

**STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS**

November 17, 2021

Good afternoon Chairman Tester, Ranking Member Moran, and Members of the Committee. I appreciate the opportunity to appear before you today to discuss pending legislation, including bills pertaining to disability compensation, health care, education, transition assistance, and other benefits. Accompanying me today are Jill DeBord, Executive Director, Care Management & Social Work, Veterans Health Administration (VHA); and Marjorie Bowman, MD, MPA, Chief Academic Affiliations Officer, Office of Academic Affiliations, VHA. VA defers to the Department of Education (ED) with respect to views on S. 1881.

S. 1296 – Daniel J. Harvey Jr. and Adam Lambert Improving Servicemember Transition to Reduce Veteran Suicide Act

S. 1296 would require VA and the Department of Defense (DoD) to carry out jointly a 5-year pilot program to assess the feasibility and advisability of providing a 3-hour module under the Transition Assistance Program (TAP) for each member of the Armed Forces as a means of reducing the incidence of suicide among Veterans. The module would have to include an in-person meeting between the cohort of the member and a social worker who would counsel the cohort on (1) specific potential risks confronting members after discharge or release from the Armed Forces; (2) the potential risks and resources for members of the cohort who have been diagnosed with physical, psychological, or neurological issues; (3) the resources afforded to victims of military sexual trauma through VA; and (4) the five stages of grieving, the manner in which members might experience grieving, and resources available to them for grieving through VA.

The module would also require each cohort member be provided contact information for a counseling or other appropriate VA facility and the submittal by cohort members to VA (including both VHA and VBA) of their medical records in connection with their service in the Armed Forces, whether or not the member intends to file a claim for benefits with respect to any service-connected disability. Under the pilot program, a VA social worker or behavioral health coordinator would contact the member within 90 days of the discharge or release of the member from the Armed Forces to schedule a follow-up appointment to occur within 90 days of such contact. The pilot program would be carried out at not fewer than 10 TAP Centers jointly selected by VA and DoD, and the Centers would be selected, to the extent practicable, to serve, whether individually or in aggregate, all the Armed Forces and both the regular and reserve components of

the Armed Forces. VA and DoD would be required to commence the pilot program within 120 days of the date of the enactment of this legislation. If VA and DoD recommend in a report to Congress that the pilot program be extended, the Departments could continue the pilot program jointly for such period as they consider appropriate. VA would be required to report to Congress, not later than 1 year after the date of the enactment and every 180 days thereafter, on the activities under the pilot program.

We would support this bill, if modified, and subject to the availability of appropriations; we have concerns with the bill as written and would appreciate the opportunity to discuss these with the Committee. VA has a number of existing programs and practices that could be expanded to provide coordinated transitions into VA health care to a larger population of transitioning Service members if this authority were enacted and if resources were provided to support such efforts. Currently, VA has 48 social workers and nurses who work as VA Liaisons for Healthcare to provide direct access and coordinate individualized health care at VA for transitioning Service members; 43 Liaisons are onsite at 21 Military Treatment Facilities (MTF), and 5 virtual VA Liaisons support all other MTFs. VA and DoD are collaborating on several improvements to transition programs, including development of an Enterprise Individual Standard Assessment tool that provides a baseline well-being assessment of an individual's suicide risk, and their susceptibility to social pitfalls such as mental and physical health and societal relationships, during transition. This well-being assessment tool allows for targeted interventions to resolve those issues, and features a warm handoff to VA services for those members unable to resolve the risk issues prior to transition and subject to their eligibility for such services.

We have some concerns regarding placement of the 3-hour module within the TAP program, as this could affect delivery timelines of other mandated requirements and instruction. We also would like to discuss the potential privacy issues that could arise under this pilot program.

As noted, we have several technical comments on the bill that we would be pleased to share with the Committee. In general, we believe the legislation could distinguish more clearly between intended general education and specific individual counseling, as TAP briefings consist of large groups where individual attention may be difficult or impossible. Our most significant comments arise from section 2(c), which would require VA to contact the member for a follow-up appointment within 90 days. It is unclear on what this appointment would be "following up". More fundamentally, we are concerned about the issues the bill raises between its requirements and VA's authorities concerning eligibility, enrollment, and the furnishing of care. Notably, the bill specifically would require the development of a medical treatment plan under section 2(c)(2)(B), which would normally only occur in the course of an ongoing patient-provider relationship. If the separated Service member were ineligible for health care from VA, this bill would seem to require VA to identify issues and develop a plan to treat those issues but would prohibit VA from actually treating the issues because of the former Service member's ineligibility to receive care under 38 U.S.C. Chapter 17. We believe

further discussion with the Committee could resolve these concerns and allow VA to support the bill.

VA estimates that, if enacted, the bill would cost the General Operating Expenses account \$3.06 million in FY 2022 and \$16.5 million over 5 years; VA anticipates additional IT costs, but has not yet developed an estimate.

S. 1564 – Veterans Legal Support Act of 2021

S. 1564, the “Veterans Legal Support Act of 2021,” would authorize VA to provide support to one or more eligible university law school programs that are designed to provide legal assistance to Veterans. Eligible programs may include university law school programs that assist Veterans with filing and appealing claims for VA benefits and such other civil, criminal, and family legal matters as VA considers appropriate. VA could provide financial support of the program, but the total amount of financial support provided in any fiscal year could not exceed \$2 million. Funding for such programs would be derived from amounts appropriated or otherwise made available to the General Operating Expenses (GOE) account of VBA.

VA supports the concept but does not support the bill as written. VA requests that further detail be provided on what is envisioned for this program. We note the potential overlap between this bill and existing authorities for legal services grant funding in 38 U.S.C. § 2022A and in section 548 of the National Defense Authorization Act (NDAA) for FY 2021 (P.L. 116-283), enacted in January 2021. 38 U.S.C. § 2022A allows VA to issue grants to public or nonprofit private entities, potentially including law school clinics, for the provision of general legal services to homeless Veterans or Veterans with unmet legal needs who are at risk of becoming homeless. Section 548(b)(2) of the NDAA for FY 2021 also specifically calls for a legal services grant program to eligible entities to include university law school clinic programs. We recommend Congress consider how the program proposed in S. 1564 would differ from or complement existing authorities for legal services. We would be happy to discuss this further with the Committee. Ultimately, we share the goal of increasing access to legal services for Veterans. We would also welcome the opportunity to provide technical assistance on this legislation.

VA does not have a cost estimate for this bill at this time, but we predict there would be costs.

S. 1607 – Student Veterans Transparency and Protection Act of 2021

Section 2 of S. 1607, the Student Veterans Transparency and Protection Act of 2021, would make numerous changes to VA’s G.I. Bill Comparison Tool that was established under Executive Order 13607 or a successor tool. Section 2(a) would require the Secretary of Veterans Affairs (Secretary) to maintain the tool to provide relevant and timely information about programs of education approved under chapter 36 and the educational institutions that offer such programs. VA would be required to

ensure that historical data that is reported via the tool is easily and prominently accessible on the benefits.va.gov website, or a successor website, for at least seven years from the date of initial publication.

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

Section 2(c) of this bill outlines additional improvements that VA would be required to make to the GI Bill Comparison Tool regarding feedback from students, including providing institutions of higher learning with up to 30 days to review and respond to feedback and address issues regarding the feedback before it is published. Section 2(d) would require VA, not less than one year after the date of enactment, to ensure that personnel employed or contracted to provide counseling, vocational or transition assistance, or similar functions, including employees or contractors of VA who provide counseling or assistance as part of the TAP, are trained on how to properly use the G.I. Bill Comparison Tool or a successor tool and provides appropriate educational counseling services to Veterans, members of the Armed Forces, and other individuals.

Section 3 would amend section 38 U.S.C. §3699(b)(1) to preclude a charge against entitlement to educational assistance for payments made to an individual who is pursuing a course or program at an educational institution under chapter 30, 31, 32, 33, or 35 of title 38, or chapter 1606 or 1607 of title 10, if the Secretary determines that the individual was unable to complete their course or program as a result of a Federal or State civil enforcement action against the education institution or an action taken by the Secretary. Additionally, the proposed legislation would allow such an individual to obtain a partial restoration of entitlement by submitting a request to VA and allow the individual to specify the percentage of the charge to the entitlement that they request to be applied. The percentage could not be less than zero or more than 100. VA would be required to establish a mechanism that could be used by an individual approved under this provision to obtain relief under 38 U.S.C. §3699(a).

VA supports portions of S. 1607, subject to the availability of appropriations, but also has concerns with certain aspects of the bill. VA supports section 2 of the bill as it would codify the G.I. Bill Comparison Tool as a valuable source of information for prospective and current G.I. Bill beneficiaries. Moreover, VA supports the provision as it would expand the information available to users of the tool. Implementing the provision outlined in section 2(b) of the bill, would require significant technical changes to the tool

in order to provide the required information and significant support from other partners ED, to locate the required information and receive regular updates. VA also supports section 2(d) specifically as it pertains to the training of VA personnel and contractors on the delivery of educational counseling services, which include education benefits counseling, transition assistance, and similar services. Veteran Readiness & Employment (VR&E) staff provide these services for VBA. VA and contracting staff must meet strict educational requirements to obtain this position. These educational requirements meet and exceed those outlined in this section. The Office of Outreach, Transition and Economic Development's Personalized Career Planning and Guidance program also provides guidance to individuals entitled to educational assistance via Contract Counseling. VA has several technical comments and will be happy to follow up at the request of the Committee.

VA supports section (3)(a) of the bill as it would expand restoration of entitlement to include protection for when an individual is unable to complete a course or program due to a Federal or State civil enforcement action against the educational institution.

However, VA has concerns with section 3(b) and 3(c) of the bill. Currently, under 38 U.S.C. § 3699(a), an individual impacted by a school closure or disapproval is not charged for any payment of educational assistance, the entitlement is not counted against their aggregate period, and these individuals are able to keep the educational assistance payments that were paid to them. Under section 3(c) of the bill, if implemented, upon a request VA would be required to charge the entitlement and, as a result, count the entitlement against the individual's educational benefits. Thus, beneficiaries could be negatively impacted by the loss of entitlement. Additionally, under section 3(b) of the bill, VA would be required to establish a mechanism that would allow individuals eligible under this provision to obtain relief for restoration of entitlement. This would require VA to establish a system that can accept these requests on the date of enactment of the bill.

Discretionary cost estimates will be determined. No mandatory costs are associated with section 2 of S. 1607. Mandatory costs are associated with section 3 of S. 1607, but VA is unable to estimate the cost at this time due to insufficient data.

S. 1664 – Department of Veterans Affairs Post-Traumatic Stress Disorder Processing Claims Improvement Act of 2021

This bill would require VA to take certain actions to improve the processing of disability claims for post-traumatic stress disorder (PTSD). Effective no later than 180 days from passage, the bill would require:

- (1) An updated ongoing, national training program for claims processors who review PTSD claims;
- (2) Participation in training at least once each year beginning in the second year in which the claims processor carries out duties;
- (3) Training to include instruction on stressor development and verification;
- (4) Standardization of training provided at regional offices;

- (5) Establishment of a formal process to analyze, on an annual basis, training needs based on identified processing error trends;
- (6) Establishment of a formal process to conduct, on an annual basis, studies to help guide the national training program; and,
- (7) Evaluation of the guidance relating to PTSD at least once a year to determine if updates are warranted to provide claims processors with better resources regarding best practices for claims processing, including specific guidance regarding development of PTSD claims.

VA supports continued improvement in the processing of disability claims based on PTSD, and appreciates interest from Congress in ensuring that VA provides adequate training on PTSD for claims processors, however, VA already has a comprehensive training curriculum and annual training requirement for claims processors. While VA has no objection to this bill, we consider it unnecessary.

Currently, VBA's training curriculum contains 21 different training modules pertaining to PTSD. These training modules cover all topics pertaining to processing PTSD claims, including general development and evidence gathering, submitting examination requests, applying guidance to sympathetic reading of mental disorders, development for stressors related to personal trauma, evaluating evidence, and deciding a claim for service connection for PTSD.

In addition to the training requirement, this bill asks VA to analyze error trends and provide an annual report on the metrics for PTSD claims. VA already has a robust quality review process and publishes reports on overall quality for all issues, including quality specific to PTSD claims, on a monthly basis. During FY 2021, VA rated 104,820 PTSD issues with an overall grant rate of 68%. In April 2020, the PTSD grant rate was 58% and has been steadily climbing since this time. In FY 2020 through April 2020, the quality of PTSD issues reviewed by STAR was 97.0% and for FY 2021 was 97.2% through August 2021. VA believes that the increased grant rate reflects the measures VBA has taken over the years to provide additional training and conduct quality reviews for claims specifically for PTSD. Therefore, the requirements in this bill appear to be unnecessary.

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

S. 1838 – Building Credit Access for Veterans Act of 2021

The Building Credit Access for Veterans Act of 2021 would require VA to commence, within one year of enactment, a pilot program to assess the feasibility and advisability of using alternative credit scoring information or credit scoring models (1) to improve the determination of credit worthiness of individuals and (2) to increase the number of individuals who are able to obtain a VA-guaranteed loan. Participation would be limited to Veterans and members of the Armed Forces (hereinafter referred to as Veterans) who qualify for VA home loan benefits under chapter 37 of title 38 United States Code, and whose credit history is insufficient for a lender or the Secretary to

determine credit worthiness. “Insufficient credit history” would be defined in the bill as an individual without a credit record with one of the national credit reporting agencies or an individual whose credit record contains insufficient information to assess creditworthiness. Under the bill, participation in the pilot program would be voluntary for lenders and Veterans. VA would be authorized to limit the number of participating individuals and lenders, but would be required to notify Congress of any limitation.

Additionally, the bill would require VA, in consultation with such entities as the Secretary considers appropriate, to establish criteria and approval for acceptable commercially available credit scoring models and to publish such criteria in the Federal Register. VA would be required to consider the Federal Housing Finance Agency’s regulation on credit score assessment (12 C.F.R. § 1254.7) and to approve any commercially available model approved for use by Fannie Mae and Freddie Mac.

The bill would also require VA to conduct outreach to lenders and Veterans to inform them of the pilot program. VA would also be required to report to Congress findings related to the pilot program within two years of enactment. The bill would set a termination date for the pilot of no later than September 30, 2025.

While VA supports the use of alternative credit information and alternative credit scoring models in evaluating Veterans’ creditworthiness for purposes of the VA home loan program, it does not support this bill. VA recognizes Veterans may lack sufficient credit history as a result of being recently discharged from service, having a preference to purchase with cash rather than credit, or having not acquired new obligations following a bankruptcy. As such, VA regulations and policies already contemplate the use of alternative credit information and scoring models to be used by lenders when underwriting VA-guaranteed loans. Additionally, VA does not have data to suggest creditworthy Veterans are unable to access the home loan benefit.

Existing statutory authority in 38 U.S.C. § 3710(g) directs the Secretary to prescribe regulations to establish credit underwriting standards to be used in evaluating loans as well as standards in obtaining credit information. Pursuant to this authority, VA’s regulation at 38 C.F.R. § 36.4340(g)(6) states that the absence of a credit history will not generally be viewed as an adverse factor in credit underwriting. Whereas a number of Federal housing agencies have minimum credit score requirements, VA does not. Instead, Chapter 4.1.a of the *Lenders Handbook* (VA Pamphlet 26-7) encourages lenders to make VA loans to all qualified Veterans who apply, and outlines expectations that underwriters use good judgment and flexibility when determining creditworthiness. Both VA regulation and the *Lenders Handbook* provide guidelines for evaluating the creditworthiness of individuals with an absence of credit history and instruct lenders to base the determination of credit approval on alternative or non-traditional credit in which a payment history can be verified. VA also offers lenders and underwriters training and individualized assistance in determining credit qualifications pursuant to 38 U.S.C. § 3710(b) and (g).

VA's present regulation and policy allow lenders significant latitude in determining the optimal alternative and non-traditional credit sources to use on an individual loan to establish creditworthiness and support loan approval. VA notes that it does not currently prescribe specific credit scoring models that may be considered. As such, this bill, in restricting lenders to credit models approved by the Secretary, would appear to limit lenders' options in evaluating Veterans. It may also lead lenders to consider less alternative credit information than under the current policy. In this regard, obtaining approval of a credit scoring model might delay the processing of a loan application and lead lenders to utilize an already-approved, but perhaps less robust, scoring model instead. Further, a commercially-available credit scoring model may not incorporate all potential sources of alternative or non-traditional credit information based on the individual's profile. Conversely, under VA's existing regulation, lenders are encouraged to develop evidence, including through non-traditional documentation, of timely payments on any non-installment debts such as rent and utilities with information provided by the Veteran. Underwriters are directed to make an informed decision based on any alternative or non-traditional documentation obtained by the lender.

In view of the foregoing, VA does not believe that a pilot program is necessary to determine whether alternative credit scoring information or credit scoring models would improve Veteran outcomes related to VA-guaranteed loans. Based on existing data, VA believes that this bill would likely result in no or insignificant costs.

S. 1850 – Chaplains Memorial Preservation Act

S.1850, the "Chaplains Memorial Preservation Act," would allow the Secretary of the Army to permit the National Conference on Ministry to the Armed Forces (NCMAF) to make updates and corrections to the Protestant chaplain memorial located in Arlington National Cemetery and to make similar updates and corrections to the memorial to Catholic chaplains and the memorial to Jewish chaplains, also located in Arlington National Cemetery. NCMAF is an umbrella group of religious organizations that endorse clergy for service as military chaplains in the U.S. Armed Forces. It functions as the point of contact between religious groups and the U.S. military to satisfy the U.S. military requirement that chaplains serving with the various branches of the U.S. Armed Forces hold "ecclesiastical endorsement" from their religious communities and also serves as a forum for discussions among member organizations regarding issues relating to the military chaplaincy.

VA defers to the Department of the Army for comment on this bill as the Federal agency that owns and operates Arlington National Cemetery.

S. 1936 – GI Bill National Emergency Extended Deadline Act of 2021

Section 2 of the proposed legislation would add a new subsection (i)(1) to 38 U.S.C. § 3031 that would require VA to extend the 10-year period for using entitlement under the Montgomery GI Bill if an individual is prevented from pursuing a chosen program of education before the expiration of the 10-year period because an

educational institution closed (temporarily or permanently) due to an emergency situation, or another reason that prevents the individual from pursuing the individual's chosen program of education, as determined by the Secretary. The 10-year period would not run during the time the individual is prevented from pursuing the program and would begin again on a date determined by the Secretary that is not earlier than the first day after the individual is able to resume training under the Montgomery GI Bill, and not later than 90 days after that date. Section 2 would also amend 38 U.S.C. § 3321(b)(1) to extend the 15-year period for use of entitlement under the Post-9/11 GI Bill in the same manner as subsection (i) applies under section 3031 with respect to the running of the 10-year period of eligibility.

Section 3 of the proposed legislation would add a new subsection (h)(1) to section 3103 and would extend the period of eligibility to those disabled Veterans who use vocational rehabilitation training and were affected by a school closure.

Section 4 of the proposed legislation would amend 38 U.S.C. § 3679(c) to provide for the disapproval by the Secretary of courses of education offered by public institutions of higher learning that do not charge the in-state tuition rate for eligible students using VA education benefits under the Survivors' and Dependents' Educational Assistance Program. The bill would do so by amending 38 U.S.C. § 3679 to add Chapter 35 beneficiaries to the definition of a "covered individual" by which VA must disapprove a course of education offered by a public institution of higher learning if the institution does not charge in-state tuition and fees for covered individuals. The amendments would take effect on the date of the bill's enactment and would apply with respect to an academic period that begins on or after August 1, 2022.

Section 5 of the proposed legislation would require VA to implement a modern information technology (IT) service to process claims for educational assistance under chapters 30, 33, 35, and 36 of title 38 United States Code, using one or more commercial software systems. VA would be required to complete the implementation not later than August 1, 2024. The bill would require that VA ensure the modern IT service, as compared to the legacy IT systems (both of which would be defined under the bill), can process claims faster and more efficiently through improved processing integration and accuracy, data exchange and reporting, customer integration, and simplification of the online experience. The modern IT service would have to be capable of facilitating timely communication by VA employees to individuals and educational institutions using an online portal that could provide real-time information on claims for educational assistance, fully automating (to the extent practicable) all original and supplemental claims (to include calculating accurate awards). Additionally, the service would have to have the ability to be customized to address future capabilities required by law, electronically process changes made by educational institutions, verify attendance at an educational institution, process validations made by an educational institution, allow individuals entitled to educational assistance to electronically apply for, withdraw from, and amend their entitlement, and reallocate a transferred entitlement.

Further, section 5 of the bill would require VA to meet certain reporting and notification requirements. VA would be required to provide the Committees on Veterans' Affairs of the House of Representatives and Senate an initial report not later than 120 days after the date of enactment. This report would have to contain information on the cost, schedule, and performance of the project for implementing such system, including, with respect to such project, cost estimates, an implementation schedule, key objectives, statistics related to original and supplemental claims processed on a monthly basis, estimated savings realized by using the modern IT system over the legacy system, claim timeliness and processing accuracy, and a description of how the modern IT service will automate the processing of original claims and supplemental claims.

Section 6 of the proposed legislation would redesignate subsection (h) as subsection (f) and add a new subsection (g) to 38 U.S.C. § 3512 to allow dependents to receive benefits under Chapter 35 at any time after August 1, 2023, and without regard to the age of the dependent. This provision would apply to dependents who first become eligible on or after August 1, 2023; and those who first become eligible before August 1, 2023; and become 18 years of age, or complete secondary schooling, on or after August 1, 2023.

Section 7 of the proposed legislation would require that the Assistant Secretary of Labor for Veterans' Employment and Training carry out a pilot program that allows a State to use a grant or contract under 38 U.S.C. § 4102A(b)(5) to carry out a short-term fellowship program. The Secretary would be required to select at least three, but not more than five, states to carry out a short-term fellowship program. Each state that is selected would be required to enter into an agreement with a non-profit organization to carry out the fellowship program.

Additionally, a program carried out under this section would have to consist of Veterans participating as fellows with an employer for a period not exceeding 20 weeks; provide to such Veterans a monthly stipend during such period; and provide Veterans an opportunity to be employed on a long-term basis with the employer following their fellowship participation. The amount of the stipend paid to the Veteran would be equal to the amount of wages earned during the month for participating in the fellowship program.

The proposed legislation would require that the Comptroller General provide a report to the House of Representatives and Senate Veterans Affairs Committees no later than four years after the fellowship pilot program begins. The definition of States would include the District of Columbia, and the Commonwealth of Puerto Rico, and may include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas Islands, and the Trust Territory of the Pacific Islands. The proposed legislation would provide additional funding to the Assistant Secretary of Labor in the amount of \$15,000,000 for each fiscal year from 2021 through 2025. This would be in addition to the funding levels already established under 38 U.S.C. § 4102(a)(b)(5).

VA supports section 2 of the proposed legislation, subject to the availability of appropriations, as it would ensure that individuals prevented from training due to a school closure because of an emergency situation, or due to another reason as determined by VA, would have additional time to use their Montgomery GI Bill and Post-9/11 GI Bill educational assistance benefits.

VA has no objection to section 3, subject to the availability of appropriations, which would grant VA the authority to extend the eligibility period for use of vocational rehabilitation and employment benefits and services under Chapter 31. For individuals who are discharged on or before December 31, 2012, the current eligibility period is 12 years from the date of discharge or the initial notification of a VA service-connected disability rating, whichever occurs last. This section would amend 38 U.S.C. § 3103 by adding a new subsection (h) that would grant VA the authority to extend the eligibility period if an individual was prevented from participating in a vocational rehabilitation program for a number of reasons, to include a temporary or permanent facility closure due to an emergency or another reason that prevents participation as determined by the Secretary of VA. The eligibility period would pause during these periods if the individual is prevented from participation. The eligibility period would resume no later than 90 days after the individual is able to resume participation.

VA supports section 4 of the proposed legislation, subject to the availability of appropriations. Currently, covered individuals include only those beneficiaries under Chapters 30, 31, and 33 of title 38. This section would allow Chapter 35 beneficiaries to receive the same protections under the law as beneficiaries who are in receipt of benefits under other VA educational programs.

VA does not support section 5 of the proposed legislation. On March 11, 2021, VA awarded a contract to Accenture Federal Services who will partner with Education Service and the Office of Information and Technology to develop the Digital GI Bill, which is a modernized business platform that will feature world-class customer and financial services to enable timely and accurate delivery of payments and real-time eligibility and benefit information. This new platform will provide an end-to-end systems management perspective to ensure proper compliance and oversight of GI Bill programs and will allow the use of data and business intelligence tools to monitor and measure school and student outcomes. Using this platform, GI Bill students will have the ability to engage with VA and their earned benefits through electronic outreach, intake, and communication tools for on-the-spot service.

The new technology will also modernize our operations by streamlining processes, providing new data intelligence tools, and decreasing the amount of time to process claims. With this change, VA is going beyond the technical modernization of claims processing by transitioning to a holistic service that improves user experiences across our entire ecosystem.

VA supports section 6, subject to the availability of appropriations, of the proposed legislation as it would provide additional time for certain dependents to use their chapter 35 educational assistance.

VA defers to the Department of Labor (DOL) for views on section 7 of this proposed legislation as it does not require coordination with or involvement of VA.

There are no discretionary costs associated with this bill. Sections 2 and 3 would result in mandatory costs, that are yet to be determined.

S. 2089 – Burial Equity for Guards and Reserves Act of 2021

S. 2089, the “Burial Equity for Guards and Reserves Act of 2021,” would amend 38 U.S.C. § 2408 to allow interment of certain individuals in certain State Veterans’ cemeteries. Section 2(a) would require that grants provided by VA for State Veterans’ cemeteries not restrict States from authorizing interment of Reservists whose service was terminated under honorable conditions, members of the Army or Air National Guard whose service was terminated under honorable conditions, members of the Reserve Officers’ Training Corps (ROTC) of the Army, Navy, or Air Force whose death occurred under honorable conditions while a member of the ROTC of the Army, Navy, or Air Force; and the spouse, any minor child, or unmarried adult child of such individuals solely by reason of the ineligibility of such individual for burial in an open national cemetery under the control of the National Cemetery Administration.

Section 2(b) would prohibit VA from enforcing certain conditions on State Veterans’ cemeteries with respect to grants that were awarded/established prior to the enactment of the bill. Section 2(c) would amend 38 U.S.C. § 2303(b)(1) to authorize payment of a plot allowance to a State Veterans’ cemetery for an eligible Veteran interred in that cemetery that also inters individuals described in section 2(a).

VA supports this bill, and greatly appreciates the Committee’s support of the mission VA shares with its Veterans Cemetery Grants Program (VCGP) to meet the burial needs of our Nation’s heroes. The VCGP was established by Congress to complement/augment burials in VA national cemeteries in recognition of the service and sacrifice of eligible Veterans and Service members. Current law states that VA may make a grant to a State for the purpose of establishing, expanding, improving, or operating and maintaining a Veterans’ cemetery. VA’s regulations were established based on the definition of Veteran provided under 38 U.S.C. § 101(2). Reservists may become eligible for burial in a national cemetery under specific circumstances, such as a call to active duty, death or disability incurred during active duty for training or inactive duty training, death while undergoing treatment at the expense of the United States for injury or disease incurred during training exercises, or eligibility for retirement pay under particular title 10 provisions.

However, to better understand the issues affecting States and Tribal Organizations in meeting burial and other needs of their National Guard and Reservist

populations with respect to burial in VA grant-funded cemeteries, VA published a Notice of Request for Information (RFI) in the *Federal Register* at the end of July. The majority of the responses to the RFI were supportive of expanding eligibility for burial benefits to non-Veteran National Guard and Reserve members and their spouses and dependents. Feedback included proposed minimum service time and requisite character of service for the non-Veteran National Guard and Reserve members. Concerns were raised by some State Veterans' cemetery representatives about costs associated with burial plots, headstones or markers, and cemetery maintenance.

This bill as written would not mandate State or Tribal Veterans' cemeteries that receive such grants to inter such individuals; however, we do note that expanding VCGP burial eligibility as proposed would create an inconsistency between VA national and VA-grant funded cemeteries and would also likely create inconsistencies across States as State laws vary regarding burial eligibility in State Veterans' cemeteries. In addition, the potential increase in demand for burial in State Veterans' cemeteries would drive additional burial capacity/cost/resource challenges for the States.

Regarding the plot allowance, under the bill's proposed language, there would still remain a discrepancy between interment of Guard/Reserve members versus their spouses/dependents. The current section 2303(b) allows a State Veterans' cemetery to receive a plot allowance for interment of an eligible Veteran if the cemetery (or section of the cemetery) interrs former Guard/Reserve members discharged under conditions "other than dishonorable," but not their spouses/dependents. By contrast, this bill's proposed expansion to allow the cemetery to inter spouses/dependents only applies to spouses/dependents of Guard/Reserve members whose service "was terminated under honorable conditions." Thus, the spouses/dependents of those members who received an other than dishonorable discharge, not a discharge under honorable conditions, would be excluded, even though such members themselves could be interred there with no detrimental effect on the cemetery's eligibility to receive plot allowances for Veterans.

There would be no mandatory benefit costs to VA associated with this bill. There would be minimal discretionary operations and maintenance costs to VA related to implementation and regulation development.

S. 2329 – Better Examiner Standards and Transparency for Veterans Act of 2021

S. 2329, the Better Examiner Standards and Transparency for Veterans Act of 2021, or the "BEST for Vets Act of 2021," would require that only licensed health care professionals furnish medical disability examinations under the pilot program established in Section 504 of the Veterans Benefits Improvement Act of 1996 for the use of contract physicians for disability examinations. The bill would also require annual reports to Congress on the conduct of the pilot program and the actions of the Secretary.

VA supports the provisions of this bill, except for the annual reporting requirement in section 2(c). Section 2(c) lacks specificity as to what information regarding “the conduct of the pilot program” is to be included in the report. Additionally, VA believes reporting is unnecessary as the contract used to implement the pilot program specifically states the contractor shall ensure all examiners have all licenses, permits, accreditation, and certificates required by law and are not barred from practicing such health care profession in any state, the District of Columbia, or a Commonwealth, territory, or possession of the United States. Additionally, VA currently maintains an independent third-party contract, validating the contract license requirements stated above, in addition to validating there are no pending disciplinary actions against the examiners. VA also requires training and certification to be completed prior to performing work under the contract.

There are no costs associated with this bill.

S. 2405 – Commitment to Veteran Support and Outreach Act

Section 2 of S. 2405, the Commitment to Veterans Support and Outreach Act, would amend 38 U.S.C. chapter 63 to authorize VA to award grants to states to improve outreach to Veterans through County Veterans Service Officers (CVSO) and Tribal Veterans Service Officers (TVSO) serving through States. The grant would provide funding to expand existing outreach programs, activities, and services or to hire more CVSOs and TVSOs, or for travel and transportation necessary to accomplish those purposes. In addition, a grant could also be used to provide education and training, including on-the-job training, to state, county, local, and Tribal government employees who provide (or when trained, will provide) Veteran’s outreach services, to help those employees obtain VA accreditation in accordance with procedures approved by the Secretary. The bill would authorize appropriations of \$50 million per year for each year FY 2022 through FY 2026 through a separate appropriation account, and thereafter would require VA to submit a separate statement of the amount requested in the budget justification materials submitted to Congress.

VA supports S. 2405 in concept, but asks that Congress adjust some details of the bill. Outreach is an integral part of VA’s customer experience framework to engage Veterans, Service members, survivors, and caregivers. VA values the partnerships it has with Veterans Service Organizations, to include State, county, and Tribal Veterans Service Officers who are affiliated with them and continues to look for opportunities to further engage with the organizations. However, although this bill provides a mechanism for VA to receive funding through a separate appropriations account, VA cites concerns because VA would need additional resources or would have to reallocate resources to stand up a grants program, which requires development of regulations, as well as resources to administer a program. Unless Congress allocates additional resources for this grant program, the diversion of current resources would negatively impact VA’s ability to continue the current levels of outreach efforts and transition services. Moreover, although this grant program would be administered by VBA, the successful implementation of the program would be measured by additional individuals being

approved for VA accreditation, which is a function performed by the Office of General Counsel (OGC). Thus, OGC would also require additional resources to ensure that those individuals are timely accredited, and that their qualifications and conduct are appropriately tracked and monitored.

Under 38 U.S.C. § 7703 (5), VBA is responsible for outreach programs and other Veterans' services programs. Along with this authority is the responsibility of informing Service members, Veterans, survivors, dependents, and eligible beneficiaries about the benefits and services for which they may be eligible. VBA maintains a robust outreach program, reaching millions of Veterans and partners each year through various forms of customer-focused outreach programs, communications, and activities. In FY 2020, VBA participated in more than 6,000 outreach events, reaching over 348,000 Veterans to provide information, benefits, and services to Service members, Veterans, survivors, dependents, and eligible beneficiaries. In FY 2021, VBA participated in more than 6,700 outreach events, reaching over 274,000 Veterans. In FY 2021, VBA also hosted a series of national outreach partnership campaigns with the State Departments of Veterans Affairs (SDVA) and the National Association of State Directors of Veteran Affairs (NASDVA). The national campaigns provided an opportunity to highlight ongoing initiatives within VBA to SDVAs and NASDVA and strengthen VA's partnership with these organizations. Beginning in January 2022, VBA will host a series of National Association of County Veterans Service Officers Partnership meetings as part of VBA's effort to further expand collaborative outreach efforts with internal and external partners. In addition, SDVAs are currently integrated within the regional office (RO) outreach framework and often occupy office space within ROs.

Additionally, we note that the stated purpose of the bill includes ensuring that Veterans and their families are "*assisted in applying for*" Veterans' benefits and services. This language, which is similar to language in existing 38 U.S.C. § 6301, has traditionally been reserved for describing the responsibilities of VA and its employees. We believe that using such language with respect to non-VA employees would be confusing, as the role of a non-VA employee would be different. In fact, pursuant to 38 U.S.C. § 5902, the role of these non-VA employees would be much larger in scope than that of a VA employee because it would include the preparation, presentation, and prosecution of the VA benefits claim—not simply assistance with the claim's submission. This potential confusion could be avoided by revising the bill's language to limit the use of the term "outreach" for the purposes of this grant program to informing Veterans and their family members of the availability of VA benefits and services, and then using language consistent with section 5902 when describing the CVSOs' and TVSOs' potential responsibility towards providing claim-specific assistance as a representative who is recognized by VA.

In addition, in 2017, VA revised its regulations that govern VA recognition to clarify that Tribal Veterans' programs may be recognized specifically as "tribal" organizations in a manner similar to state organizations. The bill as currently drafted, would not include Tribal governments as potential recipients under the grant program. VA's General Counsel is also exploring other ways to facilitate representation for Tribal

communities, such as partnering with Tribal governments and using the discretionary authority afforded to him by the Secretary, pursuant to 38 U.S.C. § 5903, to authorize TVSOs who are affiliated with Tribal governments, but not accredited through a VA-recognized organization, to prepare, present, and prosecute Veterans' benefit claims before VA on an ongoing basis. The language of S. 2405 would not allow for Tribal governments that have TVSOs authorized pursuant to the General Counsel's authority to receive grants through this program.

VA's regulations also require representatives of state organizations, CVSOs, or TVSOs to be paid employees, working a minimum of 1,000 hours for the state, county, or Tribal government, respectively, to obtain accreditation as a representative directly through the state's organization. Proposed section 6307(g) and (h) does not seem to permit the grant funds to be used to pay the salaries of CVSOs or TVSOs who are not "new" employees, which could cause any new position developed to be short lived as it would leave the State and county responsible for providing non-grant funding for the CVSOs' and TVSOs' salaries after the first year.

The GOE estimate for FY 2022 is \$51.3 million and includes salary, benefits, rent, travel, supplies, other services, and equipment. Five-year costs are estimated at \$256.4 million. IT costs are anticipated but not estimated at this time.

S. 2431 – Department of Veterans Affairs Office of Inspector General Training Act of 2021

S. 2431, the Department of Veterans Affairs Office of Inspector General Training Act of 2021, would require VA employees to receive training developed by the Inspector General of the Department on reporting wrongdoing to, responding to requests from, and cooperating with the Office of Inspector General (OIG).

While VA supports the intent of the training proposed in S. 2431, VA does not support the bill, as drafted, because it is duplicative of existing training provided to VA employees. As of September 22, 2021, VA employees began receiving training designed and developed by OIG on the topics identified in the bill. All employees are required to complete the training in VA's Talent Management System by September 22, 2022 or within 90 days of hire. VA's Chief Learning Officer will continue to work closely with OIG to ensure the training is reviewed and revised, as needed.

While the requirements in this bill are duplicative of existing training, VA has not yet determined whether there are costs associated with this measure.

S. 2513 – Brian Neuman Department of Veterans Affairs Clothing Allowance Improvement Act of 2021

S. 2513, the "Brian Neuman Department of Veterans Affairs Clothing Allowance Improvement Act of 2021," would amend 38 U.S.C. § 1162 by adding a new subsection (b) to require VA to make recurring payments for a clothing allowance to

qualifying Veterans until the Veteran elects to no longer receive such payments or until VA determines the Veteran is no longer eligible for such payments. Under a new subsection (c), VA would be required to conduct reviews of clothing allowance claims to determine a Veteran's eligibility when it receives notice the Veteran is no longer eligible or within 5 years of the date on which the Veteran initially received a clothing allowance and periodically thereafter. VA would be required to prescribe in regulation standards for determining whether a claim for clothing allowance is based on a circumstance that is not subject to change. If the claim is based on a circumstance not subject to change, the review under subsection (c) would no longer be required. A new subsection (d) would state that if VA determines, as a result of a review under subsection (c), that a Veteran is no longer eligible, VA would have to provide notice to the Veteran of the determination and a description of applicable actions that could be taken and discontinue the clothing allowance.

VA supports this bill, but we recommend it be modified to incorporate technical amendments VA will share with the Committee. VA welcomes the Committee's interest in this program and authority; it has been more than a dozen years since section 1162 was last amended, and considerable advances in prosthetics, orthopedic appliances, and medications have occurred during that time. Further, OIG published a report (Report #20-01487-142) this summer regarding the clothing allowance program that identified other opportunities to improve this program. We would welcome the opportunity to discuss this program and its authority in more detail with the Committee.

No mandatory or discretionary costs are associated with this bill.

S. 2644 – Guard, Reserve, and Active Duty Department of Veterans Affairs Educational Assistance Parity Act of 2021

S. 2644, the Guard, Reserve, and Active Duty Department of Veterans Affairs Educational Assistance Parity Act of 2021 or the "GRAD VA Educational Assistance Parity Act of 2021," would amend 38 U.S.C. § 3301(1)(B) to expand eligibility criteria for those who are on active duty service as defined in 10 U.S.C. § 101(d), but would exclude inactive duty training. Section 101(d) of title 10 defines the term "active duty" as those individuals who are on full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. The proposed legislation would also expand eligibility criteria to include those who serve on full-time National Guard duty as defined in 32 U.S.C. § 101, which includes the National Guard, the Army National Guard, and the Air National Guard, as well as those same members when performing active duty. The provisions of the bill would be effective on the date of enactment

VA supports the proposed legislation, subject to the availability of appropriations. However, VA would need additional time to address data collection challenges if such changes were effective the date of enactment. The additional categories falling under the revised definition of full-time active duty and the sufficiency of the data received

under the current computer matching agreement for identifying individuals falling within those categories would need to be discussed with DoD. VA has concerns regarding the availability of DoD data elements corresponding with IT systems and adjudication rules; therefore, VA believes that significant collaboration between VA and DoD would be required in order to facilitate the data exchange needed to make automated claims adjudication possible. The proposed changes would require VA to make significant changes to the type of data currently exchanged between DoD and VA through the VA/DoD Identity Repository and displayed in the Veteran Information System. In addition, new rules would need to be programmed into the Post-9/11 GI Bill Long Term Solution in order to calculate eligibility based on the new categories of qualifying active-duty service. Based on the cumulative effect of these changes, VA estimates that it would take 18 to 24 months from enactment of the proposed legislation to make necessary adjustments.

No discretionary costs are associated with this bill. Mandatory costs will be determined.

S. 2687 – Strengthening Oversight for Veterans Act of 2021

The “Strengthening Oversight for Veterans Act of 2021” would provide authority for the issuance of administrative subpoenas (for the production of documents and records) from non-Federal agencies or individuals. Compliance with such subpoenas would be enforceable through appropriate Federal district courts. VA has no objection to the proposed legislation. However, we note VA’s Office of Inspector General (OIG) currently lacks authority to compel non-Federal employees, through the issuance of an administrative subpoena to provide testimony under oath.

The expansion of the ability to issue subpoenas, without judicial consideration, to former government officials and other individuals who might have information relevant to an IG investigation would add a mechanism by which former officials could no longer avoid questions from IG investigators. This enhanced authority could increase the depth of VA OIG investigations and contribute to a greater transparency and accountability. Some Federal IG offices currently have the authority to issue administrative subpoenas for testimony in specific types of investigations. The Department of Defense is currently the only agency that has an expansive authority to issue administrative subpoenas for testimony, as even the Department of Justice currently lacks such authority.

In addition to this proposed bill, on March 19, 2021, the “IG Subpoena Authority Act” was also introduced in the House. This similar bill would provide enhanced administrative testimony subpoena authority to all Federal IG offices. The Administration supports accountability and transparency and recognizes that increased subpoena authority would impact the completeness of IG investigations by providing an additional mechanism by which to obtain investigatory evidence of fraud, waste, or abuse. VA OIG, as the oversight authority for the Department, can provide further insight into how such increased authority may impact IG investigations and operations.

VA has not yet determined if there are costs associated with this bill.

S. 2761 – Every Veteran Counts Act of 2021

Section 2 of S. 2761 would express Congress' findings regarding the need for more detailed information on the Veteran population to better serve Veterans and other beneficiaries.

Section 3 of the bill would add a new section 528 to title 38 United States Code to require VA to collect demographic data on Veterans, from any source of such data available to VA, and to maintain a database of such data. This data would include sex, gender identity, age, educational level, race and ethnicity, sexual orientation, household makeup, gross income and sources of income, housing status, employment status, history of service in the Armed Forces, whether the Veteran is enrolled in VA health care, whether the Veteran has received a disability rating from VA, the location of the Veteran's residence, and any other information VA considers appropriate. The data in the database would be machine readable and anonymized to prevent the release of sensitive personal information. VA would be required to maintain a public website that provides access to the database and would have to update this website not less frequently than once each year. VA would have 180 days to carry out the new section 528, as added by this section.

Section 4 of the bill would require VA, not later than 1 year after the date of the enactment, to submit to Congress a report describing the progress, challenges, performance, and opportunities of implementing VA's data strategy. This report would need to include a number of elements, such as progress toward strengthening data management, progress in cataloging and inventorying VA's data assets, progress in implementing requirements under the Paperwork Reduction Act, efforts to move towards a rules-based and transparent enterprise approach to data, and a discussion of current risk assessments regarding data breaches and information security. Not later than 30 days after submitting this report to Congress, VA would have to publish such report on VA's open data website.

We understand the intent of this bill is to seek to address a significant aspect of any agency's efforts to bolster inclusion, diversity, equity, and access and ensuring we have the demographic information necessary to identify and respond to groups of Veterans who may have been historically marginalized and underserved. The bill aims to do that by establishing and ensuring that VA has, as much as possible, access to demographic data, whether it is held by other Federal agencies or non-Federal entities.

VA is engaged in ongoing discussions with House Veterans' Affairs Committee staff concerning multiple bills targeting demographic data collection, sharing, management, and use for both operational and analytic purposes. VA strongly supports continued dialog to ensure these efforts are integrated and consistent with existing laws and Executive Orders (EO) including the Foundations for Evidence-Based Policymaking Act, the Information Quality Act, Paperwork Reduction Act, the Federal Data Strategy and ongoing efforts under EO 13985, Advancing Racial Equity and Support for

Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (January 20, 2021) (the Order). The Order charged VA with pursuing a “comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice and equal opportunity is the responsibility of the whole of our Government.”

Part of the Order establishes an Interagency Working Group on Equitable Data, or Data Working Group. It noted that “[m]any Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, Veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to promoting equity in Government action is to gather the data necessary to inform that effort.”

This bill's goals have much in common with the aims of the Order. These efforts are necessarily complicated, especially across Federal agencies and other sources of data, as VA must take care not to run afoul of Veterans' expectations of privacy or laws ensuring the protection of information. We also must be mindful that it may be important to distinguish the characteristics of the Veterans who use VA with the Veteran population at large.

As a result, VA would like to continue a dialogue with the Committee on these efforts, as well as discuss the technical aspects of this bill in more detail than we can do today. We would ask that the Committee forego advancing this legislation at this time to allow for that discussion, and for VA to advance its ongoing efforts.

VA has not yet determined the costs associated with this bill, but assumes there to be mandatory and discretionary costs.

S. 2794 – Supporting Families of the Fallen Act

This bill would amend 38 U.S.C. §1967 to increase the maximum amount of coverage in the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) that a member can carry while in service from \$400,000 to \$500,000. Under this bill, following separation from service, former members would be eligible to purchase VGLI up to the proposed \$500,000 maximum coverage amount.

VA supports this bill. To operationalize an increase in SGLI and VGLI maximum coverage, VA would be required to coordinate with DoD's Manpower Data Center and the primary insurer in the SGLI/VGLI program. This coordination will address administrative matters that include IT system changes, updates to forms, modifications to letters, and updates to online communications to reflect the new coverage amounts. As such, VA notes that these activities confirming administrative soundness would occur after confirming the new maximum coverage amounts and corresponding premiums are actuarially sound.

There would be no mandatory costs for VA from this proposed legislation as the SGLI and VGLI programs are self-funded by Service member premiums and interest earned on such premiums. However, please note that DoD would have mandatory costs related to this bill due to 37 U.S.C. § 437, which requires DoD to reimburse Service members for their SGLI premiums when they serve in a combat zone. DoD is projecting these costs based on the current SGLI premium rate and internal data on the number of Service members projected to serve in a combat zone for varying periods of time. DoD would also have IT costs to make enhancements to pay systems as well as the SGLI Online Enrollment System, the system of record for SGLI elections. DoD is developing these costs in response to this bill.

S. 3047 – Veterans Pro Bono Corps Act of 2021

Section 2 of the draft bill would require VA, not later than 180 days after the date of the enactment of this Act, to commence a 5-year pilot program to assess the feasibility and advisability of providing grants through a competitive basis to accredited entities administering a medical residency or fellowship program that assist Veterans applying for compensation under chapter 11 of title 38 United States Code, in substantiating their claims with independent medical examinations and opinions. VA could give preference in the award of grants to eligible recipients in a rural area or an underserved area. Grant funds would be used to establish or maintain a program in which medical residents or fellows would provide pro bono medical examinations and opinions for C&P examinations. Residents and fellows would be required to practice under the supervision of attending physicians and to meet other requirements as well. VA would have to provide each grantee all current DBQ forms. Not later than 180 days after the date of the enactment of this bill, VA would have to, in partnership with Veterans Service Organizations, implement an informative outreach program for Veterans regarding the availability of services from programs established or maintained under the pilot program. VA would have to report to Congress annually on the time, number, and accuracy of examinations, among other requirements, conducted under this program. Rural areas would be defined as those areas classified as rural by the Bureau of the Census, and underserved areas would be defined as those areas that have a high proportion of individuals with limited access to health care, a high proportion of individuals with limited access to legal services, or both.

VA does not support the draft bill and has significant concerns with different elements in the bill. The bill does not appear to appreciate the important role that Graduate Medical Education (GME) serves in preparing residents and fellows to practice medicine. The Accreditation Council for Graduate Medical Education (ACGME) is the only nationally recognized accrediting agency for GME, and hence would be the only agency that accredits any eligible residency or fellowship program participating in the pilot program. However, ACGME determines the goals and objectives of such programs, and the proposed C&P examinations do not align with these goals and objectives. The proposed program seems focused exclusively on providing access to services for Veterans, but there is no discussion of the educational goals or benefits for

medical residents. We believe this could be a significant problem for this proposal, as program sponsors and ACGME may not find this arrangement acceptable and could decline to participate. Residents and fellows are in these programs to build their knowledge and skills to become Licensed Independent Practitioners (LIP), and they are evaluated based on their ability to develop core competencies as determined by ACGME. ACGME closely monitors residents' perceptions on service obligations versus beneficial educational training; performing C&P examinations at VA would count as a service obligation and would likely be of little benefit in the development of residents as LIPs. The bill also makes no mention of the important ethical difference between a C&P examination and regular clinical activities, as a C&P examiner has no treatment relationship with the patient and has no physician/patient responsibility; this underscores the greater weight of service versus education for trainees participating in this initiative. We believe the necessary background to develop curriculum for this activity would also be a barrier to programs participating in this pilot program.

We have other logistical concerns with the bill as well. Initially, we note that Congress has previously expanded VBA's contract examination authority, which ensures C&P examinations are available worldwide, including in rural and underserved areas in the U.S. Veterans can obtain C&P examinations from VBA contractors or from VHA clinicians. We believe this authority is sufficient to ensure that Veterans are able to receive the examinations they need in places that are convenient to them. We are also concerned that many C&P examinations require the clinician to review the entire electronic claims file to complete the DBQ, but for non-VA residents and fellows, this would require permission to access VA's internal systems. VA does not currently have an electronic system in place to facilitate the submission of examination requests to participants in the pilot program or to receive completed DBQs; VA would require additional resources to provide training and establish a quality-control program to monitor examinations completed under this pilot program, which would result in additional administrative costs. As noted above, C&P examinations are substantially different from providing medical treatment, and clinicians who perform C&P examinations require specialized training and specific certification. The amount of training required for such examiners could be exceptionally burdensome on staff and residents alike. The logistics involved for grantees to market the pilot program, identify eligible Veterans, obtain data to screen participants, obtain consent, schedule examinations, obtain necessary clinical data, and report to the national program office could be expensive and complex.

VA has provided technical assistance on an earlier draft of this bill, and we believe many of those comments are still applicable to the current draft. For example, we noted that VA currently pays residents by disbursement agreements and pays supervising physicians as well, meaning that any services such residents, fellows, or physicians provided would not truly be "pro bono." We also stated that we do not believe the 180-days authorized under section 2(a) would be sufficient time to implement a program of this nature as there are critical elements of this proposal that VA would need to define through regulation.

We assume this bill would result in additional expenses to VA as a result of awarding grants for the purposes described in the bill, but VA does not have a cost estimate for this bill.

S. 3094 – Reaching Every Homeless Veteran Act of 2021

The draft bill, “Reaching Every Homeless Veteran Act of 2021,” would amend 38 U.S.C. § 2021 to authorize the Secretary of Labor, in awarding grants for purposes of conducting programs to provide job training, counseling, and placement services to expedite the reintegration of homeless Veterans and other Veterans with housing issues. Specifically, the bill would require DOL, to the maximum extent practicable, to consider applications for fundable grants from entities in all States; further, the bill would require, in each state in which no entity has been awarded a grant, DOL to organize and conduct, in coordination with the Director of Veterans’ Employment and Training in the state, an outreach and education program to raise awareness of the programs conducted under section 2021A. The draft bill would also modify DOL’s biennial reporting requirements to include additional elements, and it would make technical and conforming edits.

While VA generally defers to DOL on this proposal, we note as a technical matter that because the changes made by this bill would be codified in title 38 United States Code, the definition of “State” in 38 U.S.C. 101(20) would apply to this authority. That definition establishes in relevant part that “State” means each of the several states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. This definition may be different than DOL’s other authorities.

Unnumbered Bill – Reform and Update Rural Access to Local Exams Act of 2021

The Reform and Update Rural Access to Local Exams Act of 2021 or the “RURAL Exam Act of 2021,” would require VA to undertake several actions related to rural Veterans’ access to medical disability examinations required to obtain VA disability compensation or pension benefits. The bill would require VA to collect data regarding timeliness, quality, and Veteran satisfaction and the disaggregation of data by state and county of individual contractors and VHA facilities conducting covered disability examinations. VA would also be required to conduct a study comparing the average number of days to complete a covered medical disability examination for rural Veterans to non-rural Veterans, including a root cause analysis of the differences between both and provide an annual report of the study not later than two years after the enactment of the bill. The bill would require VA to provide in contracts for the provision by a contractor of a medical disability examination, financial incentives for providing medical disability examinations to rural Veterans and housebound Veterans in a timely manner, and disincentives for failing to timely provide medical disability examinations to Veterans in rural areas and housebound Veterans. Finally, the bill would require VA to yearly inspect not fewer than three percent of all sites, locations and facilities used by

contractors, ensuring the number of inspections of rural areas is similar to non-rural areas.

Subject to the availability of appropriations, VA would support this bill if amended, and notes the following concerns. With respect to the definition of “housebound” in section 2, VA notes that we are unable to determine whether a Veteran meets the definition of “permanently housebound” unless there is a rating of record that denotes “permanently housebound.” With respect to the data collection requirement and disaggregation of data, VA is unable to identify Veterans’ county of residence; however, we note that zip codes are available. Additionally, VA has privacy concerns related to the requirement to make Veteran and contractor performance data publicly available on an internet website.

With respect to the study in section 4 and the requirement to conduct a root cause analysis, VA notes that this requirement is ambiguous and requests that Congress specify the elements required. VA also notes that the reporting requirement under section 4(d) does not include an end date.

With respect to section 5, VA notes that we have incentives and disincentives for overall contract performance. However, an incentive and disincentive does not exist strictly for rural Veterans. Additionally, VA would need to develop a separate timeliness calculation for rural and housebound Veterans and provide a specific incentive for this timeliness metric. With respect to section 6 and the inspection requirements, VA has concerns with the requirement of three percent due to the associated costs and logistics related to travel and number of facilities. This would require VA to conduct approximately 410 site visits per year. Pursuant to the current status of the global pandemic and national emergency, all non-essential travel is prohibited. VA also notes that terms such as “dignified” and “general fitness” are subjective and lack specificity.

Mandatory costs associated with this unnumbered bill are estimated to be \$7.8 million in 2022, \$39.9 million over five years, and \$100.9 million over 10 years. Contract exams are initially funded by VBA’s discretionary GOE account and then reimbursed by VBA’s mandatory C&P account. Therefore, no discretionary costs are associated with this bill.

Unnumbered Bill – Veterans Benefits Improvement Act of 2021

Title I of this bill addresses Board of Veterans’ Appeals (Board) matters. Section 101 would create a new section 7114 in title 38, U.S.C., under which VA would be required to establish a competitive internship program for high-achieving law students at the Board. The bill specifies that participating students must attend a law school accredited by the American Bar Association, and VA would be required to establish the internship program no later than one year after enactment.

Section 102 would create a new section 7115 under which VA would be required to establish an honors program at VA to help recruit high-achieving law school students,

recent law school graduates and entry-level attorneys for potential employment at the Board. The bill specifies that VA would provide priority consideration for applicants who successfully complete the internship program established under section 101 of this bill. Participants in this program, who enter into an agreement requiring not less than three years of service at VA, would be eligible to receive student loan repayment benefits authorized under 5 U.S.C. § 5379, which authorizes agencies under current law to set up their own student loan repayment programs for eligible employees and loans. Section 102 further specifies that participants in the honor program would receive a mentor who is a managerial employee at VA and who also is outside of the participant's chain of command. In addition, the bill would provide each participant at least one full-time legal assignment rotation within OGC of not less than 120 days and not more than 180 days. Participants would also be eligible for one or more 30 to 180-day rotational assignments within VA for the purpose of additional professional development. VA would be required to establish the honors program not later than one year after enactment of the bill.

Section 103 of title I of the bill would require VA to establish, not later than 180 days after enactment, a pilot program at VA to reimburse claimants for expenses incurred for travel to hearings held by picture and voice transmission before the Board. The intent of the pilot program would be to assess the feasibility and advisability of claimant reimbursements for expenses incurred due to travel from the home of the claimant to the location at which the hearing before the Board is scheduled to be held. The bill specifies that reimbursement for participants in the pilot would occur in instances where VA determines that travel to such location was reasonably necessary and participant selection would focus on claimants most likely to benefit from reimbursement under the program, including claimants limited by geography. VA would also be required to submit a report, including analysis and recommendations for the program, no later than one year after the commencement of the pilot.

Title II addresses medical disability exam matters. Section 201 would amend section 2006 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (P.L. 116–315; 38 U.S.C. § 5101(d)(1)(A)) to require VA to publish all Disability Benefits Questionnaires (DBQ) and fact sheets that are available to VHA personnel and contract personnel for the completion of compensation and pension examinations (C&P exams). Section 202 would amend 38 U.S.C. § 111(b)(1)(F) to explicitly authorize VA to pay travel expenses for Veterans who are abroad to travel to scheduled C&P exams and would direct the Secretary to update training aids, manuals, and informational materials for staff of the Department, Veterans, members of the Armed Forces, and stakeholders. Section 203 would require that, when VA contracts for the provision of medical disability examinations, VA require that the contractor recognize powers of attorney executed under 38 U.S.C. §§ 5902, 5903, or 5904, for the preparation, presentation, and prosecution of claims. Section 204 would require VA to partner with Veterans Service Organizations to implement an outreach program regarding contact information for contractors providing C&P exams and the need for Veterans to provide personally identifiable information when contacted by such contractors to verify the Veterans' identity.

Title III would address other matters. Section 301 would require VA to establish a pilot program to assess the feasibility and advisability of accrediting governmental Veterans Service Officers, who would be employees of a state, county, municipal, or Tribal government. The program would include training for such officers and expanded access to VA systems, including electronic claims records of individuals that the governmental Veterans Service Officer is not authorized to represent. Section 302 would amend 38 U.S.C. §§ 5101, 5104, 5104B, and 7105 to allow VA the option of providing notification of decisions to claimants electronically. Section 303 would permit VA to disclose Federal tax information to contractors and vendors.

VA supports the intent of sections 101 and 102, but the provisions regarding student loan repayment benefits are unnecessary, since the referenced honors program participants would be eligible to receive student loan repayment benefits under the general authority in 5 U.S.C. 5379 without the proposed new statutory text.

VA supports the intent of section 103 and would recommend that the pilot program be limited to considering for reimbursement only those Veterans who establish that such travel is reasonably necessary, such as those individuals who do not have a mobile device and Internet connectivity reasonably available. The Board is eager to build on recent successes (96% of hearings are now held virtually) and engage in constructive ways to improve access.

VA opposes section 201 of this bill due to the following concerns. P.L. 116-315 was signed into law on January 5, 2021. Section 2006 of the law required VA to reinstitute the public use DBQs and publish these forms *as they were on January 1, 2020 on VA's website*. This bill would require VA to publish 11 additional internal DBQs that have never previously been available for public use. We note that, pursuant to 38 U.S.C. § 501(a), the Secretary is authorized to prescribe rules and regulations pertaining to the nature and extent of proof and evidence, as well as the method of taking and furnishing it, required to establish the right to benefits. Section 501(a) also grants the Secretary authority to regulate the forms of application by claimants and the methods of making investigations and medical examinations. As explained below, whether to make the internal DBQs publicly available is a decision that directly affects the method of taking and furnishing evidence and, specifically, the method of making medical examinations.

VA requests a Veteran's claims file be reviewed by a C&P examiner in certain situations. The basic premise for the claims file review in these situations is that the content of the claims file has been considered critical information for the examiner to conduct a fully informed examination and provide a full and complete examination report. Board remands and formal medical opinions require claims file reviews based on supporting regulatory guidance. Examinations for traumatic brain injury do not have a regulatory requirement; however, because of the importance of all information of record to perform a full and accurate examination, and the frequency with which examiners are

required to provide opinions as to differentiation of symptoms and association of co-morbid conditions with these examination reports, examiner review has been considered the standard. Additionally, there are certain regulatory requirements that have served to reinforce this determination that VHA and VBA contracted examiners complete these questionnaires. It is important to mention the following DBQs are currently available internally to VHA examiners and VBA contract examiners:

- **Initial PTSD DBQ.** For a claim for service connection for PTSD based upon a stressor related to the Veteran's fear of hostile military or terrorist activity, 38 C.F.R. § 3.304(f)(3) directs that the examination must be conducted by a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted.
- **Medical Opinion DBQ.** This DBQ was designed to allow a standardized format for the request and provision of medical opinions required as part of the Secretary's duty to assist Veterans in the claims process. 38 U.S.C. § 5103A(d) obligates the Secretary to obtain a medical examination or medical opinion when specific evidence criteria are met, but the evidence of record is insufficient to decide a claim. The implementing regulation, 38 C.F.R. § 3.159(c)(4), states such an opinion will be "based upon a review of the evidence of record" It is for this reason this DBQ was relegated to internal VA use only. While the cited regulation requires that such opinions be based upon a review of the evidence of record, there is no authorized or practical means for a treating clinician to obtain access to the entire claims record to conduct such a review.
- **Hearing Loss and Tinnitus DBQ.** This DBQ was designed to address multiple specific issues that affect Veterans in very large numbers. This DBQ contains extensive instructional and explanatory notes to ensure the report is full and complete to established VA audiological standards. Because of the very complex nuances of military life and experiences relating to a plethora of audiological hazards, and the specific requirements of VA's Schedule for Rating Disabilities (VASRD) relating to hearing loss, this DBQ was retained only for internal VA use. 38 C.F.R. § 3.385, Disability Due to Impaired Hearing, defines what level of hearing is determined disabling. Additionally, this regulation prescribed that speech recognition ability be tested using the Maryland Consonant-Vowel Nucleus-Consonant (CNC) Test. Further, the VASRD at 38 C.F.R. § 4.85 reiterates this requirement. Because hearing loss and tinnitus are so prevalent among Veterans, VHA's Audiology and Speech Pathology Service has developed an extensive set of audiological testing standards and protocols, "Handbook of Standard Procedures and Best Practices for Audiology Compensation and Pension Examinations," as a means of ensuring uniformity in the conduct of all audiological examinations. All VHA audiology clinics and VBA contracted audiology facilities are equipped and utilize trained providers to conduct testing to the exacting standards. Providing this DBQ for public use would undermine our efforts for consistency and uniformity in the testing protocols. Further, the required speech recognition test, Maryland CNC, is not commonly used or available in the private audiology community. Allowing private

or treating audiologists to complete DBQs in lieu of a standardized VA audiological examination would bring about testing variations and inconsistencies into the adjudication process, introducing inequities in the adjudication and evaluation of claims for hearing loss and tinnitus.

- **Gulf War General Medical DBQ.** When requesting the VA Gulf War general medical examination, VA claims processors must ask the examiner to conduct not only a general medical examination, but also to conduct any required specialist examinations. VBA's manual requires that the claims folder be sent to the examiner for review. These complicated claims must contain either a medical statement or an opinion with supporting rationale as to whether the disability pattern or diagnosed disease is related to a specific exposure event experienced by the Veteran during service in Southwest Asia. Again, 38 C.F.R. § 3.159(c)(4) states such an opinion will be "based upon a review of the evidence of record." It is for this reason that the Gulf War General Medical DBQ was designated for internal VA use only. While the cited procedures and regulation require that such opinions be based upon a review of the evidence of record, there is no authorized or practical means for a treating clinician to obtain access to the entire claims record to conduct such a review.

VA supports section 202 in principle, subject to the availability of appropriations. VA believes the intent of the section is to allow the reimbursement of expenses for travel to a Department facility or a facility of a Department-contracted provider, regardless of whether the facility is inside or outside the United States, for C&P exams. However, we believe section 202 may be unnecessary and are exploring how this can be accomplished under current statutory authority.

VA could support section 203 if it were amended to limit its applicability to communications regarding the scheduling of medical disability examinations. VA has determined that claimants do not have a right to have an attorney present during disability examinations, as the presence of an attorney may, in some situations, undermine the candor and communication essential to the examination process. We do not believe the purpose of section 203 is to undermine that communication, but is to ensure that medical disability examiners communicate with claimants' representatives, as appropriate, about matters relating to the scheduling of examinations for purposes of benefit claims.

VA supports section 204 as we believe it will help with the examination scheduling process. We also note that it may help protect Veterans by helping them screen calls from predatory claims assistance practices and unwanted calls, including robocalls.

VA does not support section 301 of this bill. VA believes it is duplicative in nature compared to current statutory authority for VA to recognize organizations and their representatives, particularly because such authority has already been interpreted by VA to include the authority to recognize State departments of Veterans affairs as "State

Organizations” pursuant to 38 C.F.R. § 14.628(b)(1). There are approximately 8,000 individuals who are recognized by VA as representatives of VA-recognized organizations and over 4,000 of those individuals are affiliated with governments of states or U.S. territories. Alaska and the District of Columbia are the only governmental entities that do not currently have VA-recognized State organizations, and VA would welcome their requests for recognition of their Veterans Affairs Departments.

It is unclear how a governmental Veterans Service Officer under the pilot program proposed in this section would help Veterans obtain benefits and services in comparison to similar functions currently being performed by representatives of VA-recognized organizations. For example, pension eligibility is dependent on numerous requirements and information is utilized from several different sources – many of which the governmental Veterans Service Officer within the pilot program would not be permitted to view when proactively guiding claimants to obtain benefits and services (e.g., income, asset, and service information received via computer and/or matching agreements with other Federal agencies). *Compare* 26 U.S.C. § 6103(l)(19)-(20) (authorizing disclosure of tax return information to contractors of certain agencies) *with* 26 U.S.C. § 6103(l)(7)(D)(viii) (containing no similar authority for tax return information disclosed to VA). Most guidance on benefits and services provided by a governmental Veterans Service Officer in the pilot program would be similar to guidance currently being provided by representatives of VA-recognized organizations.

Subject to the availability of appropriations, VA supports section 302 of this bill, which would provide the Secretary the general authority to provide notification through a method determined appropriate by the Secretary, which may include electronic notification, as this would enhance the efficiency and timeliness of the claims adjudication process, while allowing a surer method of providing notice to claimants. However, we recommend certain technical amendments.

Section 302 states, “[t]he Secretary may provide notice under subsection (a) electronically unless the claimant or the claimant’s representative requests, in the application for benefits, that such notice be sent by mail.” VA has concerns with this proposed language. The specific reference to “application for benefits” would require VA to update a significant number of benefit forms to comply with this requirement. Additionally, this provision suggests that opting-in to electronic notifications could be claim specific, and not apply uniformly to all pending claims. For example, a claimant could opt-in to receive electronic notifications on an application for an increased rating and decide to receive a paper mailing on an application which was submitted for a claim for a separate disability. VA recommends that if a claimant opts-in to receive electronic notifications, that electronic delivery method apply uniformly to all correspondence and claims.

Also, as section 302(b) would require revision of multiple forms (a process that is lengthy), VA recommends that section 302 be amended to include an effective date of one year after the date of the enactment of the bill, with the opportunity for the claimant

to opt-in to electronic notice prior to that date. VA also recommends consideration of a catch-all provision that makes clear that electronic notice is an acceptable means of notice for *any* notice required under title 38 even if a statute or regulation says “mailing.”

VA supports the purpose of section 303 but would appreciate the opportunity to work with the Committee on technical changes to the provision. VA understands the intent of section 303(a) is to allow VA contractors and vendors access to return information for the purpose of administering (or assisting in administering) certain types of benefit claims. This would improve the efficiency of VA claim adjudication. However, VA is concerned that the bill as written could be interpreted to limit its contractors’ or vendors’ ability to perform some key functions with respect to the claim process, such as processing mail and maintaining information technology systems. We would welcome the opportunity to address this issue with the Committee.

VA has no concerns with section 303(b).

Costs associated with an internship program under section 101 would be assumed within baseline funding and managed within approved full-time equivalent (FTE) and funding levels.

Costs to establish an honors program under section 102 to help recruit and retain high-achieving law school students, recent law school graduates, and entry-level attorneys for employment with the Board would be assumed within baseline funding and managed within approved FTE and funding levels.

Discretionary costs associated with establishing a pilot program under section 103 to assess the feasibility and advisability of reimbursing claimants for travel expenses incurred for travel to hearings held by picture and voice transmission before the Board would be insignificant.

No mandatory or discretionary costs are associated with section 201.

Mandatory costs associated with section 202 are estimated to be \$13.8 million in 2022, \$71.8 million over five years, and \$151.0 million over 10 years. Contract exams are initially funded by VBA’s discretionary GOE account and then reimbursed by VBA’s mandatory C&P account. Therefore, no discretionary costs are associated with this section.

No mandatory or discretionary costs are associated with sections 203 and 204.

No mandatory costs are associated with section 301. IT costs will be determined. The GOE estimate for FY 2022 is \$10.5 million and includes salary, benefits, rent, travel, supplies, other services, and equipment. Five-year costs are estimated to be \$50.5 million, and 10-year costs are estimated to be \$105.9 million.

No mandatory costs are associated with section 302. IT costs will be determined. The GOE estimate for FY 2022 is \$37.5 million and includes salary, benefits, rent, travel, supplies, other services, and equipment. Five-year costs are estimated to be \$187.3 million, and 10-year costs are estimated to be \$374.8 million.

There are no anticipated mandatory or discretionary costs associated with sections 303.

Conclusion

Mr. Chairman, this concludes my testimony. My colleagues and I are prepared to respond to any questions you or other Members of the Committee may have.