3674, on or after October 1, 2015.

While VA agrees with the intent underlining section 6, that the approval requirements for non-accredited courses should be applied equitably regardless of the type of institution providing the training, VA does not believe that it should be interjected into the SAA approval requirements applicable to educational institutions located in the state over which the SAA has jurisdiction. VA is not aware of any widespread concerns regarding unfair practices or unequal treatment with respect to additional SAA approval requirements. VA is concerned about the amount of resources that could potentially be involved in regulating the process, reviewing the SAA requirements, and making determinations regarding necessity and equity. In this instance, VA would have to coordinate with all 50 States, territories, and institutions of higher learning regarding policy and procedure changes. At this time, VA cannot quantify the level of effort required for coordination of this scope. Consequently, VA recommends adding the requirement that any additional criteria treat public, private, and proprietary for-profit educational institutions equitably, without requiring a formal process and a VA decision on each additional requirement. This would ensure the consistent application of additional SAA approval requirements, allow states to promulgate additional requirements for educational institutions located within their borders, and avoid the potentially burdensome administrative process proposed in this section.

At this time, VA cannot quantify the costs and level of effort required for coordination of this scope.

Section 7 would amend 38 U.S.C. 3693 by inserting a new subsection (a) that would require VA to conduct an annual compliance survey of educational institutions

and training establishments offering one or more courses approved for enrollment of eligible Veterans or individuals, if at least 20 such Veterans or individuals are enrolled. VA would be responsible for:

- Designing the compliance surveys to ensure that such institutions or establishments, as the case may be, and approved courses are in compliance with all applicable provisions of chapters 30 through 36 of title 38;
- Surveying each of these educational institutions and training establishments not less than once during every two-year period; and
- Assigning not fewer than one education compliance specialist to work on compliance surveys in any year for each 40 compliance surveys required to be made under this section for such year.

Additionally, VA, in consultation with the SAAs, would annually determine the parameters of the surveys, and not later than September 1 of each year, make available to the SAAs a list of the educational and training establishments that would be surveyed during the fiscal year following the date of making such list available.

VA supports this section as it would improve the compliance survey process. VA recognizes the importance of compliance work in ensuring timely and accurate payments to Veterans and their families. As such, VA and the National Association of State Approving Agencies formed a joint committee, the Compliance Survey Redesign Working Group, to streamline and enhance the compliance survey process.

Currently, there are approximately 16,000 approved domestic and international IHLs and non-college degree institutions. Of the 16,000 institutions, there were 11,260 active institutions in calendar year 2013. During FY 2013 and FY 2014, VA and SAAs completed well over 10,000 surveys, with just over 5,000 surveys completed in FY 2014. VA anticipates completing a similar number of reviews in 2015. This work will be split roughly in half between VA and SAAs, as it has been for the last few years.

The statute requires VA to conduct annual surveys at 100 percent of schools with greater than 300 beneficiaries and non-college degree programs. Schools with high numbers of beneficiaries are more likely to have one or more full-time school certifying officials and may not need a visit annually. Institutions with a smaller number of beneficiaries are more likely to have school certifying officials who have other duties, and these institutions may not be as well-versed in school certifying official requirements, especially as they relate to the Post-9/11 GI Bill program.

This section would also create a new provision that would require the Secretary to consult with SAAs when determining the parameters of which institutions would receive a compliance survey each year. VA believes this provision is unnecessary as VA already consults with SAAs when determining where surveys will be conducted. With the implementation of section 203 of P.L. 111-377 (Post-9/11 Veterans Educational Assistance Improvements Act of 2010), VA was granted the authority to utilize SAAs to assist VA in conducting compliance surveys at GI Bill-approved

institutions. Although VA can use the services of SAAs, VA continues to be ultimately responsible for conducting compliance surveys.

There are no mandatory costs associated with section 7, and there would be only minimal administrative costs associated with this provision.

Mr. Chairman, thank you for the opportunity to present our views on the legislation today and we will be glad to answer any questions you or other members of the Committee may have.