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

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Chairman Tester, Ranking Member Moran, and other Members of the Committee, thank you for inviting us here today to present our views on bills that would affect VA programs and services. Joining me today are Matthew Sullivan, Deputy Under Secretary for Finance and Planning and Chief Financial Officer, National Cemetery Administration; Barbara C. Morton, Deputy Chief Veterans Experience Officer, Veterans Experience Office; James Ruhlman, Deputy Director for Program Management, Education Service; and Michelle Corridon, Deputy Director of Policy, Loan Guaranty Service.

S. 1299 Fairness for Servicemembers and their Families Act of 2023

This bill would require VA to review the automatic maximum coverage under the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs every three years by comparing the amount of the statutory maximum to the amount of $400,000 multiplied by the increase in the Consumer Price Index (CPI) from fiscal year (FY) 2005 to the CPI in the calendar year preceding the review.

VA does not support this bill, unless amended. VA recommends amendments to the bill to clarify that the results of the analysis submitted by VA to Congress should be used as a guide for coverage increases, rather than as a method to select an exact amount of coverage.

First, there are other measures of coverage comparison, such as coverage available in other large employer plans and military benefit associations. For many Service members, the SGLI program already offers more than a typical employer plan would offer.

Second, the SGLI program was never intended to be the sole source of life insurance coverage for Service members, but rather it was intended to serve as foundational coverage that could be supplemented by commercially available coverage if desired. Coverage by both SGLI/VGLI and by private insurers has met the needs of Service members since the establishment of SGLI in 1965.

Third, the administrative simplicity of offering coverage in $50,000 increments, as currently provided for by law, is critical in ensuring Service members understand the coverage they have, and the $50,000 increments simplifies collecting premiums for the

uniformed services. Offering coverage outside of the current increment structure would significantly increase administrative costs both for the services and for the program's primary insurer, Prudential Insurance Company of America, which administers SGLI. Because the program is self-supporting, any administrative cost increases would be borne by the insureds.

Additionally, the maximum coverage amount for SGLI/VGLI was increased to $500,000 on March 1, 2023, but S. 1299 references the prior coverage maximum of $400,000. The bill also uses the CPI from FY 2005 as a benchmark, which is when the maximum coverage was increased from $250,000 to $400,000.

Mandatory and discretionary costing were not considered, due to lack of VA support of this bill.

S. 1590 Justice for ALS Veterans Act of 2023

This bill would amend title 38, United States Code, to extend increased Dependency and Indemnity Compensation (DIC) paid to surviving spouses of Veterans who die from amyotrophic lateral sclerosis (ALS), regardless of how long the Veterans had the disease prior to death.

Section 2(a) would amend 38 U.S.C. § 1311(a)(2) by inserting (A) before "The rate" thus creating a subparagraph under (a)(2). A new subparagraph (B) would then be added to explain that a Veteran who died from ALS shall be treated as a Veteran described in subparagraph (A) without regard for how long the Veteran had the disease prior to death. This change would allow VA to pay an increased amount on top of the basic DIC rate.

The additional benefit is presently reserved for cases where deceased Veterans who received or were entitled to receive service-connected disability compensation rated totally disabling for a continuous period of at least eight years immediately preceding death, and the surviving spouse was married to the Veteran for the same eight-year period. The bill proposes to allow the additional amount, under 38 U.S.C. § 1311(a)(2), to be paid when a Veteran was service connected for ALS for any amount of time preceding death. This waives the continuous eight-year stipulation in cases of ALS service-connection and death.

Section 2(b) would clarify that subparagraph (B) of 38 U.S.C. § 1311(a)(2) shall apply to a Veteran who dies from ALS on or after October 1, 2022.

VA supports this bill, if amended, subject to the availability of appropriations. The bill would allow the additional amount paid on top of basic DIC under 38 U.S.C. § 1311(a)(2) to be paid when a Veteran was service connected for ALS for any amount of time preceding death. This would waive the continuous eight-year stipulation in cases of ALS service connection and death.

VA understands the intent of this bill is to extend the increased DIC rate to surviving spouses of Veterans who died from ALS, regardless of how long the Veteran had the disease prior to death. However, VA recommends the committee consider striking "the Secretary determines" within line 10 on page 2 of the bill. As provided in 38 U.S.C. § 5107(b), VA makes decisions based on consideration of evidence. VA's existing policy, 38 C.F.R. § 3.312, provides "the death of a veteran will be considered as having been due to a service-connected disability when the *evidence* establishes that such disability was either the principal or a contributory cause of death" (emphasis added). The phrase "the Secretary determines" may raise unnecessary confusion as to whether a departure from the standard generally applicable to VA benefit determinations is intended.

It is unclear whether the bill would obviate the requirement that the surviving spouse must have been married to the Veteran for eight continuous years prior to the Veteran's death. It appears that new section 1311(a)(2)(B) would require VA to presume only that a Veteran who died of ALS met the eight-year disability requirement in section 1311(a)(2)(A), but would still require a surviving spouse to meet the eight-year marriage requirement. However, due to the potential for conflicting interpretations, we recommend adding language to clarify the intent on that question. Further, VA notes that the reduced requirement for the Veteran's length of illness would not remove the required marriage duration as provided in 38 U.S.C. § 1102.

Lastly, VA notes that, while this bill would benefit surviving spouses of those who die from ALS before the end of the eight-year period of total disability required by current section 1311(a)(2), it would also create disparate treatment of surviving spouses of Veterans who pass away from other rapidly progressive diseases, such as cancer or Parkinson's disease. VA suggests extending the bill to survivors of Veterans who died as the result of a condition with a similar high mortality rate. Further, VA requests that Congress either identify similar conditions or provide the parameters by which VA can evaluate whether a condition has a high mortality rate under the intention of the bill.

VA estimates mandatory costs to be $3.4 million in 2024, $23.5 million over 5 years, and $58.5 million over 10 years. Additional time would be needed to estimate discretionary costs.

S. 1910 Ensuring VetSuccess On Campus Act of 2023

This bill would expand the VetSuccess On Campus (VSOC) program to at least one location in each state, with at least one counselor per location, regardless of the number of individuals in a state or educational institution. The bill would also give preference to educational institutions with the largest populations of students receiving VA educational assistance.

VA supports, if amended, subject to the availability of appropriations. Section 3697B of title 38, United States Code, would need to be updated to allow for benefits counseling on campus to be provided by a VA employee as determined by the

Secretary rather than a Vocational Rehabilitation Counselor (VRC). Currently, under 38 U.S.C. § 3697A, a VRC provides educational and vocational counseling and guidance, including testing and any other services determined to be necessary to increase employment opportunities. VRCs are hired by VA's Veteran Readiness and Employment (VR&E) program specifically for their skill and experience assisting Veterans with disabilities to return to work in suitable employment. This counseling should be provided by specialists with a unique understanding of both disability limitations and vocational counseling. Section 3697B requires on-campus educational and vocational counseling to be administered by the employee who provides services under section 3697A. Currently, the VSOC program operates in 34 states. The states that do not have a VSOC position are generally lower student Veteran population. This legislation change would increase the ability to hire additional VSOCs to serve these more rural populations and underserved communities, in addition to Historically Black Colleges and Universities (HBCU), Tribal Colleges and Universities (TCU), and Hispanic Serving Institutions (HSI).

The VR&E program needs VRCs to manage the increased workload from Veterans applying for Chapter 31 benefits and services, in addition to the services they provide under Chapter 36. This law improved access to care and benefits for those Veterans who were exposed to toxic substances during their service. When VA regional offices are provided with additional FTE positions, they focus on hiring VRCs for growing local workload demands, prioritizing the Chapter 31 caseloads to serve the highest number of Veterans and meet associated statutory staffing ratios VR&E counselors are critically needed to work the increase in Chapter 31 caseloads with their experience and expertise. Allowing other types of employees to perform VSOC functions, rather than requiring VRCs to fill VSOC positions, would allow the VRCs to focus on Chapter 31 beneficiaries (including those on campuses). It would also allow FTEs allocated by Congress to perform VSOC functions to be filled more quickly if they do not need to meet the educational requirements of a VRC.VR&E counselors are critically needed to work the increase in Chapter 31 caseloads with their experience and expertise. Allowing other types of employees to perform VSOC functions, rather than requiring VRCs to fill VSOC positions, would allow the VRCs to focus on Chapter 31 beneficiaries (including those on campuses). It would also allow FTEs allocated by Congress to perform VSOC functions to be filled more quickly if they do not need to meet the educational requirements of a VRC.

There are no mandatory costs associated with this bill. The discretionary estimate for FY 2024 is $2.2 million and includes salary, benefits, rent, travel, supplies, other services, and equipment. Five-year costs are estimated at $22.3 million and 10-year costs are estimated to be $51 million.

S. 2014 Unnamed Senate Jax Act Bill

This bill would amend title 38, United States Code, to ensure that certain members of the Armed Forces who served in female cultural support teams (CSTs) receive proper credit for that service and for other purposes.

Section 1(a) and (b) of the bill would provide the findings and sense of Congress regarding the treatment of approximately 310 female Service members of the Armed Forces who served on female CSTs and deployed with special operations forces between 2010 and 2021.

Section 1(c) would require each Secretary concerned, within one year after the date of enactment, to ensure the performance of covered service is included in the military record of each individual who performed the service and in the computation of retired pay for each individual, and transmit a list to VA of each veteran whose military record was modified to include the covered service.

Section 1(d)(1) would require VBA to determine service connection and adjust the computation of any disability compensation awarded accordingly upon submission of a claim from an eligible individual. Section 1(d)(2) would require VA to treat covered service as engagement in combat with the enemy in the course of active military, naval, air, or space service. Section 1(d)(3)(B) seeks to provide an exception to the effective date of an award in accordance with 38 U.S.C. § 5110(g) for eligible individuals who submitted a claim for service-connected disability or death before the date of enactment of the Act. The exception would require VA to treat the date on which the individual filed the initial claim as the date on which the individual filed the claim awarded. Section 1(C) would define eligible individuals as those who performed covered service, or a survivor of such individual, who: 1) submitted a claim for service-connected disability or death before the date of enactment of the Act, 2) had such claim denied because the disability or death was not service-connected, and 3) submit a claim within three years following enactment for the same condition. Section 1(d)(4) would require VA to improve training and guidance for employees who may process a claim for a covered individual. Section 1(d)(5) would require VA to conduct outreach to inform individuals who performed covered service and their survivors that they may submit supplemental claims for service-connected disability or death. Outreach would include contacting the individuals directly, publishing notice on a VA website, and notifying Veterans Service organizations.

Section 1(e) would provide definitions, including defining “covered service” as service: 1) as a member of the Armed Forces, 2) in a female cultural support team, 3) with the personnel development skill identifier of R2J or 5DK, or any other validation method, and during the period January 1, 2010, through August 31, 2021.

VA cites concerns with this bill. While VA supports the intent of the bill to ensure proper recognition of Veterans’ combat service, we cite concerns with several specific elements.

Section 1(d)(2) would require VA to treat covered service as engagement in combat with the enemy in the course of active military, naval, air or space service. Per VA's procedural guidance in VBA's Adjudication Procedures Manual (M21-1) VIII.iv.1.D.2.b, there are no limitations as to the type of evidence that may be accepted to confirm engagement in combat. Any evidence that is probative of combat participation may be used to support a determination that a Veteran engaged in combat. However, VA notes that a finding that a Veteran engaged in combat with the enemy in active service with a military, naval, air, or space service under 38 U.S.C. § 1154(b) requires that the Veteran "have personally participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality, as determined [by VA] on a case-by-case basis." *Moran v. Peake*, 525 F.3d 1157, 1159 (Fed. Cir. 2008). It is unclear whether the female Veterans who served as members of CSTs would meet the requirement for a finding of combat service under 38 U.S.C. § 1154(b).

To obtain an award of service connection, a claimant must generally establish three elements: (i) a current disability, (ii) a disease or injury incurred or aggravated during service, i.e., in-service incurrence, and (iii) a causal relationship between the current disability and the in-service disease or injury, i.e., nexus. By statute, satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat is sufficient proof of "service connection," i.e., in-service incurrence, if that evidence is consistent with the circumstances, conditions, or hardships of such service even if the disease, disability, or injury is not otherwise documented in the official record. Thus, if a CST Veteran states that a disease or injury was incurred in combat and the same is consistent with the circumstances, conditions, or hardships of service, the rating activity and the examiner will accept the lay evidence as satisfying the "in-service incurrence" requirement for an award of service connection, even if there is no other record of the same. This would allow for grant of service connection of a disability, from Traumatic Brain Injury (TBI) to a musculoskeletal disability from carrying heavy gear, assuming the CST Veteran establishes a current disability and a nexus between the current disability and the in-service disease or injury.

If this bill is enacted, VA would readjudicate qualifying claims and may place more CST Veterans on compensation rolls. For claims that were previously denied because the evidence did not establish in-service incurrence, VA may more likely grant CST Veterans service connection for their previously denied claims because the evidentiary burden to satisfy the "in-service incurrence" requirement would be lowered. However, for claims that were previously denied because the evidence did not establish a current disability or nexus, enactment of this bill would not change the outcome because the fact that a Veteran engaged in combat does not alter the evidentiary burden for establishing the current disability and nexus elements. Therefore, based on the language in section (d)(1) that, upon the filing of a claim pursuant to this bill, VA "shall determine whether such disability or death was service-connected" and based on the operation of 38 U.S.C. § 1154(b) for combat Veterans, VA understands section 1(d)(3)(C)(ii) to refer to a claim for service connection that was denied because the claimant did not satisfy the "in-service incurrence" requirement. If this is not Congress' intent, VA respectfully requests clarification of that intent.

Although the bill provides that the general effective date rules apply, it further provides that, for a period of three years after enactment, VA shall determine the effective date of an award for eligible individuals by treating the date the claimant originally filed for service connection as the date on which the claimant filed the claim that was awarded. Section 1(d)(3)(C) of the bill specifies an eligible individual is a Veteran or survivor who: (i) prior to the Act's enactment submitted a claim for service-connected disability or death; (ii) had such claim denied for lack of service connection; (iii) submits a claim within three years of the Act's enactment for the same disability that was previously denied; and (iv) is granted service connection, pursuant to this bill, for the previously denied claim.

In sum, the bill allows VA to grant service connection from the original date of claim. While the bill would also place a three-year time limit for CST Veterans or survivors to file a supplemental claim and have this effective date provision applied, it may nonetheless result in significant retroactive benefits for some CST Veterans and survivors depending on the original date of claim. Thus, this bill provides for an unusually liberal effective date. Under current effective date rules, the effective date of an award based on a supplemental claim that is received after a rating decision, Board of Veterans' Appeals decision, or Court of Appeals for Veterans Claims' decision becomes final is the date entitlement arose or on the date the supplemental claim was received, whichever is later, unless another section allows for an earlier effective date. *Military-Veterans Advocacy v. Secretary of Veterans Affairs*, 7 F.4th 1110 (Fed. Cir. 2021). VA notes that this bill would carve out an effective date exception for only this small group of Veterans, which may be perceived as inequitable. VA suggests amending this section of the bill to align with current laws concerning effective dates of claims.

VA endorses specialized training for these types of claims so that the CST Veterans and survivor claims are properly and efficiently processed. VA also recognizes claims processors would need to be able to accurately identify eligible individuals and apply the liberal effective date provisions of section 1(d)(3)(B).

Mandatory and discretionary costing have not been considered as VA cites concerns with the proposed bill.

S. 2181 Keeping Military Families Together Act of 2023

This bill would remove existing sunset provisions currently in 38 U.S.C. §§ 2306(b)(2) and 2402(a)(5) and thus provide VA with the permanent authority to provide a memorial headstone or marker, and burial in a VA national cemetery, for spouses and eligible dependent children who predecease active-duty Service members.

VA supports this bill, subject to the availability of appropriations. VA currently has authority to provide spouses and eligible dependent children of active-duty Service members with memorial headstones and markers under 38 U.S.C. § 2306(b) and authority to bury such individuals in a national cemetery under 38 U.S.C. § 2402(a)(5). However, the law only allows such memorialization or burial if the spouse

or dependent child dies prior to October 1, 2024. Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation will retain the opportunity to obtain a Government-furnished memorial headstone or marker or to choose to bury their loved ones in a VA national cemetery.

VA estimates this bill would have insignificant mandatory costs to the compensation and pension account of $28,000 in 2025, $141,000 over five years, and $282,000 over ten years.

S. 2276 Welcome Home Veterans Act of 2023

This bill would amend section 570F of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, to provide an option to opt-out of the sharing of information of members retiring or separating from the Armed Forces with community-based organizations and related entities.

VA defers to the Department of Defense. The ability to modify Form DD–2648, which would provide the option to opt-out, lies with the Secretary of Defense.

S. 2718 Medical Disability Exam Improvement Act of 2023

The proposed legislation would amend title 38, United States Code, to alter matters relating to medical examinations for Veterans' disability compensation, and for other purposes.

Section 2 of the bill would amend 38 U.S.C. § 1168 by striking ‘‘with evidence of a disability and evidence of participation in a toxic exposure risk activity’’ and inserting ‘‘and expresses that such claim is associated with a toxic exposure risk activity’’; and by striking ‘‘and such evidence’’ and inserting ‘‘and evidence of record before the Secretary’’.

Section 3 of the proposed legislation would amend 38 U.S.C. § 5103A(d) by adding a new paragraph that would authorize VBA’s Compensation and Pensions (C&P) account to reimburse the VBA General Operating Expenses (GOE) account and the IT Systems account for all expenses of carrying out a medical examination or obtaining a medical opinion for VBA’s disability examinations. Section 3 further notes the intent to add authority for VBA’s GOE account to reimburse Veterans Health Administration (VHA) for costs of carrying out medical examinations for C&P claims.

Section 4 of the proposed legislation would create an annual reporting requirement to conduct a study on improvements to VA-covered medical disability examinations in rural areas. Section 4 would also require a study on access to covered medical disability examinations by Veterans who reside in rural areas.

Section 5(a) would require VA, within 180 days of enactment of the bill, to provide additional training to all claims processors who order or review medical disability examinations.

Section 5(b) would provide that mandatory training must include instruction on how to assess whether a covered medical disability examination is adequate for purposes of adjudicating claims for benefits, and instruction on how to assess whether a medical disability examination is necessary for purposes of adjudicating a particular claim for a benefit. That mandated training would also have to include review of relevant statutes, judicial decisions, regulations, and VA policies regarding covered medical disability examinations, including at minimum, the duty to assist, the relevance of causation compared to other evidentiary standards in covered medical disability examinations, required elements of a covered medical disability examination (with an emphasis on the requirement for reasoned analysis to support medical opinions), the relevance of a lack of a statutory or regulatory presumption of service connection in covered medical disability examinations, and input from impacted employees of the Department, to include labor representatives.

Section 5(c) would require the specified mandatory training to be completed no less frequently than once per year.

Section 5(d) would amend 38 U.S.C. §§ 7101(d)(2) and 7288(b) to modify certain reporting requirements by the Board of Veterans' Appeals and the U.S. Court of Appeals for Veterans Claims.

Section 6(a) would require that not later than 1 year after the date of enactment, and not less frequently than once every calendar month thereafter, VA review a statistically significant sample of all medical disability examinations, defined as a medical nexus examination or a medical opinion, completed within the previous calendar month. Section 6(b) would require the Secretary to ensure that these reviews include statistically significant samples of covered medical disability examinations completed by both VA employees and contractors. Section 6(c) would require the Secretary to analyze the review under section 6(a) to determine whether these examinations were adequate for adjudicating claims under chapters 11 and 15 of title 38 of the United States Code. Section 6(d) would require that if VA's review identifies any inadequate or unnecessary examinations, VA may provide such claimant another examination on a priority basis and priority processing for the entirety of the impacted claim. VA would not be required to furnish an additional examination if VA determines the examination is unnecessary for adjudicating the claim.

Section 7 would require VA to establish a mechanism for contractors conducting disability examinations under a certain VA pilot program to transmit medical evidence introduced by claimants during examinations.

VA cites concerns with this draft bill. The below analysis addresses the specific provisions of this draft bill.

VA cites concerns regarding Section 2. Generally, VA understands the intent of section 2 of this draft bill regarding the provision of examinations and nexus opinions for Veterans potentially exposed to chemicals, substances, and airborne hazards during service.

Revised section 1168(a) would strike "with evidence of a disability and evidence of participation in a toxic exposure risk activity during active military, naval, air, or space service" and replace it with "and expresses that such claim is associated with a toxic exposure risk activity," triggering the examination and opinion requirements based on TERA for Veterans who express that their claim is associated with a TERA (explicit claim).This could be construed as requiring examinations for nearly all claims for service-connected disability compensation under 38 U.S.C. § 1110, if the Veteran simply provides an explicit statement of association and the evidence of record is not otherwise sufficient to grant the claim, even if the Veteran does not have evidence of a current disability or active military service. Currently section 1168(a)(1) requires VA to consider both implicit and explicit claims. VA recommends maintaining the requirement for evidence of a disability.

VA highlights that the amendments to section 1168 change the requirements for mandatory examinations for toxic exposure, but VA's duty to assist for all claims remains unchanged. VA aims to sympathetically read all claim submissions and provides examinations on a case-by-case basis if indicated by the evidence of record even if not required by section 1168.

VA does not believe section 2 of the bill would affect VHA workload or requirements to conduct compensation examinations. To the extent it does, such increased workload would require additional resources to support these efforts. If the bill does not increase the number of examinations that are required, this would not affect VHA's resource needs.

VA does not support section 3. The first portion of legislative text in section 3 is unnecessary because it duplicates existing authority (see 38 U.S.C. § 5101, special note on Pilot Program for Use of Contract Physicians for Disability Examinations, section (d)). Currently, all necessary expenses associated with C&P exams completed by VBA's contractors are funded by the VBA-GOE account or IT Systems account, and then VBA's mandatory C&P account reimburses the VBA-GOE and IT Systems accounts. VA needs this funding structure because VBA's C&P account is designed to issue benefit payments, not to pay for contracts or provide health care. For this reimbursement authority, VBA and OIT use existing infrastructure for discretionary-funded contracts; for example, contracts for C&P exams use the same systems, review/approval processes, reporting mechanisms, and internal controls that are used for any other VBA-GOE or IT funded contract.

However, VA notes that moving the current authority from a note to a main section of the United States Code seems appropriate.

Section 3 would also require VBA's GOE account and the IT Systems account to fund <u>all</u> medical examinations for C&P claims. However, VBA's GOE account and the IT

Systems account do not have authority to reimburse VHA for costs of carrying out medical examinations for C&P claims. Therefore, VBA contractors would be required to complete all medical examinations for C&P claims. VA notes an existing regulatory requirement to have VHA complete examinations for Former Prisoners of War (FPOW) as well as complete examinations that are excluded from being performed by the contract vendors. These include examinations which require hospitalization or surgical evaluation (such as colonoscopy or laparoscopy), when the Veteran is an inpatient at a VHA facility, nursing home, extended care facility, or domiciliary, and when the Veteran is an employee of the contract examination vendor scheduled to conduct the examination. VA is concerned that Veterans would be negatively impacted if the examinations addressed in regulations were no longer completed by VHA employees.

VA generally supports Section 4, but recommends a definition of "rural" also be provided.

VA does not support Section 5. VA notes that comprehensive training regarding medical disability examinations is currently provided to claims processors. Claims processors are provided initial in-person and virtual training in VA's foundational training program. In addition, proficiency of claims processors with 1 or more year of experience is assessed annually. That assessment includes evaluation of their knowledge of the medical disability examination process. Training mandates in sections 5(a) through (c) of the bill are largely redundant of training VA currently provides, and therefore may not produce any additional benefit to Veterans. VA defers to the United States Court of Appeals for Veterans Claims on section 5(d)(2) of the bill, as that language pertains to the Court's reporting requirements.

Concerning section 5(d)(1), the bill does not define "recurring issues," nor does it stipulate how VA should use these reports or whether the results from the report would be binding on VA for action. Further, the Chairman and/or the chief judge would be scrutinizing claims processed by VA in prior years based on the term "believes" as outlined in the bill. The recurring issues identified may not accurately reflect or account for the policies in place at the time the claim was adjudicated, nor for any corrective actions VA has already taken to address such issues of its own accord. "Believes" signifies holding an opinion, a subjective expression not founded on legal interpretation. Nevertheless, the potential oversight by the appellate authority through congressional reporting may lead to interference with agency autonomy through conflicting recommendations or perception of precedent where it does not yet exist.

VA does not support section 6. VA has a comprehensive quality program at the national level through the systematic technical accuracy review program and at the local claims processor level which capture medical opinion accuracy and nexus exams. When errors are identified through the quality review process, VA ensures the claimant receives another examination, if necessary.

VA further notes that implementation of section 6 would necessitate extensive coordination across many VBA business lines and staff offices to include (at minimum)

the Office of Field Operations, Compensation Service, Pension and Fiduciary Service, Office of Administrative Review, the Medical Disability Examination Office, the Office of Performance Analysis and Integrity, and VHA's Office of Disability and Medical Assessment. Implementation of section 6 would also necessitate ensuring availability of sufficient personnel to accomplish its goals, as well as the creation of standardized operating procedures to ensure consistency and accuracy in the mandated reviews.

VA supports section 7, subject to the availability of appropriations. Mandatory savings associated with section 2 are estimated to be $142.7 million in 2024, $1.4 billion over five years, and $3.1 billion over 10 years. No discretionary costs or savings are associated with section 2.

Mandatory costs associated with section 3 are estimated to be $146.0 million in 2024, $1.4 billion over five years, and $3.1 billion over 10 years. No discretionary costs to VBA are associated with section 3. Costs associated with section 3 would be incurred by VBA's General Operating Expenses account and reimbursed by the mandatory Compensation and Pension account.

No mandatory costs are associated with section 4. The study is not specific to contract disability exams or necessary to conduct contract exams. Therefore, the cost of the study could not be reimbursed by the mandatory Compensation and Pension account. Discretionary costs associated with section 4 are estimated to be $0 in 2024, $1.4 million over five years, and $1.4 million over 10 years.

No mandatory costs are associated with sections 5 and 6. Additional time would be needed to estimate discretionary costs.

Mandatory costs associated with section 7 are estimated to be $0 in 2024, $19.8 million over five years, and $42.3 million over 10 years. No discretionary costs are associated with section 7. VBA believes costs associated with section 7 would be incurred by VBA's General Operating Expenses account and then reimbursed by the mandatory Compensation and Pension account, but legal review would be required to confirm this reimbursement authority.

S. 2778 Vetting for Equal Treatment of Small Business Act of 2023

This bill would direct VA to provide a report to the Congress on the state of competition among VA suppliers for contracting requirements of the Department. The bill directs this report to follow the model of a similar report issued in 2022 by the Department of Defense. In preparing the report, VA is specifically directed to consult with its Office of Small and Disadvantaged Business Utilization (OSDBU).

VA supports this bill, subject to the availability of appropriations. The bill is consistent with Biden Administration policy, as stated in Office of Management and Budget (OMB) Memorandum M-23-11 (February 17, 2023). This memorandum directs the Executive agencies to increase management attention on participation by new and

recent entrants into the Federal procurement marketplace. Not only does this emphasis support the effort to expand opportunity for small and disadvantaged business, it seeks to ensure a resilient and diverse supplier base generally. Providing competitive contracting opportunities for new and recent entrants will be essential to retain these firms as part of VA's small business supplier base, and OSDBU's mandated role as one of the report's stakeholders supports that objective. Additional insight into VA's competitive efforts could support and inform VA's implementation of this initiative.

VA anticipates the bill would incur discretionary costs from staff time needed to research and prepare the report, but these costs would be covered by current budgeted amounts for VA personnel.

S. 2863 Commission on Equity and Reconciliation in the Uniformed Services Act

Section 2(a) establishes the Commission on Equity and Reconciliation in the Uniformed Services. Section 2(b) requires the Commission to compile documentation on the policing of sexual orientation and gender identity in the uniformed services from the beginning of World War II to the present and will include documentation of: (1) facts related to the history of policing LGBTQ sexual orientation and gender identity in the military, and (2) the effects of such policies on eligibility and access to benefits under the laws administered by the Secretary of Veterans Affairs for servicemembers who were discharged due to sexual orientation or gender identity. The Committee will gather testimony, hold hearings, have subpoena power, and examine the impacts that discriminatory policies have had on the LGBTQ community, racial minorities, and women. The Commission will submit a report to Congress not later than one year after the date of the first meeting of the Commission.

The Commission will make recommendations regarding the appropriate ways to educate the American public about government-sanctioned discrimination and make recommendations as to how the government can apologize for enforcing discrimination. The Commission will recommend appropriate remedies to the Secretaries of the Department of Defense and Veterans Affairs regarding discharge upgrades or amendments, providing more visible materials related to the service of LGBTQ individuals, revising diversity and inclusion policies, committing additional resources to healthcare benefits and diversity training, and granting burial rights for members of the uniformed service previously denied due to discriminatory policies.

VA defers to Congress. VA supports and shares the goal of recognizing and improving access to benefits previously denied to members of the uniformed services because of gender identity or sexual orientation. The time requirements in section 2(b)(10) may not be achievable. VA recommends amending section 2(b)(10) to provide a period of 18-24 months for delivery of a written report as this is ordinarily the time frame by which information can be gathered, synthesized, and incorporated into a written report. VA also seeks clarity on whether the reporting requirement contemplates or prohibits the possibility of minority and majority reports.

Section 3(a) would establish the membership requirements of the Commission and provides that members shall be appointed within thirty (30) days after the date of enactment. Requirements for searching for, recruiting, and vetting, as well as filing of financial disclosures and conflict of interest considerations, and training of the members generally takes 180 days. VA recommends amending section 3(a) to reflect an increased timeframe for selection of members to encompass more accurately being able to complete administrative requirements that are required prior to seating a member. In making this recommendation VA remains cognizant that deadlines for appointments to Congressional Commissions has ranged with appointments occurring in 60-120 days, or in as few as 18 days.

Section 3(d) would require the Commission to call its first meeting not later than thirty (30) days after enactment, or availability of appropriated funds to carry out the Act, whichever is later. The first meeting of a constituted Commission generally occurs 90-180 days after appropriated funds have been made available. The 90–180-day period is reflective of the need to provide support to the Commission, including staff, which cannot occur until an Act makes appropriations available. VA recommends amending section 3(d) to provide a greater period prior to the first meeting of the Commission, to ensure appropriate and necessary support can be provided to the Commission as they carry out their important work. VA defers to Congress as to the workability of the proposed timeframe.

The Commission is being established as a Congressional Commission. Accordingly, VA defers to Congress regarding the provisions and time periods reflected in this bill. The comments offered reflect general administrative realities regarding constituting a Commission. However, VA is also cognizant that prior Congressional Committees have been constituted and begun work within as short as 18 days. VA understands that OPM has identified certain technical issues in the bill related to the Federal employee status of Commission members and staff, and we recommend that Congress consult with OPM regarding those matters.

S. 2873 Veterans Affairs Opportunity for Women-Owned Small Businesses Act of 2023

This bill would update VA's Veterans First Contracting Program to recognize the Women-Owned Small Business (WOSB) program in VA's procurement hierarchy of small business preferences, contained in 38 U.S.C. § 8127(h). As the term "Veterans First" suggests, current law directs VA's contracting officers to apply small business preferences in a specific sequence, starting with Service-Disabled Veteran-Owned Small Businesses (SDVOSB) first and Veteran-Owned Small Businesses (VOSB) second. Following those two tiers of the procurement hierarchy, contracting officers then consider Historically Underutilized Business Zone (HUBZone) small business concerns and Small Disadvantaged Businesses participating in the Small Business Administration's (SBA) 8(a) Business Development program. The fourth and last tier encompasses any other small business program preference.

The law currently does not expressly state at which tier a contracting officer should apply WOSB program preferences. By implication, in the absence of specific language, the WOSB program would fit within the "any other small business contracting preference" descriptor on the fourth tier, making it a lesser priority than the HUBZone or 8(a) programs on tier three. This approach, however, makes VA's application of these programs inconsistent with their regulations as issued by SBA, which is the administrative agency responsible.

SBA's rules hold these programs in "parity," meaning they have an equal priority for contracting officers to apply them. Under SBA regulation, contracting officers should consider progress in meeting the various program goals, market research, and other factors in deciding which preferences to apply to a contracting opportunity (see, e.g., 13 C.F.R. § 127.501(d)(2)). Because of the current language in the procurement hierarchy, VA contracting officers are unable to apply the discretion SBA's parity rule provides.

S. 2873 would amend VA's procurement hierarchy to place the WOSB program expressly on the third tier, along with the HUBZone and 8(a) programs. In addition, it would state clearly that these programs "shall be afforded the same degree of priority," thus incorporating SBA's parity rule for that tier. VA's Veterans First requirements for SDVOSBs and VOSBs would remain unchanged.

VA supports this bill. S. 2873 is consistent with a Biden Administration legislative proposal, which was included in the VA budget submissions for FY 2024 and FY 2025. The proposal would remove a barrier to WOSB participation in VA contracts, improving access to this underserved population. It also could improve the Department's performance on the WOSB contracting goal, which VA has never met.

The bill would not create new authority, but instead would change the point at which contracting officers consider the WOSB program under VA's procurement hierarchy. Accordingly, it should not create new administrative or oversight costs. Application of WOSB preferences would be monitored in the same manner and using the same processes as are used currently. VA anticipates the bill would not have a budgetary impact.

S. 2888 TAP Promotion Act

This bill would amend 10 U.S.C. § 1142(b) to add a presentation on VA benefits as a component of pre-separation counseling. The bill would require VA to develop the presentation in collaboration with Veterans Service Organizations (VSOs) and require the presentation to include information on how a VSO may assist Service members in filing benefits claims. The bill would also require that, where available, a VSO representative, or an individual recognized to serve as a VA claims representative, be included as a participant in the presentation.

VA cites concerns with the bill. VA benefits information is already included as a mandatory component of the Transition Assistance Program (TAP) pre-separation

counseling. The proposed presentation is redundant to the one-day VA Benefits and Services (BAS) course, which is a mandatory component of TAP. This legislation would provide VA with no new authority and would be redundant based on actions already taken by VA.

TAP, established in 1991, consists of five core curricula shared among interagency partners (VA, DoD, Department of Labor (DOL), and SBA). These courses are developed and maintained through these partnerships to ensure continuity, consistency, and relevance while reducing redundancy for transitioning Service members. VA, DoD, DOL, and SBA collaborate through an annual evaluation process by reviewing and approving the TAP curricula through the interagency governance structure. Each agency is responsible for the delivery of its curriculum.

The VA portion of TAP, the one-day BAS course, helps Service members and their families understand how to navigate the resources within VA, including how to access the benefits and services they have earned through their military careers.

Additionally, on January 2, 2024, VA launched VSO participation in the VA BAS course. VA extended an invitation to accredited Veterans Service Officers working on or near military installations to make direct connections with attendees during the structured 45-minute session at the end of the VA BAS course. The purpose of the session is to highlight the value of using a VA-accredited VSO and how they can serve as a trusted advocate during the VA benefits claims process and as a free resource before, during, and after the Service member's transition. The goal of this collaborative effort is to educate, inform, and empower attendees by providing valuable VSO information and resources, fostering connections with VSOs, and increasing benefit use. Given the nature and content of programs that already exist for Service members preparing to transition from military to civilian life, VA believes that the presentation required in the proposed bill would be redundant.

Mandatory and Discretionary costing have not been considered as VA cites concerns with the proposed bill.

S. 3126 Mark Our Place Act

This bill would eliminate the date limitation in 38 U.S.C. § 2306(d)(5)(C)(i), under which VA is currently authorized to provide a distinct headstone, marker, or medallion for the graves of Medal of Honor recipients buried in private cemeteries, or to replace a previously furnished headstone, marker, or medallion if the original does not signify the decedent's status as a Medal of Honor recipient, but only if those recipients served on or after April 6, 1917.

VA supports this bill, subject to the availability of appropriations. The Medal of Honor is the highest award for valor in action against an enemy force that can be bestowed upon an individual serving in the Armed Forces of the United States. The award is generally presented to its recipient by the President of the United States in the name of Congress. Since 1976, VA has provided distinctive Government-furnished

headstones and markers for Medal of Honor recipients to recognize this prestigious honor. VA's current practice is to inscribe the headstone or marker with the term "Medal of Honor," accompanied by a graphic representation of the award based on the individual's unique branch of service design. If the headstone or marker is marble or granite, an application of gold lithichrome paint is applied to the entire inscription. VA has also developed a medallion that signifies a Veteran's status as a Medal of Honor recipient.

VA is authorized to provide these distinctive grave markers for the graves of Medal of Honor recipients buried in any cemetery, or to replace a previously furnished headstone, marker, or medallion for a Medal of Honor recipient if the original does not signify the decedent's status as a Medal of Honor recipient, but only if those recipients served in the Armed Forces on or after April 6, 1917. By removing this date of service restriction, VA would be able to ensure a visual reminder to visitors of the sacrifices made by Medal of Honor recipients.

VA estimates this bill would have insignificant mandatory costs to the compensation and pension account of $54,000 in 2025, $285,000 over 5 years, and $605,000 over 10 years.

S. 3256 Improving Veterans' Experience Act of 2023

Section 2 amends chapter 3 of title 38 adding the establishment of the Veterans Experience Office to "carry out customer experience initiatives of the Department, including setting the customer experience strategy, framework, policy and other guidance for the Department." This section also establishes the head of the office, requiring the Secretary of Veterans Affairs to appoint a Chief Veterans Experience Officer, who will report directly to the Secretary. Additionally, the bill identifies the functions of the office and requires the Department to report regularly on customer experience metrics, action plans, and other customer experience improvement efforts. The final portion identifies the office will be funded through reimbursement.

VA supports this bill. This bill is consistent with VA's legislative proposal and provides statutory authority to the Veterans Experience Office (VEO) to act as VA's customer experience lead, authorities which were previously established in VA Directive 0010. This element is beneficial in codifying the office and capability within VA now and in the future.

Additionally, VA supports the requirement for the Secretary of Veterans Affairs to appoint a Chief Veterans Experience Officer who will report directly to the Secretary. Keeping the Chief position as a peer alongside other appointees leading VA's primary business lines ensures that the Veteran experience perspective at Department-wide strategic conversations and guarantees that the voice of the Veteran, families, caregivers, and survivors will be part of the decision-making process.

Section 2 also identifies the functions of the office, requires the department to report regularly on customer experience metrics, action plans, and other customer experience improvement efforts. VA strongly supports these requirements, as some customer experience metrics are reported through OMB, and VA currently reports key operational data points and customer experience metrics of ease, effectiveness, emotion, and trust in the VA through the Trust Report, available at www.VA.gov/trust. This language will require VA to continue to be transparent with the experiences it provides customers.

The final portion specifies that the office will continue to be funded through reimbursement and so will not be reliant upon additional appropriations. VA also supports this language. Reimbursement funding will keep this office agile to adjust to emergent issues of stakeholders and customers as they arise. Since establishment, VEO has operated on a reimbursable authority funding model, so there is no additional cost. Funding and increases in services are funded through reimbursement agreements with VA Administrations and Staff Offices. For FY 2024, VEO achieved reimbursable agreements for $128.9 million, which includes budget for staff and resources. In FY 2025, VEO has requested reimbursable authority for $134.8 million.VA strongly supports this bill and appreciates Congress' consideration of it to ensure that VA remains accountable for delivering the best experiences for Veterans, their families, caregivers, and survivors now and in the future.

S. 3295 Increasing Access to Military Service Records Act of 2023

Section 2(a) would require the VA to establish a portal for maintaining digital images of the military personnel records of DoD so that Veterans and their families can access their own records.

Section 2(b) would require VA to establish a 12-member advisory committee on access to military personnel records, known as the "Veteran Military Personnel Record Advisory Committee" (Advisory Committee). The members would be appointed by the Secretary with members from the Administration, DoD, VA, Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard as well as at least one skilled software product development specialist and at least one representative from a VSO. The bill would require the appointments to be made and the first meeting be held not later than 90 days after the date of enactment. The draft bill also outlines requirements for period of appointment, treatment of vacancies, and quorum.

The Advisory Committee would be tasked with assessing how VA and the National Archives can effectively use DoD electronic records, while also exploring opportunities to leverage existing infrastructure in conjunction with the Defense Personnel Record Information Retrieval System for enhanced access to military personnel records. Their responsibilities include coordinating capabilities between military departments; exploring options for access, such as call centers and non-digital means, while considering separate portals for specific user groups like Congressional caseworkers and scholars; and protecting privacy and determining criteria for family

members' access to records. Finally, the Advisory Committee will establish standards for sharing records and planning for their digital transfer after the records become public.

Section 2(b)(5) would require a report to Congress no later than 180 days after the initial meeting of the Advisory Committee. The bill would also provide requirements for the Advisory Committee's powers, gifts, personnel matters, staff, compensation, travel expenses, procurement, etc. The bill would require the Advisory Committee to terminate on the date that is two years after the date of enactment of the Act. Section 2(b)(9) would require the Secretary to carry out the requirements of the bill using amounts otherwise made available to VA; it does not authorize additional appropriations to fund the Advisory Committee.

VA does not support, unless amended. The bill appears to mandate VA to establish a portal for maintaining electronic service personnel records prior to the Advisory Committee completing its assessment and report on feasibility. VA recommends removing the requirement in the draft bill for creating the portal to allow the Advisory Committee to first assess feasibility and make recommendations to Congress based on their findings. VA also recommends shifting the responsibility for the Advisory Committee from the Secretary of Veterans Affairs to the Secretary of Defense as the required portal would house DoD records.

The Advisory Committee established by section 2(b)(2)(A) would be comprised of at least one non-government employee and would thereby be subject to chapter 10 (Federal Advisory Committees) of title 5, United States Code, unless the Advisory Committee is specifically exempted from those requirements in the statute. The requirement in section 2(b)(2)(B) that member appointments be made and the first meeting held not later than 90 days after enactment is not reasonable. The requirements to search, recruit, vet candidates, review candidate Financial Disclosure forms for conflicts of interest and providing the appointed members orientation training has historically taken 180 days. Section 2(b)(2)(C)(i) could be problematic and contrary to VA policy if the life of the Advisory Committee extends beyond a two-year period. In addition, section 2(b)(3)(A) of the bill requires the initial Advisory Committee meeting to be held not later than 90 days after the date of the enactment of this Act. This would not be reasonable given that it has historically taken 180 days to appoint members and that FACA requires an advisory committee charter to be filed with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of the agency. The first meeting of the Advisory Committee requires sufficient administrative support staff and a support facility has historically taken 90-180 days after enactment of appropriations.

Section 2(b)(3)(C) may be problematic if a lesser number than a quorum of members holds hearings as a federal advisory committee if committee members begin to discuss or deliberate on substantive matters upon which the Advisory Committee provides advice or recommendations. Section 2(b)(5) would require that, not later than 180 days after the initial meeting of the Advisory Committee under section 2(b)(3)(A),

the Advisory Committee submit to Congress a report on the activities conducted by the Advisory Committee. A complete and substantive report within 180 days would have limited information as it is unlikely that the Advisory Committee will have had the opportunity to meet potentially twice, at best, so the report would be limited to the amount of information obtained and discussed during that short window of time.

Section 2(b)(6)(D) authorizes the Advisory Committee to accept, use, and dispose of donations of services or property, which is problematic as it does not indicate under what conditions they may accept, use or dispose of those donations or what type of an account would be created. Section 2(b)(8) requires termination of the Advisory Committee two years after the date of enactment of the Act. Given that it would take up to 180 days to appoint members to the committee, and it would take additional time to ensure sufficient administrative support two years would not be sufficient time to adequately fulfill the duties the Advisory Committee is tasked with in the bill. Potential conflicts of interest may also exist for the Committee Members if donations, services or property come from organizations or individuals that would financially benefit from the Committee's advice or recommendations (see, e.g., 5 C.F.R. §§ 2635.202, 2635.502).

Additionally, VA would like to point out that it does not have access to all military records for all former members of the Armed Forces. Many records exist in non-digital formats and are only digitized on an as-needed basis to support VA's claims processing operations. Acquiring, digitizing, and maintaining a secure and up-to-date online interface would require significant investments and resources. VA also recommends shifting the requirement in the draft bill for creating the portal to the National Archives and Records Administration, as it is the official custodian of military records.

VA's Office of Information and Technology (OI&T) also cites concerns regarding privacy, interagency issues, access to records, and logistical issues. OI&T notes that an introduction of an "advisory committee on access to military personnel records" outside of existing Joint Executive Governance would likely disrupt and delay current Joint efforts to improve Member/Veteran access to their electronic service records.

The Advisory Committee is being established as a VA federal advisory committee. Accordingly, VA does not support establishment of the Advisory Committee without amendments. The comments offered reflect general administrative realities regarding constituting a federal advisory committee as well as challenges with establishing such a committee as the bill is currently written. VA understands that OPM has identified certain technical issues in the bill related to the Federal employee status of Advisory Committee members and staff, and we recommend that Congress consult with OPM regarding those matters.

S. 3452 Fred Hamilton Veterans' Lost Records Act

This bill would authorize the Secretary of Veterans Affairs (Secretary) to determine the eligibility or entitlement of a member or former member of the Armed Forces to a benefit under a law administered by the Secretary solely based on alternative sources of evidence when the military service records or medical treatment records of the member or former member are incomplete because of damage or loss of records after being in the possession of the Federal Government, and for other purposes.

Section 2(b) would specify that the Secretary, in consultation with the Secretary of Defense and the Archivist of the United States, shall promulgate regulations regarding the use by the Secretary of alternative sources of evidence within one year of enactment.

Section 2(c) would provide that in cases in which the military service records or medical treatment records of the member or former member are incomplete because of damage or loss of records after being in the possession of the Federal Government, paragraph (2) of section 5110(a) of title 38, United States Code, shall apply except for any limitation based on the date of a request, supplemental claim, or notice described in such paragraph.

Section 2(d) would define the term “alternate sources of evidence” as, in the case of a former member of the Armed Forces: a medical disability examination occurring soonest after the former member’s date of discharge or release from service in the active military, naval, air, or space service; in the case of a claim regarding a disability incurred or aggravated during service in the active military, naval, air, or space service: the assertion of a former member of the Armed Forces regarding the circumstances surrounding its incurrence or aggravation; a credible buddy statement; or such other sources of evidence or processes as the Secretary deems appropriate for purposes of determining eligibility or entitlement under subsection (a).

VA cites concerns with this bill. First, VA notes that the terminology “in a case in which the military service records or medical treatment records of the member or former member are incomplete because of damage or loss of records after being in the possession of the Federal Government” may be overly broad. It appears the intent of the bill is to cover circumstances such as records that are incomplete due to damage from the July 12, 1973, fire at the National Personnel Records Center (NPRC) in St. Louis, which destroyed many military records (i.e., fire-related cases), or cases where records may have been transferred from the DoD to VA and lost. However, as the bill is written, any Veteran could claim that their military records are incomplete due to damage or loss of records after being in the possession of the Federal Government, and VA would have little recourse to refute such allegations. VA recommends adding specificity to clarify Congress’ intent.

When complete records are not available for review, VA will apply the reasonable doubt rule, which means that the evidence provided by the claimant (or obtained on the claimant's behalf) must only persuade the decision maker that each factual matter is at least as likely as not. It is the defined and consistently applied policy of VA to administer the law under a broad interpretation, consistent with the facts shown in every case. When, after careful consideration of all evidence, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant when deciding the claim. This is a statutory requirement that VA has recognized in regulation. See 38 U.S.C. § 5107; 38 C.F.R § 3.102.

As such, the Secretary already has necessary authority to resolve reasonable doubt in favor of claimants whose records have been lost or destroyed while in the care and custody of the Federal Government. Importantly, 38 U.S.C. § 5107(b) specifies that resolution is based on consideration of "all information and lay and medical evidence of record in a case before the Secretary."

VA also notes that, irrespective of whether complete military service records or medical treatment records are available for consideration, it is required to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate a claim. This assistance includes obtaining any and all relevant Federal records, private records adequately identified by the claimant, and a medical examinations or opinions necessary to decide the claim. See 38 U.S.C. § 5103A; 38 C.F.R. § 3.159(b).

VA makes as many requests as necessary to obtain relevant records from a Federal department or agency. These records include military personnel records, service medical records, treatment records from VA medical facilities, records from non-VA facilities providing examination or treatment at VA expense, and records from other Federal Agencies. This effort does not end until VA obtains the records from the Federal department or once VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile.

VA recognizes there may be certain situations in which records may be incomplete due to loss, damage, complete destruction, or misplacement including fire-related cases. In those cases, VA has significant discretion to accept alternative sources of evidence. VA has established extensive procedures to assist Veterans with fire-related records. For example, if the record is located but damaged, it is given to a preservation team, which meticulously reviews the fire-related file and attempts to stabilize it (page by page) using humidity chambers, vacuums, etc. If a record is not located, auxiliary records are used to confirm enlistment and separation. The NPRC may be able to verify details of a claimant's military service, commonly found in the personnel records, even if the personnel records were destroyed in the fire. Additionally, in *Cuevas v. Principi*, 3 Vet.App. 542 (1992), the Court held that VA has a duty to assist the Veteran in developing facts pertinent to the claim, and this duty is heightened where service medical records are presumed destroyed and includes the obligation to search for alternate records.

VA also does not rely exclusively on Federal military personnel or service treatment records (STRs) when deciding a Veteran's claim. The various types of evidence VA may use to supplement or substitute for STRs include, but are not limited to, statements from service medical personnel, certified "buddy" statements or affidavits, accident and police reports, employment-related examination reports, medical evidence from civilian or private hospitals, clinics, and physicians that treated the Veteran during service or shortly after separation, letters written during service, photographs taken during service, pharmacy prescription records, or insurance-related examination reports. VA also accepts photocopies of STRs provided by claimants if, upon review, the copies are confirmed to be genuine and free from alteration.

VA supports the consideration of alternative sources of evidence to determine eligibility and entitlement to benefits in cases where the service records or medical treatment records are incomplete, as this is consistent with current practice. However, VA is concerned that section 2(a) allows VA to determine eligibility or entitlement for benefits *solely* based on such evidence. That direction would allow consideration of alternative evidence alone, contradicting other statutory requirements for VA to consider all evidence of record. Consideration of alternative evidence alone could prove detrimental to a claimant who, for example, submitted a buddy statement in support of a claim that may not seem credible in isolation, but which could be assessed as credible by reference to whatever service records are available for consideration. It could also result in a claimant's statements being taken as dispositive in cases where military records are incomplete even if the partial military records and other relevant historical documents wholly contradict such statements.

If enacted, VA requests more specific guidance regarding acceptable forms of alternative evidence for a disability incurred or aggravated during service in the active military, naval, air, or space service. VA recommends adjusting "credible buddy statements" to "certified buddy statements or affidavits." Requiring a certified statement ensures the authenticity or truthfulness of statements provided in support of a claim for service-connection and would align with the current regulatory requirement within 38 C.F.R. § 3.200(b) to consider written testimony submitted on behalf of the claimant for the purposes of establishing a claim for service connection. Additionally, VA recommends including additional forms of acceptable medical evidence such as statements from service medical personnel and medical evidence from private hospitals, clinics or physicians that treated the Veteran during service or shortly after separation. These examples are currently considered alternative forms of evidence VA may use to supplement or substitute when a Veteran's personnel or service treatment records are unavailable when deciding a Veteran's claim.

To determine if a disease or injury occurred during service, VA reviews all evidence of record, including personnel records, service treatment records, and other available evidence. For Veterans who engaged in combat, VA will accept the Veteran's lay statement or other evidence of service incurrence or aggravation of an injury or disease, if that evidence is consistent with the circumstances, conditions, or hardships of such service, even if there is no official record of such incurrence or aggravation in

such service. 38 U.S.C. § 1154(b). For non-combat Veterans, VA would not generally accept a Veteran's lay statement alone as proof of incurrence or aggravation without some additional corroborating evidence. This bill would effectively apply the lowered evidentiary burden for combat Veterans to any Veteran whose records are incomplete due to damage or loss after being in the possession of the Federal government. Moreover, it would lower the bar even further as the bill does not include a requirement that the lay or other alternative evidence be consistent with the circumstances and conditions of the Veteran's service. VA is concerned that this may result in granting of benefits based only on a Veteran's wholly uncorroborated statement.

VA notes that if the word "solely" were removed from section 2(a), the provisions requiring consideration of alternative sources of evidence generally reflect current practice. VA recommends removal of the word "solely." The Committee might also consider limitation of eligibility and entitlement to benefits "solely" based on alternative sources of evidence to situations where the Veteran's military service or medical treatment records are completely unavailable because of damage or loss after being in the possession of the Federal Government. In such cases where the records were totally destroyed or lost, there would be a reduced likelihood of the availability of other evidence to corroborate a Veteran's lay statement.

VA is also concerned that section 2(c) is confusing and could effectively deprive the Secretary of any consistent means of assigning effective dates for entitlement to benefits in cases where service records have been lost or destroyed. If the intent of the Act is to mandate that in cases where service records have been lost or destroyed, but other evidence establishes entitlement to a benefit, the effective date of that entitlement will be the date of the initial claim, it should simply so state. If that is not the intent of the Act, the Secretary is unable to discern what that intent may be.

Further, VA requests additional time to promulgate regulations regarding the use of alternative sources of evidence. VA notes that the process to propose, and subsequently publish regulations, requires extensive concurrence and, in some situations, may take upwards of two years to complete. Additionally, VA believes it would be technically impossible for multiple Federal agencies to complete a joint rulemaking within one year of enactment, especially when considering that what alternative sources of evidence would be appropriate to use may differ across VA benefits programs. VA notes that during the time period in which VA is pursuing a new or amended regulation, statutory authority is still in effect and will be applied in lieu of regulatory guidance during the adjudication process.

Finally, VA suggests that the bill exclude VA life insurance programs. First, although the Secretary administers VA Life Insurance programs, VA does not make the eligibility and benefit decisions for SGLI, Family SGLI, SGLI Disability Extension, VGLI, and SGLI Traumatic Injury Protection (TSGLI).

Second, under current law, the uniformed services determine who is a covered member under SGLI, Family SGLI, and SGLI Disability Extension. The SGLI Program's

primary insurer, Prudential Insurance Company of America, determines who is eligible for VGLI and who receives payment of benefits upon death of an insured member for all of the aforementioned programs. For TSGLI, the uniformed services determine both who is a covered member and if they are eligible for a TSGLI benefit payment.

Third, this bill would create ambiguity on who can make these decisions when records are lost or damaged and undermine the purposeful intent of Congress to ensure that the entities making the decisions have financial liability for the risk of their decisions.

Given these concerns, all VA Insurance programs under 38 U.S.C. chapter 19 should be excluded from the legislation.

Mandatory and discretionary costing have not been considered as VA cites concerns with the proposed bill.

S. 3567 Veterans Affairs Centennial and Heritage Act of 2024

This bill would codify the recent establishment of the VA History Office within the Department. Headed by the Chief Historian, the office would be supported by professional and administrative staff as the Secretary deems necessary to carry out its purposes. The bill would also provide additional gift acceptance authorities, enhanced funding mechanisms, and additional lease authorities for the Secretary, and it would establish an internal coordination group comprised solely of VA employees, which would provide a logical governance protocol for what would likely be a VA-wide initiative (the centennial) and for management and resourcing decisions related to an enterprise asset (the VA History Office (VAHO) and National VA History Center (NVAHC)). Not later than 180 days following enactment, the Secretary would be required to submit a report to the Senate and House Committees on Veterans' Affairs detailing the operations of VAHO and the activities that would mark the centennial. The Chief Historian would also be required to submit yearly reports to the Senate and House Committees on Veterans' Affairs through December 31, 2030, detailing VAHO progress.

VA supports this bill, subject to the availability of appropriations. VA supports this bill as development of VAHO and NVAHC are ongoing projects of importance to the Department. The upcoming centennial celebration will draw positive attention to the Department through outreach, events, and permanent exhibits emphasizing the Department's role in assisting our Veterans throughout our Nation's history.

Since publication of VA Directive 7777, Implementation of the VA History Program, VA has undertaken the establishment of VAHO and has begun work on building a history of the Department to ensure that the Department, and the Veterans that we serve, are recognized and celebrated. The Department welcomes the opportunity to engage with Congress to continue to ensure that both the centennial celebrations in 2030 and the ongoing activities of VAHO and NVAHC continue to

celebrate the important role of Veterans to this country and the support that the Department has provided to those Veterans.

By statutorily establishing VAHO, which encompasses the National VA History Center, Congress would be recognizing the historical accomplishments of the Department. Authorizing the Department to "collect, preserve, and provide access to relevant historical records, artifacts, and cultural resources of the Department [will] tell a comprehensive story of the Department and its predecessor organizations to Veterans, Government agencies, and the public." The bill would also allow VA to engage in public outreach, advertising, and publication, and to participate in and host centennial events and public activities. VA Directive 7777 establishes VAHO, and this bill would provide statutory authorities that would allow it to fully execute its stated mission.

S. 3567 would provide the Secretary the authority to enter into partnerships and cooperative agreements; additional gift acceptance authority; and enhanced lease authorities in support of the bill's purposes. This language of the bill would provide a clear path for VA to accept funds donated by the 501(c)(3) NVAHC Foundation for the NVAHC project and any donation that may be provided directly to VA for the purposes and activities of VAHO, which is not an uncommon process for Federal agency history or heritage center projects like the NVAHC. VA requests clarification as to what type of Treasury fund is to be established. Knowing whether it would be a revolving fund, whether funds will remain available until expended for these purposes, and whether the established Treasury fund is anticipated to be the sole source of VA funding for the VAHO/NVAHC project will allow the History Office and the Department to fully exercise these authorities.

S. 3567 would also provide additional construction and land acquisition authorities for construction, renovation, repair, operation, and maintenance of facilities used for the preservation, restoration, and public access to Department historic materials, archives, and artifacts. These authorities are needed to execute the 2017 Memorandum of Agreement between VA and Dayton stakeholders regarding the development of plans, partnerships, and a pathway for development of the NVAHC. This language would allow VA to commit resources to VAHO and the NVAHC project without concern for violating existing regulations or statutes and would provide agreement on proceeding with certain planning and developmental tasks.

The mandatory reporting requirements, while creating an additional administrative burden, would provide a consistent, scheduled reporting process on VAHO and the NVAHC progress, and we look forward to working with Congress to achieve the objectives of the VA History Office.

Costs associated with S. 3567 represent funds actually spent from FY 2020 to FY 2023 ($3.6 million) as well as estimates for FY 2024 to FY 2030 based on the baseline functions and tasks outlined in the bill and the duties already specified in VA Directive 7777. Future costs are estimated to be $3.0 million for FY 2024, $32.2 million over 5 years, and $47.9 million through FY 2030. Note that these cost estimates do not

include some key components such as construction of the museum building, final renovation cost of associated historical buildings, or additional centennial-specific costs, which we will not be able to accurately estimate without additional time, research, and information.

S. 3636 Hire Veterans Act

This bill would direct the Office of Personnel Management (OPM) Director to establish a pilot program to identify and refer veterans for potential employment.

VA defers to OPM. VA will collaborate with OPM and other Federal agencies to assist in implementing sections (b) and (c) of the bill. VA defers to OPM, the Secretary of Interior, the Secretary of Agriculture, and the Federal land management agencies to which the Veterans would be appointed to determine how to test, train and appoint applicants to vacant positions as described in sections (d) and (e).

S. 3728 Veterans Housing Stability Act of 2024

This bill would authorize the Secretary to impose foreclosure and eviction moratoria and periods of forbearance, establish temporary and permanent partial claim programs, and enhance VA's oversight authorities. The oversight enhancements would allow VA to prescribe a loss mitigation waterfall and to assess civil penalties for loan servicers' false statements to VA.

VA does not support the bill, unless amended. Although VA supports having more tools for helping Veterans avoid foreclosure and for holding loan servicers accountable, such as the additional authorities provided in subsections (a), (c), and (d) of section 2, VA cannot support the bill unless section 2(b) is removed from the bill. VA has serious concerns that section (2)(b)'s new partial claim programs, one permanent and one temporary, could compromise Veterans' long-term financial standing and make it more challenging for Veterans to sell or retain their homes. VA also urges minor technical amendments to subsections (a) and (d) of section 2.

Section 2(a) of the bill would amend 38 U.S.C. § 3720 by adding a new subsection (i). Proposed subsection (i)(1) would provide the Secretary with express discretion to exercise emergency powers relating to VA's housing loan program in response to Presidentially declared national emergencies and major disasters. The Secretary would also have the discretion to respond to a significant and widespread crisis, as determined by the Secretary. These emergency powers would include the authority to impose foreclosure and eviction moratoria for loans guaranteed, insured, made, or held by VA, as well as to impose a period of forbearance, meaning loan payments could be paused.

Proposed subsection (i)(2) would provide limitations on these emergency powers. Under paragraph (2)(A), no moratorium or forbearance could last for more than

180 days unless the Secretary extends the periods in accordance with certain conditions. Paragraph (2)(B) would allow for extensions if the Secretary, not fewer than 30 days before the extension, notifies Congress of the extension and publishes notice in the Federal Register. VA notes a potential operational challenge associated with this publication requirement. Because any moratorium or period of forbearance would be limited to 180 days, and the publication would need to undergo a review process, VA would likely need to decide on an extension very soon after making the initial publication. This practical necessity could work against the intended outcome because VA would not be able to assess the prudence of an extension based on events as they unfold. Accordingly, VA recommends replacing a requirement to publish in the Federal Register with a requirement to publish the notice on VA's website. Even if VA were required to publish notice of the extension in the Federal Register after announcing it via the website, the authority to use the website to effect any extensions would not only improve the real-time response to the market, but also make the assistance more accessible to Veterans hoping to find help.

Additionally, from a technical perspective, VA recommends the correction to a cross-reference. The text of proposed subsection (i)(2)(A) would refer to extension criteria "as provided in subparagraph (A)." Because subparagraph (B) would set the criteria, a technical edit replacing "as provided in subparagraph (A)" with "as provided in subparagraph (B)" would be necessary.

Section 2(b) of the bill would add a new 38 U.S.C. § 3723, which would provide the Secretary with express discretion to create a permanent "Partial Claim Program" to assist Veterans who are in default or facing imminent default on their VA-guaranteed loans. Despite the "partial claim" label, the program would not provide for an advance on VA's guaranty. Instead, the Secretary would purchase a portion of the Veteran's indebtedness under the VA-guaranteed loan in an amount that is necessary to help prevent or resolve the default. Under proposed section 3723(b), the borrower would agree to repay the Secretary via a noninterest bearing loan, which would be secured as a subordinate lien against the home.

Under proposed section 3723(c), the amount of VA's partial claim would be limited to 30 percent of the unpaid principal balance of the VA-guaranteed loan as of the date the of the "initial" partial claim. From a technical angle, VA notes that the term "initial" in this context raises several questions of interpretation. For example, it is unclear if the term implies that the intent is for Veterans to receive multiple partial claims under proposed section 3723 or if the operative date is when a servicer would initiate the partial claim process. As another example, the text could refer to the date a Veteran received a COVID-19 Veterans Assistance Partial Claim (COVID-VAPCP).

Proposed section 3723(c) would also require the loan holder to apply the partial claim payment first to arrearages on the guaranteed loan, if any, which could include additional costs (such as taxes, insurance premiums, and homeowner's association dues) that the Secretary determines are necessary to resolve a default. Additionally, no expenses related to a partial claim could be charged to the borrower.

Proposed section 3723(d) would establish express requirements for holders of guaranteed loans with partial claims. First, the Secretary would have discretion to require such holders to service the partial claims as an agent of the Secretary. Second, the Secretary would have discretion to require the holder to take any action necessary to establish the partial claim, including preparing, executing, transmitting, receiving, and recording loan documents. If the Secretary mandated such services, the Secretary would need to compensate the holder appropriately, as determined by the Secretary. Finally, proposed subsection (d) would allow the Secretary to exercise the powers granted under the subsection without regard to any contracting laws that are not enacted expressly in limitation of proposed section 3723.

Proposed section 3723(e) would create personal debt liability on Veterans who default on a partial claim made under the section. A loss incurred by the Secretary would be recoverable in the same manner as any other debt due the United States. Notably, this provision would not expressly authorize VA to charge administrative costs, fees, and interest, nor would it cross-reference 38 U.S.C. § 5313, which may be important for VA's recovery of losses.

Also under proposed section 3723(e), the Secretary would have discretion to reduce a Veteran's available loan guaranty entitlement commensurate with a loss incurred by the Secretary. Additionally, proposed subsection (e) would allow partial claim liens to be foreclosed under procedures set by the subject state or local laws, e.g., nonjudicial foreclosure, notwithstanding 28 U.S.C. § 2410(c). Section 2410(c) specifies that judicial foreclosure of federally held liens is required in certain cases.

Under proposed section 3723(f), all partial claims would be made in the Secretary's sole discretion and the Secretary could establish partial claim terms and conditions that would be consistent with the legislation. The Secretary's decisions would be final, conclusive, and not subject to judicial review. The decisions would also not be considered as decisions affecting the provision of benefits, meaning the Board of Veterans' Appeals would not have jurisdiction to review the Secretary's decisions.

Proposed section 3723(g) would provide a means for the Secretary to streamline payment of partial claims. The Secretary would be authorized to establish standards allowing for payment based on a holder's certification that the holder complied with all applicable standards. This would allow VA to avoid the administrative burden and cost of reviewing every discrete aspect of a partial claim request before payment could be made. Instead, the Secretary would, as also required, carry out post-payment audits on a random-sampling basis to ensure program integrity.

Proposed section 3723(h) would provide express authority for the Secretary to issue administrative guidance to make certain partial claims available before prescribing regulations. The guidance would need to include a prohibition on Veterans being charged partial claim fees. Partial claims under proposed subsection (h) would be to remedy defaults in effect as of the date of the enactment of the bill. Additionally, the

Secretary would be unable to accept a request for a partial claim under such subsection after December 31, 2025.

VA cannot support section 2(b). VA is concerned that a new partial claim program is not the best long-term solution for Veterans. While a partial claim would provide a quick injection of liquidity for servicers that would otherwise foreclose, it would postpone – rather than help the Veteran eliminate – the financial struggle associated with repaying arrearages. Furthermore, a partial claim would result in a junior lien against the Veteran's home, which could make it more difficult to refinance, sell the home, or avoid foreclosure upon a redefault.

Housing finance research suggests that borrower liquidity is a key determinant of loan performance. But increased liquidity would not be a feature of a partial claim. Rather, the Veteran would remain responsible for the same monthly payment as before, which led to a default in the first place. This is one reason why other solutions, like temporary payment reductions, are often promoted to minimize redefault odds. Higher reductions correspond to increased household liquidity, and in turn, lead to higher home retention rates.

Beyond unaffordable monthly housing loan payments, other factors that can compromise household liquidity include increased property taxes and hazard insurance costs, higher maintenance and utility costs, and higher monthly payments on revolving debts like credit cards, all of which have increased substantially in recent years. Household debt levels have been growing rapidly and are currently at all-time record high levels. See Household Debt and Credit Report, Federal Reserve Bank of New York, Quarter 4 of 2023, available at https://www.newyorkfed.org/microeconomics/hhdc (last accessed April 4, 2024). This stands in contrast to the economic environment at the time VA instituted the temporary COVID-VAPCP program, when interest rates were at or near record lows.

While the bill would not expressly mandate a deferred payment schedule for the partial claim loan, VA believes that Veterans, servicers, and other stakeholders would expect it. Otherwise, the Veteran would be paying two monthly payments, instead of just the one on the guaranteed loan, and would be at high risk of redefault. Also, other Federal partial claim programs do not require ongoing repayment. The amount advanced for the partial claim is not due in those programs until the borrower satisfies the primary loan or sells the property. This was also a feature of the COVID-VAPCP. The result would be that Veterans would ultimately face a large, looming balloon payment when the loan is paid off, whether through a refinance or when the Veteran sells the property. This debt may restrict Veterans' future ability to refinance, diminish profits from the sale of their homes, or limit their ability or willingness to successfully repay the partial claim once the guaranteed loan is paid in full. Such a result would pose additional financial risk to VA's home loan program in the event of redefault or foreclosure.

Another factor weighing against a partial claim is the risk it levels on the taxpayer, at least when compared to other options like VA's upcoming Veterans Affairs Servicing Purchase (VASP) program. A partial claim would result in VA standing in a junior lien position, which puts VA at risk of additional losses in the event of redefault (i.e., guaranty claim and partial claim), especially in the approximately 20 states (plus the District of Columbia) with homeowner association (HOA) super lien protections.

We note that VA's VASP program will eliminate most, if not all, of the problems partial claim would present. First, unlike a partial claim, VASP will allow VA to create not just a lower monthly payment for Veterans but also, through interest rate reductions that are unavailable in the private market, a reduction in the amount Veterans will pay over the life of their loans, without a large balloon payment requirement. This means concerns about diminished resale profits for Veterans and limited refinance options will be less pronounced. Second, the reduced interest rates in VASP will help Veterans solve liquidity problems while simultaneously paying down the debt. Third, under VASP, Veterans will be able to easily ascertain and understand their total housing loan debt, as "silent" or "soft" subordinate liens are not features of the program. Lastly, because subordinate liens are not features of VASP, VA will, with VASP step into the shoes of the superior lienholder, providing VA a more protected and stronger performing asset, thereby protecting the interests of both the Government and taxpayers.

Section 2(c) of the bill would create a new 38 U.S.C. § 3724 to establish civil penalties against holders that knowingly and materially make false statements under proposed section 3723 or section 3732. The penalty would be equal to the greater of (1) two times the amount of the Secretary's loss or (2) another appropriate amount, not to exceed $27,894, as adjusted. In assessing a civil penalty, the Secretary could charge administrative costs, fees, and interest.

Section 2(d) of the bill would amend 38 U.S.C. § 3732, most notably to provide express authority for the Secretary to prescribe a mandatory sequence of options (commonly referred to as a loss mitigation waterfall) that loan holders would follow to assist Veterans avoid foreclosure. Section 2(d) of the bill would also allow the Secretary to require loan holders to take any actions necessary to facilitate the Secretary's purchase of indebtedness under section 3732, updating outmoded terminology, and making other changes that would optimize VA's authority to help save Veterans from foreclosure. Like in proposed section 3723(g), the Secretary could streamline payments to holders that make front-end certifications, and the Secretary would identify noncompliance, if any, through post-audit reviews, on a random sampling basis.

VA notes current section 3732 includes inconsistent terminology, alternating among the term's obligation, loan, and housing loan. Section 2(d) of the bill would eliminate obligation but alternate between loan and housing loan. VA recommends choosing either the term loan or housing loan and conforming the remainder of the section for consistency.

Although VA is not ready to provide exact numbers at this time, VA estimates section 2(b) of this bill will result in significant mandatory subsidy costs over a ten-year

period. VA also estimates that there will be general operating expense (GOE) costs associated with section 2(b) of this bill as additional personnel resources will be needed to implement any partial claim program.

Finally, we understand that the Department of Justice may have additional views on this legislation.

S. 3746 "Gold Star and Surviving Spouse Career Services Act"

This bill would amend 38 U.S.C. § 4103A to make certain spouses eligible for services under the disabled veterans' outreach program, and for other purposes.

VA defers to the Department of Labor.

S. 3873 Guard and Reserve GI Bill Parity Act of 2024

This bill would amend 38 U.S.C. § 3301(1)(B) to expand eligibility criteria for Post-9/11 Educational Assistance to include reserve component members who are on active-duty service, as defined in 10 U.S.C. § 101(d); inactive-duty training, as defined in 10 U.S.C. § 101(d); or annual training duty. This bill would also expand the eligibility criteria to include those who serve on "full-time National Guard duty" and National Guard members who serve on "active duty," as those terms are defined in 32 U.S.C. § 101.

This bill would be effective one year after the date of enactment. The amendments would apply to service performed on or after September 11, 2001. Finally, the time limitation under 38 U.S.C. § 3321(a) would apply to entitlement acquired as a result of the amendments in this bill as if the amendments had been enacted immediately after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252.

VA does not support this bill. The Post 9/11 GI Bill education benefit was created to reward active-duty service, particularly for those who served overseas in support of operations in Afghanistan and Iraq after September 11, 2001. This benefit was not intended to include time spent training to prepare members to implement their missions should their military service be required, which this bill would encompass. The Post 9/11 GI Bill benefit is currently available to all members of the armed forces, regardless if they are active duty or a member of a Reserve Component, who serve on full-time duty (other than for training) for 90 aggregate days of service or more, as well as for National Guard members who serve full time under Title 32 United States Code (U.S.C.) organizing, administering, recruiting, instructing and training the National Guard, and National Guard members who are activated under 32 U.S.C. 502(f) to support an operation requested by the President or Secretary of Defense.

Although VA did not have time to estimate the mandatory costs associated with this bill, the implementation will likely be very expensive, as this would significantly expand eligibility for Post 9/11 GI Bill benefits for any military service, including almost all training, and be retroactive to the initiation of the Post-9/11 benefit, September 12, 2001. VA did not estimate discretionary costs given the Administration does not support this provision.

S. XXXX Veterans' Transition to Trucking Act of 2024

This bill would amend 38 U.S.C. § 3672(c)(1) to authorize VA to act in the role of a state approving agency for approval of a multi-state apprenticeship program. Specifically, the bill would allow VA to approve apprenticeship programs operated by interstate commerce carriers. The term "multi-State apprenticeship program" is defined as a non-Federal apprenticeship program operating in more than one state that meets the minimum national program standards, as developed by DOL.

VA supports this bill. This is consistent with VA's authority to approve DOL-registered apprenticeship programs directly engaged in interstate commerce prior to the enactment of the Veterans Apprenticeship and Labor Opportunity Reform Act on November 21, 2017. Additionally, this bill is consistent with VA's published FY 2024 legislative proposal that would authorize VA to approve apprenticeship programs operated by interstate commerce carriers.

There are no mandatory or discretionary costs associated with this bill.

S. XXXX Veterans' Compensation Cost-of-Living Adjustment Act of 2024

This bill would increase, effective as of December 1, 2024, the rates of compensation for Veterans with service-connected disabilities and the rates of DIC for the Survivors of certain disabled Veterans, and for other purposes.

Section 2(a) of the bill would increase payments of disability compensation and DIC effective December 1, 2024, under the provisions specified in section 2(b). Section 2(b) provides the amounts increased under the Act to include: Wartime disability compensation, additional compensation for dependents, clothing allowance, and DIC payable to a surviving spouse or child. Section 2(c) would provide that payment rates specified in section 2(b) shall be increased by the same percentage as the percentage of Social Security benefit amounts under section 215(i) of the Social Security Act (42 U.S.C. § 415(i)). Section 2(d) would provide a special rule that VA may administratively adjust the rates of disability compensation payable to individuals under section 10 of Public Law 85-857 who have not received compensation benefits under 38 U.S.C. Chapter 11.

Section 3 of the bill would require VA to publish the increased amounts under section 2(b) in the Federal Register no later than the date of publication required by 42 U.S.C. § 415(i)(2)(D).

VA supports this bill, subject to the availability of appropriations. VA supports the annual increase of DIC benefits by the same percentage as the amounts payable under title II of the Social Security Act. The increase of wartime disability compensation, additional compensation for dependents, clothing allowance, and DIC benefits payable to a surviving spouse or child require an annual procedure by Congress to enact law. The proposed bill would ensure that Veterans and Survivors receive a cost-of-living adjustment (COLA) to keep pace with the costs of inflation.

VA also supports the publication of annual COLA increases in the Federal Register within the specified timeframe. VA routinely publishes Federal Register Notices of increased DIC benefits following the enactment of law by Congress specifying the percentage by which payments will be increased.

VA estimates the mandatory cost of this bill to be $0 in 2024, $3.8 billion in 2025, $18.4 billion over 5 years, and $45.8 billion over 10 years. However, the cost of these increases is included in VA's baseline budget, because VA assumes Congress will enact a COLA each year. Therefore, enactment of this bill would not result in additional costs beyond what is included in VA's baseline budget. No additional FTE or administrative cost requirements are associated with this legislation.

S. XXXX Honoring Veterans Legacies and Burial Benefits Enhancements Act

Title I of this bill would establish the "National Cemeteries Foundation" to support educational outreach activities of the Veterans Legacy Program (VLP).

VA supports Title I, if amended, subject to the availability of appropriations. VA established the VLP in 2016 to support VA's mission by commemorating the Nation's Veterans through the discovery and sharing of their stories. VLP enables and encourages participation of students and teachers at every level to discover the rich history found within VA national cemeteries, and to share that information through development of educational tools to increase public awareness and appreciation for Veterans' service and sacrifice. The VLP provides grants to educational institutions and community groups to conduct research and produce educational materials for K-12 schools and the general public.

The language in Title I would require that VA establish, maintain, and oversee a new foundation created for research and education conducted for or within the national cemeteries only. VA appreciates the usefulness of an entity like the foundation indicated to support the work of the VLP. In fact, VA included a legislative proposal in the FY 2024 President's budget that would have made use of the authority that currently exists in title 38 for "nonprofit corporations" that support the research and education in the VHA. In making that proposal, VA intended that the National Cemetery Administration

(NCA) make use of the resources and expertise that VHA developed over the last 20+ years of working with such entities. NCA and the VLP do not have the expertise necessary to establish and oversee a newly developed foundation, including to implement many of the steps indicated in this bill. NCA staff have engaged in discussions with VHA staff regarding expanding the authority in title 38 for research nonprofit organizations. The nonprofit corporations that support VHA research have already fulfilled the establishment requirements contained in the bill, including meeting IRS requirements for nonprofit organizations not subject to taxation under sections 501(c)(3) and 501(a) of the Internal Revenue Code, respectively. VHA's Office of Research and Development has an office overseeing those non-profit corporations.

VA suggests amending VA's current authority set forth in 38 U.S.C. § 7361, which authorizes the establishment a nonprofit corporation at any VA medical center "to provide a flexible funding mechanism for the conduct of approved research and education at the medical center." The addition of language allowing one or more of these nonprofit corporations to also support the VLP would allow VLP and NCA to leverage the resources already established in VHA. VA welcomes discussion with the Committee about its concerns to develop a way forward on this legislation.

Clarification of additional NCA roles and responsibilities is needed to estimate the cost of this section. The title would provide authority for the Foundation to retain fees for the services provided in administering funds for the VLP. It would also allow the Foundation to reimburse the Office of General Counsel for providing legal services to NCA in implementing this section, using funds accepted on behalf of the VLP. However, this section does not provide for reimbursement to NCA for the cost of developing policies and procedures, coordinating with the Foundation, and reporting and other requirements of this section.

Title II of the bill contains two sections. Section 201 would allow VA to provide a single headstone or marker to mark the gravesite of a group of individuals buried in a group interment. Section 202 of the bill would limit the use of a cardboard container for interments in national cemeteries, except in certain limited circumstances.

VA supports Title II of the bill, subject to the availability of appropriations. VA supports section 201 of the bill. The primary mission of NCA is to provide eligible individuals with final resting places in national shrines, including provision of a headstone or marker, by maintaining a system of national cemeteries under 38 U.S.C. § 2400. In addition, VA provides headstones and markers for the graves of individuals listed in 38 U.S.C. § 2306. In some instances, individuals are buried in mass gravesites, such as trench burials that were used during the Civil War or gravesites in which remains (generally cremated remains) are commingled. NCA is also aware of locations that contain multiple individual graves, where it is impossible to determine who is buried in each grave. Often in these situations, the number of individuals in the common gravesite makes provision of individual headstones infeasible—there simply may not be room for dozens or even hundreds of individual headstones. However, VA currently has no clear authority to furnish a group burial headstone or marker for these eligible

decedents. Because VA is not authorized under current section 2306 to furnish a group burial headstone or marker, VA has been unable to fulfill our mission to those who have earned the benefit through service and sacrifice.

Due to the infrequent nature of group marker circumstances, the costs associated with section 201 are insignificant.

VA also supports section 202 of the bill.VA works with Veterans service groups, funeral industry partners, public administrators, and other concerned citizens to ensure the dignified burial of the unclaimed remains of Veterans. This bill would prohibit VA from accepting cardboard containers from these entities containing unclaimed Veteran remains for burial in VA national cemeteries. Despite the availability of reimbursement under VA's casket and urn program for a more substantial and, in VA's view, a more dignified container, funeral homes and other entities responsible for the disposition of human remains have forgone the reimbursement and delivered unclaimed remains in cardboard containers usually intended for shipment of deceased bodies.

VA's casket and urn program reimburses individuals who purchase a casket for interment of unclaimed Veteran remains that meet regulatory specifications in 38 C.F.R. § 38.628(c)(5)(i). To qualify for reimbursement, at a minimum, caskets must be at least 20-gauge metal and have external rails or handles to ensure they can accommodate unclaimed Veteran remains that can be safely handled and protected after interment. Urns must also meet a "durable construction" requirement in section 38.628(c)(5)(ii). Cardboard caskets or urns would not meet these standards. However, VA can only enforce the requirements for reimbursement if the individual seeks reimbursement under the casket and urn program. Unfortunately, many choose to use containers that do not meet the standard and forego the reimbursement. Prohibiting use of cardboard containers, as this bill would, should not adversely affect funeral homes and other entities because they can submit reimbursement claims for more suitable casket and urn purchases.

Section 202 would have no cost for VA.

Title III of the bill includes three provisions, two of which, sections 301 and 303, are, respectively, virtually identical to S. 3126 and S. 2181.

VA supports sections 301 and 303, as discussed elsewhere in this testimony, along with their respective costs, subject to the availability of appropriations.

Section 302 would require that, to be eligible for burial, memorialization, or a burial flag, Service members must have served under conditions other than dishonorable at the time of their death.

VA supports section 302. This provision would bring the eligibility of active-duty Service members in line with that of discharged Veterans. To be eligible for burial and other VA benefits, Veterans must have been discharged under conditions other than

dishonorable, as shown on their discharge paperwork, commonly referred to as a DD214. However, if a Service member dies while on active duty, they are not "discharged" and therefore no DD214 is issued. This lack of documentation means that VA has no authority to deny burial, memorialization, or related benefits even if the Service member died in the commission of an act that might have led to a dishonorable discharge. Section 302 would ensure VA can evaluate the character of service of the Service member at the time of their death by seeking a statement from a general court-martial convening authority, who is an individual in the chain of command with knowledge of the conduct and character of the decedent's service and VA can then, if necessary, deny burial, memorialization, or receipt of a burial flag.

VA notes that a related authority was enacted in 2018, requiring VA to make eligibility determinations for family members of active-duty Service members based in part, on the character of service of the active-duty Service member. Without enactment of section 302, that same character of service cannot be used in determining eligibility for burial of an active-duty Service member. This could result in VA being prevented from burying the spouse or child of the Service member based on that Service member's dishonorable conduct, while being required to bury the active-duty Service member irrespective of that conduct.

No costs or savings are associated with section 302.

Due to the need for clarification of additional NCA roles and responsibilities related to Title I, Section 101 of this proposed bill, VA is unable to estimate the total costs associated with this proposed bill.

S. XXXX To amend title 38, United States Code, to ensure direct access for families to national cemeteries, and for other purposes.

Section 1 of the bill would require VA to ensure that the family members of an individual interred in a VA national cemetery have "direct access" to such cemetery. "Direct access" is defined as access provided to the family on the same day the access is requested by the family and that would not require the family to travel through an area under the control of DoD.

VA has no objection to section 1. While VA has no objection to section 1, we express concerns because the ability to implement this provision requires the approval and cooperation of DoD.

VA administers four national cemeteries that are located on a DoD installation: Fort Richardson National Cemetery, located on Joint Base Elmendorf-Richardson in Alaska; Fort Leavenworth National Cemetery, at Fort Leavenworth in Kansas; Rock Island National Cemetery, at the Rock Island Arsenal in Illinois; and Barrancas National Cemetery, at Naval Air Station Pensacola in Florida. Because of the location of these cemeteries on active DoD installations, VA does not have authority to provide "direct access," as defined and required by this bill. Coordination with DoD would be required

to determine if construction of a roadway, walkway, or gate designated for cemetery ingress and egress located on or adjacent to the DoD installation would be feasible physically and fiscally. This alternate access to the cemeteries would be managed independently of the DoD installations while allowing DoD to maintain their required physical security and access controls. This coordination for the four cemeteries noted above would necessarily involve engagement with installation management command officials from at least three Military Departments (Air Force, Army, and Navy), as well as a determination as to which department would bear the cost of development and maintenance of the alternate access.

NCA is unable to determine the cost of this section. The cost is dependent on the specific national cemeteries impacted by this bill and the coordination necessary with DoD.

Section 2 of the bill would amend 38 U.S.C. § 2408, which governs the program under which VA provides grants to states, Tribal organizations, and, in some circumstances, counties, to assist in the establishment, expansion, improvement, operation, and maintenance of cemeteries for Veterans. VA has established, at 38 C.F.R. § 39.3, a method of prioritization for these grants. Section 2 of the proposed bill would supplant this priority system, to ensure the prioritization of a narrow group of establishment proposals.

VA does not support section 2, unless amended to: (1) ensure the proposed prioritization preference remains within the category of new establishment grant requests; (2) more clearly identify the target group of states; and (3) ensure the funding included in the proposal is available for this purpose.

First, as written, VA would have to prioritize new establishment grants for particular states over any other grant requests, including grant requests to expand a veterans' cemetery nearing depletion of burial options. This would supplant VA's current regulatory priority system and effectively establish two priority categories of establishment grants—one, a "super-priority" above all other grants (including above expansion grants for cemeteries facing disruption in burial services) for those states covered by the bill, and a second for establishment grants for states that are not covered by the bill. Establishment grants for states not covered by the bill would remain in the current priority category below expansion grants for cemeteries facing disruption in burial services.

VA believes that expansion grant requests for cemeteries facing a disruption in burial services should remain the highest priority over any new establishment grant requests to prevent interruption of burial access for veterans in communities that already have an expectation of burial access in existing veterans' cemeteries. To ensure VA can continue to place such expansion grants above the narrow group of establishment grants that are the focus of this bill, VA would suggest revising the language of the bill. The bill's current language regarding the targeted states lacks clarity. The bill would require VA to "prioritize grants for establishing veterans'

cemeteries in States that do not have such a cemetery." The phrase "such a cemetery" in this provision is ambiguous and, on its face, could refer to states that do not have any veterans' cemeteries (i.e., no veterans' cemeteries owned by the Federal Government, the state, a county, or a Tribal authority); however, it could also refer to states that do not have any VA-grant funded veterans' cemeteries.

If the bill was intended to create a "subcategory" of states like Alaska that have received no grant funds from VA under section 2408, such a subcategory would also include Michigan, Oregon, and Florida, the District of Columbia, the U.S. Virgin Islands, and American Samoa. We note that a grant to a Tribal organization operating a cemetery within the geographic boundaries of a state is not considered a grant to that state. VA welcomes the opportunity to work with the Committee or the sponsor to determine precise edits to the bill that would create the desired subcategory within the establishment grant priority group. If a subcategory of states that have not received grant funds is created, states that have previously received grant funding could still apply for establishment grants. But these applications would be treated as a separate subcategory, prioritized below applications from states that have not received grant funding previously. VA believes that grant applications within each of these subcategories still must be prioritized based on the number of unserved veterans who would be served by the proposed grant-funded cemetery.

Finally, VA notes that the bill's proposed $50 million appropriation would need to be an appropriation separate and above the amount requested in the FY 2025 President's Budget for the grants program to ensure the intent of the bill can be accomplished while retaining VA's ability to provide grants necessary to avoid disruptions in service at previously established cemeteries.

VA is unable to determine the total cost of this proposed bill because the cost associated with Section 1 is dependent on the specific national cemeteries impacted by this bill and the coordination necessary with DoD.

S. XXXX To amend title 38, United States Code, to make permanent and codify the pilot program for use of contract physicians for disability examinations, and for other purposes.

This bill would add 38 U.S.C. § 5103B, *Use of contract physicians for disability examinations*, to make permanent and codify the pilot program for use of contract physicians for disability examinations, and for other purposes. New 38 U.S.C. § 5103B(d) would require VA to establish a mechanism whereby a health care professional providing an examination can transmit to VA medical evidence introduced by the application during the examination that the health care professional considers new and material to the application.

VA supports, if amended, and subject to the availability of appropriations. VA notes that the use of the phrase "new and material" in the proposed new subsection

(d) is outmoded. Current statutes and regulations refer to “new and relevant” evidence. See 38 U.S.C. § 5108; 38 C.F.R. § 3.2501.

VA notes that health care professionals providing examinations to aid a determination of claims for VA benefits are not arbiters of what constitutes evidence that is new, relevant, or material to those claims. Those health care professionals may not be familiar with the sum-total of the evidence of record related to a claim and, therefore, may not be able to determine whether the evidence in question is “new.” In addition, determining relevance (or materiality) of evidence is a legal matter best addressed by trained claims adjudicators.

VA also notes that the language of the proposed subsection (d) should refer simply to additional evidence, rather than specifying “medical” evidence. Claimants who attempt to provide information or evidence to a health care professional conducting an examination on behalf of VA may have a reasonable expectation that the information will be considered in conjunction with their claim. That expectation should not be limited by specifying that only medical evidence submitted in conjunction with the examination will be submitted to the Secretary. VA recommends that the language of proposed subsection (d) should reference any additional evidence and be rewritten for clarity, as shown below.

Finally, regarding the title in 38 U.S.C. § 5103B, *Use of contract physicians for disability examinations*, VA recommends replacing “physicians” with “health care providers” as VA utilizes a wide range of qualified medical professionals to conduct disability examinations.

Mandatory costs associated with this draft bill are estimated to be $0 in 2024, $19.8 million over 5 years, and $42.3 million over 10 years. No discretionary costs are associated. VBA believes these costs would be incurred by VBA’s GOE account and then reimbursed by the mandatory C&P account, but legal review would be required to confirm this reimbursement authority.

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.