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HEARING ON PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JUNE 29, 2016

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HEARING ON PENDING LEGISLATION

WEDNESDAY, JUNE 29, 2016

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

The Committee met, pursuant to notice, at 2:28 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Heller, Cassidy, Tillis, Sullivan, Blumenthal, Murray, Brown, Tester, and Hirono.

OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA

Chairman ISAKSON. I call this meeting of the Senate Veterans' Affairs Committee to order.

We are going to start right on time. We have a number of members who wish to address legislation they have proposed. We have an agenda of 18 bills that are before the Veterans' Affairs Committee, so it is going to be a lengthy hearing. I know there are Senators that have places to be.

I am going to waive my own opening statement, along with Ranking Member Blumenthal. We will make our statements later in the day in respect for the Senators that are here.

As is tradition with our Committee, we will give each Senator up to 5 minutes to make a presentation on their legislation. As is tradition, we do not enter into questions and answers as Committee Members, but once you have made your testimony, you may leave if you would like. If you wish to stay, you are welcome to stay. We are delighted that you came.

We will start with the first testimony from Senator Inhofe.

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM OKLAHOMA

Senator INHOFE. Thank you, Mr. Chairman. I appreciate it very much.

In 2010, Congress passed the Post-9/11 Veterans Education Assistance Improvement Act. This Act authorized veterans to use their benefits to pursue a technical or career certificate program as an option instead of traditional liberal arts opportunities at a college or university. It is kind of interesting. I am the right one to do this, because in the State of Oklahoma, I actually introduced the first legislation back in the 1970s to establish these technical training areas. So, I am very partial to them. The Career and Technical Education Centers, or CTEs, are public, not private, not-profit, non-

degree granting institutions that provide skills and certificates important to every community and are found in over ten States.

The city of Enid, OK, has been the home of the Autry Technology Center. Now, you and I may be the only two here old enough to remember who Gene Autry was. You, too? All right. [Laughter.]

Well, anyway, he is an Oklahoman, in case you did not know. The Autry Technology Center, since 1967, has served over 10,000 people annually through programs and services that enhance skills and employment opportunities. Autry currently offers 26 full-time career programs, from air conditioning to culinary arts, radiology, and several other critically-applied skills used nationwide.

Public, not-profit centers in the Oklahoma Career Tech System, like Autry, in Enid, are proven to significantly contribute to the economic development and quality-of-life in Oklahoma, especially to returning veterans. Career and Technical Education Centers are vital as post-secondary education options and workforce training system for our veterans.

The administration recently took action to block certain technical center benefits from our veterans. Since March, the VA is not allowing the Post-9/11 G.I. Bill to pay for any form of independent study from a non-degree producing institution, including CTEs. In many cases, this hindrance precludes veterans from utilizing these courses in pursuing these certificate programs.

CTEs, much like their college and university counterparts, are utilizing internet-based courses as a component of their programs to provide flexibility for working adults in expanding those programs. Unlike colleges and universities, however, CTEs are not technically degree producing, so the VA is preventing the use of G.I. Bill funds for any CTE program that has independent study.

Marcie Mack, the State Director of Oklahoma's Career Technology System, told me last week that her—this is her quote—she said, "Oklahoma's Career Tech System is committed to serving U.S. military veterans. However, with current Federal policy, there are obstacles for our veterans to be able to participation in the Oklahoma Career Tech System and receive their benefits."

Now, to address the current policy issues, I have introduced, and it is before this Committee now, S. 3021, along with Senator Lankford, clarifying the law to ensure accredited CTE programs can continue to receive G.I. Bill benefits even if a portion of the program is done through independent study.

In the time since I introduced this legislation, I have heard concerns from this Committee about whether this would open the door for bad actors in the education space to take advantage of these benefits. Now, my staff has worked with your staff, your folks. They have explored these concerns and have modifications to the language that is in the bill now to ensure that the bill does not have negative unintended consequences. It is my hope that the Committee will quickly consider this legislation.

I deeply appreciate the attention the Committee has given to my bill and I look forward to continuing my work to ensure that this problem is addressed.

Now, there is not time to go into the other one, but I have another piece of legislation because there has been a problem with the VA centers in Oklahoma, the Muskogee Center, the Oklahoma

City Center, the Tulsa Center. It has only been with my office's dedicated attention that these clinics have any progress being made. We have been helped by Ralph Gigliotti. He is the Veterans Integrated Service Networks, or VISN, Director for our area. He is really good. I sing his praises. He is outstanding. He has been very supportive. We have some legislation that is called S. 2554 that would give the VISNs more options, more authority to get things done, because they are the ones who are really capable of getting it done.

So, while S. 2554 is in the Committee, it has not been considered yet. I would like to have you consider that at your earliest convenience.

Chairman ISAKSON. Well, we appreciate your testimony on education as well as on the VISNs. We look forward to working with you on legislation and appreciate your interest in our veterans.

Senator INHOFE. Thank you.

PREPARED STATEMENT OF HON. JAMES INHOFE, U.S. SENATOR FROM OKLAHOMA

In 2010, Congress passed the Post-9/11 Veterans Educational Assistance Improvements Act. This Act authorized veterans to use their hard earned educational benefits to pursue a technical or career certificate program as an option instead of the traditional liberal arts opportunities at a college or university.

Career technology centers, or CTEs are public, non-profit, non-degree granting institutions that provide skills and certificates important to every community and are found in over ten states.

The city of Enid, Oklahoma has been home to the Autry Technology Center since 1967 and serves over 10,000 people annually through programs and services that enhance skills and employment opportunities.

Autry currently offers 26 full-time career programs from air conditioning to culinary arts, to radiography, to welding, and several other critical, applied skills used nationwide.

Public, non-profit centers in the Oklahoma Career-Tech system, like Autry Technology Center in Enid, are proven to significantly contribute to the economic development and quality of life in Oklahoma, especially our returning veterans.

Career and technical education centers are vital as a post-secondary education option and workforce training system for our veterans, but the administration recently took action to block certain tech center benefits from our vets.

Since March, the VA has not allowed the Post-9/11 GI Bill to pay for any form of independent study from a non-degree producing institution, including CTEs. In many cases, this hindrance precludes veterans from utilizing these courses or pursing these certificate programs.

CTEs, much like their college and university counterparts, are utilizing internet based courses as a component of their programs to provide flexibility for working adults and veterans to better accommodate their lifestyles and encourage learning.

Unlike colleges and universities, however, CTEs are not technically degree producing, and so the VA is preventing the use of GI Bill funds for any CTE program that has an independent study component.

Marcie Mack, the State Director of the Oklahoma Career-Tech system, told me last week that, "Oklahoma's Career-Tech system is committed to serving U.S. military veterans; however, with current Federal policy there are obstacles for our veterans to be able to participate in Oklahoma's Career-Tech system and receive their benefits."

To address the current policy issues, I have introduced S. 3021 along with Sen. Lankford, clarifying the law to ensure accredited CTE programs can continue to receive GI Bill benefits even if a portion of the program is done by independent study.

In the time since I introduced this legislation, I have heard concerns from this Committee about whether this would open the door for bad actors in the education space to take advantage of these benefits.

My staff, along with the staff of this Committee, have explored these concerns and have modifications to the language to ensure the bill does not have negative, unintended consequences, and it is my hope that the Committee will quickly consider this legislation so that veterans in Oklahoma can achieve career success after leaving the service.

I deeply appreciate the attention the Committee has given to my bill, and I look forward to continuing my work with you to ensure this issue is addressed.

While I am here, I would also like to address the Committee on some of the VA health clinic challenges we have had in Oklahoma.

We have had serious problems at both VA centers in Oklahoma—Muskogee and Oklahoma City. It has only been with my office's dedicated attention to these clinics that any measurable progress is being made.

We have been helped by Ralph Gigliotti, our VISN director, who is outstanding. He has been very supportive of ensuring the changes that need to happen on the ground in Oklahoma actually take place. Both centers now have new directors because of his leadership.

Recently, the VA contracted with the Joint Commission to do an investigation of Oklahoma's facilities together with the Inspector General. Having this outside entity come in and compare the VA facilities with private sector health care facilities is helping identify clear problems for the local and regional directors to go after and fix. It is always nice to have a second opinion.

One section of S. 2554 provides permanent authority for VISN directors like Ralph Gigliotti, to contract with outside entities to do these kinds of investigations. I believe this is an important authority that needs to be explicitly provided to them, so that more of the VA health center problems, which we hear about all over the place, can be fully addressed.

Thank you again for having me today.

Chairman ISAKSON. Senator Fischer.

STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Thank you, Mr. Chairman. Good afternoon and thank you for holding this hearing.

This Committee has addressed some of the most difficult issues that have faced our veterans. Across the country, people's confidence in the care we provide to veterans has been understandably shaken. As has been mentioned time and time again in this Committee, veterans deserve more from us. They expect more from us. They expect us to uphold our end of the bargain. The complications with the construction project in Denver, for example, have raised serious questions about our ability to provide veterans the high quality care that they have earned.

Partnerships across the aisle and across the branches of government have been important to overcoming the issues facing our veterans in the past. By bringing more partnerships about between veterans, their communities, and the Federal Government, we have an opportunity to uphold our end of the bargain for our servicemembers. We can do this, and we can do this by tapping into the strength in our local communities. Through community partnerships, our family members, neighbors, and businesses can give back to those who have given so much for them.

The VA has identified communities in Nebraska and across the country that are ready, willing, and able to contribute to improving our veterans' access to quality care. These communities do not want to wait for Washington. They are ready to restore the veterans' health care system and they want to take an active role in restoring our national confidence in that system.

So, my bill, S. 2958, creates a pathway for local communities to do just that. Local leaders have expertise in aligning both design and medical teams in constructing medical facilities. Through the partnerships created in this bill, local leaders would have the opportunity to manage construction projects from start to finish. By

allowing the private sector experts to lead these projects, the VA can avoid issues that have haunted previous projects.

Our veterans and the American people deserve transparency. They deserve projects that are on time. They deserve projects that are on budget.

The VA has already appropriated millions of dollars to construction projects that are not yet finished. This legislation would allow communities to contribute the remaining finances to complete these projects. The VA's financial obligation for the construction of these medical facilities would be limited to the previous appropriation and not one dollar more. This legislation can serve as a model for expediting the VA's efforts to coordinate its infrastructure with the needs of our veteran population.

Communities across the country are willing to help take up this national responsibility of caring for our veterans. It is our responsibility, I believe, to fully explore ways that empower them to do so, and I believe that my legislation would do that.

Thank you, Mr. Chairman.

Chairman ISAKSON. Having dealt with the Denver hospital debacle and gone through that, I am glad that there are thoughtful members of the Senate looking at solutions to our future problems so we do not ever have to replicate those again. Thank you very much for your thoughtful proposal.

Senator FISCHER. Thank you, sir.

[The prepared statement of Senator Fischer follows:]

Prepared Statement of Hon. Deb Fischer, U.S. Senator from Nebraska

Chairman Isakson and Ranking Member Blumenthal, good afternoon and thank you for holding today's hearing.

Through your leadership, this committee has addressed some of the most difficult issues that have faced our veterans.

Across the country, people's confidence in the care we provide to veterans has been understandably shaken.

As has been mentioned time and time again in this committee, veterans deserve more from us.

They expect more from us.

They expect us to uphold our end of the bargain.

The complications with the construction project in Denver, for example, have raised serious questions about our ability to provide veterans the high-quality care they have earned.

Partnerships across the aisle and across the branches of government have been important to overcoming the issues facing our veterans in the past.

By bringing about more partnerships between veterans, their communities, and the federal government, we have an opportunity to uphold our end of the bargain for our service members.

We can do this by tapping into the strength in our local communities.

Through community partnerships, our family members, neighbors, and businesses can give back to those who have given so much for them.

The VA has identified communities in Nebraska and across the country that are ready, willing, and able to contribute to improving our veterans' access to quality care.

These communities do not want to wait for Washington.

They are ready to restore the veterans' healthcare system.

They want to take an active role in restoring our national confidence in this system.

S. 2958 creates a pathway for local communities to do just that.

Local leaders have expertise in aligning both design and medical teams in the constructing of medical facilities.

Through the partnerships created in the legislation, local leaders would have the opportunity to manage construction projects from start to finish.

By allowing private sector experts to lead these projects, the VA can avoid issues that have haunted previous projects.

Our veterans, and the American people, deserve transparency. They deserve projects that are on time and on budget.

The VA has already appropriated millions of dollars to construction projects that are not yet finished.

This legislation would allow communities to contribute the remaining finances to complete these projects.

The VA's financial obligation for the construction of these medical facilities would be limited to the previous appropriation and not one dollar more.

This legislation can serve as a model for expediting the VA's efforts to coordinate its infrastructure with the needs of the veteran population.

Communities across the country are willing to help take on our national responsibility of caring for our veterans.

It is our responsibility to fully explore ways that empower them to do so.

Thank you Mr. Chairman.

Chairman ISAKSON. Senator Franken.

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Chairman Isakson, and thank you, Senator Murray, for the opportunity to speak on behalf of the Atomic Veterans Health Care Parity Act, which I introduced with Senator Tillis. Thank you also to Senator Coons and Senator Wyden for cosponsoring the bill and the others testifying on behalf of this important legislation.

Like the Members of this Committee, one of my highest priorities as a Senator is making sure that our veterans and their families get every benefit that they deserve. We need to help our veterans find a home and a job, recover from their physical and psychological wounds, and take full advantage of the benefits that they were promised when they enlisted, benefits they have earned with their service and their sacrifices as well as the sacrifices of their families.

The veterans of the cleanup of the Enewetak Atoll have not gotten the benefits that they earned. During the 1940s and the 1950s, the United States conducted more than 40 nuclear tests on the Enewetak Atoll in the Marshall Islands. Thousands of members of the U.S. Armed Forces participated in the clean-up of Enewetak between 1977 and 1980, so that was years later. Servicemembers removed radioactive fallout, soil, and debris, including significant amounts of plutonium, and dumped it into a crater on Runit Island, that was then covered with 18 inches of concrete.

Now, we dropped so much nuclear material on Enewetak that it was as if we had dropped 1.6 Hiroshima bombs every day for 12 years. That is what we are talking about. These servicemembers were typically without any form of protective gear. They wore Defense Department-issued T-shirts, shorts, and combat boots to remove highly contaminated material.

Today, half of Enewetak, of the atoll, is still considered unsuitable for human habitation. Thirty-six years after the clean-up was completed, residents still must be tested for radiation levels, especially those that work closely with the soil, just like our veterans did.

Now, our servicemembers who were actually part of the nuclear tests, the ones that were part of the nuclear tests during their active service, do receive extra benefits as atomic veterans to deal with illnesses that are assumed to be related to radiation exposure. However, servicemembers that were part of the clean-up do not receive these extra benefits, despite their exposure.

Many of the veterans who served on Enewetak Atoll have already passed away. Many more of the clean-up veterans suffer from various types of cancer, respiratory and heart diseases, at early ages and at high rates. There are reports that their children may also be suffering from illnesses caused by having a parent who was exposed to radiation.

Clean-up veterans are forced to pay out of pocket for their medical costs because the VA does not recognize them as atomic veterans. Despite being put in harm's way, these veterans that cleaned up after the nuclear tests are not being adequately compensated by their government.

In order to right this wrong, Senator Tillis and I introduced the Atomic Veterans Health Care Parity Act. This bipartisan, bicameral legislation assures that the veterans who participated in the clean-up of the Enewetak Atoll receive the benefits they deserve, benefits that their service should have entitled to them years ago.

Thank you, Mr. Chairman; thank you both Senators Murray and Hirono, for the opportunity to testify on this important piece of legislation. I look forward to working with you and the rest of the Committee to move this very important legislation along. Thank you very much.

Chairman ISAKSON. Thank you very much, Senator Franken.

Senator Cotton.

STATEMENT OF HON. TOM COTTON,
U.S. SENATOR FROM ARKANSAS

Senator COTTON. Thank you, Mr. Chair. I would like to thank the Ranking Member, Senator Blumenthal. Thank you, Senator Murray and Senator Hirono, for the chance to appear before you today. My testimony did not require a grant of immunity. [Laughter.]

I am here today to discuss my legislation, the Charles Duncan Buried with Honor Act, which would expand the cemetery burial options offered by the VA to financially insolvent veterans.

I want to begin by telling a story about the bill's namesake, Mr. Charles Duncan, a Navy veteran from Little Rock, AR. Mr. Duncan died last year at the age of 66. He was financially insolvent and his family could not afford his funeral costs. Thanks to the past efforts of this Committee in passing the Dignified Burial and Other Veterans Benefits Improvement Act of 2012, Mr. Duncan was eligible for VA assistance with his burial costs. Unfortunately, because of a small gap in the law, Mr. Duncan and other veterans like him

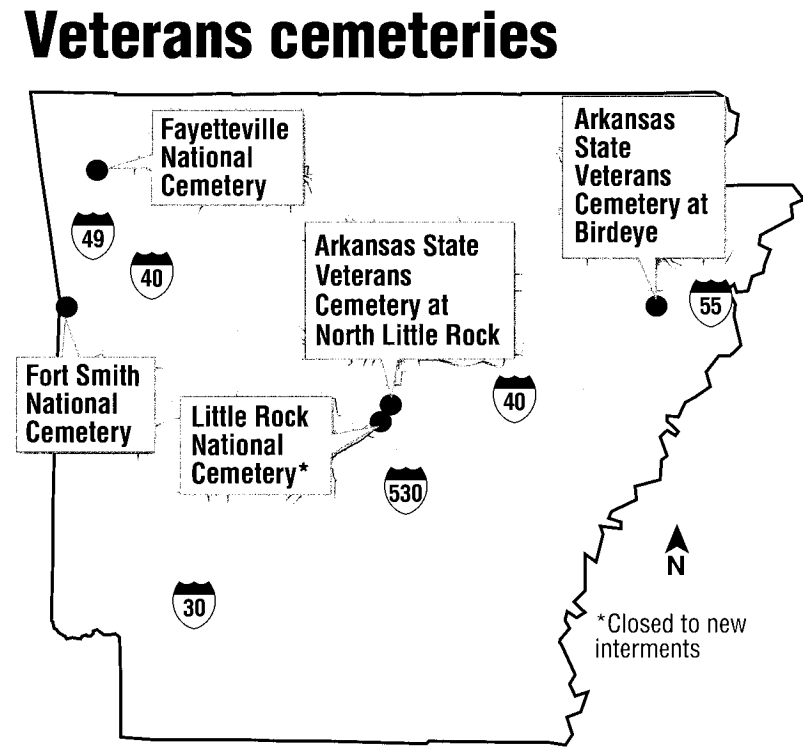
can only receive this assistance if they are buried in a national cemetery.

In Arkansas, as I suspect in other States, this rule can necessitate hours of travel to reach the closest cemetery. For instance, we have three national cemeteries, one in Little Rock, one in Fort Smith, and one in Fayetteville. But the national cemetery in Little Rock is full, leaving Fort Smith and Fayetteville in the west as the only options.

In Mr. Duncan's case, his adult daughter has no means of transportation and was unable to make the drive to Fort Smith from Little Rock and missed her father's funeral. Since then, she has been unable to visit her father's grave. Would it not make more sense to allow these veterans the option of a State veterans' cemetery if that cemetery is closer to the veteran's home?

In Arkansas, we have two State cemeteries, one in Little Rock and one in east Arkansas at Birdeye. Both of them have plenty of room for more veterans, and as you can see, a large part of my State is closer to Little Rock and Birdeye than it is to either Fort Smith or Fayetteville.

[Graphic follows:]



SOURCES: Arkansas Department of Veterans Affairs; U.S. Department of Veterans Affairs

Graphic provided by the Arkansas Democrat-Gazette

Senator COTTON. Mr. Duncan could have been laid to rest in the Little Rock State cemetery, saving taxpayer money and allowing friends and families to attend the service or visit the gravesite. This is a small but important change.

Since Senator Murray's bill took effect, the VA has reimbursed claims totaling almost $240,000 for the interment of 203 veterans. The costs associated with this legislation as estimated at only $2 million over 10 years. I would suggest the cost is minimal when you consider the sacrifices our veterans have made and the solace this could provide their loved ones.

Additionally, this change would not add additional stress to the VA or distract from their other efforts. It is a simple, straightforward change that the VA Veterans' Cemeteries Grant Program is well equipped to handle, and I would note that the VA submitted a no benefit cost or savings legislative proposal to make this type of change in its fiscal year 2017 budget submission, indicating its willingness to implement this legislation.

Finally, in the interest of moving the bill forward, it retains the "no next of kin" provision in current law, which maintains the VA's commitment to our Homeless Veterans Initiative. This provision holds no cost, but also requires indigent veterans to disavow loved ones to be eligible for burial benefits. I hope there is a way to resolve that matter at a later date, and I look forward to working with the Committee and the VA on it.

Charles Duncan was not the first veteran in this position, but we can help ensure that he is the last.

Thank you for your time and thank you for your continued support for our veterans.

Chairman ISAKSON. Thank you very much, Senator Cotton, for your thoughtful recommendation and presentation.

Senator McCaskill.

STATEMENT OF HON. CLAIRE McCASKILL, U.S. SENATOR FROM MISSOURI

Senator MCCASKILL. Thank you, Mr. Chairman, and thank you to Senator Murray and Senator Hirono for being here today.

I would like to address a very important topic with you today. I am here to speak in support of the Arla Harrell Act, legislation which I introduced to address a very serious injustice that has been perpetrated against veterans that were purposely exposed through our own military to chemical agents as part of U.S. Government experiments during World War II.

The U.S. Government conducted classified chemical tests of mustard agents, including mustard gas and lewisite, on thousands of its own servicemembers. Mustard agents can cause painful blisters on exposed skin as well as damage to the eyes and respiratory system, leading to a lifetime of adverse health impacts. In total, 60,000 servicemembers are estimated to have participated in the tests, with about 4,000 of them facing the most extreme forms of full body exposure.

One of these servicemembers is a constituent of mine, Arla Harrell, who was twice exposed to mustard gas while stationed for basic training at Camp Crowder in Neosho, MO, in 1945. Arla and his fellow subjects were told they would be helping the military,

"test summer clothing," in exchange for additional leave. It was not until they arrived at the testing site that they were told they would be exposed to mustard agents. Servicemembers who participated in chamber tests were repeatedly exposed to mustard agents until they developed moderate to intense erythema, a painful skin disorder.

The servicemembers were threatened with court-martial if they did not continue with the testing. To make matters worse, they were sworn to an oath of secrecy, leaving them unable to share what had happened to them with anyone, including their own health care providers.

Following his exposure, Arla was hospitalized twice, first at Camp Crowder while still in basic training, and again at the 98th General Hospital in Munich, Germany. Due to the classified nature of the testing and the oath of secrecy, this meant decades of suffering and frustration for the impacted veterans as they sought medical care from doctors who were in the dark about their exposure.

Seventy years after the experiments took place, the government has yet to appropriately assist and compensate many of these veterans. The VA finally established a process 25 years ago to compensate these veterans, but it puts the burden on the veterans to prove that they were exposed to mustard gas in order to make a successful claim. These tests were classified. The young servicemembers were held to an oath of secrecy for more than 40 years. Records are incomplete, and for some veterans, a massive 1973 fire destroyed their entire service files. The VA established a burden of proof that is insurmountable to many impacted veterans.

The VA has rejected approximately 90 percent of the applicants for VA benefits connected to exposure of mustard gas or lewisite. Of the thousands of veterans who were exposed during World War II during this testing, only 40 percent are receiving benefits today.

Arla Harrell himself has been denied benefits multiple times, most recently just this month. The VA says it cannot confirm that mustard gas testing occurred at Camp Crowder and, therefore, cannot approve his benefits. This comes despite the clear statements from Arla regarding his treatment and the health effects he has suffered, and it comes despite the fact that the Army recovered mustard gas in vials in Camp Crowder more than 30 years ago and an Army Corps of Engineers report identifies gas chambers at Camp Crowder.

I have put a document up on the easel that was made by the Army Corps of Engineers. They went to tear down Camp Crowder and someone operating the bulldozer had a smoke of something come up from the air and began coughing. They then recovered both the vials of mustard gas and found the actual gas chambers on the property.

The Arla Harrell Act would improve the VA's consideration of mustard agent exposure claims and address this terrible situation. Simply, the bill would flip the burden of proof for veterans who have already been denied these benefits. And keep in mind, it only flips the benefit of who has to prove this for the people who have already applied, which there are less than 400 of these folks still alive. So, for 400 individuals who have already applied, it would

flip the burden of proof, but it would not open up claims for anyone else who has not previously applied. So, it is a very limited application.

It would require the VA to reconsider all previously rejected claims for benefits under this program with the presumption that the veteran was exposed to mustard gas. Rather than require the veteran to prove exposure of a program classified for decades and decades and, frankly, only really known about within the bowels of the Department of Defense, or DOD, for many years, the bill would require the VA to prove that he was not. This is not a large universe of individuals and all of them have previously made a claim for benefits.

Additionally, the bill would require the VA and DOD to establish a new policy for the processing of future mustard agent benefit claims so that other veterans do not go through what Arla Harrell has gone through.

Arla and his wife, Betty, and their five children have fought for compensation for a service-related illness for almost 25 years. They just want somebody to believe them.

After more than 70 years, Arla and veterans like him deserve recognition for their selfless service. I urge the Committee to support this legislation so we can keep our commitment and ensure that all veterans receive the respect, care, and benefits they have earned.

Thank you, Mr. Chairman and Senators for being here, and I hope that this is something that would not be controversial and that we could move fairly quickly through the process.

Chairman ISAKSON. Well, thank you for your testimony. I enjoyed our conversations during the markup on National Defense Authorization Act on this very subject, and we will continue to do the same thing here.

Senator MCCASKILL. Thank you so much.

[The prepared statement of Senator McCaskill follows:]

PREPARED STATEMENT OF HON. CLAIRE MCCASKILL, U.S. SENATOR FROM MISSOURI

Chairman Isakson, Ranking Member Blumenthal, thank you for the opportunity to address the Committee on this important topic. I am here today to speak in support of the Arla Harrell Act, legislation I introduced to address a serious injustice perpetrated against veterans exposed to chemical agents as part of US government experiments during World War II.

The U.S. Government conducted classified chemical tests of mustard agents—including mustard gas and lewisite—on thousands of its own servicemembers. Mustard agents can cause painful blisters on exposed skin as well as damage to the eyes and respiratory system, leading to a lifetime of adverse health impacts. In total, 60,000 servicemembers are estimated to have participated in the tests, with about 4,000 of them facing the most extreme forms of full body exposure.

One of these servicemembers is a constituent of mine, Arla Harrell, who was twice exposed to mustard gas while stationed for basic training at Camp Crowder in Neosho, MO in 1945. Arla and his fellow subjects were told they would be helping the military "test summer clothing" in exchange for additional leave. It was not until they arrived at the testing site that they were told they would be exposed to mustard agents. Servicemembers who participated in chamber testes were repeatedly exposed to mustard agents until they developed moderate to intense erythema, a painful skin disorder.

The Servicemembers were threatened with court martial if they did not continue with the testing. To make matters worse, they were sworn to an oath of secrecy, leaving them unable to share what had happened to them with anyone, including their healthcare providers. Following his exposure, Arla was hospitalized twice, first

at Camp Crowder while still in basic training and again at the 98th General Hospital in Munich, Germany.

Due to the classified nature of the testing and the oath of secrecy, this meant decades of suffering and frustration for the impacted veterans as they sought medical care from doctors who were in the dark about their exposure. Seventy years after the experiments took place, the government has yet to appropriately assist and compensate many of these veterans.

The VA established a process 25 years ago to compensate these veterans, but it puts the burden on the veterans to prove they were exposed to mustard gas in order to make successful claims. These tests were classified. The young servicemembers were held to an oath of secrecy for more than 40 years. Records are incomplete. And for some veterans, a massive 1973 fire destroyed their entire service case files. The VA established a burden of proof that is insurmountable for too many impacted veterans.

The VA has rejected approximately 90 percent of applicants for VA benefits connected to exposure to mustard gas or lewisite. Of the thousands of veterans who were exposed during World War II, only 40 are receiving these benefits today.

Arla Harrell himself has been denied benefits multiple times, most recently just this month. The VA says that it cannot confirm that mustard gas testing occurred at Camp Crowder and therefore cannot approve his benefits. This comes despite the clear statements from Arla regarding his treatment and the health effects that he has suffered. And it comes despite the fact that the Army recovered mustard gas in vials at Camp Crowder more than 30 years ago, and an Army Corps of Engineers report identifies gas chambers at Camp Crowder.

The Arla Harrell Act would improve the VA's consideration of mustard agent exposure claims and address this terrible situation. Simply, the bill would flip the burden of proof for veterans who have already been denied these benefits. It would require the VA to reconsider all previously rejected claims for benefits under this program with a presumption that the veteran was exposed to mustard gas. Rather than require the veteran to prove exposure, the bill would require the VA to prove that he was not. This is not a large universe of individuals—and all of them have previously made a claim for these benefits.

Additionally, the bill would require the VA and DOD to establish a new policy for the processing of future mustard agent benefit claims so that other veterans do not go through what Arla Harrell and others have been through.

Arla, his wife Betty, and their five children have fought for compensation for his service-related illness for almost 25 years. After more than seventy years, Arla, and veterans like him, deserve recognition for their selfless service. I urge the Committee to support this legislation so we may keep our commitment and ensure all veterans receive the respect, care, and benefits they have earned.

Chairman ISAKSON. Thank you, Senator McCaskill.

We have one other member of the Senate, Senator Merkley, who has asked to testify, but he has not shown up yet. I do not know if we have a message that he is coming, so in his absence, we will go ahead and go to panel number 1.

In the absence of Senator Blumenthal, we have a much more attractive Senator as Ranking Member, Senator Murray, and I recognize Senator Murray first.

OPENING STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Senator MURRAY. Well, Mr. Chairman, thank you. I want to thank you for holding this hearing on some really important pieces of legislation.

I wanted to say, it is not on the agenda today, but I do want to take a moment to talk about my Servicemembers Civil Relief Act (SCRA) Enhancement and Improvement Act of 2016, which I believe is really important to upholding our country's commitment to veteran families. Part of that is making sure servicemembers have important legal protections so they can focus on their mission, and those protections recognize that while they are deployed or away

from home, servicemembers often do not have the resources to respond to a range of financial and legal issues.

Despite these protections, I am disappointed to learn that servicemembers continue today to be subjected to predatory practices and unfair treatment on their student loans, on their mortgages, and on their credit cards. It is why I have introduced the SCRA Enhancement and Improvement Act, which would put an end to many of these predatory practices and give servicemembers and our agencies the tools they need to fight back when banks and student loan servicers deny servicemembers their rights.

I will put my statement into the record which explains what this does, Mr. Chairman, but it is about student loans, and it goes beyond that.

I was concerned when, several years ago, some of our Nation's largest mortgage servicers improperly overcharged and foreclosed upon thousands of deployed servicemembers in violation of those current laws. So, our legislation deals with that, too. I just do not believe we should let our servicemembers be taken advantage of.

Many of the provisions in our legislation have been considered by this Committee over the past years. Much of it is derived from requests by the Department of Justice for the tools it needs to protect our servicemembers.

So, Mr. Chairman, it is not on the agenda today, but I really hope that our Committee can put it on a future agenda and deal with this important issue.

[The prepared statement of Senator Murray follows:]

PREPARED STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Mr. Chairman, Thank you for holding this hearing on some important pieces of legislation.

It is not on the agenda today, but I want to take a moment to talk about my SCRA Enhancement and Improvement Act of 2016, which I believe is so important to upholding our country's commitment to military families.

Part of that is making sure servicemembers have important legal protections so they can focus on their mission. These protections also recognize that while they are deployed or away from home servicemembers often do not have the resources to respond to a range of financial and legal issues.

Despite these protections, I've been disappointed to learn that servicemembers continue to be subjected to predatory practices and unfair treatment on their student loans, on their mortgages, and on their credit cards.

That is so wrong.

And, that is why I introduced the SCRA Enhancement and Improvement Act, which will help put an end to many of these predatory practices and give servicemembers and our agencies the tools they need to fight back when banks and student loan servicers deny servicemembers their rights.

My bill will:

- Require automatic application of the interest rate cap, timely responses to all inquiries, retention of communications with servicemembers, and a full explanation of any denial of an SCRA protection.
- It will require student loan servicers to have a designated service representative or point of contact for servicemembers and ensure these individuals are properly trained.
- It will reduce the interest rate cap to provide meaningful protection to servicemembers, including a zero percent cap for servicemembers eligible for hostile fire or imminent danger pay.
- It will mandate that sufficient notice is given when a loan is transferred or sold, and that all benefits or protections seamlessly transfer to the new loan servicer.
- And it will forgive all Federal and private student loan debt in the event the servicemember dies in the line of duty.

The SCRA Enhancement and Improvement Act also expands protections beyond student loans.

I was concerned when several years ago some of the Nation's largest mortgage servicers improperly overcharged and foreclosed upon thousands of deployed servicemembers, in violation of the current law.

To address those problems, and in addition to the interest rate cap, the bill would expand the interest rate protection to all of a servicemember's debt, regardless of when it was incurred, in order to cover consolidation loans and in recognition that the same challenges exist for military borrowers regardless of when a debt was first incurred.

My bill will also give servicemembers and our agencies the legal and oversight tools they need to hold entities accountable, including giving the Attorney General greater authority for investigations and enforcement of the SCRA and doubling the fines against bad actors.

Like everyone here I believe protecting our military men and women from predatory practices is an absolutely essential commitment. We will not allow our servicemembers to be taken advantage of.

Many of these provisions have been considered by this Committee over the past few years, and much of it is derived from requests by the Department of Justice for the tools it needs to protect servicemembers.

I look forward to working with you, Mr. Chairman, and my colleagues to advance this important bill.

Chairman ISAKSON. For the record, the distinguished lady from Washington asked me to try to get it on the agenda for today. We were so, first of all, full, that was impossible. Second of all, I talked about a jurisdictional issue with Senator Alexander with regard to student loans, which I will talk to you about that after the meeting, but we will pursue it for you.

Senator MURRAY. OK. Thank you.

Chairman ISAKSON. Thank you for being here today.

With that said, our first panel, Mr. David McLenachen, Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration (VBA), U.S. Department of Veterans Affairs, accompanied by Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration (VHA).

Mr. McLenachen, you are recognized.

STATEMENT OF DAVID McLENACHEN, DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MAUREEN McCARTHY, M.D., ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH FOR PATIENT CARE SERVICES, VETERANS HEALTH ADMINISTRATION

Mr. MCLENACHEN. Mr. Chairman and Members of the Committee, thank you for the opportunity to present the views of the Department of Veterans Affairs on several bills that are pending before the Committee.

As you said, joining me today is Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health for Patient Care at VHA.

Because there are so many bills under consideration during this hearing, I am unable to address each one individually, Mr. Chairman. VA has indicated support for or concern with these bills in my accompanying written testimony.

We provided cost projections for these bills as we can and we will provide projections for the remainder as we compile the necessary data. We will do that as soon as we possibly can.

I would like to highlight a few of the bills that VA strongly supports that are on the agenda today. S. 2316, which affects a provision in current law that prevents VA from adequately compensating our most vulnerable beneficiaries when the fiduciary that serves them misuses their benefits. It would also allow VA to more easily and thoroughly investigate financial records in cases where a fiduciary misuse is suspected.

S. 3021 would provide veterans with more flexibility in using their Post-9/11 G.I. Bill benefits to pursue independent study in a program at an institution that is not an institution of higher learning. VA recognizes the importance of career and technical education courses and the growth of online and other forms of modern non-degree training and supports expanding educational assistance to cover these programs.

S. 3055 would make permanent a successful VHA dental insurance pilot program. VA welcomes the opportunity to continue offering dental insurance to interested veterans and hopes to see the program grow.

S. 3076, the Charles Duncan Buried with Honor Act, which you just heard about, would allow VA to provide caskets and urns to indigent veterans with no next of kin who are laid to rest in State and tribal cemeteries. VA strongly supports this cost neutral expansion of benefits, but suggests clarifying that it would apply to veterans' cemeteries of a State or Indian tribe.

S. 603 would expand travel benefits for rural veterans. VA strongly supports Sections 2 and 4, but would like to work with the Committee regarding Section 3.

We would also like to work with the Committee to make some clarifying edits to S. 2210, the Veteran Partners' Efforts to Enhance Reintegration or Veteran PEER Act, and would like to discuss with the Committee S. 2279, the Veterans Health Care Staffing Improvement Act.

VA strongly supports S. 2958, which would enable the Secretary to establish a pilot program to accept donations of real property that address needs identified through VA's long-range capital planning process. VA welcomes strategic partnerships such as the partnership proposed in this legislation. We look forward to working with the Committee and the bill's sponsors to address VA's technical concerns regarding the bill.

VA has more difficulty supporting some of the other bills under consideration today. We fully support delivering benefits to veterans and survivors as quickly as possible, but we cannot support S. 3023, the Arla Harrell Act, which would create a presumption of full-body mustard gas exposure and resulting service connection for every World War II veteran who files a claim for related disability benefits. Nonetheless, these claims remain a high priority for VA and we will continue to fully and sympathetically develop and adjudicate every mustard gas claim that we receive.

Delivering benefits to veterans exposed to radiation is also a high priority for VA, but we cannot support S. 2791, the Atomic Veterans Health Care Parity Act. Historical records and scientific evidence available to VA indicate that radiation exposure among servicemembers participating in the clean-up of the atoll were well below safe thresholds and unlikely to lead to any radiogenic dis-

ease. While VA is extremely grateful for every veteran's service and sacrifice, we believe that the paternalistic claim principles codified in current law and VA's mustard gas and radiation claim regulations already provide for fair and accurate resolution of these complicated claims.

Finally, like several of our Veterans Service Organization partners, we cannot support S. 3081, Working to Integrate Networks Guaranteeing Member Access Now or the WINGMAN Act, which would give Congressional staff unprecedented access to veterans' personal records, even in the absence of those veterans' consent. We have outlined additional concerns with the WINGMAN Act and other bills in my written testimony.

Mr. Chairman, this concludes my statement. We are happy to entertain any questions that you or other Members of the Committee may have. Thank you.

[The prepared statement of Mr. McLenachen follows:]

PREPARED STATEMENT OF DAVID MCLENACHEN, DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS

Good morning, Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect the Department of Veterans Affairs' (VA) programs and services. Joining me today is Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration (VHA). While VA makes every effort to provide views on all bills that are on the hearing agenda, due to the time of receipt of the draft bill to authorize payment by VA for the costs associated with service by medical residents and interns at facilities operated by Indian tribes and tribal organizations, we are unable to provide views at this time. We look forward to sharing our views on the draft bill in a follow-up letter.

S. 2316—TO EXPAND THE REQUIREMENTS FOR REISSUANCE OF VETERANS BENEFITS IN CASES OF MISUSE OF BENEFITS BY CERTAIN FIDUCIARIES TO INCLUDE MISUSE BY ALL FIDUCIARIES, TO IMPROVE OVERSIGHT OF FIDUCIARIES, AND FOR OTHER PURPOSES.

This bill would amend Chapters 55 and 61 of Title 38, United States Code (U.S.C.), to expand the requirements for reissuance of Veterans' benefits in cases of misuse of benefits by certain fiduciaries to include misuse by all fiduciaries and improve access to financial records for purposes of oversight of fiduciaries.

Section 1 of S. 2316 would amend 38 U.S.C. § 6107, to authorize the VA to reissue benefits to a beneficiary in all cases of fiduciary misuse. This bill would extend VA's reissuance authority to include misuse by individual fiduciaries who manage benefits for fewer than 10 beneficiaries, without regard to VA negligence in appointing or overseeing such fiduciaries. The bill would prescribe that VA will pay the beneficiary or the beneficiary's successor fiduciary an amount equal to the misused benefits in any case in which a fiduciary misuses a beneficiary's VA benefits.

Section 2 of S. 2316 would add a new subsection to 38 U.S.C. § 5502, which contains VA's authority to oversee and monitor the activities of fiduciaries. This new subsection would increase VA access to fiduciary-held financial accounts by requiring every fiduciary to authorize VA to obtain any record held by any financial institution regarding the fiduciary or the beneficiary whenever VA determines that such record is necessary:

- for the administration of a VA program; or
- to safeguard the beneficiary's benefits against neglect, misappropriation, embezzlement, or fraud.

VA supports this bill. It would ensure equal treatment of all fiduciary misuse victims regardless of the nature and scope of the fiduciary's business or the fiduciary's relationship with the beneficiary. This bill would allow VA to promptly reissue benefits that have been misused, thereby avoiding any financial hardship to beneficiaries caused by the misuse or delays in obtaining restitution or VA determining negligence. It would also provide an additional measure of oversight and improve the accountability of fiduciaries serving our most vulnerable beneficiaries by facilitating

VA's inspection of financial records when necessary. Any fiduciary who is found to have misused VA benefits is barred from future service.

During calendar year (CY) 2015, VA reissued $2,507,657 to 76 beneficiaries whose fiduciaries misused benefits as a result of VA's negligence, an average of $32,995 per beneficiary. Pension and Fiduciary Service estimates that, on average, an additional $2 million in VA benefits are misused annually by individual fiduciaries where the fiduciary managed the benefits of fewer than 10 beneficiaries, and VA was not negligent in its appointment or oversight. Based on the average reissuance amount of $32,995, $2 million in benefits would represent approximately 61 beneficiaries per year. Under this proposal, VA would make these Veterans or survivors whole by reissuing benefits without regard to the number of beneficiaries an individual fiduciary managed or VA's negligence in its appointment or oversight.

There would be no additional full-time employee (FTE) costs or general operating expenses (GOE) associated with enactment of this proposed legislation.

S. 2958—TO ESTABLISH A PILOT PROGRAM ON PARTNERSHIP AGREEMENTS TO CONSTRUCT NEW FACILITIES FOR THE DEPARTMENT OF VETERANS AFFAIRS

S. 2958 would authorize the VA Secretary to enter into up to five partnership agreements with a State or local authority; a 501(c)(3) corporation; a limited liability corporation; a private entity; a donor or donor group; or another non-Federal entity in order to secure donations of health care facilities and/or national cemetery assets.

VA strongly supports this legislation, but seeks a critical change needed to preserve civil rights protections. It would enable VA to enter into agreements that could potentially assist in providing high priority assets that have been identified as a need through our long-range capital planning process and are considered to be important in order to serve Veterans in safe, modern, and secure facilities. VA believes that the proposed partnerships will enable the Department to use alternative financing mechanisms, beyond VA's traditional appropriations, to deliver needed facilities for our Veteran population.

We strongly support the bill's authorization of these partnership agreements provided that the legislation preserves civil rights protections for Veterans and other employees who will be working to construct the facilities resulting from these partnership agreements. We look forward to working with the Committee to revise the language in section 1(b), which as currently drafted could be interpreted as excluding equal opportunity and employment protections.

VA estimates that S. 2958 would be cost-neutral because it provides for the donation of assets at no additional cost to the Federal Government beyond funds that have been previously appropriated for a project at the time of the agreement. The bill would not create an obligation by VA to fund the construction of the facilities contemplated by the bill. There would also be no obligation for VA to use future appropriations to fund capital costs related to the partnerships authorized by this section. VA would be pleased to work with the Committee to address technical edits to the bill as drafted.

S. 3021—TO AUTHORIZE THE USE OF POST-9/11 EDUCATIONAL ASSISTANCE TO PURSUE INDEPENDENT STUDY PROGRAMS AT CERTAIN EDUCATIONAL INSTITUTIONS THAT ARE NOT INSTITUTIONS OF HIGHER LEARNING

The proposed legislation would amend paragraph (4) of section 3680A(a) to authorize the use of Post-9/11 educational assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning. Currently, under section 3680A(a)(4), the Secretary is explicitly prohibited from approving enrollment in "any independent study programs except an accredited independent study program (including open circuit television) leading (A) to a standard college degree, or (B) to a certificate that reflects educational attainment offered by an institution of higher learning." As such, VA is not authorized to pay educational assistance for independent study courses at an institution not considered an institution of higher learning (IHL), or for any non-accredited independent study courses.

VA supports the proposed legislation that would expand VA's approval authority to pay Post-9/11 GI Bill benefits for enrollment in accredited independent study certificate programs at educational institutions that are not IHLs. More specifically, VA supports non-IHL independent study programs that are accredited by an accreditor recognized by the Secretary of Education (which would help ensure the integrity of the accreditor) and, if career and technical, that lead to industry-recognized credentials and certificates for employment. VA understands and appreciates the importance of career and technical education courses and the growth in the utilization of online and other 21st Century training modalities in the delivery of in-

struction for both degree and non-degree programs. As such, expanding the approval authority for certain independent study programs would be in the best interests of VA education beneficiaries.

We note that because this bill would amend 38 U.S.C. Chapter 36, the expansion of benefits would not be limited to Post-9/11 GI Bill benefits. Benefit costs are estimated to be $49.2 million in the first year, $266 million over five years, and $599.4 million over ten years. There would be no additional FTE or GOE associated with enactment of this proposed legislation.

S. 3032—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2016

S. 3032, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2016," would require the Secretary of Veterans Affairs to increase, effective December 1, 2016, the rates of disability compensation for service-disabled Veterans and the rates of dependency and indemnity compensation (DIC) for survivors of Veterans. This bill would increase these rates by the same percentage as the percentage by which Social Security benefits are increased effective December 1, 2016. Consistent with VA's processing of these benefit payments under current law, the bill would prescribe an increase in each benefit dollar amount without rounding down to the next whole dollar amount. The bill would also require VA to publish the resulting increased rates in the *Federal Register*.

VA supports this Cost-of-Living Adjustment (COLA) bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children and would ensure that the value of their well-deserved benefits will keep pace with increases in consumer prices. Although not included in S. 3032, VA would also support inclusion of the round-down provision in effect before December 1, 2013, which provided that "each dollar amount, if not a whole dollar amount, be rounded down to the next lower dollar amount." This round-down methodology would provide the desired benefit increases, and ensure VA's fiscal responsibility. The 2017 President's Budget includes a legislative proposal to reinstate the round-down provision for five years, which would result in benefit savings of $21.5 million in 2017, $63.5 million in 2018, and $599.3 million over five years. Although the proposal would reinstate the round-down for five years, the cumulative effect of rounding-down COLAs for five years would total $2.0 billion in savings over ten years

Benefits costs that would result from the COLA increase are estimated to be $490.8 million during the first year, $3.0 billion for five years, and $6.6 billion over ten years. The 2017 President's budget assumes annual COLA increases for disability compensation and DIC in its baseline estimate. There would be no increases to costs above the current baseline budget associated with the COLA.

The current COLA estimate from the 2017 President's Budget, effective December 1, 2016, is 0.8 percent. The impact of the COLA was calculated by applying the 0.8 percent increase in payments to the projected caseloads in the fiscal year (FY) 2016 President's budget. The total cost was then compared to the estimated cost without COLA increases to calculate the impact of the COLA.

There would be no FTE or GOE costs associated with enactment of this proposed legislation.

S. 3055—DEPARTMENT OF VETERANS AFFAIRS DENTAL INSURANCE REAUTHORIZATION ACT OF 2016

S. 3055 would make the VA Dental Insurance Program (VADIP) permanent, which was initially implemented as a pilot program on November 15, 2013, through Section 510 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (Public Law 111–163). The VADIP program offers enrolled Veterans and beneficiaries of VA's Civilian Health and Medical Program (CHAMPVA) the opportunity to purchase dental insurance at a reduced cost. Each participant pays a fixed monthly premium for coverage, in addition to any copayments required by his or her plan. Through the pilot, over 75,000 Veterans and CHAMPVA beneficiaries purchased plans as of December 31, 2014. In the 4th quarter of CY 2014, VA conducted a survey of Veterans who have purchased and utilized the insurance plans, and over 92 percent said they would renew and recommend the program to other Veterans, indicating strong overall satisfaction with the program. Providing Veterans, their families, and beneficiaries an opportunity to purchase dental insurance that contains coverage and quality defined by the VA Office of Dentistry at discounted rates is one step in improving the overall health of the Veteran population.

VA supports S. 3055.

S. 3076—CHARLES DUNCAN BURIED WITH HONOR ACT OF 2016

This bill would amend 38 U.S.C. § 2306(f) which currently authorizes the VA Secretary to furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial in a national cemetery of a deceased Veteran in any case in which the Secretary is unable to identify the Veterans' next-of-kin, if any; and determines that sufficient resources for the furnishing of a casket or urn for the burial of the Veteran in a national cemetery are not otherwise available. By regulation, VA administers this benefit through a reimbursement program.

S. 3076 would change the current authority by expanding the availability of the benefit to Veterans buried in a State or tribal organization cemetery. VA fully supports the bill. We suggest one minor amendment to the language in subsection (1); to add "veterans" before "cemetery of a State or Indian tribe."

The authority to furnish caskets and urns was included in Public Law 112–260, the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012. This vehicle was used to highlight the issue of Veterans without next-of-kin and without sufficient resources for burial, and the need for expanded benefits for this disadvantaged group. In addition to the new authority to furnish a casket or urn for Veterans without next-of-kin and without sufficient resources for burial who are buried in VA national cemeteries, the public law expanded the plot allowance and transportation allowance and directed specific procedural requirements for national cemetery officials to confirm remains were unclaimed and the final disposition of those remains.

After publishing its final regulation on the casket and urn reimbursement program, on May 13, 2015, VA began accepting requests for reimbursement for caskets or urns purchased for the interment of deceased Veterans who died on or after January 10, 2014, without next of kin and sufficient resources for burial. Currently, any individual or entity may request reimbursement if they purchase a casket or urn to inter in a VA national cemetery an eligible Veteran who died on or after January 10, 2014, without next of kin and without sufficient resources to purchase a burial receptacle. VA will reimburse the actual cost of such a casket or urn, not to exceed an annually established rate based on the average cost of caskets and urns in any given CY. For claims received in CY 2016, the maximum reimbursement rates are $2,421.00 for caskets and $244 for urns. The maximum reimbursement amounts are adjusted for inflation on an annual basis.

Regarding the amendment's change to provide the benefit for Veterans interred in a State or tribal organization Veterans cemetery, VA submitted a legislative proposal concept to make such a change in its FY 2017 budget submission, indicating the Department's willingness to implement this expansion to its current authorities. Through a grants program to establish, expand, and improve State and tribal organization Veteran cemeteries, NCA maintains a valuable partnership with States and tribal organizations to provide a final resting place to those who may not have access to a VA national cemetery burial option. Extending the casket and urn reimbursement benefit for the burial of Veterans without next-of-kin and without sufficient resources for burial who are in State or tribal Veterans cemeteries would support VA's efforts to ensure the unclaimed remains of Veterans receive a dignified burial. VA grant-funded State and tribal Veterans cemeteries conducted nearly 36,000 burials of Veterans and their families in FY 2015. These cemeteries provide the same services and benefits to Veterans and their eligible family members and are required to comply with the same national shrine appearance standards as national cemeteries.

There would be no benefit costs or savings associated with enactment of the provision to expand the benefit to State and tribal organization cemeteries.

S. 2210—VETERAN PEER ACT

S. 2210 would require the Secretary to phase in and conduct a program whereby peer specialists would be included in patient aligned care teams at VA medical centers (VAMC), to promote the use and integration of mental health services in a primary care setting. Not later than 180 days after the date of enactment, this program would have to be established at not fewer than ten VAMCs. By not later than two years (from this same date), it would have to be in place at not fewer than 25 VAMCs. Under the bill, the Secretary would be directed to consider specified factors when selecting sites for this program, but, not fewer than five would have to be established at VA designated Polytrauma Centers, and not fewer than ten would need to be established at VAMCs not so designated. S. 2210 would also require that all peer specialist programs established under this mandate: (1) ensure that the needs of female veterans are considered and addressed; and (2) include female peer spe-

cialists. Finally, this measure would establish initial, periodic, and final Congressional reporting requirements, as detailed in the bill.

VA supports S. 2210 subject to the availability of additional funding, noting a few technical changes are needed for clarity. This legislation, if enacted, would complement VA's ongoing pilot program (commenced in 2014) whereby peer support through peer specialists has been extended beyond traditional mental health sites of care to include Veterans receiving mental health care in primary care settings. Under the pilot program, trained peer specialists work with VA primary care teams to, in general terms, help improve the health and well-being of other Veterans being treated in VA primary care settings. To date, seven medical centers have volunteered for the pilot, composing the first cohort of sites to deploy peers to primary care. Two more cohorts are being recruited for implementation in July 2016, and January 2017. Peers provide services for ten hours per week, and that time may be divided among two peers. As with VA's long established mental health peer support model, the pilot program recognizes the therapeutic value of having peer specialists share their own past recovery experiences with Veterans receiving mental health care in the primary care setting, particularly those who are experiencing challenges similar to what the peer specialist experienced.

As mentioned, female peer specialists would have to be included in the program mandated by S. 2210. This is not necessary, however, as women peer specialists are already well represented, with 18 percent of the national peer specialist workforce being women. While at first glance 18 percent may seem a low rate, please bear in mind that this figure is higher than the percentage of Veterans seeking services through VA who are women. We do recognize, however, that the current number of women Veteran peer specialists in the pilot is unevenly distributed across the country, with some medical centers having greater difficulty than others in attracting qualified applicants.

Also, it is unclear if the peers will address substance use disorders under the umbrella of their mental health duties. Given the comorbidity of these issues, the need for integration of substance use disorder identification and care, the need for overdose prevention and linkage as needed to Medication Assisted Treatment for opioid use disorder, and the need to increase the numbers of veterans achieving long term recovery, we recommend that this be clarified and if possible included.

S. 603—RURAL VETERANS TRAVEL ENHANCEMENT ACT OF 2015

S. 603, the Rural Veterans Travel Enhancement Act of 2015, would make amendments to VA's legal authorities governing transportation benefits.

Section 2 would make permanent VA's authority under 38 U.S.C. § 111A(a) to transport any person to or from a VA facility or other place in connection with vocational rehabilitation, counseling required pursuant to Chapter 34 or 35 of Title 38 U.S.C., or for the purpose of examination, treatment, or care.

Section 3 would amend 38 U.S.C. § 111 to authorize beneficiary travel benefits for travel to and from Vet Centers for readjustment counseling and related mental health services under 38 U.S.C. § 1712A. As a technical matter, we note that counseling under 38 U.S.C. § 1712A is also available to certain Servicemembers and family members.

Finally, Section 4 would extend the authorization of appropriations for the Grants for Transportation of Veterans in Highly Rural Areas program through 2020.

VA supports Sections 2 and 4 of S. 603, assuming resources are provided to continue the operation of these programs. These provisions of the legislation would provide extended transportation authority for Veterans, particularly rural Veterans.

VA does not support Section 3 of the bill. The historic nature of the Readjustment Counseling Service and the concept of ready access with minimal administrative and bureaucratic processing, together with the separate location of Vet Centers and the lack of infrastructure to support consideration payment of BT, are all factors VA considered in choosing not to support this bill.

VA is, however, currently conducting a pilot program, as required in Section 104 of Public Law 112–154, to assess the feasibility and advisability of paying beneficiary travel under 38 U.S.C. § 111 for travel from a residence located in an area that is designated by the Secretary as highly rural to the nearest Vet Center and from such Vet Center to such residence. Based on experience with this pilot, VA does not agree that Veterans traveling to Vet Centers should be reimbursed using the Beneficiary Travel (BT) Program.

The pilot has demonstrated that a significant amount of coordination is necessary between the Vet Centers and corresponding VA medical centers. Because Vet Center visits are not entered into the Veteran's electronic medical record, increased paper documentation and communication with the VA medical center is required. Risk of

improper payments would increase with the complexity of this process, as traditional methods of paying BT could not be used.

Feedback from Veterans indicates that they find Vet Centers are more therapeutic and less bureaucratic than VA medical centers, and Veterans are afforded anonymity and the ability to speak freely without fear of repercussion. Participants cautioned that privacy was an issue, especially for police officers, fire fighters, and National Guardsmen, and expressed concerns that the information included in their file may negatively affect their employment. Some participants said they would be comfortable having VA medical center administrative staff see that a Veteran was a Vet Center client, but all participants agreed that they do not want the staff to have access to visit details, such as notes or specific diagnoses. This information is required in order to process most BT claims.

Over time, as travel benefits have improved, VA health care facilities have noted a significant increase in the number of Veterans claiming travel, as well as visits by those Veterans. We anticipate that, if enacted, Vet Centers would see similar changes that could affect provision of services at those facilities or require additional staffing resources to handle the increase of visits. These Vet Center staff would have increased administrative burdens, including documentation of visits and determinations of whether treatment related to service-connected condition(s), which are not currently required.

VA estimates the cost of this bill would be over $11 million in FY 2017, nearly $12 million in FY 2018, $61 million over five years, and $136 million over ten years.

S. 2279—VETERANS HEALTH CARE STAFFING IMPROVEMENT ACT

Section 2 of S. 2279 would require the VA Secretary, in coordination with the Secretary of Defense, to carry out a program to increase efficiency in the recruitment and hiring by VA of health care workers that are undergoing separation from the Armed Forces. Under Section 2, the Department of Defense (DOD) would have to provide VA a list of members of the Armed Forces, including the reserve components, who served in a health care capacity in the Armed Forces, are undergoing or have undergone separation from the Armed Forces, and will be discharged or have been discharged under honorable conditions.

Section 2 will support VA's ability to recruit qualified and trained health care professionals from the Armed Forces.

VA anticipates that the costs for implementing Section 2 for FY 2017 would likely amount to $4.9 million, and for a five-year period, from FY 2017 to FY 2021, the costs for implementing Section 2 would likely amount to $27.3 million.

Section 3 of S. 2279 would require VA to create uniform credentialing standards for positions specified in 38 U.S.C. § 7421(b). VA does not support this section as it already has uniform credentialing standards for its health care providers. VA prescribes these standards and the process for obtaining and retaining them through VA and VHA policy, including VHA Handbook 1100.19, Credentialing and Privileging, and VHA Directive 2012.030, Credentialing of Health Care Professionals. All credentialing occurs in VHA's electronic credentialing software platform, VetPro, and credentialing files can be easily shared and transferred throughout VA. At this time, VA does not have a cost estimate for this section.

Section 4 of S. 2279 would require VA to provide full practice authority to advanced practice registered nurses (APRN), physician assistants (PA), and other licensed health care professionals. The Rulemaking for APRNs is currently open for public comment until July 25, 2016, and we have received many public comments on this regulation. VA will consider and respond to the issues raised by these comments in the final rulemaking

At this time, VA does not have a cost estimate for this section.

S. 244—INDEPENDENT COMPREHENSIVE REVIEW OF VA ASSESSMENT OF TRAUMATIC BRAIN INJURIES

S. 244 would require VA, within a reasonable period of time, to enter into an agreement with the Institute of Medicine (IOM) or another organization, if VA is unable to enter into an agreement with IOM, to conduct a comprehensive review of examinations provided by VA to individuals who submit claims to the Secretary for compensation under Chapter 11 of Title 38, U.S.C., for Traumatic Brain Injury (TBI). The comprehensive review would be required to include a determination of the adequacy of the tools and protocols used by VA to provide examinations for compensation claims for TBI and a determination of the credentials necessary for health care providers and specialists to perform such portions of such examinations that relate to assessment of cognitive functions. The IOM would be required to convene a group of experts in clinical neuropsychology and other related disciplines. VA

would be required to submit a report to Congress within 540 days of entering into an agreement with IOM detailing the findings of the IOM with respect to the comprehensive review it would conduct and recommendations of the IOM for legislative or administrative action that could improve the adjudication of these claims.

While VA appreciates the objective of this bill, we do not believe it is necessary. We are committed to ensuring that all Veterans receive comprehensive, quality compensation and pension (C&P) examinations by qualified professional health care providers in a timely manner. Mental health professionals must make a clinical determination when conducting a C&P examination as to whether any psychometric testing is to be done; if the examiner determines that testing should be utilized, it is up to the examiner to determine what test to administer, based on the specifics of the Veteran's case. VA subject matter experts have thoroughly reviewed the policies regarding TBI examinations and, based on best clinical practices and protocols, do not believe that TBI C&P examinations are insufficient. VA's existing regulations reflect the special nature of complicated TBI claims and the unique criteria and process used to evaluate TBI. Under these rules, VA employs a holistic approach using cognitive, emotional/behavioral, and physical criteria to evaluate TBI. Notably, S. 244 would direct the IOM to analyze VA's criteria for evaluating cognitive function, with no mention of emotional, behavioral, and physical symptoms. VA would characterize such a limited analysis as a step backwards. In an effort to provide continuous process improvement to evaluating disability under the VA Schedule for Rating Disability, VA employs legal, medical, and administrative experts who routinely review the sufficiency of examination and rating criteria and recommend changes necessary to maintain accuracy, fairness, and efficiency in the claims resolution process. Establishing an external reviewing body would essentially duplicate VA's existing process.

VA currently has authority to work with IOM or others, and if we determine that such input is necessary, we will not hesitate to do so.

S. 2791—ATOMIC VETERANS HEALTHCARE PARITY ACT

This bill would amend Title 38, U.S.C. to provide for the treatment of Veterans who participated in the cleanup of Enewetak Atoll, as radiation exposed Veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs.

DOD conducted atomic bomb testing on Enewetak Atoll in the Pacific Marshall Islands during the 1950s. Senate bill 2791 would provide that Veterans who participated in the cleanup effort on Enewetak Atoll from January 1, 1977, through December 31, 1980, engaged in a "radiation-risk activity" and will be classified as radiation-exposed Veterans for purposes of establishing a presumption of service connection for certain enumerated radiation-related diseases.

When considering the creation of benefits presumptions, VA relies on science-based models that can be used to establish association between an in-service event and a post-service disability. VA has thoroughly reviewed the best available analysis of Enewetak cleanup exposure data, the 1981 Defense Nuclear Agency (DNA) Report, *The Radiological Cleanup of Enewetak Atoll*, and other available evidence. That evidence establishes that radiation doses among servicemembers participating in the cleanup were well below recommended thresholds for both acute and latent health effects, such as cancers. Since the best available evidence found radiation exposure among those individuals involved with the cleanup well below acceptable thresholds, there is no factual basis that would warrant a determination that this group of Veterans engaged in a radiation-risk activity sufficient to justify a presumption of service connection.

VA continues to evaluate any individual Veteran involved with the Enewetak Atoll cleanup on a direct facts-found basis under the ionizing radiation dose-evaluation regulations at 38 Coode of Federal Regulations (CFR) § 3.311. While the VA appreciates the Committee's attention and efforts to address this very important matter, the VA is unable to support S. 2791 as the proposed policy is inconsistent with known Enewetak Atoll exposure data and associated scientific analysis.

The costs that would be associated with enactment of this bill are to be determined.

S. 3023—THE ARLA HARRELL ACT

S. 3023 would (1) provide for reconsideration of claims for disability compensation from Veterans who allege mustard gas or lewisite exposure during World War II (WWII) that were previously denied by VA; (2) create a presumption of full-body exposure to mustard gas or lewisite if VA or the Secretary of Defense makes a determination regarding such exposure; (3) preclude use of information in the DOD and

VA Chemical Biological Data base or any list of known testing sites as the sole reason for finding that such veteran did not have full-body exposure; (4) require development by DOD and VA of a policy for processing future claims; (5) require a report by DOD regarding mustard-gas or lewisite experiments conducted by DOD during WWII, including each testing location, dates of experiments and number of members of the Armed Forces who were exposed; and (6) require VA to investigate and assess actions taken to notify exposed Veterans and investigate and assess the mustard-gas and lewisite claims from WWII Veterans that are filed and the percentage of these claims that are denied by VA.

Section 2(a)(3) of the bill would provide that, in reconsidering claims for VA disability compensation based on exposure to mustard gas or lewisite, if VA or DOD "makes a determination regarding whether" a Veteran experienced full-body exposure to those substances, VA or DOD "shall presume" that the Veteran experienced such exposure. Section 2(a)(3)(B), would prohibit VA from denying a claim based "solely" on the presence or absence of information in the DOD and VA Chemical Biological Warfare Data base, which was compiled based upon information available to DOD, or other lists maintained by the Departments.

The VA appreciates the Committee's attention to this very important issue. Providing Veterans with the care they need when they need it remains VA's top priority. We owe it to Veterans to ensure our decisions are fair, clear, and consistent across the board. Due to a number of concerns, we are unable to support S. 3023. The direction that VA ignore certain evidence, which may already be in the Veteran's claims file, would not only be unfair to other Veterans, but would conflict with other applicable provisions of law. Under 38 U.S.C. § 1154(a), in determining whether a condition is related to service, VA must give "due consideration" to the "places, types, and circumstances of" a Veteran's service "as shown by such [V]eteran's service record, [and] the official history of each organization in which such [V]eteran served." In addition, 38 U.S.C. § 5107(b) requires VA to "consider all information and law and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary." Finally, under 38 U.S.C. § 1154(b), in the case of a Veteran who engaged in combat with the enemy, VA must accept lay or other evidence of service regarding service incurrence of a disease or injury, notwithstanding the absence of an official record of such incurrence. However, the Veteran must first establish that he or she engaged in combat with the enemy, which usually involves consideration of service department records, and the lay or other evidence must be "consistent with the circumstances, conditions, or hardships of such service."

The proposed presumption of exposure to mustard gas and lewisite, which would not be supported by service department records or other objective evidence, would be unprecedented if enacted. It appears that the presumption would be invoked solely on the basis of a Veteran's statement that such exposure occurred and generally would be irrebuttable. Existing presumptions of an in-service exposure or event apply to discrete groups of Veterans whose service records reflect unique circumstances of service. Examples include Vietnam and Korean Veterans who are presumed exposed to Agent Orange during certain time periods, Veterans whose records indicate participation in WWII and cold war nuclear weapon detonations who are presumed exposed to ionizing radiation, and combat Veterans of all eras who are presumed exposed to the sort of traumatic stressor that can cause Post Traumatic Stress Disorder. Each of these sets of Veterans will have service department evidence of an in-service event or circumstance that may have triggered post-service disability.

Under the standard proposed in the bill, any WWII Veteran who has claimed participation in a mustard gas or lewisite test would be entitled to a presumption of full body exposure. This includes Veterans who may be confusing exposure to mustard gas or lewisite, with more routine agents such as tear gas, or even to placebo agents. All WWII claimants would essentially be presumed exposed to mustard gas—even Veterans who participated in no chemical testing.

Section 2(b) of the bill proposes a joint VA/DOD policy for processing future disability compensation claims based on exposure to mustard gas or lewisite. VA notes that mustard gas and lewisite claim policies and procedures are already in place and have and continue to lead to fair and equitable outcomes. VA promulgated a regulation in 1994 to address full-body mustard gas and lewisite claims (see 38 CFR. § 3.316) and recently updated procedural guidance directing VA claims processors to consider all relevant evidence, including both service department data and information from outside sources.

We share the Committees concern for these Veterans and we will continue to do everything we can, within the scope of the law, to provide care for those who have been identified by DOD as having had full body exposure to Mustard Gas and have

been diagnosed with conditions due to that exposure. Changing the rules for one set of individuals is simply unfair for the thousands of other Veterans seeking care at VA. We value our Veterans lives equally and want to ensure that each and every Veteran seeking care is treated fairly under the law.

Costs that would be associated with enactment of this proposed legislation are to be determined.

S. 3081—WORKING TO INTEGRATE NETWORKS GUARANTEEING MEMBER ACCESS NOW ACT (WINGMAN ACT)

Section 2 of this bill would amend Chapter 59 of Title 38, U.S.C. by adding new Section 5906 to direct the Secretary to, within 180 days, provide "accredited," permanent congressional staffers designated by a Member of Congress with remote, read-only access to Veterans Benefits Administration's (VBA) electronic records of Veterans who reside in the area represented by the Member, regardless of whether the Veteran whose record is accessed has consented to the disclosure of information. The bill also clearly states that the provision of access to the congressional staffer is not for purposes of representing Veterans in the preparation, presentation, and prosecution of claims for Veterans' benefits.

VA understands the interest of Members in Congress in having current casework information for their Veteran constituents. However, VA strongly opposes this bill because it would provide congressional employees with unprecedented access to the records of Veterans and other VA claimants, raising significant privacy concerns, and because it improperly conflates the concept of access to claims records with the distinct mission and function of VA's Accreditation Program in ensuring that Veterans have access to competent and qualified claims representation.

Regarding the nature of the access provided, the bill would provide congressional staff who assist constituents of a Member of Congress with greater access to VA records than is provided to a VA employee or contractor. Under the Privacy Act, Federal employees generally may access private records only when necessary to perform their duties. This bill would impose no similar restriction on access by congressional staff. From a privacy and information security standpoint, granting congressional staff unrestricted access to the medical records of Veterans and other VA claimants is not in the best interest of Veterans and their families. VA patients and claimants entrust VA with their personal, medical, and other information, and they do not generally expect that such information could be viewed by Congress without their explicit consent. To the extent that congressional staffers require access to an electronic claims record for which the Member possesses an appropriate release from the individual, access may be provided in the form of a disc or under supervision at a VA facility because those types of access are within the current capabilities of VA systems.

Regarding how the bill conflates the concepts of access to claims records and representation of claimants, accreditation by VA as attorneys, claims agents, and Veterans Service Organization (VSO) representatives is not done for purposes of providing access to VBA's electronic records system. Rather, as stated at 38 CFR § 14.626, "the purpose of [VA's accreditation and oversight] of representatives, agents, attorneys, and other individuals is to ensure that claimants for [VA] benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits." In contrast, as specifically stated in draft § 5906(d), this bill is unrelated to that purpose. The laws governing accreditation do not address the issue of access to claimants' records, which are governed separately by other laws. Instead, the provisions in Chapter 59 address the authority for regulation and oversight of representation before VA, including the ethical standards of professional conduct for representatives, and whether fees charged in a particular case may be considered reasonable. VA's Accreditation Program serves the important function of ensuring that Veterans have information on and access to qualified and competent representatives who can assist with their claims for benefits and who are subject to appropriate VA regulation and oversight in that role. Making congressional employees' access to claimant records a function of VA's accreditation program would unnecessarily complicate the operation of that program. Referring to congressional staff as "accredited" can only create confusion about whether staffers are accredited by VA for purposes of claims representation and what their role is in the claims process.

Access to claims records is authorized under Chapter 57 of Title 38, U.S.C., as well as other privacy and information laws. Specifically, 38 U.S.C. § 5701(b)(1) authorizes VA to disclose records to a "duly authorized agent or representative of a claimant." There are numerous provisions in Chapter 57 that provide for release of VA records and that have nothing to do with representation and or the status of

being a VA-accredited representative. Because the bill pertains to congressional access to Veterans' records, placing this new authorization in Chapter 59 would be an additional source of confusion.

Additionally, there are serious technological obstacles to implementing this bill. The bill would impose on VA a substantial burden to accommodate the contemplated access. Our system provides access to one representative per Veteran or claim and for only the records of a Veteran who has specifically authorized access. VA would need to re-design its system architecture to allow more than one representative per Veteran or claim. Absent such system changes, in order to provide the type of electronic access to congressional staff contemplated by the bill, VA would have to displace the electronic access of current representatives—VSO representatives, private attorneys, and claims agents—causing substantial administrative burdens on VA and hardships on those representing Veterans and the Veterans they represent, while also interfering with the relationship between Veterans and their representatives.

Finally, Members of Congress and their employees already have access to claims status information through VA's regional offices and central office when specifically authorized by a Veteran constituent or when they have proper authority to conduct oversight. Each VA regional office has a Congressional Liaison, who may be contacted for claims information assistance, and VA's Office of Government Relations serves as a central point of contact for inquiries originating from Capitol Hill. If enacted, this bill would delay both the development of information technology components critical to VA's electronic claim process transformation, and the resolution of pending claims for benefits.

Due to the short time-frame and the magnitude of the system changes needed, we are unable to provide an accurate cost-estimate at this time, although costs associated with changes to VA information systems would likely be substantial. VA is always ready to discuss with the Committee other ways VA can improve a Member of Congress' ability to effectively work with VA to resolve casework issues on behalf of their constituents.

S. 3035—MAXIMIZING EFFICIENCY AND IMPROVING ACCESS TO PROVIDERS AT THE DEPARTMENT OF VETERANS AFFAIRS ACT OF 2016

Section 2 of S. 3035 would require VA, within 120 days of the date of the enactment of the bill, to carry out a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at VA medical facilities. The pilot program would be carried out for a period of 18 months and would be located at not fewer than five VA medical facilities that VA has determined have a high volume of patients or that are located in rural areas at which the Secretary has determined there is a shortage of physicians and each physician has a high caseload. VA would be required to enter into contracts with one or more appropriate non-governmental entities, defined as an entity that trains and employs professional medical scribes who specialize in medical data collection and entry, to carry out the pilot program. VA would be required to collect various data on the pilot program to determine the effectiveness of the program. VA would be required within 180 days after the commencement of the pilot program, and not less frequently than once every 180 days thereafter, to submit to Congress a report on the pilot program.

VA does not support this bill. Currently, VHA has an Enterprise Wide Front End Speech Recognition contract that includes unlimited licenses for clinical end users for the Nuance Dragon Medical 360 Network Edition (DMNE) Version 2.3, which is the current version. DMNE provides advanced, secure, speech recognition solutions that allow clinicians to document the complete patient story using voice while allowing healthcare organizations to deploy and administer medical speech recognition across the enterprise. VHA is in the process of administering a request for proposals that includes the use of scribes (contracted or hired) and transcription, as well as a health advocate. An evaluation plan of all methods of provider documentation support has been developed as well. The pilot should commence by end of this FY.

VA estimates this bill would cost $464,427 in FY 2017, and $475,899 in FY 2018.

DRAFT BILL—READJUSTMENT COUNSELING SERVICES FOR MEMBERS OF THE SELECTED RESERVE OF THE ARMED FORCES

The draft bill would authorize VA, in consultation with the Secretary of Defense, to provide VA readjustment counseling services to any member of the Selected Reserve of the Armed Forces who has a behavioral health condition or psychological trauma, to assist the individual in readjusting to civilian life. These services may include a comprehensive individual assessment of the member's psychological, so-

cial, and other characteristics to ascertain whether he or she has difficulties associated with readjusting to civilian life. Such a member would not be required to obtain a referral before receiving these services. If enacted, these amendments would become effective one year after the date of the Act's enactment.

VA does not support this bill. The Readjustment Counseling Service (RCS) was created in 1979 to provide the specific and unique function of assisting individuals to life after combat related military service. This bill would authorize VA to expand RCS services related to assisting the individual in readjusting to civilian life to all members of the Selected Reserve of the Armed Forces who have behavioral health conditions or psychological trauma, regardless of connection to combat related service. VA currently has authority to provide readjustment counseling services to members of the Selected Reserve who meet other qualifying criteria; namely: (1) having served on active military duty in any combat theater or an area at a time during which hostilities occurred in that area; (2) having experienced military sexual trauma while serving on active military duty, active duty for training, or inactive duty training; (3) having provided direct emergency medical or mental health care or mortuary services to the casualties of combat operations or hostilities; (4) having engaged in combat with an enemy of the United States or against an opposing military force in a theater of combat operations or an area at a time during which hostilities occurred in that area by remotely controlling an unmanned aerial vehicle; or (5) having received readjustment counseling before January 2, 2013. We are concerned that this bill would expand the scope of RCS and would be inconsistent with the intended design of RCS.

DRAFT BILL—TO CLARIFY THE SCOPE OF PROCEDURAL RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES WITH RESPECT TO THEIR EMPLOYMENT AND REEMPLOYMENT RIGHTS, TO IMPROVE THE ENFORCEMENT OF SUCH EMPLOYMENT AND REEMPLOYMENT RIGHTS, AND FOR OTHER PURPOSES.

The draft legislation on employment rights for the uniformed services would amend Chapter 43 of Title 38 to clarify the scope of employment and reemployment rights of members of the uniformed services and to amend the enforcement of employment and reemployment rights of members of uniformed services with respect to a State or private employer. VA respectfully defers to the Department of Justice and the Department of Labor for views on this draft legislation.

DISCUSSION DRAFT—TO AUTHORIZE THE AMERICAN BATTLE MONUMENTS COMMISSION TO ACQUIRE, OPERATE, AND MAINTAIN THE LAFAYETTE ESCADRILL MEMORIAL IN MARNES-LA-COQUETTE, FRANCE.

The discussion draft would authorize the American Battle Monuments Commission to enter into an agreement to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France. Because this bill concerns responsibilities under the purview of the American Battle Monuments Commission, VA defers to the views of that agency on the discussion draft.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other Members may have.

ADDITIONAL VIEWS OF THE U.S. DEPARTMENT OF VETERANS AFFAIRS

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

August 3, 2016

The Honorable Johnny Isakson
Chairman
Senate Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The agenda for the Senate Committee on Veterans' Affairs on June 29, 2016, legislative hearing included one bill that the Department of Veterans Affairs (VA) was unable to address in our testimony. We are aware of the Committee's interest in receiving our views and cost estimates for that bill. By this letter, we are providing views and cost estimates on Senator Sullivan's draft bill on medical residents and interns.

We appreciate the opportunity to comment on this legislation and look forward to working with you and the other Committee Members on these important legislative issues.

Sincerely,

Robert A. McDonald

Robert A. McDonald

Enclosure

Draft Bill To authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian Tribes and tribal organizations, and to require the Secretary of Veterans Affairs to carry out a pilot program to expand medical residencies and internships at such facilities.

VA strongly supports the imperative to build Graduate Medical Education (GME) capacity in Alaska and other rural and underserved areas, with the strategic intent to address the shortage of physicians and clinical staff in those areas. While we appreciate the purpose of this bill, it is likely that a relatively small proportion of the patients seen by residents in such programs would be Veterans, yet VA would incur much of the burden for program initiation and maintenance including resident salaries, faculty time and development, curriculum development, and recruitment efforts. Please note that the bill itself states that a medical resident, who participates in the pilot program, shall be eligible for participation in the Indian Health Service (IHS) Loan Repayment Program under section 108 of the Indian Health Care Improvement Act (25 United States Code § 1616a). In order for VA to benefit from its investment in the pilot, it would be helpful for the legislation to require that IHS require that these residents "pay-back" time to VA (2 years-service obligation per-year of support). IHS would be in the best position to determine costs of the resident's loan repayment program, as that program is run by IHS. VA supports the draft legislation contingent upon IHS' ability to authorize and pay back the physician resident's time with a service obligation to VA of 2 years for each year of financial support and contingent upon the provision of additional resources to VA.

VA most fundamentally believes that supporting the practice of rural health care in the U.S. is crucial to fulfilling its mission to provide the highest quality care for Veterans and that we must include within our broad health professions education portfolio a focus on rural health in order to meet our statutory mission to provide medical education for VA and for the Nation. VA also believes that education into the unique health needs of Veterans is necessary for all U.S. providers and is especially important for rural health care delivery systems, including those affiliated with "Indian Tribes and tribal organizations" that care for significant numbers of Veterans.

VA shares a commitment with the South Central Foundation to "team-based care" and would intend to structure these pilot programs around a model of inter-professional education that VA has been refining through its Centers of Excellence in Primary Care Education. VA has worked closely with Nuka for several years, having established pilots in the Veterans Health Administration that emulate the principles embodied in the Nuka system of care. We see this as a very productive opportunity that advantages both parties.

We would be glad to discuss with the Committee the important health care challenges facing many tribal communities. VA estimates the cost of the legislation would be $73 million over 5 years and $160 million over 10 years.

Chairman ISAKSON. Well, thank you very much for your testimony.

I will start off with the questions. We will go with a round of 5 minutes for questions for each Member.

Let us go back to the WINGMAN Act and your last statement. Would you walk us through how the information may be obtained by caseworkers now and how long it generally takes to get that information.

Mr. MCLENACHEN. Mr. Chairman, I do not have information on how long it takes. I can tell you that each of our regional offices has a Congressional liaison, that their specific job is to work with local Congressional caseworkers to provide that information as quickly as possible, and we are definitely willing to work with the Committee and other Members of Congress to speed that process up.

What happens now is VA receives a release from the claimant, generally through the Congressional staff, that authorizes us to disclose information to the caseworker; we try to do that as quickly and as efficiently as we can, as well as to provide other information that the caseworker may need regarding what do these records mean.

I will tell you that although we have concerns about, on behalf of veterans, privacy, we are working hard right now to do something that may help in this area, and that is exposing the e-folder in our Veterans Benefits Management System, or VBMS, to veterans and also to third parties that they may authorize for us to disclose that information to. So, that is a goal that we are actively working on now, where that information would be available electronically to veterans and the individuals that they authorize to have access.

Chairman ISAKSON. Does not every inquiry on a benefit or appeal on a disability claim or any other benefit from the VA require a privacy release from the veteran?

Mr. MCLENACHEN. Yes, unless it is the veteran themselves asking for it. They have a right to it under the——

Chairman ISAKSON. I understand that. But in terms of this deals with Congressional staff——

Mr. MCLENACHEN. Right.

Chairman ISAKSON [continuing]. And every one of them, the first thing we are instructed to do, or we instruct our staff to do, is to get a privacy release before anything else happens. That is true nationwide, is it not?

Mr. MCLENACHEN. That is true with an exception of yourself, I believe, on behalf of the Committee asking for information. I believe the Committee has that authority to ask us for information.

Chairman ISAKSON. And you said your objection to this bill was what?

Mr. MCLENACHEN. Well, this bill would essentially authorize all Congressional personnel to have access to our systems, regardless of the consent or authorization of the claimant. So, we think the veteran's privacy right is paramount to everything and they should have the ability to determine who they are going to—who VA should disclose their records to.

Chairman ISAKSON. So, you want to maintain the privacy release signed by the veteran. But once you get the privacy release, how difficult is it for staff to get the information they need to assist the veteran?

Mr. MCLENACHEN. As long as we have that authorization, it should not be difficult.

Chairman ISAKSON. Are you aware that Senator Rounds and Senator Manchin will be conducting a roundtable, if you will, for lack of a better term, here at the Committee during the break over the next 2 weeks to talk about this very issue?

Mr. MCLENACHEN. I am not aware of that.

Chairman ISAKSON. A number of offices, and I have received as Chairman a number of complaints, if you will, for the lack of speed in responding to Congressional inquiries from the VA. I think part of the genesis of this particular legislation is some of the frustration with the response time it takes for many caseworkers to get

veterans' information. So, I hope you will participate with whomever the Secretary decides to come and testify at that particular event.

Mr. MCLENACHEN. I would be happy to. I would like to say, Mr. Chairman, I am not downplaying the delay, and specifically in responding to veterans' own requests for Privacy Act information, their own records. We are working hard to address that particular problem. It does exist and we are working hard to address it. Veterans should be able to go online and see their own record.

Chairman ISAKSON. One other question. You said that you were opposed to Senator Cotton's proposal with regard to burial of indigent veterans?

Mr. MCLENACHEN. No. We strongly support it.

Chairman ISAKSON. You strongly support it?

Mr. MCLENACHEN. Yes, sir.

Chairman ISAKSON. I am sorry. I misheard that.

Senator Blumenthal.

HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you very much, Mr. Chairman, and thanks for having this hearing on a number of separate bills. If I count correctly, we have 18 bills on our agenda and they are extremely important to advance the interests of our veterans.

One of them is the Veteran PEER Act, which complements the VA's ongoing efforts that I have strongly supported. The measure would expand the use of peer support specialists beyond traditional mental health sites of care. The VA has indicated support for the measure, "subject to the availability of additional funding." Dr. McCarthy, can you tell us what the VA currently spends on the peer support program.

Dr. MCCARTHY. Well, let me start by saying we currently have a peer support program in mental health and we have a pilot going on for encouraging individuals that are receiving mental health care right in primary care. So, we have seven sites that are up now, six more that will be starting in July, and nine more in January, and potentially four additional, where we would have peer support to encourage the veterans in the primary care clinics to receive mental health services that are embedded.

As for the current costs, I am not sure I have those figures handy at this point for what we are spending right now on that particular pilot, but that would bring us to a total of 26 sites that we currently have ongoing, and the bill is——

Senator BLUMENTHAL. The bill would bring to 26.

Dr. MCCARTHY. No. We already have twenty——

Senator BLUMENTHAL. OK. Tell me——

Dr. MCCARTHY. We have 13——

Senator BLUMENTHAL. Since we are short on time, let me just ask very directly.

Dr. MCCARTHY. Sure.

Senator BLUMENTHAL. How much more spending would it cost to implement the Veteran PEER Act?

Dr. MCCARTHY. So, the total for 3 years is projected to be $2.8 million.

Senator BLUMENTHAL. Two-point-eight million with an "M."

Dr. MCCARTHY. Million with an "M."

Senator BLUMENTHAL. OK. Let me ask you, Mr. McLenachen, I was proud to introduce the FRAUD Act (Fiduciary Responsibility and Accountability for Unpaid Debts) with my colleagues, Senators Brown and Moran, to address the misuse—I think it is rampant—of VA benefits. That misuse is not by the veterans, it is by fiduciaries that are appointed to safeguard the finances of our veterans. Those fiduciaries all too often commit fraud. The misuse of these benefits is rampant.

In your testimony, you state that during the calendar year 2015, the VA reissued more than $2 million in benefits to veterans who have experienced the misuse of funds at the hands of fiduciaries, and that $2 million covers only the ones you know about and who have been processed, so there may be many, many more, as I understand it, that $2 million covers only ten veterans.

This legislation is fruitful to ensure that the VA can reissue benefits in all cases of fiduciary misuse, which I think we need to do more to protect our most vulnerable veterans. They can be at the mercy of family, caregivers, all kinds of potential abuse.

Would you please explain the process that is used to appoint a fiduciary for a veteran receiving these benefits, and how do you evaluate whether a fiduciary is going to be equipped in terms of expertise, but also be trustworthy, to administer those benefits.

Mr. MCLENACHEN. I would be happy to. Back in about 2004, Congress amended the law to require VA to use a specific investigation method when we appoint a fiduciary, with the standard being that we have to make a best interest determination on behalf of the beneficiary. Actually, the law requires us to do a number of things, such as a background check, a credit check, check character references, and so the statute itself establishes that standard for us.

In our policy, we have determined that the first thing that we will look at for appointing a fiduciary is a family member. We are transitioning the program from one where, in the past, veterans, a lot of their benefits were used to pay fees to professional fiduciaries. We are shifting the program toward more family and friend caregiver-type oriented program and we have been very successful at that. The program is growing extremely fast.

But our really important role that we play is oversight to detect misuse, and although I regret that there is any misuse in our program, the fact that we are doing sufficient oversight to detect misuse and provide reissuance of benefits according to the authority that we have now in one way is a sign that we are doing good oversight.

Yes, I hope that we can do more to diminish that by appointing appropriate people to provide these services for these veterans and survivors, but it does happen. I respectfully disagree with you that it is rampant in our program. You are right, we do not know what is happening that we have not found, but we make every effort to find the misuse that is occurring. We do audits. We do follow-up field examinations. We do on-site visits of fiduciaries. This bill, in particular, will expand our authority for doing oversight because it

would allow us to have access to financial records that we currently do not have.

So that, in addition to the provision to reissue benefits, would strengthen our oversight. It is very important legislation.

Senator BLUMENTHAL. Thank you. Thank you for your response. My time has expired, but I hope to follow up in written questions. Thank you.

Mr. MCLENACHEN. Thank you.

Chairman ISAKSON. Senator Tillis.

HON. THOM TILLIS, U.S. SENATOR FROM NORTH CAROLINA

Senator TILLIS. Thank you, Mr. Chair. Thank you all for being here.

I guess before I get started on questions about two bills, I do think that the Department's position on a bill that is sponsored by my senior Senator, the Department of Veterans Affairs Dental Insurance Reauthorization Act, you support?

[Witness nodding.]

Senator TILLIS. Good. Thank you, on Senator Burr's behalf.

I want to go back first to the Veterans Health Care Staffing Improvement Act. I think that there is a qualified support there. And before I ask you all to go through the areas that you have as concerns, there are a few pieces of the bill that I feel like we need to work on. One of them relates to—I know that the Department is making a decision, or has made a policy decision to extend or make some staffing decisions with respect to nurse anesthetists, for example.

One thing that I think we have to be mindful of is that in States that have clear scope of practice laws, I hope that the Department is looking at instances where you have a bona fide shortage of the most qualified people before you would move that route, because I think that could create a slippery slope to where it is more of a lower-cost alternative rather than a most-qualified alternative. So, I recognize there are places in the country where you have the deficiencies and you may have to do them, but could you give me a reaction to that?

Dr. MCCARTHY. Absolutely. As you noted, we have the final rule out for comment, and when we reached 10,000 comments, well, it was like nothing we had ever received before. We are now at 48,000 comments; the comment period extends until July 28.

I think the Certified Registered Nurse Anesthetist part of it is the one that has brought a lot of controversy. In VA, nurse anesthetists work closely with anesthesiologists and our model of care is team-based care. Teams define a lot of what we do. If you look across our system, we do have access challenges in primary care, in mental health, specialty care, and so forth, but we have not identified significant shortages of anesthesiologists, for instance. So, at this point, the proposed rulemaking is all inclusive with the idea that we would not necessarily implement all the changes in the rulemaking until it is clear what is needed. So, we would have flexibility.

Senator TILLIS. Well, thank you, because, again, it just speaks to a capability and training that if it is available, we want it in the hospital setting to make sure the veterans are getting the best pos-

sible care. That is taking nothing away from the nurse anesthetists. It is just making certain that this does not just change a model that is based more on business factors than medical outcomes. So, I appreciate that.

Can you tell me other aspects, areas of concern, that you have? I do not think you necessarily had a concern with that aspect of it, but other areas where you are having problems with the Staffing Improvement Act.

Dr. MCCARTHY. There were a couple of concerns. One was the desire to have a separate credentialing program. We do have a national program we call VetPro, which is actually quite functional and allows credentialing to be across our system. So, we do not need to really change that.

We are excited about what we are doing with DOD in helping people come into our system now, all the possibilities for how we can partner and have folks supported with training options, and make the transition into VA easier. It is a win-win for those veterans who are being discharged and for us.

So, the main concern, really, for us is to let the rulemaking comments happen. That is the main section that we are concerned about.

Senator TILLIS. All right. In my limited time, I want to get to the other one, which has to do with the Atomic Veterans Health Care Parity Act, and in some ways—there is no way we are going to get this done in 48 seconds, but I have been in the battles and, obviously, I think I have established good relationships within the VA. I am trying to do everything I can to support you all in efforts that I think are right minded.

But, I almost feel like we are at a point where we were with the Camp Lejeune toxic substances, where people were saying there is not quite enough data for us to give the benefit of the doubt to the veteran. I am wondering whether or not the full complement of medical research, people that are looking at this, share the same position that the VA does right now, which is there is no presumption that their exposure—I am not a doctor, not a lawyer, but if we put these people on an island in T-shirts in close proximity to a mushroom cloud which is the aftermath of an atomic bomb, common sense says there may have been some exposure there that could have caused a condition.

I am not going to ask you to respond to it because I am out of time, but I would like to maybe find a time to meet, as we did—and we got to a pretty good place with the Camp Lejeune toxic substances—to show me how that data would lead you to that position.

Thank you, Mr. Chair.

Chairman ISAKSON. Thank you, Senator Tillis.

For a clarification for my purposes, with regard to the nurse anesthetists, you had a record response in terms of public input when you published that.

Dr. MCCARTHY. Mm-hmm.

Chairman ISAKSON. Now, my understanding is that you have determined that you have enough licensed and trained anesthesiologists to meet the demands of the Veterans Administration, so you are not going to be implementing at the present time a nurse anes-

thetist program to replace any anesthesiologists anywhere, is that correct?

Dr. MCCARTHY. That is where we are right now, sir. Dr. Shulkin has talked about the fact that it took 6 years for us to bring it to the final rule at this point and a future Under Secretary, he would not want them to have to go through another 6 years of waiting to bring that particular rule. He feels like having the rule published would be useful to us should we need to implement it in the future. But, it is really going to be facility-specific, what are the needs of that individual facility and the veterans that come there in terms of who are the right people to be prescribing or treating the veterans with anesthesia.

Chairman ISAKSON. Given that the rule would allow at a future date a Secretary to determine to use some nurse anesthetists, what would be the requirement to let this Committee know about that before they make that decision? Is there anything in the rulemaking that determines that?

Dr. MCCARTHY. I do not know that that is in the rulemaking, but in the spirit of cooperation, I think it makes a lot of sense for people to talk about that together.

Chairman ISAKSON. My point is, I think the Committee should be made aware in advance of the rule being amended by the Secretary, and I wish you would share that with Dr. Shulkin.

Dr. MCCARTHY. I will.

Chairman ISAKSON. I appreciate that.

Dr. MCCARTHY. Thank you.

Chairman ISAKSON. Senator Murray.

Senator MURRAY. Thank you very much.

Dr. McCarthy, Vet Centers are one of the most successful programs VA runs, with some really high satisfaction scores. I strongly believe that this is really an important service that would help greatly our Guard and Reserve members when they return home from deployments, and as we do so, we want to protect the Vet Center system and make sure it can meet the demand.

In Lacey, WA, in my home State, we created a new satellite office of our Tacoma Vet Center to meet the needs of the veterans in the area. It is already at full capacity and needs more staff and expanded hours, which I hope the Department will address.

But, I wanted to ask you, if we expand eligibility for Vet Centers to members of the Guard and Reserve, how much additional resources will the VA need and will you make that in your request for your next budget?

Dr. MCCARTHY. OK. Let me just address the specific legislation about rehab counseling services. It talks about members of the Guard and Reserve who are not otherwise eligible, so we are not talking about combat veterans or veterans who may have experienced military sexual trauma (MST) or been involved with emergency medical care or mortuary services. That is the highlight of this particular proposed legislation that we are a little bit concerned about.

We do not want to destroy the special nature or culture of the Vet Centers. We do want to expand the role more. We have a staff that have been built up around trauma, counseling, and so forth, where this expands the roles of the Vet Centers to cover more than

just trauma counseling, which is our concern. It is not that we do not want to do it, but it would be a major mission shift for those in the Vet Centers. About 80 percent of the staff are themselves people who have been trauma counselors for quite a while.

We feel like the Guard and Reserves, they have eligibility for care for MST and for those who have combat services and even those who have been discharged dishonorably can come to the Vet Centers, as you know. We are really proud of the Vet Centers. They do have some capacity to help us with our access for mental health and we are really looking to partner with them to do more. But we really do not want to change the culture and the mission.

There is a special clientele that go to the Vet Centers, often people that do not want to have, for instance, a trail of medical records about the care that they are receiving; people that might be police, National Guard, active duty, Reservists. And there is a culture of combat veterans and veterans with MST. So, changing it to allow those that are not part of that group in particular is the part of that bill that we have concerns about.

Senator MURRAY. I also wanted to ask you, as you know, veterans living in our rural communities often experience barriers to accessing the health care that they need. The Veterans Travel Enhancement Act would permanently authorize the Veterans Transportation Service (VTS) to improve veterans' ability to access care and expand the definition of VA facilities to include Vet Centers. The Veterans Transportation Service has been very popular in my homestate of Washington and I understand it is also very cost effective for the VA. If this legislation is enacted, how much will you be able to expand VTS services?

Dr. MCCARTHY. I want to first of all thank our VSO partners, who themselves have quite a transportation network.

Senator MURRAY. Yes, they do.

Dr. MCCARTHY. I would not want us to not thank them.

Second, we are really excited about making that permanent. For us, the VTS made over 400,000 trips averaging 54 miles. It has been really quite significant for us. There has been a decrease in cost compared to beneficiary travel of 4 percent. That resulted in $1.7 million savings anticipated for fiscal year 2017.

There is some concern about expanding to the Vet Centers. There is a pilot program going on that has allowed for transportation for rural veterans to Vet Centers and the reaction to it has been somewhat negative and not what we expected. The concerns are twofold. First of all, from the point of view of the veterans, again, when I talked about the culture, the people that like the anonymity of coming to the Vet Centers, to process claims related to travel requires listing diagnosis and treatment and so forth, which is something that they do not want to be revealed in particular. So, that is one administrative function.

Then, there is the other side of the coin, the Vet Centers. I mean, they are set up for quick access, easy availability. They do not have a lot of overhead people that would be involved in all the fiduciary responsibilities, so it has been a concern for them, as well.

We are really supportive of the bill, but we do question the Vet Centers being included, although we understand the needs for help

with veterans being transported to the rural Vet Centers, in particular.

Senator MURRAY. I am out of time. Thank you very much, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Murray.

Senator Heller.

HON. DEAN HELLER, U.S. SENATOR FROM NEVADA

Senator HELLER. Mr. Chairman, thank you, and to our panelists, also, thank you for being here.

I just had a couple of questions. I want to thank the Chairman for including my legislation, S. 3035 with Senator Tester. I certainly do appreciate his support on this. The title on the bill is Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016. It is a long title, Mr. Chairman. It was not my first choice, but I will take it.

I think the bill is somewhat unique. It conducts a pilot program using medical scribes at the VA so that doctors can spend more time with their veteran patients. I am pleased that I have got the support of the VFW, the Disabled American Veterans organization, and The American Legion. Unfortunately, we do not have the VA on board yet. In fact, I am looking at some of the testimony. Doctor, you said the VA does not support this bill. Then you go on to say that the VHA is in the process of administering a request for proposals that includes the use of scribes. So, one, you say you are not for it, but then you say within the same paragraph that you have a proposal. Could you explain to me what your proposal is for the use of scribes and what the VA is envisioning here.

Dr. MCCARTHY. First of all, thank you. I think most clinicians who work with electronic medical records worry about the time taken away from patients in documenting and how much typing goes on versus scribes and so forth. So, we understand what is behind this.

Right now, VA has an enterprise-wide contract so that all front-end providers can use what is called a speech recognition contract, where it is Nuance® Dragon Medical 360 Network Edition Version 2.3.

Senator HELLER. Another long title.

Dr. MCCARTHY. I know. I am sorry about the long name, too——

Senator HELLER. That is OK.

Dr. MCCARTHY. But, you know, I used this a long time ago, which was probably version negative one or something, and when you do the Dragon dictate, you actually have to teach the device that is recording your voice and translating it into what is typed. You have to train it to your own personal voice or accent or whatever. But, this is available nationwide currently.

Our Request for Proposal (RFP), which is what you asked about, includes for scribes, transcription, and a health advocate at the same time that might be able to help us with some of the public health screening kind of measures that we do at the same time. It is a kind of tweak on what this bill proposes, so that is why.

We have a couple of pilots going on right now, but we also have that national contract and we are encouraging the use, as well.

Senator HELLER. Doctor, I spent some time in Las Vegas and Reno this March and hosted two military and veterans roundtables. I heard from these veterans both in Northern Nevada and Southern Nevada, and probably one of the biggest complaints I got was they are concerned with how little time they actually got to spend with their doctor. So, obviously what you are trying to propose and what we are trying to propose, hopefully, we can somewhat come together on this and understand that these patients, these veterans, need more eye-to-eye time with their doctors.

I guess the question I have right now is, do you have any statistics that show how much time a doctor does spend with their patients at a VA facility?

Dr. MCCARTHY. We have statistics about expectations and we include a typical primary care visit would be 30 minutes. I sympathize with what the veterans are saying. Do not treat the computer, treat me.

Senator HELLER. Yes.

Dr. MCCARTHY. I fully understand that. We have worked to get our rooms set up so that you do not have to turn your back on the patient to enter things into the computer.

A lot of our screening happens in the initial primary care visit, but in that 20- to 30-minute visit, there is a lot that goes on. I can get you statistics about average amount of time spent if that would be helpful to you.

Senator HELLER. Well, let me ask you this question. When you measure patient satisfaction, do you consider the time with the doctor as part of that satisfaction?

Dr. MCCARTHY. There are measures that ask things like: did you feel like your need got met? Did you feel like the doctor understood what you were saying as what you brought to the appointment and so forth——

Senator HELLER. It is open-ended, also——

Dr. MCCARTHY. Yes.

Senator HELLER [continuing]. For any comments that they may have?

Dr. MCCARTHY. Yes, sir.

Senator HELLER. Do you have any statistics also that show how much time these doctors spend with these electronic health records?

Dr. MCCARTHY. I do not, but I can look for them. I would be happy to take that for the record.

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. DEAN HELLER TO THE U.S. DEPARTMENT OF VETERANS AFFAIRS

Response. VA does not currently collect this type of data as it is not easy to obtain. Simply asking physicians often leads to inaccurate estimates and there is no easy way to track this electronically. The research on this has general involved direct observation, "time-motion" studies which are expensive to conduct.

Senator HELLER. OK. My time has run out.

Dr. MCCARTHY. OK.

Senator HELLER. Chairman, thank you very much.

Chairman ISAKSON. Senator Cassidy.

HON. BILL CASSIDY, U.S. SENATOR FROM LOUISIANA

Senator CASSIDY. Thank you, Mr. Chair.

Dr. McCarthy, I am interested in the WINGMAN Act, which I gather you all oppose, but when I read the nature of your opposition, I am not quite sure why you oppose. For those who—in short, when my folks are working to try and facilitate something with the VA, they sometimes wait weeks and months to get the record from the VA. My chief, the person who is my guru on how to make work all things, she just kind of says, "Bill, sometimes we cannot get anything from the VA and there is nothing I can do except drive down there."

Now, here, I look at your testimony as to why you oppose allowing our staff read-only access to the records contingent upon the veteran signing a release that that may occur, which is referenced in the bill; I think you raised privacy concerns. Let me be explicit. What we reference, which is 552(a)(B) of Title V, explicitly says there has to be an informed consent by the patient to allow this access. So, I guess that is one thing. The privacy concern does not seem to work with me.

Second, we would expect that they would have the same training in use of these records as the VA folks. I understand that there is an online course that VA employees take to kind of do this sort of review, which is what we presume would be for the Congressional staff. Is there something besides this online course which makes someone working for the VA specially qualified, and if so, why could not the Congressional staff have access to the same training?

Dr. MCCARTHY. I am going to pass that to my partner in VBA to answer that question.

Mr. MCLENACHEN. Yes, Senator. I will take the question. Thank you.

Actually, Senator, our reading of the bill is apparently not the same as yours. We read the bill to mean that Congressional staff would actually have unprecedented access——

Senator CASSIDY. Now, you define unprecedented, which is somewhat pejorative, so what do you base upon—it is unprecedented, right, in the sense that before, we have had to wait for somebody to send it to us——

Mr. MCLENACHEN. Sure.

Senator CASSIDY [continuing]. But it is——

Mr. MCLENACHEN. Let me explain. They would have access greater than the VA employees. VA employees currently have access to records only if they have a need in working a particular veteran's claim. The bill would allow——

Senator CASSIDY. That would be the case—let me interrupt, please—because the person would only have access if the veteran himself or herself signed a release. So, they would only have access for people in their district who had explicitly said, "I need help with my benefits and I am not getting it," sort of thing.

Mr. MCLENACHEN. Actually, our reading of the bill indicates that the access would be regardless of the individual's consent.

Senator CASSIDY. No, that is wrong, and that is where I refer to—I can give it to you if you wish—552(a)(B) of Title V, and I will read from here, "except pursuant to a written request or with a

prior written consent of the individual to whom the record pertains," et cetera. So, I think I win on that one——

Mr. MCLENACHEN. Well——

Senator CASSIDY [continuing]. But go ahead.

Mr. MCLENACHEN. I will certainly go back and take a look at it, but our position is authorization from the veteran has to be there. If the legislation provides for that, then yes, there may be some change to our views on the bill.

That is not the only issue in the bill. The bill creates some confusion about VA's accreditation program. VA accredits representatives for the purpose of providing representation on claims, not for purpose of access to our systems.

As I said before, and I apologize, it may have been before you came in, but we feel the solution to this problem—and I do not disagree with you that we are too slow in providing veterans' records even to veterans themselves. So, to address that, we are going to make veterans' records available to them through e-Benefits, as well as to other individuals that the veteran authorizes to have access. I think that is the solution to this problem.

Senator CASSIDY. I guess I am not following. If the veteran authorizes Johnny Isakson's staff person who is working on their veteran's benefit claim to have access to the record and it is—you can trust me, I am right on this one, because we explicitly said it had to be approved—I am not sure that is different from what you just said. Oh, we are going to release the records to whomever the veteran tells us to release the records to. Did I miss something there? It seems substantially the same.

Mr. MCLENACHEN. The bill concerns electronic access, and we currently do not provide——

Senator CASSIDY. Oh. So, now we have to go back to waiting for you all to generate it. That is incredibly frustrating, let me tell you that.

Now, you are drawing a distinction between our aides accessing this record to look up, OK, they say you have a hepatitis claim and you say you were exposed and they say not, and you are saying that that is somehow with claims. I do not quite follow why allowing someone to do a PDF search for the word "hepatitis"—I am not following the distinction you are making, which is not to say there is not a distinction. I just do not follow it.

Mr. MCLENACHEN. I think you will hear some concerns from the next panel, as well. You know, simply providing access to a record does not really interpret what that record means. I would hope that some engagement between our Congressional liaison and your staffs is helpful, as well as engagement with representatives such as the VSO representatives for a particular claimant. We would be very happy to work with the Committee and any other member of Congress to figure out how we can get that information to you more quickly.

Senator CASSIDY. I know I am out of time, so I will just finish by saying this, I have not yet heard an objection that actually sounds like it is firm. We have the privacy addressed. That is clearly addressed in this section. I will submit this for the record, Mr. Chairman.

[The information from Senator Cassidy follows:]

5 U.S.C.—UNITED STATES CODE, 2010 EDITION

Title 5. Government Organization and Employees

Part I. The Agencies Generally

Chapter 5. Administrative Procedure

Subchapter II. Administrative Procedure

SEC. 552a. RECORDS MAINTAINED ON INDIVIDUALS

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

Senator CASSIDY. The other just seems to be kind of a nebulous sort of, well, we do not want them in our record, even though it is read-only, "because." I do not know if you can—and I am out of time—respond maybe for the record as to why it is more than "because."

Mr. MCLENACHEN. I would be happy to.

[See the Chairman's remarks below addressing this issue.]

Senator CASSIDY. That is all I get right now. I yield back.

Chairman ISAKSON. Let me acknowledge how important your comments are. Before you arrived here, I raised exactly the same issues with the VA and reminded them that we are going to have a scheduled roundtable here with representatives from each Member's office back home and the VA to talk about the intercommuni-

cation between the VA and us in terms of case work matters with the Veterans Administration.

And I, like you, am a WINGMAN supporter. I would like to see us work through the difficulties that the agency has to make sure we improve access to information so we can improve the speed with which we get back to our veterans who have claims. So, your time was well spent and I thank you for your input.

Senator Sullivan.

HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Mr. Chairman, and I appreciate the witnesses coming today.

I wanted to talk a little bit about a draft bill that I have been working on with the VA. It actually stemmed from a visit that Under Secretary Shulkin and I had in Alaska where we were out in several different communities. One of the big take-aways I believe he had from that trip was some of the big challenges that, not just Alaska, but rural States who have big veteran populations who do not have enough providers to actually help with regard to a lot of the challenges that the VA has.

As you all probably know, there was a recent Association of American Medical Colleges survey that said close to 45 percent of doctors who do their residencies at certain medical schools end up staying there. Well, if you have a State like mine where you do not have a medical school, you kind of start with a challenge.

So, we have been working closely with the VA for months now—it was actually really in many ways Dr. Shulkin's idea last year—to have a pilot program for the VA to work with tribal organizations, particularly in States with heavy veteran populations but are very rural States. So, not just Alaska, but Montana, Wyoming, other places like that.

I know that—I guess that we were just outside of the timeframe to get your guys' official view on that. You said you needed 3 weeks. I think we got it to you 2 weeks and 3 days ago. So, if we did not make it under the deadline, I get that, though it would be nice to be able to get the response. I am almost certain that the VA is supportive, since in many ways it was Dr. Shulkin's idea, which we have been working with you and some of the other organizations interested in this for months now.

So, Dr. McCarthy, would you mind just giving a view on that, whether it is official or not. I think we are very close and I would like to get your view. Then we are going to work hard to get others from other States, other Members on this Committee to be cosponsors of that, but we want to make sure the VA was good to go with it first.

Dr. MCCARTHY. We would really like to get to yes. There are a few items that we want to work with you about. I totally agree with you about the training and where people stay. You are exactly right, and I do think that this would be really important.

We are also, as part of the Choice Act, trying to expand residency programs significantly——

Senator SULLIVAN. Yes. Right.

Dr. MCCARTHY [continuing]. So, this is a good fit for us. There are some other regulations that we have to get through. I do not want to speak for all of them——

Senator SULLIVAN. OK.

Dr. MCCARTHY [continuing]. But I would be happy to talk to you more about it.

Senator SULLIVAN. OK. Well, let us remember, though, we are also looking at statute, so obviously a law would trump a regulation.

Dr. MCCARTHY. Yes.

Senator SULLIVAN. I do not think, "we do not want to violate any regulations," but we also want to make sure that we understand the hierarchy here. This is a pretty important issue and I know even Secretary McDonald has met with different Alaska groups——

Dr. MCCARTHY. Right.

Senator SULLIVAN [continuing]. And has been supportive of it. So, already, I know that we have top cover——

Dr. MCCARTHY. Right.

Senator SULLIVAN [continuing]. Support from Under Secretary Shulkin, Secretary McDonald. For me, it is just really important to move this, and if we can get your commitment to move this, I think the Chairman is aware of what we are trying to do on this.

Let me ask—and you touched on it—let me ask a related question. There were 1,500 new graduate medical education spots given to the VA through the Choice Act, and I think only 372 of those spots have been filled to date. So, what is the issue there? Why have so few—relative to the number that Congress authorized—been filled; and is there anything we should be doing on that? Or, what should you be doing to make sure you take full advantage of the Choice Act provisions which you referenced and that, again, I think, dovetail nicely with the bill that we are working on with you guys?

Dr. MCCARTHY. The Choice Act gives us a 5-year limitation and we really believe that building the relationships and building residency programs is going to take more than 5 years. So, there is a significant amount of lead time.

I was involved in building residency programs in the site where I used to be a chief of staff and it is not something that is done overnight. I am a psychiatrist by training. I was working to partner on psychiatry residency programs. You have to set up, you know, relationships with child psychiatry programs and so forth, because we do not have that in VA. You have to get people that are willing to partner with you and so forth. So, it is not something that can happen overnight; those programs have to build their capacity and so forth. So, it takes a while to build.

I do think that expanding the Choice recommendations to 10 years would help us a lot, but that said, there are a lot of efforts underway right now to try to partner as much as we can.

I, personally, have a heart for doing that, especially in the rural areas, particularly for what you said about when people train in an area, they stay. There are a number of, for instance, osteopathic medical schools that have set up residency programs in rural areas and that is exactly what is happening. More of them are staying

in the area, which is, you know, not something that happened overnight; it does take a lot of time.

So, when you set up one residency program, you know, family practice or mental health or whatever, there are other parts of the residency that you need to get going at the same time. So, it takes building relationships with community partners, which is very important work to do. There is a lot of good will out there. Some of the community partners are not of the—interested necessarily in building their own residency program, so there is convincing going on back and forth, and that is where we are right now.

Senator SULLIVAN. Thank you.

Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Sullivan.

Senator Tester.

HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you.

I would like to follow on. In the bill that we are trying to get through the Senate right now, I think there is a component to extend it to 10 years from 5, and I also think there is a component in it, if my memory serves me correctly, there are CMS caps right now and it will take those caps off, which will also help in a big, big way. So, once we get that done, then we are really going to get you if they are not filled up.

Look, we appreciate the testimony. Sorry I was late, but I had two other committee meetings, Senator Tillis, just to let you know.

In September 2014, I wrote a letter to Secretary McDonald. It was brought to my attention that the Montana Board of Psychologists had reprimanded a VA psychologist for practicing outside the scope of his qualifications when performing a compensation and pension exam for a Montana veteran with traumatic brain injury (TBI). I was and I still remain concerned about the implications of these exams not being carried out properly. What ultimately led to the VA conducting a national review of medical exams of veterans who have filed disability claims related to TBI?

Mr. MCLENACHEN. Senator, I will take that question. A while back, our facility in Minneapolis, on their own initiative, took a look to see if they were following VA policy about the specialists that are required to do the initial TBI exam. There are four specialists that VA requires to do those initial TBI exams, not the follow-on exams. What they learned was that, in fact, there were about 300 veterans who did not receive that type of exam.

Senator TESTER. OK.

Mr. MCLENACHEN. Based on that information, the Deputy Secretary asked us to do a nationwide review.

Senator TESTER. Mm-hmm.

Mr. MCLENACHEN. We did that. We recently discovered as a result of that review that there are about 24,000 veterans that did not receive an initial TBI exam by one of those specialists. About 70 percent of those veterans—actually, about 17,000 of those veterans—are already service-connected for TBI.

Senator TESTER. OK.

Mr. MCLENACHEN. Nonetheless, looking back at the policy that we had issued over the years, starting in about 2007, we concluded

that the guidance was sufficiently unclear and perhaps confusing, that to be fair to all veterans, we needed to go back and offer them all an opportunity for a new exam.

Senator TESTER. So, would it be fair to say that the VA protocol was inadequate?

Mr. MCLENACHEN. It would be fair to say that if it created confusion, yes——

Senator TESTER. OK.

Mr. MCLENACHEN [continuing]. It would be fair to say that.

Senator TESTER. So, what are we doing? I mean, what, moving forward?

Mr. MCLENACHEN. Well, that guidance has been clarified. VHA has gone out and checked with each of its facilities that do these type of exams and confirmed that that guidance is being followed.

Senator TESTER. OK.

Mr. MCLENACHEN. One noteworthy point is that the overwhelming majority of these exams were done by a VBA contractor——

Senator TESTER. Yeah.

Mr. MCLENACHEN [continuing]. And the contract was amended in 2014 to specifically require that these type of exams be done.

Senator TESTER. OK.

Mr. MCLENACHEN. So——

Senator TESTER. So, let me ask you this, because there is a bill called S. 244 that we are taking up today that an independent assessment of these protocols would be done by a medical expert. Do you think this would be helpful?

Mr. MCLENACHEN. Senator, I think it is our view that it is unnecessary, given what I just explained about the specialists that are required to do these exams. In addition, and it is my understanding—I am not a physician—but the bill would require, or ask the Institute of Medicine to focus on cognitive issues, where we use a more holistic approach——

Senator TESTER. Yeah——

Mr. MCLENACHEN [continuing]. That is broader than that.

Senator TESTER. Even though it is my bill, I actually kind of like that. The question is, what do I do next time it happens——

Mr. MCLENACHEN. Well——

Senator TESTER [continuing]. When the exam is done improperly?

Mr. MCLENACHEN. I think——

Senator TESTER. Then——

Mr. MCLENACHEN. Our commitment to you should be that this—we have solved this problem and it should not happen again.

Senator TESTER. And if it happens again, does somebody's head roll?

Mr. MCLENACHEN. Well, if somebody was not following the policy that we have in place, there should be accountability.

Senator TESTER. OK. All right. OK.

Well, I have got time for one more question. The Veterans Transportation Service program has been successful in connecting veterans to care. I think it is efficient from a taxpayer standpoint and I think it is good for a veteran. The VA has previously said that reauthorizing this program would save taxpayer dollars, maybe as much as $200 million over 5 years—that is a fair amount of money

in my book—because it is cheaper to hire drivers than to contract with an ambulance service. Would you agree with that?

Dr. MCCARTHY. Yes, sir. We are very excited about the opportunity to extend this bill, but I am not sure the estimates that I have been given are of the level that you have talked about.

Senator TESTER. You do not think it saves that much?

Dr. MCCARTHY. The most recent number I have been given is $1.7 million in fiscal year 2017.

Senator TESTER. OK. So, let me ask you this. Would it help with the veterans that might be missing exams now that would not miss them if you had this service?

Dr. MCCARTHY. My understanding is this is more about care.

Senator TESTER. Is it not about—OK, yes, transportation to care, right?

Dr. MCCARTHY. Yes. Yes, sir.

Senator TESTER. I guess the point was not made very well by me. If a veteran has transportation, it would seem to me that they are much more likely to meet an appointment for care——

Dr. MCCARTHY. Right.

Senator TESTER [continuing]. Than if they did not.

Dr. MCCARTHY. Right.

Senator TESTER. So, would this help reduce that number?

Dr. MCCARTHY. One would expect that to be the case. When I heard exam, I was thinking VBA. I am sorry——

Senator TESTER. Yes, that is right. So, can you tell me what percentage of—I am sure it varies by region—what percentage of appointments are not met by the veteran?

Dr. MCCARTHY. That does vary. I would not want to make a number. I would be happy to get back with you——

Senator TESTER. It would be really good to know from my perspective, and it is my bill, that if, in fact, the percentage is higher than it ought to be and if they are being missed because of transportation reasons.

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOHN TESTER TO THE U.S. DEPARTMENT OF VETERANS AFFAIRS

Veteran Missed Appointments by Fiscal Year

FY	Total # Appointments*	# Appts Veteran Missed	% Veteran Missed
2013	60,632,327	6,582,090	10.86%
2014	63,461,668	7,293,636	11.49%
2015	66,495,855	7,560,539	11.37%
2016*	51,875,904	5,823,699	11.23%

*Total Appointments = Checked Out + No Show Combined
**2016 is FYTD through 07/07/2016

Note: "Checked out" appointments means that the scheduled appointment occurred as planned and that the required check-out elements of provider, procedure, and diagnosis were all entered into the record. This makes the appointment complete with a status of checked out.

Dr. MCCARTHY. I am familiar more with by specialty——

Senator TESTER. I am sorry. I took way too much time now. Sorry, Mr. Chairman.

Chairman ISAKSON. No apology necessary, Senator Tester. Thank you for coming.

For the edification of the Members that are present as well as the audience, we have one other Senator who had asked to be recognized, Senator Merkley, who was supposed to be on the way, but he is not here yet——

Senator TESTER. He is right there.

Chairman ISAKSON. Oh, I am sorry. Well, the Chairman's eyesight is getting bad, Senator Merkley.

We will let the first panel be excused. Thank you for your time.

I am going to give Senator Merkley up to 5 minutes to make his presentation, then we will go immediately to the second panel. There is a classified briefing at 4 p.m. for members of the Senate, so if you have only me left in the room, that would be the reason why.

Senator Merkley, you are recognized for up to 5 minutes. As is the tradition of the Committee, there will be no exchange of questions at this time. We welcome hearing about your legislation.

STATEMENT OF HON. JEFF MERKLEY,
U.S. SENATOR FROM OREGON

Senator MERKLEY. Thank you very much, Mr. Chairman. It is an honor to be able to introduce S. 2279, the Veterans Health Care Staffing Improvement Act. I want to thank my colleague, Senator Rounds, for co-leading this bill and to thank the Members of this Committee who are sponsoring it, including Senator Rounds, Senator Tillis, Senator Murray, Senator Brown, Senator Tester, as well as cosponsors who do not sit on this Committee.

Our servicemen and women are the very best demonstration of our Nation's greatness, folks who have stepped up, taken the oath, and put on the uniform so the rest of us can live in a country that is safer and more secure. While we often offer warm words of thanks, we should be looking for ways to do more, and that is what our bill aims to do.

Every day, hundreds of thousands of dedicated public servants at the VA help us honor that commitment. In VA hospitals across the country, many doctors and nurses work hard to deliver world class care. But we all recognize that we have more to do, we have further to go to improve VA hospitals, to reduce long wait times, to ensure that all of our veterans, every single one, gets the care they need, the care they deserve. And this bill, the Veterans Health Care Staffing Improvement Act, will help us meet that goal.

This legislation makes common sense changes in staffing policies to improve veterans' care and working conditions at VA health care facilities. It would increase the ability of the VA to recruit veterans who served as health care providers while they are in the military. We call this the Docs-to-Doctors program. It makes common sense. We hear again and again from returning veterans that they want to have a new mission. They want to be able to continue helping their fellow Americans and their fellow soldiers. What better way than allowing veterans with a medical background to continue serving in the VA system, to streamline the red tape so these doctors and other health care providers can transition seamlessly into the VA system. That is a win-win.

This legislation also creates uniform credentialing rules for medical professionals so VA doctors and other licensed health care providers do not have to wait weeks or months to recredential if they want to move hospitals or split their time and work at multiple VA facilities.

It provides full practice authority to Advance Practice Registered Nurses (APRNs), nurses with post-graduate education, and physician assistants in the VA health system. This will help to make more primary care providers available, and certainly this is important in rural areas.

That is why this bill is needed now more than ever, to ensure our veterans can get the care they need and staff can practice to the full extent of their education and training. Writing these measures into law will make the VA more effective, more efficient. It will make it easier for the VA to achieve the staffing levels they need and to ensure the VA can better carry out its mission and to put veterans first.

Caring for our veterans is an area where Democrats and Republicans have worked together and should always be working together, and this bill represents that.

This bill is endorsed by many veterans organizations and 37 different nursing groups. The veterans groups include the Veterans of Foreign Wars, the Vietnam Veterans of America, the Iraq and Afghanistan Veterans of America, the National Guard Association, the Reserve Officers Association, The American Legion Department of Oregon.

I am delighted to be able to come and testify on behalf of this bill. We have a huge problem affecting our entire health care system, which is so many of our practitioners are Baby Boomers and they are retiring. And so many of us are Baby Boomers and need more medical care. And, therefore, we have an increase in demand and a decrease in supply, and we see that affecting our VA system as it competes with the rest of the health care system.

So, we have all of these soldiers coming home with experience, with the desire to have a significant mission, with the skills to be able to help in our VA health care system. Let us streamline that path, and that is what this bill does, and I would appreciate the support of the entire committee.

Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Merkley. We appreciate your interest and your testimony.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. MAZIE K. HIRONO TO DAVID MCLENACHEN, DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS' BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. Mr. McLenachen, in your written testimony, you express concerns about the WINGMAN Act, which would provide congressional staffers "with greater access to VA records than is provided to VA employees or contractors" (p. 28). Can you elaborate on how expanded access to these records for congressional staffers, as outlined under the WINGMAN Act, would provide them with greater access than is currently provided to VA employees and contractors?

Response. As stated in the Department of Veterans Affairs' (VA) written testimony, this bill would provide Congressional employees with unprecedented access to the records of Veterans and other VA claimants, raising significant privacy concerns. The bill also improperly conflates the concept of access to claims records with

the distinct mission and function of VA's Accreditation Program in ensuring that Veterans have access to competent and qualified claims representation.

Regarding the nature of the access provided, the bill would allow Congressional staff, who assist constituents of a Member of Congress, with greater access to VA records than is provided to a VA employee or contractor. Under the Privacy Act, Federal employees generally may access private records only when necessary to perform their duties. This bill would impose no similar restriction on access by Congressional staff. From a privacy and information security standpoint, granting Congressional staff unrestricted access to the medical records of Veterans and other VA claimants is not in the best interest of Veterans and their families. VA patients and claimants entrust VA with their personal, medical, and other information, and they do not generally expect that such information could be viewed by Congress without their explicit consent. To the extent that Congressional staffers require access to an electronic claims record for which the Member of Congress possesses an appropriate release from the individual, access may be provided in the form of a disc or under supervision at a VA facility because those types of access are within the current capabilities of VA systems.

Question 2. Mr. McLenachen, we know that nearly one in three veterans live in rural areas, and that rural veterans have been underserved due to a lack of access to health care, which can be caused by greater travel barriers and other factors. The permanent reauthorization of the Veterans Transportation Service (VTS) program, through the Rural Veterans Travel Enhancement Act of 2015, would address this issue, and would provide veterans with reliable transportation to health care. Can you elaborate on why it's so important to permanently reauthorize this program?

Response. The Veterans Transportation Service (VTS) has historically been a voluntary participation program for VA medical centers. The VTS Program is currently operating at 99 VA medical centers across the Nation. Currently, 53 VA medical centers do not participate in the VTS program. Participation has been less than 100 percent largely due to uncertainty regarding future authorization for the program. Each year since its enactment in 2013, Congress has extended the expiration date for the program for an additional year, but the legal authority for the program is currently set to expire on December 31, 2016. Granting permanent authority for VTS to operate provides reassurance of continued program support, which cannot otherwise be assured. VTS can transport any Veteran; however, disabled, aged, frail, and critically ill Veterans face the largest transportation challenges in accessing care. VTS specializes in transporting Veterans with these challenges.

Question 3. Mr. McLenachen, in your written testimony, you mention that VA would support the reauthorization of the VTS program assuming that resources are provided to continue its operations. What kinds of resources are you referring to? Would this be an appropriation? If so, then how much are we talking about?

Response. As with VA Medical Care in general, resources would need to be provided in the annual appropriation. VA would then allocate funds to cover the following costs of the VTS program, as follows:

- Salaries for Mobility Managers, Transportation Coordinators (schedulers/dispatchers) and Drivers;
- Funds for purchase of Americans with Disabilities Act compliant wheelchair vehicles, stretcher vans (ambulettes), and ambulances;
- Fuel and maintenance;
- Expansion of current Vet Ride System, which provides transport scheduling; metrics reporting; vehicle on-board mobile data computer with Veteran Health Identification Card swipe for safe patient tracking and monitoring; Veteran web-based trip request portal; a Third-Party Vendor portal for assigning, as appropriate, Beneficiary Travel Special Mode Transports to contractors when VTS cannot perform the transport; and a Special Mode Tracker feature for tracking all Special Mode Transports from the medical authorization through the claims reconciliation and payment process.

The VTS Program has demonstrated significant cost avoidance in Beneficiary Travel Special Mode Transport contract provider costs and a significant reduction in Beneficiary Travel mileage reimbursement payments. Table 1 below indicates the costs required to implement and operate the VTS program at all 152 VA medical centers through fiscal year 2026. VA proposed an extension of the VTS Program in its FY 2017 Budget (see Volume I, page Leg Sum–11, FY 2017 Budget Submission of the Department of Veterans Affairs).

Table 1: Resources Required for VTS for all 152 VA medical centers reflecting Special Mode cost offset

FY	Special Mode/Common Carrier Current Estimate	Special Mode Revised Estimate w/VTS Program	Offset	New Driver FTE	Other costs (vehicle purchases, fuel, maint.)	Total Costs (VAMC Facilities beginning in FY2013 will be responsible for for Mobility Manager and Transportation Program Coordinator)	Net Cost
2015 (actual)	433,118,448	422,860,379	(10,258,069)	6,144,944	5,626,830	11,771,774	1,513,706
2016	450,443,186	438,589,418	(11,853,768)	8,354,702	5,739,367	14,094,069	2,240,300
2017	468,460,913	453,667,411	(14,793,503)	11,072,872	5,854,154	16,927,026	2,133,523
2018	487,199,350	469,249,900	(17,949,450)	11,222,356	5,971,237	17,193,593	(755,857)
2019	506,687,324	486,419,831	(20,267,493)	11,373,857	6,090,662	17,464,519	(2,802,974)
2020	526,954,817	505,876,624	(21,078,193)	11,527,404	6,212,475	17,739,879	(3,338,313)
2021	548,033,010	526,111,689	(21,921,320)	11,683,024	6,336,724	18,019,748	(3,901,572)
5 Yr Total	**2,537,335,413**	**2,441,325,455**	**(96,009,958)**	**56,879,513**	**30,465,252**	**113,210,608**	**(8,665,193)**
2022	569,954,330	547,156,157	(22,798,173)	11,840,745	6,463,459	6,463,459	(4,493,969)
2023	592,752,503	569,042,403	(23,710,100)	12,000,595	6,592,728	6,592,728	(5,116,777)
2024	616,462,603	591,804,099	(24,658,504)	12,162,603	6,724,583	6,724,583	(5,771,318)
2025	641,121,107	615,476,263	(25,644,844)	12,326,798	6,859,074	6,859,074	(6,458,972)
2026	666,765,952	640,095,314	(26,670,638)	12,493,210	6,996,256	6,996,256	(7,181,172)
10 Yr Total	**5,624,391,909**	**5,404,899,691**	**(219,492,218)**	**117,703,466**	**64,101,352**	**146,846,708**	**(37,687,400)**

(Numbers may not add due to rounding)

Chairman ISAKSON. Now it is time to recognize the second panel, if you will come forward and sit according to the nameplates as they are placed. [Pause.]

Our second panel includes Roscoe Butler, Deputy Director of Health Care, National Veterans Affairs and Rehabilitation Division of The American Legion; Carlos Fuentes, Deputy Director, National Legislative Service, Veterans of Foreign Wars; Rick Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America; and Kevin Ziober, member of the Reserve Component.

We welcome all of you and look forward to your testimony. You have got 5 minutes. We will start with Roscoe Butler.

Senator TILLIS. Mr. Chairman, if I just may—I am sorry to interrupt, but you all are one of the main reasons why I like coming to these meetings. I appreciate the VA, yet I do have to go off to this other meeting. So, with respect to bills that I am working on, I would appreciate your offices contacting mine so that we can work together.

Thank you, Mr. Chair. Sorry for the interruption.

Chairman ISAKSON. Well, thank you, Senator Tillis.

I would advise everybody, we do have a secure briefing which begins in 4 minutes.

Roscoe Butler, welcome.

STATEMENT OF ROSCOE BUTLER, DEPUTY DIRECTOR OF HEALTH CARE, NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION, THE AMERICAN LEGION

Mr. BUTLER. Thank you. On March 4, 1865, during President Lincoln's second Inaugural Address, the President addressed our Nation's veterans and called upon the Nation to care for him who shall have borne the battle, and for his widow and his orphan, which affirmed the government's obligation to care for those injured during the war and to provide for the family of those who perished on the battlefield. This became the Department of Veterans Affairs trademark motto. Across the Nation, from Maine to Washington State, veterans, their families, and Veterans Service Organizations have called out again for affirming the government's obligation to care for our Nation's heroes and their families.

Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee, on behalf of the National Commander, Dale Barnett, and The American Legion, the country's largest patriotic wartime service organization for veterans, comprising over two million members and serving every man and woman who has worn the uniform for this country, we thank you for the opportunity to testify regarding The American Legion's positions on the pending draft bills.

There are several bills on the agenda today and you have our full written remarks for the record. Therefore, I will focus only on a couple of key bills.

Operation Iraqi Freedom, Enduring Freedom, and New Dawn veterans are returning home in alarming numbers with Traumatic Brain Injuries. TBI has become one of the signature injuries of the current war on terror. Recently, VA acknowledged that it may have under-evaluated nearly 25,000 veterans suffering from TBI. In a

June 2016 press release, VA stated veterans whose initial examination for TBI was not conducted by one of four designated medical specialists and provides them with the opportunity to have their claims reprocessed. TBI is an inherently complex medical condition and requires the opinions of specialized medical professionals to determine the level of severity and disability.

S. 244 would require an independent comprehensive review of the process by which VA assesses cognitive impairments that result from TBI for purposes of awarding disability compensation and for other purposes. The American Legion believes that it is imperative that Congress ensure that veterans suffering from the devastating and debilitating effects of TBI are properly evaluated for the conditions and any symptoms associated with the conditions for those reasons mentioned. The American Legion supports S. 244.

In 2014, The American Legion System Worth Saving program issued a report on rural health care and in 2014 issued a report on women veterans' health care. Both reports identified significant challenges veterans face in obtaining health care in rural locations as well as health care challenges women veterans face.

S. 2210, the PEER Act, calls on the Department of Veterans Affairs to establish peer specialists to be assigned in patient-aligned care teams at designated VA medical centers, to include female peer specialists. Peer specialists in the private sector have become an integral part of health care teams and are vital in promoting the recovery of patients.

The American Legion believes this bill will improve health care for male and female veterans living in rural areas. The American Legion supports developing a national program to provide peer-to-peer rehabilitation services based on the recovery model tailored to meet the specialized need of current generation's combat affected veterans and their families. Therefore, The American Legion strongly believes the Secretary of Veterans Affairs should utilize returning servicemembers for positions as peer support specialists in the effort to provide treatment, support services, and readjustment counseling for those veterans requiring these services. Therefore, The American Legion supports S. 2210.

I want to thank you, Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. I appreciate the opportunity to present The American Legion's views and look forward to answering any questions you may have.

[The prepared statement of Mr. Butler follows:]

PREPARED STATEMENT OF ROSCOE G. BUTLER, DEPUTY DIRECTOR OF HEALTH CARE, NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION, THE AMERICAN LEGION

Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee: On behalf of National Commander Dale Barnett and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding The American Legion's position on the pending and draft legislation.

S. 244

A bill to require an independent comprehensive review of the process by which the Department of Veterans Affairs assesses cognitive impairments that result from Traumatic Brain Injury for purposes of awarding disability compensation, and for other purposes.

Traumatic Brain Injury (TBI) has been identified as the "signature injury" of Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF) and Operation New Dawn (OND). Servicemembers have experienced injuries related to their combat experiences that will likely negatively impact their earnings post-service. As a result, it is imperative that we ensure that veterans suffering from the devastating and debilitating effects of TBI are properly evaluated for the condition and any symptoms associated with the conditions.

Recently, VA acknowledged that it may have under evaluated nearly 25,000 veterans suffering from TBI. In a June 2016 press release, VA stated, "Veterans whose initial examination for TBI was not conducted by one of four designated medical specialists and provides them with the opportunity to have their claims reprocessed." [1] TBI is an inherently complex medical condition and requires the opinions of specialized medical professionals to determine the level of severity and disability.

S. 244 directs VA to work with the Institute of Medicine (IOM) to conduct a comprehensive review of VA examinations to ensure that they are appropriately targeting symptoms and levels of disability by TBI sufferers. Additionally, it directs IOM to convene medical experts to determine the required credentials necessary to assess cognitive functions and provide recommendations to improve the adjudications of claims.

The American Legion has over 3,000 accredited representatives responsible for the effective advocacy of veterans' benefits throughout the Nation. It is not uncommon to hear reports from these representatives of the under evaluation of claims associated with TBI; despite their determined efforts to have these claims adjudicated properly by a VA rater, they often are compelled to appeal these decisions and have veterans who suffer from the pain and trauma associated with TBI wait for years to finally have their claims properly adjudicated.

The American Legion by resolution stated, "That Congress and the Administration encourage acceleration in the development and initiation of needed research on conditions that significantly affect veterans, such as prostate cancer, addictive disorders, trauma and wound healing, Post-Traumatic Stress Disorder, Traumatic Brain Injury, rehabilitation, and others, jointly with the Department of Defense, the National Institutes of Health, other Federal agencies, academic institutions and the Department of Veterans Affairs." [2]

The American Legion supports S. 244.

S. 603: RURAL VETERANS TRAVEL ENHANCEMENT ACT OF 2015

A bill to make permanent the authority of the Secretary of Veterans Affairs to transport individuals to and from facilities of the Department of Veterans Affairs in connection with rehabilitation, counseling, examination, treatment, and care, and for other purposes.

One out of every three veterans treated by the Department of Veterans Affairs (VA) lives in rural communities and rural veterans have been underserved due to a lack of access to health care, which can be attributed to greater travel barriers and a lack of public transportation. S. 603 would make it easier for veterans who live in rural areas to be reimbursed for expenses occurred as a result of traveling long distances for their medical and mental health appointments. This bill would permanently reauthorize the Department of Veterans Affairs (VA) Veterans Transportation Program (VTS). The VTS program provides funding to local VA healthcare systems to hire transportation coordinators and purchase vehicles that staff can utilize to transport veterans to the care they need. The Rural Veterans Travel Enhancement Act of 2015 would also provide mileage reimbursement for combat veterans traveling to receive mental health care at Vet Centers, and would amend the Caregivers and Veterans Omnibus Health Services Act of 2010 to reauthorize through FY 2020 a grant program to provide innovative transportation options to veterans in highly rural areas.

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[1] VA Office of Public and Intergovernmental Affairs: *VA Secretary Provides Relief for Veterans with Traumatic Brain Injuries* (June 1, 2016)

[2] American Legion Resolution No. 148 (August 2014): *Request Congress Provide the Department of Veterans Affairs Adequate Funding for Medical and Prosthetic Research*

Based on VA's interpretation of titles 38 U.S.C. § 111, Beneficiary Travel, and 38 U.S.C. § 1712A, entitled "Eligibility for readjustment counseling and related mental health services," VA has interpreted these laws to mean they do not allow payment of beneficiary travel benefits to veterans traveling to Vet Centers. Veterans traveling to Vet Centers should be eligible for beneficiary travel benefits on the same basis as other veterans.

The American Legion urges the Secretary to seek adequate funding to accommodate the needs of the increasing demand for care, to include the need for a Veterans Transportation System (VTS), accompanied by an increase in the beneficiary travel rate.[3]

The American Legion supports S. 603.

S. 2210: VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION (PEER) ACT

A bill to require the Secretary of Veterans Affairs to carry out a program to establish peer specialists in patient aligned care teams at medical centers of the Department of Veterans Affairs, and for other purposes.

A peer support specialist is a person with significant life altering experience who works to assist individuals with chemical dependency, mental disorder or domestic abuse and other life effecting issues. Due to their life experiences, such persons have expertise that professional training cannot replicate. This is not to be confused with peer educators who may not consider recovery a suitable goal for everyone and may focus instead on the principles of harm reduction. There are many tasks performed by peer support specialists that may include assisting their peers in articulating their goals for recovery, learning and practicing new skills, helping them monitor their progress, assisting them in their treatment, modeling effective coping techniques and self-help strategies based on the specialist's own recovery experience, and supporting them in advocating for themselves to obtain effective services.

S. 2210 would expand VA's current use of peer specialists from mental health clinics to be utilized in primary care settings. The PEER Act would require the Department of Veterans Affairs (VA) to establish a pilot program of peer specialists to work as members of VA's patient-aligned care teams (PACT), for the purpose of promoting the integration of mental health services in a VA primary care setting. This bill would authorize the establishment of this pilot program in 25 VA sites, to include the five VA's Polytrauma centers across the country. The bill would also require a series of reports, including a final report to recommend whether the program should be expanded beyond the pilot program sites.

The American Legion urges the President of the United States and the U.S. Congress to call on the Secretary of Veterans Affairs to develop a national program to provide peer to peer rehabilitation services based on the recovery model tailored to meet the specialized needs of current generation combat-affected veterans and their families.[4]

The American Legion supports S. 2210.

S. 2279 VETERANS HEALTH CARE STAFFING IMPROVEMENT ACT

A bill to require the Secretary of Veterans Affairs to carry out a program to increase efficiency in the recruitment and hiring by the Department of Veterans Affairs of health care workers that are undergoing separation from the Armed Forces, to create uniform credentialing standards for certain health care professionals of the Department, and for other purposes.

S. 2279 would make changes in staffing policies throughout the VA healthcare system to improve the recruitment of health care workers who are transitioning from military service. Throughout the country veterans are faced with waiting weeks or even months for a health care appointment. These barriers to receiving quality care can be attributed to a shortfall of tens of thousands of medical professionals to provide that care. This bill would decrease the bureaucratic red tape by making it easier for the VA to increase staffing throughout the VA healthcare system and ultimately reduce wait times for thousands of veterans. This bill also includes the "Docs-to-Doctors" program which allows servicemembers who have served in the medical field to transition directly into the VA which would allow veterans access to health care they need in a timely manner.

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[3] American Legion Resolution No. 106 (August 2014): *Veterans Transportation System & Benefits Travel*

[4] American Legion Resolution No. 284 (August 2014): *Department of Veterans Affairs to Develop Outreach and Peer to Peer Programs for Rehabilitation*

The American Legion supports Sections 2 and 3 of S. 2279; however, at this time The American Legion does not have a position on Section 4, which is granting Nurses and Physicians Assistants full practice authority.

S. 2316

A bill to expand the requirements for reissuance of veterans benefits in cases of misuse of benefits by certain fiduciaries to include misuse by all fiduciaries, to improve oversight of fiduciaries, and for other purposes.

Without question, veterans requiring a fiduciary are some of our Nation's most vulnerable. Unable to manage their financial affairs, VA will appoint a fiduciary to ensure that payments for bills are provided from their VA benefits. Due to their vulnerable states, veterans are exposed to abuse by their fiduciary and may face daunting challenges to recover lost payments.

The American Legion has previously testified regarding the need to reform the fiduciary program. Repeatedly, we have heard from our accredited representatives about veterans being financially harmed by their appointed fiduciary.

In 2011, the Federal Bureau of Investigation (FBI) detailed a conviction of two individuals, to include one former VA employee, of defrauding veterans of nearly $900,000 between 1999–2008.[5] Based upon allegations received by VA's Office of Inspector General (VAOIG) in May 2013, an investigation of the Eastern Area Fiduciary Hub was conducted; as stated in the May 2014 VAOIG report, there were 12 incidents of fiduciaries misusing funds, costing veterans approximately $944,000 in benefits.[6]

Unfortunately, it is often noticed after years of a fiduciary's abuse of a veteran's funds. This can amount to hundreds of thousands of dollars lost by the veteran. Currently, the only way that a veteran can pursue the lost benefits are through civil court proceedings.

S. 2316 removes the requirement of these vulnerable veterans to have to pursue civil litigation to recover the lost benefits. It places the requirement on VA; considering that VA is responsible for assigning a fiduciary, it stands to reason that they should inherit the responsibility of recovering the lost benefits by unscrupulous fiduciaries. Through this bill, we can move to protecting beneficiaries from the unlawful taking of benefits by unscrupulous fiduciaries from our Nation's veterans.

Recognizing that veterans requiring fiduciaries are often some of our Nation's most vulnerable veterans, The American Legion supports legislation requiring the Department of Veterans Affairs to provide oversight over their fiduciary program and that it protects veterans and their beneficiaries who are unable to manage their financial affairs.[7]

The American Legion supports S. 2316.

S. 2791—ATOMIC VETERANS HEALTHCARE PARITY ACT

A bill to provide for the treatment of veterans who participated in the cleanup of Enewetak Atoll as radiation exposed veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs.

From 1977 to 1980, thousands of members of the United States Armed Forces participated in a radiation cleanup of United States nuclear test sites in the Marshall Islands. S. 2791 would provide for the treatment and service-connection presumption of certain disabilities related to those veterans who participated in the cleanup of the Enewetak Atoll and other areas that conducted nuclear testing. The Atomic Veterans Healthcare Parity Act would help veterans who were exposed through the cleanup at these atomic sites to access the benefits and treatment they earned.

The American Legion highlighted the plight of these veterans, left behind and struggling to gain access to treatment and benefits due to the way the laws are written, in the March 2016 issue of The American Legion Magazine entitled, "Toxic Paradise," as well as on our website.

The American Legion urges ensuring medical examinations, compassionate treatment and just compensation for veterans exposed to environmental hazards "through testing, transportation, storage, and disposal."[8]

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[5] The Federal Bureau of Investigation: *Veterans' Benefit Fiduciary and Former U.S. Department of Veterans Affairs Employee Plead Guilty to Embezzling Nearly $900,000* (August 10, 2011)

[6] VA OIG report (May 28, 2014): *Review of Alleged Mismanagement at the Eastern Area Fiduciary Hub*

[7] American Legion Resolution No. 103 (September 2015): *Fiduciary Responsibility*

[8] American Legion Resolution No. 125 (August 2014): *Environmental Exposures*

The American Legion supports S. 2791.

S. 2958

A bill to establish a pilot program on partnership agreements to construct new facilities for the Department of Veterans Affairs.

Veterans are frustrated and concerned with VA's construction processes and the continued delays and cost overruns and unsure whether VA's improvements will ensure VA major construction in the future will be within schedule and budget. S. 2958 would allow the VA to enter into public-private partnerships for the planning, design and construction of new buildings for the use by the Department of Veterans Affairs. This bill would allow improvements to be made to VA medical centers to better serve veterans by creating a pilot program that would allow the VA to create up to five partnerships to assist with their VA construction projects.

The American Legion urges VA to consider all available options, both within the agency and externally, to include, but not limited to, the Army Corps of Engineers to ensure major construction programs are completed on time and within budget.[9]

The American Legion supports S. 2958.

S. 3021

A bill to authorize the use of Post-9/11 Educational Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning.

This bill would provide student-veterans with expanded scope and usage of the Post-9/11 GI Bill education benefits to other forms of postsecondary institutions. This legislation adds needed options to student-veterans in the pursuit of their educational goals. The Post-9/11 GI Bill passed by Congress in 2008 has been an effective upgrade for 21st century veterans using their college education benefits. It was not, nor can it be, a law so static that it cannot continue evolving to best meet the needs of student-veterans in an ever-shifting landscape of higher education and career training.

Last, The American Legion has been encouraged by the growing recognition within Congress of the need to make basic, but critical information about the return on investment in higher education available to student-veterans.

The American Legion seeks and supports any legislative or administrative proposal that improves, but not limited to, the GI Bill, Department of Defense Tuition Assistance (TA), Higher Education Title IV funding (i.e., Pell Grants, Student Loans, etc.) and education benefits so servicemembers, veterans, and their families can maximize its usage.[10]

The American Legion supports S. 3021.

S. 3023—THE ARLA HARRELL ACT

A bill to provide for the reconsideration of claims for disability compensation for veterans who were the subjects of experiments by the Department of Defense during World War II that were conducted to assess the effects of mustard gas or lewisite on people, and for other purposes.

For 10 years, Arla Harrell has sought VA disability compensation for conditions he attributes to his military service. While stationed at Camp Crowder, Missouri, during the waning days of World War II, he reports being subjected to mustard gas exposure as part of a secret experimental program. The exposure led to a lifetime of respiratory ailments.

Unfortunately, like many World War II veterans, his military records were burned in the National Personnel Records fire of 1973. To further complicate the matter, neither the Department of Defense (DOD) nor VA have been able to produce accurate records indicating the impacted veterans. According to an article published on May 27, 2016, in the St. Louis Post Dispatch, National Public Radio uncovered in November 2015 that 3,900 veterans were exposed to mustard gas experiments, a list six times greater than VA previously acknowledged.[11]

38 CFR §3.316 identifies a host of medical conditions, to include respiratory conditions that are presumptively related to mustard gas exposure. The issue is not

[9] American Legion Resolution No. 24 (May 2015): *Department of Veterans Affairs Construction Programs*

[10] American Legion Resolution No. 312 (August 2014): *Ensuring the Quality of Servicemember and Veteran Student's Education at Institutions of Higher Learning*

[11] St. Louis Post Dispatch (May 27, 2016): *"World War II vet's mustard gas claim again denied, but VA boss pledges look at new evidence"*

what conditions to service connect presumptively; S. 3023 will allow VA to presumptively service connect veterans for exposure to mustard gas based upon participating in mustard gas testing.

The American Legion has long supported service connecting veterans presumptively due to environmental exposures. The American Legion supports "the liberalization of the rules relating to the evaluation of studies involving exposure to any environmental hazard and that all necessary action be taken by the Federal Government, both administratively and legislatively as appropriate, to ensure that veterans are properly compensated for diseases and other disabilities scientifically associated with a particular exposure"[12]

The American Legion supports S. 3023.

S. 3032—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2016

A bill to provide for an increase, effective December 1, 2016, in the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

This bill will provide a Cost of Living Allowance (COLA) effective December 1, 2016. Disability compensation and pension benefits awarded by the Department of Veterans Affairs (VA) are designed to compensate veterans for medical conditions due to service or who earn below an income threshold. With annual increases to costs of living, it is only appropriate that veterans' benefits increase commensurate with those increases.

For nearly 100 years, The American Legion has advocated on behalf of our Nation's veterans, to include the awarding of disability benefits associated with chronic medical conditions that manifest related to selfless service to this Nation. Annually, veterans and their family members are subjects in the debate regarding the annual cost of living adjustment (COLA) for these disability benefits. For these veterans and their family members, COLA is not simply an acronym or a minor adjustment in benefits; instead, it is a tangible benefit that meets the needs of the increasing costs of living in a nation that they bravely defended.

The American Legion would like to commend the members on this bill. Previous bills introduced have had "round-down" provisions, where veterans' benefits were rounded-down to the next whole dollar. This is a frustrating practice that has an insidious effect over years of receiving benefits.

The American Legion supports legislation to provide a periodic cost-of-living adjustment increase and to increase the monthly rates of disability compensation.[13]

The American Legion supports S. 3032.

S. 3035—MAXIMIZING EFFICIENCY AND IMPROVING ACCESS TO PROVIDERS AT THE DEPARTMENT OF VETERANS AFFAIRS ACT OF 2016

A bill to require the Secretary of Veterans Affairs to carry out a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at medical facilities of the Department of Veterans Affairs.

Veterans are experiencing long wait times for VA health care for a variety of reasons, but in part due to high patient load and not enough doctors to serve the population. This shortage is a nationwide problem.

A medical scribe is a paraprofessional who specializes in charting physician-patient encounters in real time, such as during medical examinations. Depending on which area of practice the scribe works in, the position may also be called clinical scribe, ER scribe or ED scribe (in the emergency department), or just scribe (when the context is implicit). A scribe is trained in health information management and the use of health information technology to support it. A scribe can work on-site (at a hospital or clinic) or remotely from a Health Insurance Portability and Accountability Act (HIPAA) secure facility. Medical scribes who work at an offsite location are known as virtual medical scribes and normally work in clinical settings.

A medical scribe's primary duties are to follow a physician through his or her work day and chart patient encounters in real-time using a medical office's electronic health record (EHR) and existing templates. Medical scribes also generate referral letters for physicians, manage and sort medical documents within the EHR system, and assist with e-prescribing. Medical scribes can be thought of as data care managers, enabling physicians, medical assistants, and nurses to focus on patient

[12] American Legion Resolution No. 125 (August 2016): *Environmental Exposures*

[13] American Legion Resolution No. 18 (August 2014): *Department of Veterans Affairs Disability Compensation*

in-take and care during clinic hours. Medical scribes, by handling data management tasks for physicians in real-time, free the physician to increase patient contact time, give more thought to complex cases, better manage patient flow through the department, and increase productivity to see more patients.

S. 3035 would require VA to carry out an 18 month pilot program in no less than five high-volume VA medical centers for the contract hiring of medical scribes to assist VA physicians with workload. This bill will ensure doctors have more time to see patients rather than entering in medical data and will serve as a recruitment tool for doctors who want a package comparable to the private sector.

The American Legion supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including timely access to quality VA health care.[14]

The American Legion supports S. 3035.

S. 3055—DEPARTMENT OF VETERANS AFFAIRS DENTAL INSURANCE REAUTHORIZATION ACT OF 2016

A bill to provide a dental insurance plan to veterans and survivors and dependents of veterans.

S. 3055 would reauthorize the current veteran dental insurance pilot program that was included in the Caregiver and Veterans Omnibus Health Services Act of 2010. This bill would ensure that eligible veterans, survivors and dependents of veterans continue to access quality dental insurance at a low cost.

Under current VA's dental authority, only certain enrolled veterans are eligible for outpatient dental care from the VA. If this bill was enacted into law, veterans not eligible for VA benefits would be also able to enroll in the VA Dental Insurance Program (VADIP). Each veteran enrolled in the plan shall pay the entire premium for coverage under the dental insurance plan, in addition to the full cost of any copayment.

The American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance benefits for veterans and their dependents.[15]

The American Legion supports S. 3055.

S. 3076—CHARLES DUNCAN BURIED WITH HONOR ACT OF 2016

A bill to authorize the Secretary of Veterans Affairs to furnish caskets and urns for burial in cemeteries of States and Indian tribes of veterans without sufficient resources to provide for caskets or urns.

The draft bill would amend Title 38 United States Code (U.S.C) Section 2306 entitled Headstones, markers, and burial receptacles subsection (f). Under current law, Title 38 U.S.C. § 2306(f), the Secretary may furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial in a national cemetery of a deceased veteran in any case in which the Secretary is unable to identify the veteran's next of kin, if any; and determines that sufficient resources for the furnishing of a casket or urn for the burial of the veteran in a national cemetery are not otherwise available. The bill would allow for such burial in cemeteries of States and Native American Indian tribes of veterans without sufficient resources to provide for caskets or urns.

The American Legion urges Congress and the Department of Veterans Affairs (VA) to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents with final resting places in national shrines and with lasting tributes that commemorates their service.[16]

The American Legion supports S. 3076.

S. 3081—WORKING TO INTEGRATE NETWORKS GUARANTEEING MEMBER ACCESS NOW ACT ("WINGMAN ACT")

To amend title 38, United States Code, to provide certain employees of Members of Congress and certain employees of State or local governmental agencies with access to case-tracking information of the Department of Veterans Affairs.

The WINGMAN Act would grant access to the Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) for the purpose of assisting constituents. According to the bill, Members could select an employee, and at a cost to the employee or member, would receive the necessary training to gain accredita-

[14] American Legion Resolution No. 23 (May 2016):Support for Veteran Quality of Life
[15] American Legion Resolution No. 23 (May 2016): *Support for Veteran Quality of Life*
[16] American Legion Resolution No. 23: (May 2016): *Support for Veteran Quality of Life*

tion to legally review veterans' records within VBMS. The American Legion has over 3,000 accredited representatives located throughout the Nation. These professionals receive regular professional training to ensure they have the most current understanding of the impact of changes in statutes, regulations, and case law. It is simply not a matter of receiving initial training and meeting the requirement of being accredited; like many professions, it requires on-going, thorough training. Additionally, veterans are repeatedly advised of their opportunity to elect to have a Veterans Service Organization (VSO) represent them in their quest to receive VA disability benefits without a cost to the veteran. The American Legion does not have a resolution to support the enactment of this bill; however, we urge Congress to consider the long-term ramifications of supporting legislation that only requires their own employees to have the minimal level of understanding in veterans' law assisting their constituents. To ensure their constituents receive the assistance they deserve, we highly recommend that a VSO advocate on their veterans' behalf.

The American Legion Opposes the S. 3081.

DRAFT BILL

A bill to clarify the scope of procedural rights of members of the uniformed services with respect to their employment and reemployment rights, to improve the enforcement of such employment and reemployment rights, and for other purposes.

With the number of Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) cases across the country, The American Legion is deeply concerned with the protection of the servicemember and the prevention of the servicemember not being reemployed by their previous employer after deployment(s). USERRA cases have become more complex than in the past and frequently involve multiple issues. This is due to longer and more frequent deployments of National Guard and Reserve members. As currently drafted, USERRA fails to adequately support military personnel upon their return to civilian employment as numerous employers have violated the rules laid out in Title 38 of the United States Code.

This bill would improve USERRA by clarifying the scope of USERRA rights and expand the enforcement authority of the Department of Justice (DOJ). This legislation adds essential authority to DOJ that provides the kind of protection for servicemembers' employment—which includes compensatory and punitive damages—which servicemembers have earned through their honorable service for the United States of America.

The American Legion seeks and supports any legislative or administrative proposal that will mandate the use of automated recruitment, hiring and retention system that safeguard against hiring malpractice in the application and the hiring process.[17] The American Legion supports legislation to amend Title 38, U.S.C., to prohibit discrimination and acts of reprisals by employers against veterans that seek treatment for their service-connected disabilities.[18]

The American Legion supports the Draft Bill.

DRAFT BILL

A bill to expand eligibility for readjustment counseling to certain members of the Selected Reserve of the Armed Forces.

Readjustment counseling is made up of a wide range of psychosocial services offered to eligible veterans and their families in the effort to make a successful transition from military to civilian life. The draft bill would amend Title 38 United States Code Section 1712A entitled Eligibility for readjustment counseling and related mental health services by adding new subparagraphs under the current law that includes: (D)(i) The Secretary, in consultation with the Secretary of Defense, may furnish to any member of the Selected Reserve of the Armed Forces who has a behavioral health condition or psychological trauma, counseling under subparagraph (A)(i),which may include a comprehensive individual assessment under subparagraph (B)(i) and (ii) A member of the Selected Reserve of the Armed Forces described in clause (i) shall not be required to obtain a referral before being furnished counseling or an assessment under this subparagraph."

The American Legion urges Congress and the Department of Veterans Affairs (VA) to enact legislation and programs within the VA that will enhance, promote,

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[17] American Legion Resolution No. 301 (August 2014): *Enforcing Veterans' Preference Hiring Practices in Federal Civil Service*

[18] American Legion Resolution No. 341 (August 2014): *Resolution No. 341: Support Legislation to Amend Title 38 United States Code, to Prohibit Discrimination and Acts of Reprisal by Employers against Veterans that Seek Treatment for Their Service-Connected Disabilities*

restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care.[19]

The American Legion supports the Draft Bill.

DRAFT BILL

A bill to authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian tribes and tribal organizations, to require the Secretary of Veterans Affairs to carry out a pilot program to expand medical residencies and internships at such facilities, and for other purposes.

This bill would require the Secretary of Veterans Affairs to implement a pilot program to establish graduate medical education (GME) residency training programs at covered facilities. According to Title 25 U.S. Code Subchapter II—Indian Self-Determination and Education Assistance 450b Section 4 of the Indian Self-Determination and Education Assistance Act—VA defines a covered facility to mean a department facility, or a facility operated by an Indian tribe or a tribal organization.

The American Legion supports any legislation or policies that will enhance, promote, restore, or preserve benefits for veterans and their dependents.[20]

The American Legion supports the Draft Bill.

DISCUSSION DRAFT

To authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille memorial in Marnes-la-Coquette, France

The Lafayette Escadrille Memorial is dedicated to the memory of the American pilots who volunteered to assist the Allied Army in 1914. The central platform is crowned with a triumphal arch and flanked with porticos leading to the underground crypt. The "art deco" style highlights the pilots' sacrifice and the Franco-American friendship.

There are statues of Lafayette and Washington facing one another and, on the ground, a mosaic of the famous Sioux warrior's head, the squadron's ensign. The crypt holds the ashes of 66 American pilots. It is decorated with 13 stained glass windows depicting the great aerial combats of the war. The monument was inaugurated on American Independence Day, July 4, 1928.

The discussion draft would authorize the American Battle Monuments Commission (ABMC), which was established by the Congress in 1923, as the guardian of America's overseas commemorative cemeteries and memorials and honors the service, achievements and sacrifices of the United States Armed Forces by overseeing the operations of the memorial which has been erected to honor those who gave the ultimate sacrifice for their country.

The American Legion urges Congress to appropriate adequate funding and human resources to the American Battle Monuments Commission in order to properly maintain and preserve the final resting place of America's war dead located on foreign soil.[21]

The American Legion supports the Discussion Draft.

CONCLUSION

As always, The American Legion thanks this Committee for the opportunity to explain the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861–2700 or wgoldstein@legion.org.

Chairman ISAKSON. Roscoe, you are always thorough and we appreciate your input on the Committee's work all the time. Thank you for coming today.

Mr. Fuentes.

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[19] American Legion Resolution No. 23 (May 2016): Support for Veterans Quality of Life

[20] American Legion Resolution No. 23 (May 2016): *Support for Veterans Quality of Life*

[21] American Legion Resolution No. 50 (August 2014): *Support for the American Battle Monuments Commission*

STATEMENT OF CARLOS FUENTES, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. FUENTES. Mr. Chairman, Ranking Member Blumenthal, and Members of the Committee, on behalf of the men and women of the VFW and our Auxiliaries, I would like to thank you for the opportunity to present our views on legislation pending before the Committee.

The VFW supports most of the bills being considered today, but I will limit my remarks to those we urge the Committee to amend.

The VFW supports the Maximizing Efficiency and Improving Access to Providers Act. However, we urge the Committee to require contractors hired as medical scribes to help VA providers locate medical documents in a veteran's electronic health care record, such as labs and private sector health records. This would ensure VA providers spend less time navigating electronic health care records and more time treating veterans.

The VFW supports the VA Dental Insurance Reauthorization Act of 2016 but urges the Committee to consider expanding VA dental care eligibility instead of passing on the costs of dental coverage onto the veterans. Oral health has a direct impact on overall health. Additionally, several health care conditions prevalent among veterans, such as diabetes, have been found to directly impact oral health. Until January 2014, veterans enrolled in VA health care have little to no options for receiving dental care. While the VA dental insurance program provides dental care options to 100,000 veterans and their eligible families, VFW members consider this program as better than nothing. The VFW believes veterans have earned the best, not better than nothing.

Additionally, veterans who participate in the dental insurance program do not have their dental records integrated into their VA electronic health care records. Thus, VA providers are unable to determine if these veterans have dental conditions that may impact their overall health. That is why the VFW supports expanding eligibility for VA dental care to all veterans who are enrolled in—who are eligible for VA health care.

While the VFW agrees with the need to improve the ability of Congressional staff to assist veterans with their claims, we cannot support the WINGMAN Act at this time. We have several concerns that would need to be addressed before we could support this bill, and like VA, our reading of the bill did not require Congressional staff to have signed releases before having access to the records. We agree with VA and Senator Cassidy that that is necessary.

When a power of attorney is held by an individual or organization, that entity must be notified of Congressional involvement. Congressional staff must pass VA certification tests and level-sensitive restrictions that apply to VA employees and service officers must also apply to Congressional staff, including consequences for staff found to have abused their authority.

The VFW acknowledges the need for improved access to mental health care for Guard and Reserve servicemembers, but we cannot support the expansion of Vet Center eligibility to non-combat veterans. The rate of suicide among our servicemembers is equally as troubling as the rate of suicide among veterans. While DOD's sui-

cide prevention programs have successfully reduced the rate of suicides among our active duty force, it has not been able to replicate those efforts in its Reserve components. To address this need, the VFW urges Congress and DOD to devote more efforts and resources to combat the rate of suicide among Guardsmen and Reservists. Additionally, DOD must leverage shared agreements with VA to ensure Guardsmen and Reservists who live in rural and remote areas have access to the mental health care they need.

Mr. Chairman, this concludes my remarks. I am happy to answer any questions you or the Members of the Committee may have.

[The prepared statement of Mr. Fuentes follows:]

PREPARED STATEMENT OF CARLOS FUENTES, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

S. 244

A bill to require an independent comprehensive review of the process by which the Department of Veterans Affairs assesses cognitive impairments that result from Traumatic Brain Injury for purposes of awarding disability compensation.

The VFW supports this legislation and its efforts to address incorrect assessments of cognitive impairments suffered by veterans with Traumatic Brain Injury (TBI).

With the current shallow understanding of TBI, it is of utmost importance we properly handle and treat the portions we do comprehend. If underqualified Department of Veterans Affairs (VA) doctors have possibly misdiagnosed thousands of veterans who may have cognitive impairments from TBI, then that issue must be addressed and those veterans need to be given the opportunity to receive treatment and disability compensation. VA must be sure it is delivering the highest quality of care to veterans. By bringing in an outside source such as the Institute of Medicine, there will be opportunity for unbiased assessment of protocols for VA psychologists carrying out physiological exams related to TBI.

S. 603, RURAL VETERANS TRAVEL ENHANCEMENT ACT OF 2015

The VFW strongly supports this legislation, which would authorize VA to continue a number of successful transportation programs to help veterans travel to their VA health care appointments. The lack of reliable transportation is a significant barrier to access for veterans throughout the country, especially in rural areas. The VFW strongly supports efforts to eliminate such barriers.

Section 2 would permanently extend VA's authority to administer the Veterans Transportation Service (VTS). This program was commissioned by the Veterans Health Administration's Office of Rural Health in 2010, and greatly improved access to care for rural and severely disabled veterans by allowing VA facilities to establish and coordinate networks of local transportation providers, including community, commercial and government transportation services.

VTS suffered a major setback in 2012 when it was temporarily suspended following a determination by the VA Office of General Counsel that VA lacked the statutory authority to hire paid drivers to transport veterans. Congress has passed one-year authorizations of the VTS program since January 2013, but a long term fix is still needed. The VFW supports permanently expanding this successful program.

Section 3 would authorize VA to reimburse veterans for travel to Vet Centers. With the significant shortage of culturally competent and evidence-based mental health care available to veterans, we must do what is needed to ensure veterans have access to programs tailored to their unique needs. The combat-specific readjustment services offered at Vet Centers makes them a great source for mental health care for veterans struggling to readjust back to civilian life after their experiences during war. Unfortunately, accessing such readjustment centers may be difficult for certain veterans who cannot afford the transportation to and from Vet Centers. This bill would rightfully remove that barrier by expanding eligibility for VA beneficiary travel benefits.

Section 4 would reauthorize grants which enable Veterans Service Organizations to transport veterans who live in highly rural areas to their VA and community care appointments. VFW posts and departments in California, Texas, Maine and North Dakota use these grants to help thousands of veterans access the health care and services they need. The VFW supports reauthorizing such grants to allow these successful programs to continue.

S. 2210, VETERANS PEER ACT

The VFW supports this legislation, which would require VA to integrate peer support specialists into Primary Care Patient Align Care Teams (PACT).

Peer support specialists provide a valuable service to veterans coping with mental health conditions. Such veterans often look for guidance from fellow veterans who have successfully completed treatment and have learned to cope with conditions they are experiencing. While current law requires each VA medical center to hire a minimum of two peer support specialists, it does not require VA medical facilities to incorporate them into the clinical settings. As a result, many peer support specialists are not used to their full potential. Many peer support specialists currently lead successful mental health care programs and services. The VFW supports efforts to expand such best practices.

The VFW is glad to see this legislation would require each medical center that participates in the pilot program to consider the gender-specific needs of women veterans when carrying out the pilot program. In our survey of women veterans, survey participants identified the lack of gender-specific services as the greatest need in VA health care facilities. Survey participants also indicated their desire to select a provider of the same gender, specifically for veterans who have mental health conditions that may be a result of military sexual trauma. The VFW supports efforts to hire women peer support specialists to ensure women veterans have the opportunity to seek guidance from women veterans who have learned to cope with military sexual trauma related mental health conditions.

S. 2279, VETERANS HEALTH CARE STAFFING IMPROVEMENT ACT

This legislation would improve the transition of health care providers between the Department of Defense (DOD) and VA, streamline the process for transferring health care professionals between VA facilities and expand the practice authority for certain health care providers. The VFW supports sections 2 and 3 and takes no position on section 4.

Section 2 would streamline the VA hiring process for transitioning servicemembers who practice medicine in the Military Health System. Servicemembers with years of clinical experience with the Military Health System have the skills and cultural competency needed to treat service-connected injuries as VA health care providers. The VFW believes veterans who choose to continue serving their country and their fellow veterans must have access to expedited hiring authorities that enable them to seamlessly transition from military service to the civil service. This legislation would rightfully ensure applications for VA health care employment from transitioning servicemembers are given priority.

Section 3 would eliminate the requirement for VA health care professionals to undergo credentialing every time such employees transfer to a new VA medical facility. During our site visits of VA medical facilities throughout the country, the VFW has heard from VA physicians that VA credentialing requirements delay their ability to begin treating veterans when they transfer between VA medical facilities. The VFW does not see a reason for VA physicians to endure the VA credentialing process every time they transition to a new VA medical facility. We support efforts to streamline this process to ensure VA is able to seamlessly transfer its health care professionals to areas of greatest need.

Section 4 would grant independent practice authority for advanced practice registered nurses and physician assistants employed by the Department. VA recently published a proposed rule to grant its advance practice nurses full practice authority. The VFW does not take a position on scope of practice issues. The VFW defers to VA in determining the most efficient and effective scope of practice of its providers. However, we will hold VA accountable for providing timely access to high quality health care, regardless if such care is provided by an advance practice registered nurse or a physician.

S. 2316

A bill to expand the requirements for reissuance of veterans benefits in cases of misuse of benefits by certain fiduciaries.

This legislation would ensure a veteran who is defrauded by his or her fiduciary can be fully reimbursed, regardless of VA negligence or the amount the fiduciary manages. Today, veterans can only be made whole if VA does not respond to the notification of fraud within 60 days. For all other beneficiaries who have been defrauded, they can only be reimbursed the amount VA can collect back through fines placed on the fiduciary. This legislation would ensure that every veteran who has been defrauded can be made whole.

This legislation would also require all fiduciaries to provide authorization for the Secretary to obtain the financial records of all accounts held by a fiduciary. This measure will provide VA with enhanced access to bank accounts held by fiduciaries for beneficiaries in its oversite function of safeguarding veterans' benefits.

The VFW supports this legislation.

S. 2791, ATOMIC VETERANS HEALTHCARE PARITY ACT

When servicemembers answer the call of duty without hesitation, it is our duty to take care of the repercussions of their military service. The VFW supports this legislation, which would expand VA disability compensation to veterans who were exposed to nuclear radiation from 1977 to 1980 during the atomic cleanup of Enewetak Atoll. The VFW sees this as one more example of military toxic exposure causing adverse health conditions which has been ignored for far too long.

S. 2958

A bill to establish a pilot program on partnership agreements to construct new facilities for the Department of Veterans Affairs.

This legislation would authorize a pilot program for VA to enter into five public-private partnerships (P3) for the funding and construction of major construction projects. This bill will allow "entities" to apply for and enter into a contract with VA. These entities would be made up of a board of directors that will submit an application to the Secretary that will describe the name and experience of the project manager; the proposed contributions and how funding will be secured; a description of the management plan and monitoring process that will be used; and finally the total cost and timeline for completion.

The VFW has called on Congress to allow VA to enter into P3s for several years and fully believes that these partnerships are the future for VA major construction projects. That is why we fully support this legislation.

S. 3021

A bill to authorize the use of Post-9/11 Educational Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning.

Post-secondary education comes in various forms and is vital to the successful transition from military to civilian life. The VFW supports this legislation to expand the Post-9/11 Education Assistance Program. Current legislation does not allow veterans to use their education benefits to earn accredited certificates through independent study programs at institutions that are not deemed those of higher learning. Yet, there are institutions that offer these accredited programs for areas such as career and technical education. Allowing veterans to use their education benefits to earn such certificates would incentivize veterans to purse secondary education and open more windows of opportunity for their futures.

S. 3023, THE ARLA HARRELL ACT

During WWII, 60,000 servicemembers were human subjects of the military's chemical defense research program——some 4,000 of those servicemembers were exposed to high levels of mustard agents. Until the early 1990s, these veterans where forbidden to speak of the experiments, even though the program was declassified in 1975.

Because of the classified nature of these exposures and the reliance on incomplete and conflicting data, the ability to accurately determine the level of exposure to mustard gas and Lewisite each veteran endured is difficult at best. Because of these facts, the VFW believes those veterans who have previously applied for benefits related to exposure to mustard gas and Lewisite and were denied because the evi-

dence of "full body" exposure could not be proven, should be given the benefit of the doubt and have their claims adjudicated with the presumption of full body exposure.

The VFW supports requiring VA to reconsider previously denied claims for mustard gas and Lewisite exposure with the presumption that the exposure was full body, unless available evidence proves otherwise.

S. 3032, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2016

The VFW strongly supports this legislation, which would increase VA compensation for veterans and survivors, and adjust other benefits beginning December 1, 2016.

Disabled veterans, along with their surviving spouses and children, depend on their disability and dependency and indemnity compensation to bridge the gap of lost earnings and savings caused by service-connected injuries and illnesses. Each year, veterans wait anxiously to find out if they will receive a cost-of-living adjustment (COLA). There is no automatic trigger that increases these forms of compensation for veterans and their dependents. Annually, veterans wait for a separate Act of Congress to provide the same adjustment that is automatically granted to Social Security beneficiaries.

The VFW thanks the Committee for providing veterans the opportunity to receive their full COLA increase, by not including a "round down," which is nothing more than a money-saving gimmick that asked veterans and their survivors to bear the burden of budget austerity measures.

S. 3035, MAXIMIZING EFFICIENCY AND IMPROVING ACCESS TO PROVIDERS AT THE DEPARTMENT OF VETERANS AFFAIRS ACT OF 2016

The VFW supports this legislation, which would require VA to carry out a pilot program to evaluate the efficacy of using medical scribes.

A recent VA study evaluating common challenges faced by clinicians in their day-to-day environments, conducted by VA's Emerging Health Technology Service, concluded that burdensome non-clinician-centered electronic health care systems have a significant impact on morale and retention of VA physicians and the veteran's experience due to reduced facetime with providers. This legislation would reduce the time physicians spend on the keyboard and maximize face to face time with their patients.

This legislation requires VA to contract with a nongovernmental entity that specializes in the collection of medical data and data entry into electronic health care records. The VFW urges the Committee to require the contractors to undergo training on VA's Computerized Patient Record System or the Enterprise Health Management Platform, including training on how to research required medical documents, such as labs and non-department health care records which have been scanned into a veteran's electronic health care record. The "Day in the Life" assessment determined that searching and navigating disparate data systems consumes vast amounts of time that VA clinicians can spend interacting with their patients. The VFW believes medical scribes could assist VA providers in locating necessary medical records and spend less time navigating electronic health care records and more time treating veterans.

S. 3055, DEPARTMENT OF VETERANS AFFAIRS DENTAL INSURANCE REAUTHORIZATION ACT OF 2016

This legislation would reauthorize the VA Dental Insurance Program (VADIP) for five years. While the VFW believes dental must be included in the health care benefits package for all veterans enrolled in VA health care, we support expanding the current program to ensure current beneficiaries do not have a gap in dental coverage.

Dental care is a vital aspect of general health care. According to the Mayo Clinic and a myriad of peer-reviewed medical studies, oral health has a direct impact on severe diseases and conditions, such as heart disease and adverse birth conditions. Conversely, several health conditions which are prevalent among veterans, such as diabetes and Alzheimer's disease, have been found to directly impact oral health. Until the VADIP was implemented in January 2014, veterans enrolled in VA health care had little to no options for receiving dental coverage.

Additionally, there is a large disparity between VA and DOD dental coverage, which can have a significant impact on the health care and quality of life for veterans. While in uniform, veterans were required to maintain a high level of dental readiness, to the extent that they would be placed on a non-deployable status if they failed to receive a dental evaluation every year. However, only veterans who were

100 percent service-connected disabled, certain homeless veterans, and those who had a service-connected dental condition were eligible for VA dental care.

While the VADIP provides dental care options for 100,000 veterans and their eligible families, VFW members consider this program as "better than nothing." The VFW believes veterans have earned and deserve the best, not "better than nothing." According to VFW members who have used or currently use this program, it provides lower coverage for higher costs than most dental plans, including dental plans available through TRICARE and the Affordable Care Act health care exchanges. Like many of my peers, I decided to terminate my VADIP coverage as soon as I became eligible for the VFW's dental coverage. I now pay lower monthly premiums and cost shares and have better dental coverage than when I participated in the Delta Dental's Comprehensive VADIP plan, which is the highest plan Delta Dental offers under the VADIP contract.

However, similarly to the 100,000 veterans and eligible family members who participate in the VADIP, my dental records are not integrated into my VA electronic health care record. Thus, VA health care providers are unable to determine whether veterans who participate in the VADIP have dental conditions that may impact their overall health care conditions. Such disparate care could have a negative impact on the health care and quality of life of the veterans who participate in the VADIP program. That is why the VFW fully supports expanding eligibility for VA dental care to all veterans who are eligible for VA health care. Doing so would ensure veterans have access to needed dental care without having to bear the full cost of such care.

The VFW understands the need for some form of dental coverage while Congress and VA work to expand VA dental care, thus we support expanding the current program for an additional five years to allow VA to rebid the contract and hopefully negotiate better coverage options than the current contract.

S. 3076, CHARLES DUNCAN BURIED WITH HONOR ACT OF 2016

The VFW support this legislation, which would ensure deceased veterans without a next of kin who are buried in a state or tribal cemetery receive the same benefits as those buried in a national cemetery.

The National Cemetery Administration's (NCA) strategic goal is for 96 percent of all veterans to have interment options within 75 miles of their home. This includes viable burial options at cemeteries that have been built, expanded, or improved through NCA cemetery grants.

When the demand exists, NCA proposes the construction of new national cemeteries. However, NCA also uses agreements and grants with states, United States territories and federally recognized tribal organizations to establish, expand, or improve veterans' cemeteries in areas where NCA has no plans to build or maintain a national cemetery. Cemeteries assisted by an NCA grant are required to be exclusively reserved for veterans and eligible family members and maintained by the same standards as an NCA managed national cemetery——meaning that veterans interred in NCA assisted state, territorial, or tribal cemeteries must be afforded the same honors as those interred in a national cemetery.

However, VA can only furnish a casket or urn for veterans without a next of kin and without the means to purchase a casket or urn who are buried in a national cemetery. This bill would rightfully extend the right to a dignified burial to veterans who are buried or inurned in a tribal or state cemetery.

S. 3081, WINGMAN ACT

The VFW does not support this legislation at this time. While we agree there should be a more efficient way for congressional constituent services staff to assist veterans, there are current controls in place to limit access to veterans' records, and those controls must be preserved under any expansion of access.

The VFW would insist that a release must still be signed before any access to records can be granted. There must be a limitation on access to only veterans who are constituents of the Member of Congress. When a Power of Attorney (POA) is held by an individual or organization, that POA must be notified of the request. Any "accredited" congressional employee must be viewed as an "agent" regardless of that employee's status with a State Bar Association. This will ensure the employee's certification includes passing a certification test. Currently, VA provides background checks at no cost to Veterans Service Organizations. If this will also be the case with accredited employees, funding must be provided. If the intent is for congressional offices to reimburse VA for the cost of such background checks, it must be explicitly defined in legislation.

Under current law, there are level-sensitive restrictions on most VA employees, preventing them from viewing certain files without expressed consent. These restrictions must extend to these accredited employees as well. Last, VA must have a tracking system to ensure these employees are only assisting their congressional constituents. Additionally, there must be a consequence for congressional staff found to have abused any aspect of their authority.

DISCUSSION DRAFT

To clarify the scope of procedural rights of members of the uniformed services with respect to their employment and reemployment rights, to improve the enforcement of such employment and reemployment rights, and for other purposes.

When servicemembers receive orders to deploy or for active duty responsibilities, they should not be burdened with the stress factor of not knowing if they will still be employed when they return home. Unfortunately, some employers have found ways to avoid current law protecting veterans from repercussions from job providers due to completion of orders. The VFW supports this legislation to protect employment rights of servicemembers by closing legal loopholes some employers have chosen to exploit. More specifically, this would allow servicemembers who signed forced arbitration agreements with their employers to not forgo their work contract, but still be able to void any forced arbitration written in. Also, if investigating attorneys general find wrongdoings by employers trying to evade the *Uniformed Services Employment and Reemployment Act of 1994*, this legislation lays out the groundwork for appropriate damages and compensation of servicemembers. Employers should not be able to require servicemembers to forgo their rights as a condition of employment. Those affected by this injustice should have the option to void this portion of these contracts, as well as receive compensation for punitive damages.

DRAFT BILL

To expand eligibility for readjustment counseling to certain members of the Selected Reserve of the Armed Forces.

This legislation would expand eligibility for Vet Centers to members of the Selected Reserve who have not deployed in support of combat operations. While the VFW acknowledges the need for more mental health care and services for our Guard and Reserve servicemembers, we cannot support expanding Vet Center eligibility to non-combat veterans.

Vet Centers have a sacred mission to assist combat veterans in coping with their experiences at war. These veterans face readjustment issues and concerns that are not faced by their non-combat veteran peers, and necessitates the confidential and high quality services provided at Vet Centers—especially servicemembers who are still in uniform and fear seeking mental health care could impact their careers. That is why the VFW has supported efforts to expand eligibility to servicemembers, including Guardsmen and Reservists, who have deployed to combat zones.

The VFW agrees that suicide rates in our Armed Forces are equally as troubling as veteran suicides. While the DOD's suicide prevention programs have successfully reduced the rate of suicides among our active duty forces, it has not be able to replicate such efforts with its reserve components. Recent data from the Defense Suicide Prevention Office shows an increase in the number of suicides among Guardsmen and Reservists in the past year. This is due in large part to the fact that Guard and Reserve units often operate in rural and remote areas, without access to military treatment facilities. To address this need, the VFW urges Congress and DOD to devote more effort and resources to combat the rate of suicides among DOD's reserve components. To assist DOD in reducing the rate of suicide among Guardsmen and Reservists, the VFW would support authorizing DOD to enter into sharing agreements with VA to provide mental health care to Guard and Reserve servicemembers who live too far from a military treatment facility, but near a VA medical facility with excess mental health care capacity. To be clear, such agreements must not limit or erode the mental health care and services VA provides eligible veterans.

DRAFT LEGISLATION

To authorize payment by the Department of Veterans Affairs for the costs associated with services by medical residents and interns at facilities operated by Indian tribes and tribal organization.

The VFW supports this legislation, which would expand partnership opportunities with medical facilities administered by tribal organizations.

For more than 75 years, VA has partnered with medical schools around the country to train and teach America's health care workforce. This legislation would re-

quire VA to establish a pilot program to evaluate the feasibility of developing similar relationships with tribal health care facilities to incentivize health care professionals to practice medicine in tribal areas. The VFW believes this legislation would expand access to high quality care to our Native American veterans.

DISCUSSION DRAFT

To authorize the American Battle Monuments Commission to acquire, operate and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

The Lafayette Escadrille Memorial was built to honor U.S. pilots who flew combat missions with the French military prior to U.S. entry into WWI. As a result of the reduction in funds available through the Lafayette Escadrille Memorial Foundation, the memorial has fallen into a state of disrepair. To supplement the depleted foundation, the American Battle Monuments Commission (ABMC) provided $2.1 million to the project. However, a long-term care plan for this important monument is still uncertain. To ensure the memorial receives the care and recognition it deserves, the VFW supports placing it under the care of the ABMC.

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

Chairman ISAKSON. Thank you, Mr. Fuentes. We appreciate your testimony.

Mr. Rick Weidman, Executive Director for Policy and Government Affairs, VVA.

STATEMENT OF RICK WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA

Mr. WEIDMAN. Thank you, Mr. Chairman. I appreciate the opportunity for VBA to share some of our views today.

S. 244, Senator Tester's bill, we would strongly endorse that. One of the problems that VA has always had is consistency across the board and working to do quality assurance of every VA hospital. It is no different in this case than anything else. One of the things we would point out, however, that has never been mentioned by VA, is nobody ever tested previous generations of veterans no matter what other symptoms they might have. Vietnam veterans were subject to the same kinds of explosions as those of the more recent wars.

The Rural Veterans Travel Enhancement Act, we are very strongly for. The Veterans' Partners Efforts to Enhance Reintegration Act, Senator Blumenthal's bill and others, we are strongly in favor of a patient having the peer review—excuse me—having the peer specialists but think it should not end there. There should be a ladder for young veterans to move up into any medical profession without regard to cost, even if they do not have available the 21st Century G.I. Bill, on a condition that they give back at least year for year in tuition. We are going to have to do many imaginative things in the next 10 years. Otherwise, we are not going to have the clinical resources we need to operate the system properly.

In regard to the Atomic Veterans Health Care Parity Act, I would respectfully strongly disagree with the VA on this. I would point out that the VA has been wrong about every single darn toxic exposure in my adult lifetime. They are always wrong. They always say there is no problem. They always say, do not worry about it, and almost invariably, they are proven wrong. So, this bill is very much needed and we need to look at the whole area of VA of toxic exposures and what is happening with staff there and with policy

about how they are carrying it out, because it is not right, what they are doing.

Senator Fischer's bill, we have always been—VVA has been strongly in favor of giving as much private capital into the game as possible, particularly when it comes to capital construction, and think we should look not only to Senator Fischer's bill, but look to do the same when it comes to housing and permanent housing as well as transition housing for homeless veterans.

S. 3021, we will take the Senator at his word that this is a great outfit, but it needs monitoring, and particularly if people want to do the same thing elsewhere.

The Arla Harrell Act by Senator McCaskill, this is yet another place where we need to look hard and, frankly, do not trust VA's judgment when it comes to whether or not these veterans have been affected adversely, either, and it is something that oversight really needs to look closely at, Mr. Chairman. I am not sure what we do about that bill, or about that problem systemically, but I know it systemically needs to be adjusted, because the one thing that will be a constant from now until long after we are gone is toxic exposures of our military forces of one kind or another and we need to start to figure out how to do a better job and not just the answer of "no" and "no problem."

The Veterans Compensation Cost of Living Act—frankly, we think the Consumer Price Index (CPI) is busted, and anybody who looks at what the CPI says about advance increases for the cost of living and then looks at their own household budget does not have any respect for it because it does not square with the reality that people see in front of them. So, while that is bigger than this Committee, to have compensation cost of living indexed to the CPI is always going to fall short on the part of our veterans.

The dental insurance, we are in favor of it, since Congress has thus far been reluctant to move in that direction and VA just says no. But, frankly, VVA agrees with the VFW on this issue. We are long past the time when we consider dental health a frill and it is essential to health and moving forward.

I do not have time to comment on the other bills, but the Integrate Networks Guaranteeing Member Access, we have significant problems with and we will be happy to discuss it with Senator Cassidy and his staff.

Mr. Chairman, thank you for the opportunity to speak here today.

[The prepared statement of Mr. Weidman follows:]

PREPARED STATEMENT OF RICHARD WEIDMAN, EXECUTIVE DIRECTOR, POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA

Good afternoon Chairman Isakson, Ranking Member Blumenthal, and other distinguished Members of the Senate Veterans' Affairs Committee. On behalf of the members of Vietnam Veterans of America [VVA] and our families, we very much appreciate the opportunity to express our views regarding legislation pending before this very vital committee.

S. 244, introduced by Senator Tester, would require an independent and comprehensive review of the process by which the Department of Veterans Affairs assesses cognitive impairments that result from Traumatic Brain Injury for purposes of awarding disability compensation.

It is our understanding that troops who have returned from deployments to Iraq and/or Afghanistan and who have sought disability compensation from the VA re-

ceive varying clinical assessments for the same injury, assessments which, obviously, affect the award of disability compensation from the VA. This bill would—at least it should—set the stage for determining if what VA clinicians are doing is consistent, and equitable, across the board and, if not, what the VA must do to rectify this situation.

VVA strongly supports enactment of S. 244.

S. 603, the Rural Veterans Travel Enhancement Act, introduced by Senators Tester and Murray, would make permanent the authority of the Secretary of Veterans Affairs to transport individuals to and from VA in conjunction with rehabilitation, counseling, examination, treatment, and care.

There is nothing not to like about S. 603; in fact, what it calls for should continue to be standard operating procedure for every VA healthcare facility. Therefore, VVA supports enactment of S. 603.

S. 2210, the Veteran Partners' Efforts to Enhance Reintegration Act, introduced by Senator Blumenthal for himself and Senators Baldwin and Markey, would require the VA Secretary to carry out a program to establish peer specialists in the Patient Aligned Care Teams at VA medical centers. The bill stipulates that female peer specialists must be included in this program.

The purpose of the PEER Act, which is essentially a pilot program, is "to promote the use and integration of mental health services in a primary care setting." Because we believe that enactment and implementation of this bill can lead to a significant advancement in melding mental with physical health services, VVA fully supports the passage of the PEER Act.

S. 2279, the Veterans Health Care Staffing Improvement Act, a bipartisan bill introduced by Senator Merkley along with Senators Brown, Rounds, Shaheen, Tester, Warner, Wyden, and Tillis, would require the SecVA to initiate and carry out a program to increase efficiency in the recruitment and hiring by the VA of health care workers in the process of exiting from the Armed Forces; and would create uniform credentialing standards for certain health care professionals in the department.

It certainly is no secret that the VA is in dire need of additional medical professionals to handle an increasing demand for the healthcare services it provides eligible veterans. The unfilled vacancies for these clinicians in VAMCs and CBOCS across the country is a prime reason that VA personnel cut corners by finagling appointments with both primary care clinicians and specialists.

VVA has long believed that the VA must do more—a lot more—to attract and retain health care workers leaving active duty to "sign on" with the VA.

While we have long urged VA to do a much better job of recruiting and hiring physicians, as well as all of the allied health care professionals.

S. 2316, introduced by Senator Blumenthal for himself and Senators Moran and Brown, would "expand the requirements for reissuance of veterans' benefits in cases of misuse of benefits by certain fiduciaries to include misuse by all fiduciaries, [and] to improve oversight of fiduciaries."

Fiduciaries have what we consider to be a sacred obligation to assist honestly and transparently the veterans whose financial interests they take responsibility for. Unfortunately, there are some who are entrusted with this charge who are neither honest nor transparent, who in essence betray the veterans whom they represent.

Because S. 2316 will give the VA Secretary the legal authority to reimburse veterans who have been ripped off by their fiduciary, as well as additional oversight powers to help ensure the honesty and integrity of fiduciaries, VVA enthusiastically supports enactment of this bill.

S. 2791, the Atomic Veterans Healthcare Parity Act, introduced by Senators Franken and Tillis, would provide for the treatment of radiation-exposed veterans who participated in the cleanup of Eniwetok Atoll for purposes of the presumption of service-connection for certain disabilities.

Far too many veterans who have been exposed to radiation and other toxic substances in the performance of their duties while in uniform have been denied healthcare benefits and disability compensation by the VA. Why? Because they cannot show a nexus between their exposure(s) and particular health conditions that erupt years after exposure.

VVA supports enactment of this bill. Although S. 2791 is focused on a relatively small group of veterans who participated in the cleanup of Eniwetok Atoll between January 1, 1977, and December 31, 1980, we remind the honorable Members of this Committee that other veterans are suffering from a variety of maladies that can be associated with their exposure to toxic substances while in uniform; and that the

progeny of many of these veterans have health conditions that may be caused by a parent's exposure to certain toxins; and that they, too, need additional protections under the law to access healthcare and disability compensation. Hence, we make a plea to those who serve on this most important committee to insist that S. 901, the Toxic Exposure Research Act, be voted upon by the whole Senate.

S. 2958, introduced by Senator Fischer, would establish a pilot program on partnership agreements to construct new facilities for the Department of Veterans Affairs.

Although we do not object to this pilot program, we question why it is limited to "not more than five partnership agreements."

So, if this distinguished committee sees the wisdom of voting for the enactment of S. 2958, VVA would support this bill.

S. 3021, introduced by Senators Inhofe and Lankford, would authorize the use of Post-9/11 Educational Assistance for independent study programs at certain institutions that are not institutions of higher learning.

VVA has little doubt that the sponsors have in mind a particular institution in the state that they represent that will benefit from the enactment of this bill. Still, if a veteran can improve his/her chances to achieve their American Dream, and if any "educational institution" that stands to benefit should this bill become law is legitimate and not one of the predatory institutions—most of which are colleges whose bottom line is profit and not the education of the students they ostensibly serve—then we may be able to endorse the enactment of S. 3021 in the future.

S. 3023, the Arla Harrell Act, introduced by Senator McCaskill, would provide for the reconsideration of claims for disability compensation for veterans who were the subjects of experiments by the Department of Defense during the Second World War that were conducted to assess the effects of mustard gas or Lewisite on humans.

There are not many of the 60,000 or so veterans left who participated in these experiments. Still, because they are deserving of a measure of justice long denied them, VVA strongly supports passage of this bill, and thanks Senator McCaskill for taking the lead on ameliorating this historic wrong.

S. 3032, the Veterans' Compensation Cost-of-Living Adjustment Act of 2016, introduced by Chairman Isakson, Ranking Member Blumenthal, and most of the Members of this Committee, would provide for an increase, effective December 1, 2016, in the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

VVA of course joins in the chorus of support for passage of this bill. We would like to see, however, that the compensation adjustment for service-connected disabilities not be an annual affair but rather be added to black-letter law in perpetuity.

S. 3035, Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act, introduced by Senators Heller and Tester, would require the Secretary of Veterans Affairs to carry out a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at VA medical facilities.

Instead of clinicians having to type up their notes, conclusions, and recommendations for each patient they see, this pilot program would test the efficacy of the use of "medical scribes" to assist them in this "onerous" task. Surely, a pilot might be worthy, particularly for those clinicians who are not particularly adept at writing and those surgeons who, obviously, cannot write up their conclusions in the middle of an operation. Yet even if a pilot program illustrated the value, however limited or extensive, of the use of such scribes, how many would have to be hired and trained across the VA healthcare system to be truly effective?

Hence, VVA supports the concept but we have significant doubts that any future Congress will provide significant enough additional resources to ever realize the potential impact of this concept.

S. 3055, the Department of Veterans Affairs Dental Insurance Reauthorization Act of 2016, introduced by Senators Burr and Tester, would provide a dental insurance plan for veterans and their survivors and dependents.

Although full implementation of such a plan effectively puts the VA in the position of becoming an insurance agency, VVA supports the passage of S. 3055 because, for many veterans, it may be the insurer of last resort. VVA would further argue that dental health care is not a "frill," but rather an integral part of overall health. If a person's dental health is a mess, it should come as no surprise that that veteran's overall health is not good.

Given the reluctance of the Executive branch and the Congress to include dental health (with the notable exception of 100% service-connected disabled veterans and certain veterans who are homeless), providing this opportunity to purchase dental insurance through the VA is a good alternative.

Speaking of insurance, the option for those who are 50% or more service-connected disabled to buy additional life insurance should be extended to the same higher level of insurance as that accorded to 100% disabled veterans. This problem of finding affordable life insurance is really a significant problem for those who have PTSD as part of their service-connected disability rating.

S. 3076, the Charles Duncan Buried with Honor Act, introduced by Senator Cotton, would authorize the SecVA to furnish caskets and urns for burial in cemeteries of states and Indian tribes for veterans without sufficient resources to provide for caskets or urns.

Just as the VA provides caskets or urns for the remains of veterans to be laid to rest in national cemeteries, this bill would extend this service to veterans to be buried in state and Indian cemeteries. As such, VVA strongly endorses enactment of this bill.

S. 3081, the Working to Integrate Networks Guaranteeing Member Access Now Act, introduced by Senator Cassidy, would provide certain employees of Members of Congress with access to case-tracking information of the Department of Veterans Affairs.

VVA does not advocate for this bill. Will this effectively speed up the adjudication of claims? We have our doubts. The VA is obligated to provide any Member of Congress who asks with the status of a veteran's claim for compensation. To give "certain employees" direct access to such information, however, opens up the unfortunate possibility that, by citing potential outlier cases, just puts the department in a bad light and does little to improve the efficiency of the adjudication process.

S. _____, introduced by Senator Blumenthal, would clarify the scope of procedural rights of members of the uniformed services with respect to their employment and reemployment rights, and would improve enforcement of these rights.

Members of the National Guard and the Reserves now comprise just about half of the Nation's active duty Armed Forces on any given day. Since 9/11, more than 900,000 members of the Reserve components have been mobilized in the Global War on Terrorism. Despite the protections afforded them under the Uniformed Services Employment and Reemployment Rights Act (USERRA), there have been far too many instances in which a Reservist or Guardsman returns from a deployment to find that the job s/he has left to serve our Nation is no longer there for him/her.

This is wrong. This is something USERRA has sought to provide protection for these Reservists and members of the National Guard. Because the Blumenthal bill would strengthen enforcement of USERRA, because it would provide additional protections for those who have served our Nation in uniform, often at great personal and professional cost, VVA supports swift passage of this bill.

VVA would also urge that USERRA protection be in place from time/date of the first public knowledge of a deployment of a unit, instead of the date the orders are cut for an individual. Some employers are currently doing layoffs of workers at the first notice of a unit being deployed, which skirts the current law, and leaves these Reservists and National Guard members with no protection whatsoever.

S. _____, introduced by Senator Tester, would expand eligibility for readjustment counseling to certain members of the Selected Reserve.

It is only right that those who serve in uniform and who are afflicted with "a behavioral health condition or psychological trauma" ought to be able to avail themselves of the readjustment counseling available in the VA's Vet Centers. Hence, VVA applauds and supports the swift enactment of this bill.

S. _____, introduced by Senator Sullivan, would authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian tribes and tribal organizations, and would require the Secretary to carry out a pilot program to expand medical residencies and internships at such facilities.

It should come as no surprise to anyone that the VA is in need of qualified, competent medical professionals. Because this bill has the potential of increasing the pool of these clinicians to serve veterans enrolled for VA health care, VVA supports enactment of this bill.

A Discussion Draft, companion legislation to H.R. 5420 introduced by HVAC Chairman Miller, would authorize the American Battle Monuments Commission to

acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

Monuments and memorials to our men and women in uniform speak to their service and their sacrifices and, in many cases, to their last true measure of devotion. If the commission sees a need to take responsibility for this memorial, subject "to the consent of the Government of France," VVA stands with the commission, and with the enactment of this bill.

Vietnam Veterans of America appreciates the opportunity to present our views on this pending legislation before this Committee and will be pleased to respond to any question you may have. And we want to thank you for the work you do for the Nation's veterans.

Chairman ISAKSON. Thank you, Mr. Weidman, very much.

Kevin Ziober, member of the Reserve Component. Kevin, you are welcomed.

STATEMENT OF KEVIN ZIOBER,
MEMBER OF THE RESERVE COMPONENT

Mr. ZIOBER. Mr. Chairman, Ranking Member Blumenthal, thank you for this opportunity to testify in support of S. 3042, the Justice for Servicemembers Act, and to share my personal views and experiences on the importance of strong Uniformed Services Employment and Reemployment Rights Act (USERRA) law.

I applaud Senator Blumenthal for introducing this much needed legislation that would clarify that servicemembers and veterans cannot waive their substantive or procedural rights under USERRA, consistent with the original intent of Congress when it enacted USERRA in 1994.

As a private citizen, a combat veteran and Reservist, I stand with the 32 Veterans Service Organizations in the military coalition who support this legislation. Without USERRA's strong substantive and procedural protections, it would be impossible for millions of Americans to serve in the Guard and Reserve to help protect our homeland and advance America's interests abroad.

As the Committee is aware, USERRA guarantees servicemembers the right to return from their civilian jobs after serving in the military and prohibits employment discrimination based on military service or status. USERRA makes it possible for Reservists like me to serve our Nation in the Armed Forces.

Several years ago, I lost a job that I loved because I chose to serve my country. But sadly, my story is not unique. Each year, thousands of Reservists lose their jobs or miss out on benefits because employers are not aware of USERRA or they find our military service to be inconvenient.

In July 2010, I was hired by a Federal contractor called BLB Resources. From 2010 to 2012, as a manager, I helped BLB expand its operations and workforce from 18 employees to over 90. In November 2012, I received active duty orders to deploy to Afghanistan for 12 months. As soon as I learned of the upcoming deployment, I gave BLB notice. On my last day of work, BLB hosted a lunchtime party to honor my military service. Forty coworkers gave me a standing ovation. I was presented with a large cake with an American flag and the inscription, "Best Wishes Kevin," and my colleagues decorated my office with camouflage netting along with cards and gifts that were stacked on my desk.

Around 4:45 on that same afternoon, I was called into the Human Resources Department, where I was promptly fired and

told that my position would not be available upon my return from active duty. I was shocked to learn that I was being terminated from my job on the eve of my deployment to a combat zone. It created an unimaginable amount of concern and anxiety about how I would earn a living once my military orders had ended.

Upon returning home from Afghanistan in 2014, I was further surprised by what happened when I tried to enforce my rights. After I filed a USERRA claim in Federal Court, BLB asked the court to compel me to arbitrate my USERRA case and the court agreed. This was shocking, because I knew that when Congress passed USERRA, it explicitly stated that veterans and servicemembers cannot waive any of their rights, that they are entitled to enforce their rights in Federal Court, and that they cannot be required to arbitrate their claim.

Fortunately, my story did not end there. I found legal advocates who agreed to take my case to the U.S. Court of Appeals and, if necessary, to the U.S. Supreme Court. But the Nation's highest court should not need to decide whether servicemembers can waive their procedural rights under USERRA. By passing the Justice for Servicemembers Act now, Congress can clarify that all USERRA rights are protected against waiver and ensure once and for all that no servicemember is forced to choose his USERRA rights and a job that puts food on the table.

Today, servicemembers face uncertainty when they enforce their USERRA rights. In 2005, the Bush administration issued a final rule stating that servicemembers cannot be forced to arbitrate their USERRA claims. Some courts have faithfully followed the intent of Congress on this issue while others have not. Due to this split within the courts, it is much harder for servicemembers to leave their civilian jobs with confidence when they are called to duty because they do not know what to expect if they ever need to enforce their USERRA rights.

When servicemembers are required to arbitrate their USERRA claims, they do not just lose the right to file an action in court. They also lose many of the enforcement tools that make USERRA a strong law, such as the right to file in any district where the employer has a place of business, the lack of a statute of limitations period, and a ban on making servicemembers pay filing fees or an employer's fees and costs.

By enacting the Justice for Servicemembers Act, Congress can send a powerful bipartisan message to all those who have served or are thinking about serving in the future. Congress can make clear that it understands the challenges we face and supports us so that no servicemember or veteran will ever again experience what happened to me. No warfighter who is asked to leave his job and risk his life for his country should ever need to worry about fighting for his job when he returns home.

Thank you very much for your time and consideration of my views. I look forward to answering your questions.

[The prepared statement of Mr. Ziober follows:]

PREPARED STATEMENT OF KEVIN ZIOBER, MEMBER OF THE RESERVE COMPONENT

Chairman Johnny Isakson (GA), Ranking Member Richard Blumenthal (CT) and other distinguished Members of the Committee, thank you for affording me the opportunity to testify in support of the Justice for Servicemembers Act of 2016 (S. 3042 / H.R. 5426). This legislation that Senator Blumenthal recently introduced would clarify longstanding protections under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) that have existed since the 1950s, by stating that service members and veterans cannot waive their substantive or procedural rights under USERRA.

I also appreciate the opportunity to tell my own personal story – about how on my last day of work before a one-year deployment to Afghanistan, my employer threw an office-wide party to celebrate my military service, and then fired me minutes before my deployment began. Furthermore, when I tried to enforce my rights upon returning home from military duty, I was told that I had to arbitrate my USERRA claims, even though Congress has expressly stated that service members and veterans are not required to arbitrate their USERRA claims.[1]

USERRA is the latest in an unbroken line of federal laws that since the 1940s have guaranteed that service members can return to their civilian jobs after serving in the military, be free of discrimination based on their military service or status, and will not be disadvantaged by their service. This law is not just a vital protection for Reservists like me who take leave from our civilian jobs to serve in the Armed Forces. It is also vital to maintaining a vibrant Guard and Reserve force, and ensuring that the United States has the strongest military in the world.

As a private citizen, a combat veteran, and Reservist, I stand with twelve Veterans Service Organizations – including the Military Officers Association of America, the Reserve Officers Association, and the National Guard Association of the United States – in support of the Justice for Servicemembers Act of 2016.

In 1994, when Congress enacted USERRA, it stated explicitly that veterans and service members cannot waive *any* of their rights under USERRA, that they have a right to enforce their rights in federal court, and that they cannot be required to arbitrate their USERRA claims. While some courts like the Federal Circuit have followed Congress' explicit intent, two federal courts of appeals have erroneously concluded that the text of USERRA is not clear enough to protect the procedural rights of service members from waiver. By clarifying that *all* USERRA rights are protected against waiver, the Justice for Servicemembers Act will ensure, once and for all, that no service member is forced to choose between his USERRA rights and a job that puts food on the table and a roof over his head.

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[1] Today, I am sharing my own views as a private citizen about the importance of USERRA, and I am not speaking on behalf of any other person or institution. I accepted this invitation to speak and am testifying in my personal capacity. The views expressed in my remarks are my own and do not necessarily reflect the official positions of the U.S. Government, the U.S. Navy, U.S. Special Operations Command or Naval Special Warfare Command. I am speaking on my own behalf and have no affiliation with public or private entities. Nor do I seek any financial or political gain by participating in this hearing.

I am heartened to see bipartisan support for the Justice for Servicemembers Act. I also appreciate how both parties have come together in the past to strengthen USERRA including, when necessary, clarifying provisions of the law when courts have ignored the intent of Congress in enacting USERRA.

My USERRA Story: Fired the Day Before I Began a Deployment to Afghanistan and Forced to Arbitrate My Claims Under USERRA

I am here today to share my own story about losing a job that I loved because I chose to serve my country in the Armed Forces. Sadly my story is not unique. It happens every day across America, because employers either are not aware of USERRA or they disregard the law when they find our military service to be inconvenient.

In July 2010, I was hired as a manager by BLB Resources, Inc. ("BLB"), a federal contractor headquartered in Irvine, California. From 2010 to 2012, I helped BLB to grow from a staff of 18 employees to a workforce of over 90.

Six months into my tenure at BLB, the company asked me and other employees to sign an arbitration agreement in order to remain employed. The agreement was presented to us on a take it or leave it basis. Like other employees who needed their jobs to support themselves and their families, I felt that I had to sign the arbitration agreement.

In November 2012, I received active duty orders to deploy to Afghanistan for 12 months. On my last day of work on November 30, 2012, I was greeted by my colleagues with a standing round of applause. My office was decorated with camouflage netting and balloons. Cards and gifts were stacked on my desk. At noon, BLB held a surprise party in my honor, where 40 of my co-workers gathered to wish me well on my deployment. There was even a large cake with an American flag decorated in red, white, and blue, with the inscription "Best Wishes Kevin." Right after the party, I felt amazing. I even called my family to tell them about how moved I was that my colleagues had honored me and my military service.

Around 4:45 that same afternoon, I was summoned into a meeting with BLB's Human Resources department where I was summarily fired and told that my position would not be available upon my return from active duty. The shock of learning that I was being terminated from my job – on the eve of my deployment to a combat zone – created an unimaginable amount of concern and anxiety about how I would support myself when I returned home. No service member who is asked to fight for his country should ever need to worry about fighting for his job when he returns from war. That was the primary reason why Congress enacted USERRA and its predecessor statutes.

When my deployment ended in the spring of 2014, I was further surprised when I tried to enforce my USERRA rights. I was surprised, because the arbitration agreement did not mention USERRA and because I understood that when Congress enacted USERRA in 1994, it explicitly stated that service members cannot be required to arbitrate their USERRA claims. Upon filing a USERRA action in a federal district court in southern California, BLB filed a motion to compel

arbitration. Soon thereafter, the judge granted BLB's motion, dismissing my USERRA case and sending my case to arbitration.

Thankfully, my story did not end there. I found legal advocates – including a former Marine and a former Senate counsel who advised members of this Committee and the HELP Committee on bipartisan USERRA legislation – who agreed to take my case to the U.S. Court of Appeals and, if necessary, to the U.S. Supreme Court. As much as I would like to take my case to the U.S. Supreme Court and win this issue for the benefit of all service members and veterans, it should not be necessary for America's highest court to decide whether service members can be forced to waive their procedural rights, including the right to enforce their USERRA protections in court. By passing the Justice for Servicemembers Act, Congress can ensure that no service member will ever have to give up any USERRA rights to make ends meet.

Background on USERRA's Strong Protections and Congress' Intent to Allow Service Members to Choose Where They Enforce Their USERRA Rights

In 1994, Congress enacted USERRA to clarify, simplify, and strengthen federal employment and reemployment rights that have existed since the 1940s. Congress enacted USERRA and its predecessor statutes so that honorable Americans can serve in the Armed Forces without jeopardizing their civilian jobs when they return from deployment, and so that all who have served can be free of discrimination related to their military service. Without USERRA's strong substantive and procedural protections, it would be impossible for millions of Americans to serve in the National Guard and Reserves to protect our homeland and advance America's national interests abroad.

USERRA is one of the strongest employment laws that Congress has ever enacted. One of the primary reasons why USERRA is such a strong and effective law is that Congress provided service members and veterans with a number of powerful enforcement tools that are rarely found in other federal employment laws. For example:

1. *USERRA allows a service member or veteran to file a USERRA action in any district where the employer maintains a place of business.* 38 U.S.C. § 4323(c)(2). This is very important for service members, who are often called to duty far away from home for extended periods of time.

2. *USERRA has no statute of limitations period, as Congress clarified in an amendment that was enacted unanimously and signed by President Bush in 2008.* 38 U.S.C. § 4327(b).

3. USERRA does not require service members or veterans to file an administrative claim with a federal agency – like the Equal Employment Opportunity Commission (EEOC) – before enforcing their rights in court. 38 U.S.C. § 4323(a)(3).

4. Under USERRA, service members and veterans cannot be charged any filing fees or other court fees, and cannot be required to pay an employer's fees or costs. 38 U.S.C. § 4323(h)(2).

Most, if not all, of these strong enforcement rights do not exist under other federal employment laws. For example, claims under Title VII of the Civil Rights Act of 1964 generally must be filed in the district where the employee worked; an employee must file a charge with the EEOC before filing an action in court; an action must be filed in court within 90 days of the end of the EEOC proceeding; and employees must pay filing fees in court and can be required to pay the attorneys' fees and costs of a prevailing employer. 42 U.S.C. § 2000e-5(e)(1), (f)(1), (3), (k),

USERRA's strong enforcement rights are routinely undermined by arbitration agreements that are designed to cover federal laws like Title VII that are not as protective as USERRA. Arbitration agreements do not just take away a service member's right to file a USERRA action in federal court; they commonly require the service member to arbitrate in one county or city, even if he or she is deployed across the country; they often impose very short statute of limitations periods, such as six months, even though USERRA has no statute of limitations period; they frequently impose arbitration filing fees and costs on service members and permit service members to pay an employer's fees and costs, even though such fees and costs are barred by USERRA; and they often require multi-step procedures to be exhausted before a service member can obtain a hearing before an arbitrator, even though USERRA was designed to allow service members to enforce their rights without delay.

Simply put, USERRA's strong enforcement protections are incompatible with arbitration. Arbitration does not adequately protect the rights of our service members and veterans under USERRA. Furthermore, Congress, the U.S. Supreme Court, and the U.S. Department of Labor have made clear that service members and veterans cannot be required to arbitrate their reemployment and reemployment claims.

In 1946, the U.S. Supreme Court declared that private agreements cannot "cut down" or waive the substantive rights of servicemembers – like the right to be reemployed after serving in the Armed Forces. *See Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). In 1958, the Supreme Court extended that non-waiver principle to procedural rights by declaring that service members have a right to enforce their reemployment rights in court and that they cannot be required to arbitrate their reemployment rights. *See McKinney v. Missouri-Kan.-Tex. R.R. Co.*, 357 U.S. 265, 268-69 (1958). As the Supreme Court explained in *McKinney*, service members cannot be required to grieve or arbitrate their reemployment claims before enforcing their rights in court, because they are "asserting special rights bestowed upon him in furtherance of a federal policy to protect those who have served in the Armed Forces." *Id.*

In 1994, when Congress enacted USERRA it consciously decided to continue to the non-waiver principles of *Fishgold* and *McKinney* so that service members cannot be required to waive any of their rights and cannot be required to arbitrate their reemployment or employment claims under USERRA.

Although USERRA's predecessor statute had not included statutory language on the waiver of rights, in 1994 Congress added a very broad, express provision against waiver of USERRA rights. In USERRA § 4302(b), Congress stated that:

> This chapter supersedes any State law . . . contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

38 U.S.C. § 4302(b). When Congress explained what this provision meant, it described its intent to continue the longstanding tradition of protecting the substantive and procedural rights of service members and veterans, and in particular its view that service members and veterans cannot be required by arbitrate their USERRA claims. The relevant House Report stated that:

> [T]his section would reaffirm that additional resort to mechanisms such as grievance procedures or arbitration or similar administrative appeals is not required. *See McKinney v. Missouri-K-T R.Co.*, 357 U.S. 265, 270 (1958) . . . . It is the Committee's intent that, even if a person protected under [USERRA] resorts to arbitration, any arbitration decision shall not be binding as a matter of law.

H.R. Rep. No. 103-65, at 20 (1993) (emphasis added).

In 2005, under the leadership of Labor Secretary Elaine Chao, the Department of Labor issued regulations recognizing that service members and veterans cannot be required to arbitrate their USERRA claims. 70 Fed. Reg. 75246, 75257 (Dec. 19, 2005). The Department of Labor understands the importance of strong USERRA protections, because each year DOL's Veterans Employment and Training Service (DOL VETS) assists more than 1,100 service members who ask DOL VETS to investigate their USERRA claims.[2] In addition, in enacting USERRA, Congress delegated DOL authority to interpret and implement USERRA. 38 U.S.C. § 4331(a).

Some Federal Courts Have Ignored the Intent of Congress to Protect Servicemembers and Veterans Against the Waiver of Their USERRA Rights

Despite the broad anti-waiver language in USERRA § 4302(b), and the explicit legislative history stating that service members cannot be required to arbitrate their USERRA claims, the federal courts are deeply divided over whether USERRA protects procedural rights from waiver and thus bars forced arbitration of USERRA disputes.

In 2008, the U.S. Court of Appeals for the Federal Circuit held that USERRA protects both procedural and substantive rights from waiver, and held that federal workers cannot be required to arbitrate their USERRA claims. *Russell v. MSPB*, 324 F. App'x 872, 874-75 (Fed. Cir. 2008) (per curiam). Unfortunately, the Fifth and Sixth Circuits ignored the clear intent of

[2] U.S. Department of Labor, Uniformed Services & Reemployment Rights Act, FY 2014 – Annual Report to Congress at 10 (July 2015), https://www.dol.gov/vets/media/USERRA_Report_to_Congress_July_2015.pdf

Congress in holding that that USERRA protects only substantive rights, not procedural rights, from waiver, and that arbitration of USERRA claims may be required. *See Garrett v. Circuit City Stores, Inc.*, 449 F.3d 672, 674-75 (5th Cir. 2006); *Landis v. Pinnacle Eye Care*, LLC, 537 F.3d 559, 561-63 (6th. Cir. 2008). Notably, one of the Sixth Circuit Judges in *Landis* wrote a special concurring opinion to point out that he believed it was clear that Congress intended for arbitration to not apply to USERRA claims, but that he did not believe the text of the law was clear enough for him to hold that USERRA would override an arbitration agreement. *Landis*, 537 F.3d at 564 (Cole, J., concurring).

The Justice for Servicemembers Act of 2016 Will Eliminate the Uncertainty That Service Members and Veterans Now Face When They Enforce Their USERRA Rights

Because federal courts have sharply disagreed over whether USERRA protects procedural rights from waiver, right now service members and veterans do not know what to expect when they try to enforce their rights. That uncertainty makes it harder for service members to leave their civilian jobs to serve in the Armed Forces and feel confident they can exercise and enforce their USERRA rights. In addition, because the Federal Circuit's decision applies to the federal sector workplace, today federal workers cannot be required to arbitrate their USERRA claims. But the opposite rule applies to private sector workers in many parts of the country. As a result, federal workers currently have the procedural protections that service members have enjoyed since the 1950s, while millions of private sector workers are left with inferior rights under USERRA.

By clarifying USERRA to say that procedural rights – as well as substantive ones – are protected from waiver, Congress can ensure that the USERRA rights of all service members and veterans will be fully protected in the future. That is what the Justice for Servicemembers Act will do. It does not create any new rights, but instead ensures that the clear intent of Congress in enacting USERRA in 1994 will be followed by the federal courts when service members seek to vindicate their rights under USERRA.

I hope Congress will enact the Justice for Servicemembers Act this year, so that no service member or veteran will have to experience what happened to me. Regardless of what one thinks of arbitration generally, I hope we can all agree that service members and veterans should not have to give up their USERRA rights to get a job or keep a job. When our USERRA protections are strong, our military is stronger, our business community is stronger, and America is stronger.

I am pleased to see that members of Congress from all across America and from both parties are supporting the Justice for Servicemembers Act, and have supported similar legislation in the past. Service members and veterans appreciate that USERRA's history is a bipartisan one. USERRA was approved by this Committee by unanimous consent, and the law was passed by the House and Senate by voice votes without the need for a roll call vote. In addition, in recent history, this Committee and Congress have unanimously enacted amendments to clarify USERRA where there was disagreement within the federal courts over how to interpret USERRA, including amendments to clarify that USERRA has no statute of limitations period and that it is illegal to pay a person lower wages due to his or her military status or service.

It Has Never Been More Important to Have Strong Protections for Guard and Reserve Members

USERRA and its predecessor laws have always been critical to encouraging and enabling Americans to serve in the Guard and Reserve. But today, because of the increasing reliance on the Guard and Reserve to support the global activities of our Armed Forces, it is more important than ever to ensure that we have strong USERRA protections so that Guard and Reserve members can transition between their civilian and military positions. In fiscal year 2015, there were approximately 810,000 Reservists and National Guard personnel comprising roughly 38 percent of total U.S. uniformed manpower.[3] Since 2001, over 780,000 Reserve and Guard members were called up to provide critical combat forces, mission support, and logistics to the global war on terror campaigns in Iraq and Afghanistan.[4]

These men and women willingly set aside their civilian lives and careers, put on a uniform, and answered our nation's call when they were asked to serve – without hesitation or reservation. Unfortunately, thousands of men and women just like me returned from overseas only to learn that their civilian were not waiting for them, or that they had to take a demotion to return to their jobs. By keeping USERRA strong and enacting the Justice for Servicemembers Act, Congress can send a powerful bipartisan message to all of those who have served – and those who are thinking about serving in the future – that it understand the challenges we face and supports us.

Conclusion

I sincerely appreciate that the Committee is considering this important issue and legislation, as well as other ways to improve the lives of America's veterans. Thank you very much for your time and consideration of my views.

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[3] U.S. Department of Defense, Office of the Assistant Secretary of Defense for Readiness and Force Management, Total Force Planning and Requirements Directorate, Defense Manpower Requirements Report, Fiscal Year 2015, June 2014, p. 2, Table 1–1, http://prhome.defense.gov/Portals/52/Documents/RFM/TFPRQ/docs/F15%20DMRR.pdf

[4] Leo Shane III, *The National Guard is coming to a dangerous crossroads, incoming chief warns*, Military Times (June 25, 2016), http://www.militarytimes.com/story/military/guard-reserve/2016/06/25/joseph-lengyel-national-guard-confirmation/86294538/.

Chairman ISAKSON. Well, thanks to all of you for your testimony.

I will make a couple of comments probably rather than questions. I do have a couple questions, too.

Comment number 1—and I think Mr. Weidman talked about the Consumer Price Index adjustment—Senator Blumenthal and I, along with every Member of the Committee, Republican and Democrat alike, have cosponsored the cost of living adjustment for this year. Your concerns about the calculations of CPI are duly noted

and I am pleased that we have made it the unanimous recommendation of the Senate to adjust compensation wherever it is indexable by CPI, and there will be an increase in those benefits at the end of this fiscal year for next fiscal year. That was approved by everybody on the Committee.

Second, Mr. Fuentes, as I understood it, you and a number of others, the way you read the WINGMAN Act was that it did not require a privacy release before the staffer could get the information, is that right?

Mr. FUENTES. That is correct, Mr. Chairman.

Chairman ISAKSON. But I also heard you say, if it did require the privacy release, you did not have any problem with the legislation, is that correct?

Mr. FUENTES. Well, there are a couple other concerns that we have with the legislation, mainly that the restriction levels have to apply to Congressional staff, as well, meaning that they could only view records for folks for whom they have a privacy release from. Also, as a Veterans Service Organization, we hold power of attorney for a number of veterans and we would like Congressional staff to either notify—or VA to notify Veterans Service Organizations of any individual that holds a power of attorney for that veteran. And I have a couple other ones. Overall, I think there are four recommendations that are included in my written testimony.

Chairman ISAKSON. We have that, and all that testimony will be made a part of the record, without objection.

Mr. FUENTES. Thank you, Mr. Chairman.

Chairman ISAKSON. I had one other point. We will deal with each of these pieces of legislation in the near future. As we have in the past, this Committee tries to do due diligence to the maximum extent possible before we act, just as we did in the Veterans First Act, which is a consolidation of 148 recommendations that came out of Members of this Committee. We are looking forward to moving that legislation in the near future.

I want to make an editorial comment and a plea to each of your Service Organizations, all of whom have been supportive of what we have done with Veterans First, to help continue to express that support to members of the U.S. Senate and the U.S. House so that we can get that legislation passed.

With the decision of Loretta Lynch, who is the Attorney General of the United States, not to enforce the government's position granted to the government under the Veterans Choice Act, we have a serious problem of accountability with no remedy whatsoever, either from the Secretary or from the Attorney General's Office. The Veterans First bill which Senator Blumenthal and I worked very hard on, along with every Member of the Committee, has a complete, comprehensive accountability piece to it. It may not be everything everybody would have liked to have had, but it is one heck of a lot better than what they have got right now, which is absolutely zero.

So, help from your organizations to support us with the other members of Congress would be greatly appreciated. I thank you for your input.

Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

I want to thank you, Mr. Ziober, for being here and for your participation earlier today in support of an event spreading awareness and raising concern. I am hoping that we will have bipartisan support on this Committee for the USERRA clarification that is in the legislation that I have proposed. I want to thank all of the Veterans Service Organizations that are supporting this measure—in fact, they all are—and I think it will make a significant difference in the lives of our Reservists and National Guard. I thank you and your attorney for being here today.

Mr. ZIOBER. Yes, sir. Thank you.

Senator BLUMENTHAL. I want to thank the other witnesses. I appreciated your testimony. In the interests of time, since we have a classified briefing ongoing right now, I am going to talk to you individually about any questions that I might have. You have all been very generous with your time when I do have questions, so I thank you very much.

Thanks, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Blumenthal, and thanks to all of you for your attendance today.

We will stand adjourned.

[Whereupon, at 4:20 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF MAX CLELAND, SECRETARY, AMERICAN BATTLE MONUMENTS COMMISSION

Thank you for this opportunity to offer written testimony on behalf of the proposed legislation to authorize the American Battle Monuments Commission to acquire, operate and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France, a suburb of Paris. We submitted this legislative proposal with the concurrence of the Administration, following review by the Department of Defense, the Department of Veterans Affairs, and other interested agencies.

The Lafayette Squadron was created on 16 April 1916, one year prior to U.S. entry into World War I. Forty-two fliers composed the original Escadrille (thirty-eight Americans and four French officers in command). As the number of American volunteers grew, Americans flew for several French units known collectively as the Lafayette Flying Corps, in which 269 fliers served in total. Out of the 269 total American volunteers, 68 died in the air war over France. Some of the best known fliers were Kiffin Rockwell, Norman Prince, Raoul Lufbery and Eugene Jacques Bullard, the only African-American fighter pilot in World War I. When the United States entered the war in 1917, most of the Escadrille pilots joined the U.S. Air Service, teaching air combat tactics to those who followed them to France. The Lafayette Escadrille ceased to exist on February 18, 1918 and the U.S. 103d Pursuit Squadron took on its symbols and traditions.

The memorial to these air combat pioneers was constructed in the 1926–28 period and inaugurated on July 4, 1928. The Lafayette Escadrille Memorial is a private memorial about five miles west of Paris. It honors these 269 American volunteers who flew for French and United States units during the Great War. But it is more than a memorial; it is a burial ground. A crypt beneath the memorial contains 68 sarcophagi, one for each of the 68 Americans of the Lafayette Escadrille who died in the skies over France; 49 Americans and two French officers rest there in honor today. Seventeen sarcophagi have remained empty because either the remains could not be found or were transferred.

ABMC has a history of involvement with the Lafayette Escadrille Memorial, approving the Foundation's construction plans in 1924, a predicate for any administrative agency of the U.S. Government, such as the State Department, to assist the founders. ABMC also managed the maintenance of the memorial for the Foundation from 1971 to 1983, using Foundation funds under the authority of our Monument Maintenance Program. The Foundation ended this arrangement in 1983 and over the years the original trust fund established to maintain the memorial dwindled and the memorial fell into a state of disrepair. As a World War I Centennial initiative, ABMC and the French Ministry of Defense partnered with the Foundation to complete a $1.7M restoration project, using funds provided by the Foundation, by private donors in the United States, and by the French government. The memorial was rededicated on a beautiful spring day in Paris, on the occasion of the Centennial Anniversary of the Escadrille's establishment on April 20, 1916. It again stands as a beautiful tribute to service and sacrifice, but the Foundation is no longer able to maintain the memorial to a standard commensurate to the American sacrifice it honors.

It is time to bring the memorial and the pioneering airmen buried beneath it under the perpetual care of the U.S. Government. There are several compelling reasons to do so.

1. The vision for the Lafayette Escadrille Memorial was to have the American pilots resting together in a memorial that allowed the spirit of their enlistment to live on. This spirit reflects the historical cooperation between the United States and France. Just as France came to the aid of the United States during our revolution, the United States came to France's aid in two world wars. The memorial has be-

come an important part of the U.S. Ambassador's Memorial Day commemorations and in other ceremonies within the American community, such as the high school graduation of the American School of Paris.

2. Since American participation in World War I began unofficially with volunteers in units such as the Lafayette Escadrille, the memorial could serve as a point-of-entry for ABMC's World War I interpretation efforts. Its location near Paris facilitates that purpose.

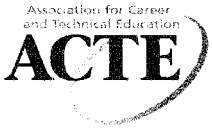
3. The U.S. Air Force considers the Lafayette Escadrille to be an important part of its tactical origins. The Air Force ties it history to the American men who flew with that unit and later joined the U.S. Air Service. The American pilots of the Lafayette Escadrille were combat veterans, whose wartime experiences were extremely valuable to the newly-arrived American units and the development of combat tactics within the Air Service. The Marine Corps considers Belleau Wood, which is part of the Aisne-Marne American Cemetery, to be an important part of its heritage. The continued support of the Marine Corps and its active participation at Memorial Day ceremonies is a highlight for Aisne-Marne and ABMC. The Lafayette Escadrille Memorial will serve a similar purpose for the Air Force.

4. Most importantly it's the right thing to do. The Foundation passed a resolution approving transfer to ABMC of full legal title to the memorial site, including the land, memorial, crypt and caretaker's cottage, by gift or in exchange for symbolic consideration. We have assurances that the French government is prepared to incorporate the Memorial into the bilateral treaty granting the U.S. perpetual use of French lands, at no cost or taxation, for the commemorative cemeteries and memorials that ABMC maintains in France. Representatives of the French Ministries of Defense and Interior sit on the LEM Foundation Board and voted to approve the Foundation resolution.

With the concurrence of the Foundation and the Government of France, it is appropriate that ABMC, on behalf of the American people, assume responsibility for preserving and protecting in perpetuity this memorial tribute and final resting place for pioneering combat Airmen who gave their lives in one of the most pivotal wars of the twentieth century. ABMC will incur no costs to acquire or transfer the memorial. The Commission will operate and maintain the memorial within existing appropriations.

Mr. Chairman, the American Battle Monuments Commission appreciates very much the Committee's support of our sacred mission. We believe it is time for the Lafayette Escadrille Memorial to become an important and significant addition to that mission, so that, in the words of General John J. Pershing, Commander of the World War I American Expeditionary Forces and our first Chairman, "Time Will Not Dim the Glory of Their Deeds."

PREPARED STATEMENT OF LEANN WILSON, EXECUTIVE DIRECTOR, ASSOCIATION FOR CAREER AND TECHNICAL EDUCATION



Association for Career and Technical Education
1410 King Street, Alexandria, VA 22314
Toll-free: 800-826-9972 • Fax: 703-683-7424 • www.acteonline.org

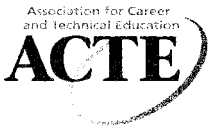
Testimony of LeAnn Wilson
Executive Director
Association for Career and Technical Education

Senate Committee on Veterans' Affairs
United States Senate

June 29, 2016

Chairman Isakson, Ranking Member Blumenthal and members of the committee, on behalf of the Association for Career and Technical Education (ACTE), the nation's largest not-for-profit association committed to the advancement of education that prepares youth and adults for successful careers, I would urge you to ensure that American veterans have access to high-quality career and technical education (CTE) opportunities in using their benefits under the Post 9/11 Educational Assistance Improvements Act of 2010 (P.L. 111-337). CTE programs provide valuable opportunities for members of our military to prepare for economic success, however, current law arbitrarily prevents many veterans from accessing these programs. S. 3021, a bill to authorize the use of Post-9/11 Educational Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning, would assist these heroes in obtaining the education they need for success in the civilian workforce using innovative educational approaches that best meet adult learners' needs.

Area CTE schools are public, non-profit, postsecondary institutions that award certificates, and serve a vital role in preparing students in states such as Oklahoma, Ohio and Florida with the skills and credentials they need to enter careers in growing fields. The opportunities available at these institutions are incredibly valuable, and offer graduates the chance to boost their earnings by an average of 20 percent while preparing to enter fields ranging from health care to information technology. This committee took a major step forward by approving eligibility for benefits at these institutions under the Post-9/11 Veterans Assistance Improvements Act of 2010. However, current law still



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prohibits area CTE schools from eligibility for veterans benefits if any such program includes any online or distance learning component – merely because these institutions are non-degree granting, and therefore do not fit into the federal definition of an "institution of higher learning" necessary for eligibility.

This issue prevents institutions from offering innovative and flexible learning opportunities for non-degree programs offered through online distance learning. Allowing working veterans the ability to pursue online coursework at an area CTE school affords them greater flexibility to pursue their education within their schedule. Non-degree programs offered through area CTE schools are an affordable option for veterans who want to quickly earn a postsecondary credential so they can enter the workforce and pursue the civilian career of their choice.

The quality of education should be the determining factor in whether a program is funded by veterans' education benefits, not the institution at which it is offered. For example, Lake Tech, an area CTE school near Orlando, Florida, added a small online component (less than 10 percent of the total instruction) to its Licensed Practical Nursing program, which prepares students to earn state licensure and obtain employment in a health care occupation with a salary range of $34,000 to $51,000 per year. Despite the fact that the online component meets a direct student need for more scheduling flexibility, was extensively researched and piloted to ensure high-quality instruction, and that the program remains fully accredited, Lake Tech has had to turn away veterans wishing to enroll and utilize their VA education benefits because they program has been deemed ineligible merely on the basis of Lake Tech's degree-granting status.

S. 3021 would address this problem with a targeted approach that expands eligibility for benefits to non-degree granting, non-profit institutions such as area CTE centers while preserving the integrity and program quality measures in place under current law. These programs would remain subject to multiple forms of scrutiny, including evaluation by accreditors and oversight of individual requests for benefits through the Veterans Administration. These requirements will ensure that veterans will only have access to programs that provide value and opportunity.

We encourage the committee to act expeditiously and efficiently in advancing S. 3021 on behalf of millions of veterans nationwide. Thank you for your continued leadership and thoughtful consideration of this legislation. We look forward to working in a bipartisan fashion with the committee to address the needs of our nation's heroes.

LETTER FROM THOMAS S. KAHN, DIRECTOR, LEGISLATIVE AFFAIRS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Eugene Hudson, Jr.
National Secretary-Treasurer

J. David Cox, Sr.
National President

Augusta Y. Thomas
NVP for Women & Fair Practices

June 29, 2016

The Honorable Johnny Isakson
Chairman, Veterans' Affairs Committee
412 Russel Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member, Veterans Affairs' Committee
825A Hart Senate Office Building
Washington, DC 20510

RE: AFGE Opposition to S. 2958

Dear Chairman Isakson and Ranking Member Blumenthal:

I am writing on behalf of nearly 700,000 federal employees represented by the American Federation of Government Employees, AFL-CIO (AFGE), including 230,000 employees of the Department of Veterans' Affairs to express our strong opposition to S. 2958, a bill introduced by Senator Fischer (R-NE) to establish a pilot program for public-private partnership agreements to construct new VA facilities. I request that this letter be included in the record of the Committee's June 29th legislative hearing.

This proposal pilot program is unnecessary, costly, and is likely to reduce VA accountability for construction projects. The VA has already revamped its major construction process to assure greater accountability for changes in the scope and budget of its projects. The Department is currently implementing the recommendations of the U.S. Army Corps of Engineers (USACE) and has engaged USACE to evaluate four projects, including the Denver Replacement Medical Center.

We also note the potential risks to taxpayers and veterans that are associated with public-private partnerships (P3s). When private capital from investors is used to finance public infrastructure projects, the overall costs of the project to taxpayers is likely to be higher than if government financing were used. P3s frequently do not protect the public interest and may have significant economic and fiscal adverse impact in the short and long term.

P3s are also less transparent and accountable than a fully public construction process and too often, the governmental entity cedes critical decision making authority to the P3. We urge you to reject S. 2958 and instead, allow the VA to proceed with its new partnership with USCAE to ensure that taxpayers and veterans' interests are well served during the facilities construction process.

Thank you for considering the views of AFGE and for including this letter in the hearing record.

Sincerely,

Thomas S. Kahn
Director, Legislative Affairs

cc: Senate Veterans' Affairs Committee Members

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80 F Street, N.W., Washington D.C. 20001 • 202.737.8700 • Fax 202.639.6490 • www.afge.org

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PREPARED STATEMENT OF AMY WEBB, LEGISLATIVE POLICY ADVISOR, AMVETS

Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee: Since 1944, AMVETS (American Veterans) has been one of the largest congressionally-chartered veterans' service organizations in the United States and includes members from each branch of the military, including the National Guard, Reserves, and Merchant Marine. We provide support for the active military and all veterans in procuring their earned entitlements, and appreciate the opportunity to present our views on the pending legislation being considered today.

S. 244—A BILL TO REQUIRE AN INDEPENDENT COMPREHENSIVE REVIEW OF THE PROCESS BY WHICH THE DEPARTMENT OF VETERANS AFFAIRS ASSESSES COGNITIVE IMPAIRMENTS THAT RESULT FROM TRAUMATIC BRAIN INJURY FOR PURPOSES OF AWARDING DISABILITY COMPENSATION, AND FOR OTHER PURPOSES.

This measure would require an agreement between the VA Secretary and the Institute of Medicine (IOM) for the performance of an independent comprehensive review of Department of Veterans Affairs (VA) examinations that assess cognitive impairments of those who submit VA disability compensation claims for Traumatic Brain Injury (TBI).

The goals of the comprehensive review would be to determine the adequacy of the tools and protocols used by VA in providing cognitive examinations, and to study the credentials necessary for health care providers to perform assessments of cognitive function. The IOM would convene a group of experts in clinical neuropsychology and other related disciplines to carry out the wide-ranging review.

Within 540 days of the agreement, the Secretary would submit a report to Congress outlining the IOM findings and recommendations for legislative or administrative action required to improve the adjudication of TBI claims.

If an acceptable agreement between the Secretary and the IOM were unable to be reached, the Secretary would make an agreement with another organization that is not part of the Government, operates as a not-for-profit entity, and has expertise and objectivity comparable to that of the Institute of Medicine. In this case, any reference in the bill to the IOM would be treated as a reference to the other organization.

It seems prescient that Senator Tester introduced this bill almost a year and a half prior to the recent VA news that Secretary McDonald has granted equitable relief to more than 24,000 veterans who received VA medical exams processed between 2007 and 2015 related to disability compensation claims for TBI. This group of veterans whose first TBI examination was not performed by one of four medical specialists qualified to diagnose the condition, now has the option to receive a new exam.

The Secretary noted in the VA News Release that, "We let these veterans down," and that VA was taking every step to ensure this group of veterans receives the full benefits they are entitled to. AMVETS is encouraged that VA publicly admitted the inconsistencies and mistakes made from 2007 to 2015, and that it believes the current TBI policy is clear and being followed.

AMVETS supports this measure pursuant to our National Resolution on Traumatic Brain Injuries, and supports the additional oversight from an independent entity such as the IOM to ensure that there are vetted protocols in place with the correct type of physician for this type of diagnosis, which can be nuanced.

S. 603—RURAL VETERANS TRAVEL ENHANCEMENT ACT OF 2015

Section 2 of this Act would make permanent the authority of the Department of Veterans Affairs (VA) to transport individuals to and from VA facilities in connection with rehabilitation, counseling, examination, treatment, and care.

Section 3 would include Vet Centers as VA facilities for the purpose of providing payment of actual expenses of travel, or allowance for travel, to or from a VA facility. A Vet Center is defined as a center for readjustment counseling and related mental health services, and the travel reimbursement allowed for under this new subsection would begin on or after the date of enactment.

Section 4 would amend Section 307(d) of Public Law 111–163 to reauthorize grants for veterans' service organizations to provide transportation of highly rural veterans to and from VA facilities for appointments through 2020.

AMVETS supports this Act based on our National Resolution for Services for Rural & Remote Veteran Populations which urges an increase of the travel reimbursement allowance to the actual cost of expenses. We are particularly pleased with the inclusion of Vet Centers as VA facilities, and support making the authority permanent for VA to provide transportation to and from medical facilities as well as reauthorizing the grants for VSOs to continue providing rides to veterans in highly rural areas. This transportation assistance can literally save lives, and AMVETS supports that this Act increases veterans' access to physical and mental health care.

S. 2210—VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION (PEER) ACT

The PEER Act would establish a peer specialist program in patient aligned care teams (PACTs) at medical centers of the Department of Veterans Affairs (VA) to promote the use and integration of mental health services in a primary care setting.

This would occur in at least ten VA medical centers within 180 days after date of enactment. Within two years of enactment peer specialists in PACTs would be present in at least twenty-five VA medical centers.

The selection of medical centers would represent a balance of geographic locations; at least five medical centers that specialize in polytrauma and at least ten that do not; those in rural and underserved areas; and those not in close proximity to an active duty military installation.

Each location selected would ensure that the needs of women veterans were specifically considered and addressed, and female peer specialists would be included in the program.

Within 180 days of enactment, and at least once every following 180 days until the program was fully implemented, the Secretary would submit a report to Congress detailing findings, conclusions, and an assessment of the benefits to veterans and their family members. Within 180 days of the last location being selected, the Secretary would submit an additional report to Congress containing recommendations on the feasibility and advisability of expanding the program to additional locations.

Peer specialists are noted for being engaged in their own recovery, and who provide peer support services to others engaged in mental health treatment. AMVETS supports the integration of mental health services into primary care, and also the patient-centric approach of the PACT model of care. Peer Specialist delivered interventions have been shown to improve patient activation in multiple studies. It is also important that women veterans receive access to care that specifically addresses their needs.

AMVETS has a National Resolution on Mental Health Care Services and supports the PEER Act, but notes that in August 2014, the White House issued an Executive Action mandating that twenty-five VA medical centers place Peer Specialists on Primary Care Teams. An update from VA's Office of Research and Development, in collaboration with the National Center for Health Promotion and Disease Prevention, shows that the, "Evaluation of Peer Specialists on VA PACTs (Peers on PACT)" officially began in January 2016, final data is projected to be collected in January 2018, and in September 2019 the study and findings are expected to be complete.

S. 2279—VETERANS HEALTH CARE STAFFING IMPROVEMENT ACT

Section 2 of this Act would require the Secretaries of Defense and Veterans Affairs to develop a "Docs-to-Doctors Program" aimed at recruiting those separating honorably from the Armed Forces and Reserves who have served in a health care capacity. Individuals in veteran status would be included if separation occurred during the period outlined.

At least once a year the Secretary of Defense would submit a recruitment list to the Secretary of Veterans Affairs which would include, as available, contact information; military rank at separation; and a description of health care experience including any relevant credential, certificate, certification, or license.

The Secretaries would work to resolve barriers related to credentialing or to specific hiring rules, procedures, and processes of the Department of Veterans Affairs (VA) that would potentially delay or prevent a qualified person's hiring, including reconciling different credentialing processes and standards between the VA and the Department of Defense.

If the VA Secretary determined that a barrier was unable to be resolved, within 90 days a report would be submitted to Congress detailing recommendations for legislative and administrative action suitable to resolve the issue.

Section 3 of this Act would implement a uniform credentialing process for each position held by Veterans Health Administration employees within one year of enactment.

If a VA employee was credentialed under this section for purposes of practicing in a VA location, the credential would be sufficient for any VA location. VA would provide for renewal of credentials, which would not be required solely because an employee moved from one VA facility to another.

Section 4 of this Act would provide full practice authority to advanced practice registered nurses (APRNs), physician assistants (PAs), and other licensed VA health care professionals as considered appropriate consistent with their education, training, and certification. Full practice authority would be provided without state limitations that would otherwise be imposed.

All three sections of this Act support VA recruitment and retention. In the past, AMVETS has stated that VA must improve its recruitment, hiring and retention policies to ensure the timely delivery of high quality healthcare to our veterans. We appreciate the intent of this Act which works toward this goal.

AMVETS has a National Resolution supporting Civilian Credentials for Military Training & Experience, and believes as a nation we need to be prepared to do our part to assist transitioning servicemembers obtain living-wage employment opportunities based on the experience and skills they developed in the military. We note that Section 2 pertains just to the medical field, and while AMVETS would hope that a broader measure would include all types of military occupation specialties for work inside and outside the VA, we do not oppose this program since the end result would be excellent providers of medical care inside VA, and quality treatment of veterans who receive VA medical care.

AMVETS supports providing full practice authority to advanced practice registered nurses (APRNs), physician assistants (PAs), and other licensed VA health care professionals to allow them to provide care to the full extent of their training. VA has an access to care issue. This is a zero cost solution that would provide veterans with the access, continuity and quality of care, and reduce wait times for veterans needing care.

A 2014 Federal Trade Commission report concluded "that empirical research and on-the-ground experience demonstrate that APRNs provide safe and effective care within the scope of their training, and licensure." APRNs are not doctors, nor do they want to be doctors, but they are highly trained with more than 97 percent having graduate degrees and 99 percent having attained national certifications in specialty areas of healthcare. They want to take care of patients and they should be allowed to practice to their full scope to the advantage of veterans receiving care.

S. 2316—A BILL TO EXPAND THE REQUIREMENTS FOR REISSUANCE OF VETERANS BENEFITS IN CASES OF MISUSE OF BENEFITS BY CERTAIN FIDUCIARIES TO INCLUDE MISUSE BY ALL FIDUCIARIES, TO IMPROVE OVERSIGHT OF FIDUCIARIES, AND FOR OTHER PURPOSES.

S. 2316 authorizes the Department of Veterans Affairs (VA) to reissue veterans' benefits to a beneficiary in all cases of fiduciary misuse. The VA would pay the beneficiary or the successor fiduciary an amount equal to the misused benefits. VA access to fiduciary-held financial accounts would be increased and require VA access in order to obtain any financial records related to the fiduciary or the beneficiary whenever the VA determined that the financial records would be beneficial to view for the administration of a VA program, or to safeguard the beneficiary's benefits against neglect, misappropriation, embezzlement, or fraud.

AMVETS does not have a National Resolution on this bill, and has taken no formal position at this time.

S. 2791—ATOMIC VETERANS HEALTHCARE PARITY ACT

This act would provide for the treatment of veterans who participated in the cleanup of Enewetak Atoll between January 1, 1977 and December 31, 1980 as radiation exposed veterans for purposes of the presumption of Department of Veterans Affairs (VA) service-connection for certain disabilities.

It has been historically documented that from 1946 through the Cold War, the U.S. military tested nuclear weapons in the Marshall Islands, including detonations over 1,000 times stronger than the atomic bombs dropped on Hiroshima and Nagasaki. Radioactive and other fallout remained and natives sued the Federal Government in 1962 for compensation for losing their homeland, or for its return. In 1977 the U.S. military began the clean-up in preparation to return the land to Marshall Island natives.

Approximately 4,000 American servicemen assisted in what became known as the Enewetak Radiological Support Project between 1977 and 1980, working to scrape 73,000 cubic meters of surface soil off six different islands on the atoll. They deposited the radioactive soil into the Cactus Crater on Runit Island, part of the atoll, and then capped the crater with a thick layer of concrete.[1]

AMVETS has two National Resolutions addressing toxic wounds, and advocating for those who suffer chronic conditions as a result of exposure to various contaminants while serving their country remains a top priority. The definition of a Toxic Wound is any adverse health condition, chronic or terminal, suffered by military personnel resulting from, or associated with, exposure to toxic substances or environmental hazards during their military service, the effects of which may not emerge until months or years after initial exposure.

The veterans who served as part of the Enewetak Radiological Support Project are small in number, and evidence of their exposure to contamination is large. AMVETS supports swift passage of this Act.

[1] https://marshallislands.llnl.gov/

S. 2958—A BILL TO ESTABLISH A PILOT PROGRAM ON PARTNERSHIP AGREEMENTS TO CONSTRUCT NEW FACILITIES FOR THE DEPARTMENT OF VETERANS AFFAIRS.

This bill would authorize partnership agreements between Secretary of Veterans Affairs and up to five entities defined as a state or local authority, a 501c3 nonprofit organization, a limited liability corporation, a private entity, a donor or donor group, or any other non-Federal Government entity.

The purpose would be to conduct at least one super construction project; major medical facility projects; or major construction projects of new cemeteries or to develop additional gravesites or columbarium niches at existing cemeteries. Projects selected would already be partially funded by Congress or those that the Department of Veterans Affairs (VA) identified on the Major Construction Strategic Capital Investment Planning priority list. Approved partners would be required to enter into a formal agreement with the Secretary to independently finance or donate project funds leaving no additional cost to the Federal Government.

The program would fall under Federal laws relating to environmental and historic preservation, and the Davis—Bacon Act of 1931 which established the requirement for paying the local prevailing wages on public works projects for laborers and mechanics.

One of the five partnership agreements authorized is to design, finance, and construct a new ambulatory care center in Omaha, Nebraska.

The Secretary may contribute up to $56,000,000 for the projects and the contribution or liability of the Secretary would not exceed this except to the extent that additional funds are appropriated.

Each partnership agreement would provide that the entity:

- Practice due diligence and conduct any necessary environmental or historic preservation; comply with local zoning requirements except for studies and consultations required of VA under Federal law; and obtain any permits required before beginning construction.
- Use VA construction standards when designing and building the project, except to the extent the Secretary determines otherwise.
- Establish a Board of Directors to oversee the conduct of the project which would be comprised of five to ten members. At least one member would be a veteran who is not a VA employee, at least one would be a VA employee and function as a nonvoting member of the Board; a Chair would be designated to oversee the activities of the Board. All current or proposed members of the Board would promptly disclose any actual or potential conflicts to the Secretary and would agree to remove themselves from Board membership if the Chair and Secretary agreed that it was appropriate due to an actual or potential conflict.
- Within 180 days of inception of the Board, or another timeframe the Secretary approves, a written charter to describe the roles, responsibilities, policies, and procedures of operation of the Board would be created to ensure successful project management, design, construction, and completion of the designated project.
- In addition, the Board would be responsible for overseeing the activities needed to finance, design, and construct the designated project for the Department, and would submit written updates regarding the status of the designated project to the Secretary in a manner the Secretary specifies.
- The Board would defer to the Secretary on all matters inherent to the mission and operations of VA, including conditional or final acceptance of the designated project.
- The Board would not dissolve until after the Secretary provided final acceptance of completion of the designated project to the Board, plus such additional time or contingencies as the Board and the Secretary may jointly approve.

To be eligible to participate in the program, entities would submit a detailed and thorough application to the Secretary to address needs relating to VA facilities identified in VA's Construction and Long-Range Capital Plan.

The Secretary would include in the budget submitted to Congress by the President information regarding any projects conducted under this section during the year preceding the submittal of the budget. Each report would provide a detailed status of projects, including the percentage of completion of the project.

The Comptroller General of the United States would submit a biennial report on the partnership agreements to Congress.

There are many aspects to this complex bill, and AMVETS does not have a formal position at this time.

S. 3021—A BILL TO AUTHORIZE THE USE OF POST-9/11 EDUCATIONAL ASSISTANCE TO PURSUE INDEPENDENT STUDY PROGRAMS AT CERTAIN EDUCATIONAL INSTITUTIONS THAT ARE NOT INSTITUTIONS OF HIGHER LEARNING.

This bill would authorize the use of Post-9/11 Educational Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning. The independent study program would provide a certificate that reflects completion of a course of study, such as an area career or technical education school or vocational institution providing education at the postsecondary level.

AMVETS does not have a National Resolution on this measure, but favors its passage. It is important that a veteran be able to utilize their earned educational assistance to learn a trade or to develop skills required for a career that are from facilities other than institutes of higher learning.

S. 3023—THE ARLA HARRELL ACT

The Arla Harrell Act would require the Secretaries of Defense and Veterans Affairs to reconsider all compensation claims related to exposure to mustard gas or lewisite during active military, naval, or air service during World War II, and make a new determination on claims denied before the date of enactment.

In carrying this out, the Secretaries would determine if a veteran experienced full-body exposure to mustard gas or lewisite with a presumption that they did, unless it could be proven otherwise. The Secretaries would not use information contained in the Department of Defense (DOD) and Department of Veterans Affairs (VA) Chemical Biological Warfare Data base or any other VA or DOD list of known mustard gas or lewisite testing sites as the sole reason for determining whether this exposure occurred.

Within 90 days of enactment, and at least once every 90 days thereafter, the VA Secretary would submit a report to Congress specifying any reconsidered claims that were denied during the preceding 90-days, including the rationale for each denial.

Within one year of enactment, the Secretaries would jointly establish a policy for processing future compensation claims that VA determines are in connection with exposure to mustard gas or lewisite during active military, naval, or air service during World War II.

Within than 180 days of enactment, the Secretary of Defense would, for purposes of determining whether a site should be added to the list of DOD sites where mustard gas or lewisite testing occurred, investigate and assess sites where the Army Corps of Engineers uncovered evidence of mustard gas or lewisite testing or where more than two veterans submitted claims for compensation where claims were denied.

A report to Congress would be required covering experiments conducted by the DOD during World War II to assess the effects of mustard gas and lewisite on people and would include a list of each location where experiments occurred, including locations investigated and assessed related to review of claims; the dates of each experiment; and the number of members of the Armed Forces who were exposed to mustard gas or lewisite in each experiment.

Within 80 days of enactment, the Secretary of Veterans Affairs would investigate and assess the outreach to individuals who had been exposed to mustard gas or lewisite in experiments; the claims for disability compensation that were filed, and the percentage of such claims that were denied. A report to Congress would be required related to findings of the investigations and assessments carried out under this bill, and a comprehensive list of each location where an experiment was conducted.

According to Senator McCaskill, who AMVETS thanks for introducing this legislation, the military has acknowledged for decades that secret mustard gas tests were performed on troops at the end of World War II. A recent U.S. Senate investigation found that 90 percent of related disability compensation claims have been rejected by the Department of Veterans Affairs. This is an astounding statistic.

AMVETS has two National Resolutions addressing toxic wounds, and advocating for those who suffer chronic conditions as a result of exposure to various contaminants while serving their country remains a top priority. The definition of a Toxic Wound is any adverse health condition, chronic or terminal, suffered by military personnel resulting from, or associated with, exposure to toxic substances or environmental hazards during their military service, the effects of which may not emerge until months or years after initial exposure.

AMVETS supports swift passage of the Arla Harrell Act.

S. 3032—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT (COLA) ACT OF 2016

The COLA Act would provide for an increase in the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans effective December 1, 2016.

The dollar amounts to be increased would be wartime disability compensation, additional compensation for dependents, clothing allowance, dependency and indemnity compensation to surviving spouse, and to children.

Each dollar amount would be increased by the same percentage as the Social Security Act, effective December 1, 2016.

The Secretary of Veterans Affairs would publish the amounts specified as increased in the *Federal Register* no later than the date on which those pertaining to the Social Security Act are required to be published.

AMVETS supports this COLA Act, and encourages its swift passage.

S. 3035—MAXIMIZING EFFICIENCY AND IMPROVING ACCESS TO PROVIDERS AT THE DEPARTMENT OF VETERANS AFFAIRS ACT OF 2016

This act would establish an eighteen-month pilot program increasing the use of medical scribes to maximize the efficiency of physicians in at least five medical facilities of the Department of Veterans Affairs (VA). A medical scribe is a member of the medical team trained exclusively to perform documentation in an electronic health record to maximize productivity of a physician.

The facilities chosen would have a high volume of patients, or be rurally located in areas determined to have a shortage of physicians which high caseloads.

In carrying out the pilot program, the Secretary would enter into a contract with one or more appropriate nongovernmental entities that train and employ professional medical scribes.

Data would be collected to determine the effectiveness of the pilot program in increasing the efficiency of physicians at VA medical facilities and would measure the following, both before and after implementation of the program:

- The average wait-time for a veteran to receive care from a physician.
- The average number of patients that such a physician is able to see on a daily basis.
- The average amount of time such a physician spends on documentation on a daily basis.
- The satisfaction and retention scores of each such physician.
- The patient satisfaction scores for each such physician.
- The patient satisfaction scores for their health care experience.

Within 180 days after the start of the pilot program, and at least once every 180 days thereafter, the Secretary would submit a report to Congress including the number of VA medical facilities participating in the pilot, and an assessment of the effects that participation has had on maximizing the efficiency of physicians; reducing average appointment wait times; improving access of patients to electronic medical records; mitigating physician shortages by increasing the productivity of physicians as well as all of the data collected as part of the program. The report would also include recommendations with respect to the extension or expansion of the pilot.

AMVETS does not have a National Resolution on this measure, but does not oppose its passage as it relates to increasing a physician's patient load with the goal of providing veterans more ready access to care.

S. 3042—JUSTICE FOR SERVICEMEMBERS ACT OF 2016

As part of the Military Coalition (TMC), which is a consortium of uniformed services and veterans' associations representing more than 5.5 million current and former servicemembers, their families and survivors, AMVETS recently signed a strong support letter for this bill.

It was noted that this concise, straightforward bill ensures that our servicemembers and veterans can enforce the rights afforded to them under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Some servicemembers have been unable to exercise their USERRA rights due to increased use of forced arbitration clauses. Usually presented on a take-it-or-leave-it basis, these clauses preclude access to the judicial system and instead funnel servicemembers' employment discrimination or wrongful termination USERRA claims into private, costly arbitration systems set up by the employers. The "Justice for Servicemembers Act" gives servicemembers the ability to pursue their USERRA

claims in court while preserving the option to enter into an arbitration agreement after a dispute arises.

AMVETS supports passage of this important legislation.

S. 3055—DEPARTMENT OF VETERANS AFFAIRS DENTAL INSURANCE REAUTHORIZATION ACT OF 2016

This act would provide dental insurance to veterans and survivors and dependents of veterans who could enroll on a voluntary basis. This beneficiary group is defined as any veteran who is enrolled in the Department of Veterans Affairs (VA) system or any survivor or dependent of a veteran who is eligible for medical care under section 1781 of this title which is:

• the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability,

• the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability,

• the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct, and

• an individual designated as a primary provider of personal care services under the caregiver program who is not entitled to care or services under a health-plan contract who are not otherwise eligible for medical care under chapter 55 of title 10 (CHAMPUS).

VA would establish a contract with a dental insurer to administer the plan, and provide benefits for dental care and treatment as considered appropriate, diagnostic services, preventative services, endodontics and other restorative services, surgical services, and emergency services.

Premiums for the dental insurance would adjust annually, and each person covered at the time of adjustment would be notified of the new amount and effective date. The entire premium would be paid by the individuals covered, in addition to the full cost of any copayments.

Voluntary disenrollment would be allowed if it occurred within 30-days of enrollment, or in circumstances where disenrollment did not jeopardize the fiscal integrity of the dental insurance plan. Such circumstances include if an enrollee relocates outside the jurisdiction of the dental insurance plan which prevents use of the benefits, or if they have a serious medical condition preventing them from obtaining benefits. The Secretary would also establish procedures for determining permission for voluntary disenrollment in order to ensure timely decisions.

This program would terminate on December 31, 2021.

AMVETS does not have a National Resolution on this bill, and has taken no formal position at this time.

S. 3076—CHARLES DUNCAN BURIED WITH HONOR ACT OF 2016

The Charles Duncan Buried with Honor Act would authorize the Secretary of Veterans Affairs to furnish caskets and urns for burial in cemeteries of states and Indian tribes of veterans without sufficient resources to provide for caskets or urns.

It is noted that in 2013 Congress enacted the "Dignified Burial and Other Veterans' Benefits Improvement Act of 2012" which authorizes the U.S. Department of Veterans Affairs (VA) to furnish a casket or urn of such quality as the Secretary considers appropriate for a dignified burial in a national cemetery of a deceased eligible veteran who died with no known next of kin and without sufficient financial resources to furnish a casket or urn. While AMVETS does not have a National Resolution on this issue, we support this Act and believe that those who serve this country should be provided the dignity of having a proper burial if they or their survivors do not have the means to provide for a casket or urn.

S. 3081—WORKING TO INTEGRATE NETWORKS GUARANTEEING MEMBER ACCESS NOW (WINGMAN) ACT

WINGMAN seeks to streamline the benefit claims procedure between the Department of Veterans Affairs (VA) and Congressional constituent advocates who process claims on behalf of veterans and their families.

Under WINGMAN, an accredited, permanent Congressional employee would have access to electronic Veterans Benefits Administration (VBA) records in a read-only fashion in order to review the status of a pending claim, medical records, compensation and pension records, rating decisions, statement of the case, supplementary statement of the case, notice of disagreement, and Form–9 files. This eliminates the

time-consuming step of using the VA as a middle-man to receive files the Congressional employee already has permission to possess.

AMVETS supports this bill, which is in line with our National Resolution addressing the claims and appeals backlog which calls for improving the timeliness of all disability claims and appeals, and agrees that it is unacceptable for weeks or months pass before advocates are able to receive files they requested to help veterans.

DISCUSSION DRAFT TO EXPAND ELIGIBILITY FOR READJUSTMENT COUNSELING TO CERTAIN MEMBERS OF THE SELECTED RESERVE OF THE ARMED FORCES.

This bill would allow any member of the Selected Reserve of the Armed Forces who has a behavioral health condition or psychological trauma to receive counseling provided by the Department of Veterans Affairs (VA) which may include a comprehensive individual assessment. No patient referral would be required and this would take effect one year after date of the enactment Act.

The Selected Reserve includes the Army, Navy, Air Force, Marine Corps and Coast Guard Reserves, and the Army and Air National Guard. These groups have served in unprecedented numbers since 2001, and of the nearly 2 million Iraq and Afghanistan veterans who have become eligible for VA Health Care in that time, nearly 40 percent served in the Reserves or National Guard. This group of veterans present with a wide range of health conditions, and mental disorders are among the top three.

We must do all that we can to provide access for readjustment services and counseling for those who serve in the Armed Forces of the United States, to include those in the Selected Reserve. AMVETS has a National Resolution on Mental Health Services and supports this draft measure.

DISCUSSION DRAFT TO AUTHORIZE THE AMERICAN BATTLE MONUMENTS COMMISSION TO ACQUIRE, OPERATE, AND MAINTAIN THE LAFAYETTE ESCADRILLE MEMORIAL IN MARNES-LA-COQUETTE, FRANCE.

This bill would authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

The Commission would carry out its duties pursuant to an agreement with the Lafayette Escadrille Memorial Foundation and would be subject to the consent of the Government of France. Additionally, the Commission could only employ the personnel needed to carry out this Act.

AMVETS has no National Resolution on this issue, but supports passage of this bill and believes that this memorial should be properly maintained in honor of the U.S. troops who served in WWI and the forty-nine American heroes who are entombed at this location.

Mr. Chairman and Members of the Committee, this concludes my testimony and would be happy to answer any questions the Committee may have.

PREPARED STATEMENT OF AMERICAN PUBLIC HEALTH ASSOCIATION

AMERICAN PUBLIC HEALTH ASSOCIATION
For science. For action. For health.

American Public Health Association testimony submitted for the record
U.S. Senate Committee on Veterans' Affairs hearing on pending health care and benefits legislation
June 29, 2016

The American Public Health Association, a diverse community of public health professionals who champion the health of all people and communities, welcomes the opportunity to submit a statement for the record in support of S. 2210, the Veteran Partners' Efforts to Enhance Reintegration Act. The Veteran PEER Act would require the inclusion of peer support specialists in Patient Aligned Care Teams within medical centers at the Department of Veterans Affairs to encourage the use and integration of mental health services in the primary care setting.

Rates of mental illness are disproportionately high among U.S. veterans, particularly posttraumatic stress disorder, substance abuse disorders, depression, anxiety and military sexual trauma. Every year, up to 20 percent of combat veterans from the Iraq and Afghanistan wars experience PTSD, and more than 20 percent of veterans with PTSD also suffer from an addiction or dependence on drugs or alcohol. In addition, between 2001-2007, non-deployed veterans that served during the Iraq and Afghanistan wars had a 61 percent higher suicide risk compared to the general U.S. population. Military culture promotes inner strength, self-reliance and the ability to shake off injury, which may contribute to stigma surrounding mental health issues. Stigma may create a reluctance to seek help and a fear of negative social consequences, and is the most often cited reason for why people to do not seek counseling or other mental health services.

Through a peer support model of care, Peer Specialists–veterans who have recovered or are recovering from a mental health condition–provide veterans with assistance in accessing mental health services, navigating the health care system and building skills needed for a successful recovery. Expanding the peer support model to the primary care setting may offer a key entry point for those reluctant to access mental health services. The bill would also direct the Secretary of Veterans Affairs to consider and address the needs of female veterans when establishing peer support programs, and also include female peer specialists in the program. Additionally, the bill would direct the secretary to consider rural and underserved areas when selecting program locations.

APHA urges the committee to advance S. 2210 to improve access to mental health services within the VA and support the health and wellbeing of U.S. veterans.

800 I Street, NW • Washington, DC 20001-3710
202-777-2742 • www.apha.org

PREPARED STATEMENT OF JOY J. ILEM, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of this legislative hearing, and to present our views on the bills under consideration. As you know, DAV is a non-profit veterans service organization comprised of 1.3 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 244, TO REQUIRE AN INDEPENDENT COMPREHENSIVE REVIEW OF THE PROCESS BY WHICH THE DEPARTMENT OF VETERANS AFFAIRS ASSESSES COGNITIVE IMPAIRMENTS THAT RESULT FROM TRAUMATIC BRAIN INJURY FOR PURPOSES OF AWARDING DISABILITY COMPENSATION

This measure would require VA to enter into an agreement with the Institute of Medicine (IOM) to conduct an independent review of the process by which the Department of Veterans Affairs (VA) assesses cognitive impairments that result from a Traumatic Brain Injury (TBI) for purposes of awarding disability compensation.

The independent review committee would include a group of experts in clinical neuropsychology and other related disciplines and would be charged with determining the adequacy of the tools and protocols used by VA for examinations relating to assessment of cognitive functions and the required credentials of the clinicians who perform such examinations. Finally, the bill would allow VA to contract with an alternate organization to perform the above mentioned review.

According to VA, following revision of its Schedule for Rating Disabilities addressing neurological conditions and convulsive disorders and the related examination protocol for residuals of TBI, guidance on using certain clinicians for compensation examinations on the residuals of TBI was sent to field operations of the Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA).

VA conducted a review of VHA and contractor examinations for 24,588 veterans from 2007 through 2015, which revealed psychiatrists, physiatrists, neurologists, or neurosurgeons were not accustomed to performing initial TBI examinations. Consequently, VA granted equitable relief on May 3, 2016, to affected veterans who are invited to exercise this remedy to include the ordering of a new initial TBI examination with one of the four designated specialists, submission of additional supporting evidence, leading to readjudication of the previous claim for residuals of TBI using the new examination and evidence.

DAV has no resolution on this specific issue. Notably however, we commend VA for revising its Schedule for Rating Disabilities in order to provide more detailed and updated criteria for evaluating residuals of TBI. The previous version did not recognize TBI as a signature injury of the conflict in Iraq and Afghanistan, and did not properly address the needs of a statistically larger number of veterans returning from these conflicts with residuals of TBI. In addition, the effects of injuries stemming from blasts resulting from roadside explosions of improvised explosive devices, which have been common sources of injury in these conflicts, appeared to be different from the effects of brain trauma observed from other explosive sources.

VA's new rating schedule for residuals of TBI and corresponding examination criteria focuses on three main areas of dysfunction that may result from TBI with serious effects: cognitive dysfunction; emotional/behavioral dysfunction, and physical dysfunction. However, this measure would require the independent review be limited to VA's process in assessing only cognitive impairments. This measure, if acted on favorably, should include in its requirements the processes of assessing physical and emotional/behavioral dysfunction, and that the convening groups of subject matter experts established in the bill should include individuals in the appropriately related disciplines.

S. 603, RURAL VETERANS TRAVEL ENHANCEMENT ACT OF 2015

Section 2 of this bill would make permanent the authority set to expire December 31, 2016, for VA to operate the Veterans Transportation Service (VTS) program. DAV opposes this measure and asks for the opportunity to work with the sponsors of this legislation and the Committee to find a resolution.

As the Committee may be aware, our organization began our free transportation program in 1987. Since then, the DAV National Transportation Network continues to show tremendous growth as an indispensable resource for veterans. Across the Nation, 190 DAV Hospital Service Coordinators operate nearly 197 active programs, in which our volunteer drivers have logged over 24.7 million miles last year, providing over 700,000 rides for veterans to and from VA healthcare facilities. To date, DAV has purchased and donated 2,967 vehicles to the VA, at a cost of $65.1 million.

The Ford Motor Company has also donated 207 vehicles at a cost of over 4.7 million dollars. Thus far our vans have carried veterans more than 642 million miles to and from their medical appointments.

The VTS provides an invaluable service in meeting the transportation needs of a special subset of the VA patient population that the DAV Transportation Network is not equipped to serve—veterans in need of special modes of transportation and accommodation due to severe disabilities. We believe that with a truly collaborative relationship, the DAV Transportation Network and VTS will be able to meet the growing transportation needs of ill and injured veterans in a cost-effective manner.

DAV Resolution No. 113 urges the VA to operate an effective and efficient transportation program for all service-connected veterans and to simplify access to transportation benefits and services so they may receive timely and high-quality VA health care, benefits and services. Accordingly, we have been working with the VHA Chief Business Office, as well as VA medical facilities across the country to resolve weaknesses that we have observed in the VTS program, which operates on resources that would otherwise go to direct medical care and services for veterans.

As one of the strongest advocates of sufficient and predictable funding for VA, we believe these precious resources should be used judiciously for ancillary programs to ensure veterans are not denied care when they most need it. Ensuring VTS works in concert with other existing and emerging transportation resources will help maximize the ability of veterans to access VA care while guarding against fraud, waste and abuse of these limited resources.

Section 3 of this bill would require VA to treat Vet Centers as department facilities in connection with payments for beneficiary travel. DAV has a special connection to the VA Vet Center program and the counseling services it provides. In 1976, the DAV funded the groundbreaking Forgotten Warrior Project, which first defined the issue of Post Traumatic Stress Disorder (PTSD) among Vietnam War veterans. Vietnam veterans were experiencing serious post-war problems at that time, and DAV hoped our new study would make it impossible for Congress, the VA, and the American public to continue to ignore the lingering dilemma that prevented many of these veterans from gaining normal lives after serving in a very unpopular and difficult war.

DAV initiated our own Vietnam Veterans Outreach Program in 1978. This DAV-sponsored study and the DAV's clinical outreach work spurred new, broad realization and additional research by others that forced the Federal Government to confront the psychological impact of war on veterans of Vietnam, and subsequently of all wars. When that movement finally occurred, the DAV Vietnam Veterans Outreach Program was already there to serve as an effective counseling model to be adopted by the VA's Vet Center program as we know it today.

Since the Readjustment Counseling Service program was established by Congress in 1979, eligibility for Vet Center readjustment counseling services has expanded from Vietnam-era veterans to include all combat veterans, to veterans who experienced military sexual trauma, to certain family members, and to survivors of veterans who die in combat or on active duty. Vet Centers also offer other vital services, including counseling for Post Traumatic Stress Disorder (PTSD) and other readjustment challenges; marriage and family counseling; and family bereavement counseling.

DAV supports this section based on Resolution No. 117, which calls on Congress to enact legislation to change beneficiary travel policies to meet the specialized clinical needs of veterans receiving MST-related treatment.

Mr. Chairman, one key policy of Vet Centers is to ensure veterans seeking help are not required to wait to receive it. Vet Centers are known for minimal barriers with almost no bureaucracy and provide a non-medical setting in a safe environment with confidentiality and an emphasis on informed consent. Because of this type of delivery model, VA's current policy—to pay travel expenses for one-way travel to veterans who receive VA care for unscheduled appointments—needs to be adjusted to meet the full intent of this measure if enacted.

Section 4 would extend the existing VA grant program to provide innovative transportation options to veterans in highly rural areas. DAV supports this section based on Resolution no. 226 calling for innovative improvements in providing health care to veterans living in rural and remote areas of the United States. We also urge the Committee to make appropriations to provide enhanced VA health care access to rural veterans.

Finally, we recommend changing the language to be stricken from "through 2014" to "through 2016" to reflect current law as amended by Public Law 114–58, Title I, Section 106.

S. 2210, VETERAN PEER ACT

Enactment of the Veteran PEER Act would require VA to establish a program that includes peer specialists within patient aligned care teams (PACT) in medical centers of the VA to promote better integration of mental health services into the primary care setting. VA must carry out this program in at least 10 VA medical centers within the first 180 days of the Act passing and in no less than 25 locations after two years of the enactment of the bill, including within five polytrauma center locations.

The bill also would require VA to consider the feasibility of locating peer specialists in rural areas and other locations that are underserved by the Department. VA would be required to ensure that the unique needs of women veterans are considered and that female peer specialists are included in the program. The measure includes requirements for routine reporting to include findings and conclusions with respect to the program and recommendations related to the feasibility of expansion of the program.

When a veteran is experiencing a mental health crisis and asking for help, there must be ready access to a mental health specialist and services must be provided. However, even when in crisis, many veterans are reluctant to reach out for help and are reluctant to seek the mental health services they need. Since 2012, VA has hired over 900 Peer Specialists, and we have heard from mental health providers that peer-to-peer interactions have been extremely helpful to both patients and treating clinicians. Making that first contact with another veteran who has had a similar experience seems to lessen the stigma and has been a successful method for coaching veterans into care.

We are pleased the bill also includes provisions that would require VA to address the needs of women veterans. Findings show that when women return from deployment, the camaraderie and support from their male peers is often short-lived, resulting in isolation for many. Studies have shown that peer support is important to a successful transition, but women report they often cannot find a network of women who can relate to their military or wartime service. Including the requirement that VA focus on hiring female peer specialists helps ensure the unique needs of women veterans will be addressed and that women veterans can benefit from access to peer-to-peer interactions.

DAV is pleased to support S. 2210, which is consistent with the following DAV resolutions: DAV Resolution No. 103, which calls for program improvements for VA mental health services to include increased staffing levels, improved outreach to veterans with a focus on reducing stigma when seeking post-deployment readjustment and other mental health services; DAV Resolution No. 104, which calls for enhanced medical services for women veterans as well as additional methods to address barriers to care. Also, the bill is consistent with recommendations in DAV's 2014 report, *Women Veterans: The Long Journey Home*.

S. 2279, VETERANS HEALTH CARE STAFFING IMPROVEMENT ACT

This bill would require the VA, in conjunction with the Department of Defense, to recruit military medical service personnel to VA health care positions following their service. To promote this outcome, the bill would require DOD to submit to VA a list once each year (or more often if agreed) of such individuals, including reservists and Coast Guardsmen, who are approaching the discharge point, or afterwards, along with contact and other relevant information to identify these individuals and their prior duties in military health care, including credentials, licensure and related information.

In respect to this program, the bill would require VA to work to resolve barriers in credentialing or other rules that could delay or prevent such VA hiring. In the event that an identified barrier cannot be resolved by VA, the bill would require VA to report its existence and nature to Congress, with recommendations for legislation or administrative action (including any barrier imposed by a state).

The bill would require VA to treat applications for VA employment by the individuals contemplated by this authority as Federal civilian employees rather than outside applicants, if applications were made within one year of discharge.

The bill would require VA to establish a national, uniform credentialing policy for any VA employee who needs credentials to practice, and that once an individual is VA-credentialed in one site, the bill would enable such an employee to practice anywhere in the VA health care system without further credentialing.

The bill would authorize full practice authority for advance practice nurses, physician assistants (PA), and other categories of health personnel as identified by the Secretary. The bill would empower these individuals to conduct independent prac-

tices in VA health care, irrespective of limitations that might be imposed by state laws. The bill would define a number of terms associated with these authorities.

With regard to easing transition from military careers to civilian careers, DAV strongly supports the intent of this bill on the basis of DAV National Resolution 130, which urges continuing support for veterans' preference in Federal, state and local employment. While the resolution does not specify employment in VA itself, the bill is a logical method of aiding VA's recruitment efforts for medical professionals and, therefore, DAV supports this provision.

With respect to the credentialing provisions of this bill, setting aside differing requirements from state to state, or from VA facility to VA facility, could produce unintended consequences. While it is true that credentialing may often delay or complicate the employment of clinical professionals in VA health care (and elsewhere), such policies are put in place to protect the quality of care and health of patients and to ensure individual practitioners are in fact capable of providing patients the type and intensity of care they are licensed to provide. In VA, credentialing in a major, affiliated VA academic health center, generally a teaching center of health professions, is considerably different than in a secondary, non-affiliated VA facility, and these differences exist for good reason.

Finally, on the issue of independent practice authority of advance practice nurses, PAs and others that might be identified by the Secretary, VA recently proposed new regulations affecting these groups. While DAV has no resolution specific to these issues in the bill, or in VA's proposed regulation, we ask the sponsors to consider the implications of setting aside VA's proposal and any public comment that it may generate, with such sweeping Federal supremacy legislation.

S. 2316, TO EXPAND THE REQUIREMENTS FOR REISSUANCE OF VETERANS BENEFITS IN CASES OF MISUSE OF BENEFITS BY CERTAIN FIDUCIARIES TO INCLUDE MISUSE BY ALL FIDUCIARIES, TO IMPROVE OVERSIGHT OF FIDUCIARIES, AND FOR OTHER PURPOSES

The bill would authorize the Department of Veteran Affairs (VA) to reissue benefits to veterans within the fiduciary program when fiduciaries are found to have misused or mishandled the administration of their benefits.

VA would require that any person or entity appointed or recognized as a fiduciary for a beneficiary to provide VA with authorization to obtain from any financial institution any record held by the institution with respect to the fiduciary or beneficiary. This authorization would be utilized whenever a financial record is necessary for the administration of a VA program. The authorization could also be executed when it becomes necessary to safeguard a beneficiary's benefits against neglect, misappropriation, misuse, embezzlement, or fraud.

Under this bill, in instances when a fiduciary refuses to provide or revokes an authorization to permit VA access to financial institution information concerning benefits paid to a beneficiary, VA would have the authority to revoke the appointment or the recognition of the fiduciary for each beneficiary for whom such fiduciary had been appointed or recognized.

Although we not have a resolution specific to fiduciary matters, DAV appreciates the importance of safeguarding benefits of veterans within the fiduciary program; therefore, DAV supports the intent of this legislation because it protects the rights and benefits of ill and injured veterans.

S. 2791, ATOMIC VETERANS HEALTHCARE PARITY ACT

The Atomic Veterans Healthcare Parity Act would provide health care parity for veterans who participated in the atomic debris cleanup mission on Enewetak Atoll in the Marshall Islands between 1977–1980. Currently these veterans are not included in the definition of "atomic veterans" and are not considered to have experienced at-risk exposure to radiation while relocating radioactive materials contaminated by 43 atomic tests at Enewetak Atoll. This measure would require VA to consider such veterans to be radiation exposed for presumption of service connection for recognized radiogenic diseases.

DAV is pleased to support S. 2791 because it is consistent with DAV Resolution No. 089, which supports legislation authorizing presumptive service connection for atomic veterans with a recognized radiogenic disease including any veteran involved in clean-up operations following the detonation of a nuclear device. We urge the Committee to expeditiously pass this legislation that would establish eligibility for personnel who participated in this specific radiation-risk activity during military service to receive presumptive service connection for recognized radiogenic diseases.

S. 2958, A BILL TO ESTABLISH A PILOT PROGRAM ON PARTNERSHIP AGREEMENTS TO CONSTRUCT NEW FACILITIES FOR THE DEPARTMENT OF VETERANS AFFAIRS

This bill would provide VA a discretionary authority to enter into not more than five public-private partnerships to construct major VA medical facilities, new cemeteries, and expanded cemeteries. Under the bill, VA could choose any qualified entity to carry out this construction, including "a donor group," an undefined term. The bill would require in each instance that a board of directors were chosen to guide each project, and the project chosen for this pilot program would come either from projects partially funded by Congress, or from VA's internal capital planning process and its priority list submitted annually to Congress as a part of VA's budget request.

One of the five sites that would be authorized and required to participate in this pilot program would be located in Omaha, Nebraska, and would include a new ambulatory care clinic with sufficient space and parking facilities, and would be limited in cost to $56 million, unless Congress appropriated additional funds for this project.

The bill would set rules for the conduct of the pilot program, including activities, actions, reports and dissolutions of these boards of directors, as well as for the entities chosen to partner with VA on the projects chosen, and would prescribe various terms and conditions applicable to both the five entities and VA. Finally, the bill would specify required elements in the application process, and would prescribe required reports to Congress by VA and the Government Accountability Office.

DAV National Resolution No. 100 urges VA to request adequate funding to fulfill the intent of its strategic capital planning initiative; that Congress carefully monitor any intended VA changes in infrastructure that could jeopardize VA's ability to meet veterans' needs; and, that Congress continue to provide appropriated funding sufficient to fulfill the needs for infrastructure identified through the strategic capital planning process. Enactment of this bill would introduce a major change in VA's capital planning and construction management programs. This new approach may hold promise in reforming VA's capital infrastructure program. Nevertheless, because it is an untested concept, before advancing this bill in the legislative process, we would urge further discussions with VA officials on the impact and intent of the measure on normal VA construction operations, especially given that VA is currently managing 49 major construction projects system-wide.

S. 3021, A BILL TO AUTHORIZE THE USE OF POST-9/11 EDUCATIONAL ASSISTANCE TO PURSUE INDEPENDENT STUDY PROGRAMS AT CERTAIN EDUCATIONAL INSTITUTIONS THAT ARE NOT INSTITUTIONS OF HIGHER LEARNING

This bill would authorize the use of Post-9/11 Educational Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning as currently defined by law.

Section 3452 of title 38 defines an "institution of higher learning" as one that grants an associate degree or higher degree. Post-secondary career and technical education (CTE) centers, which are public, non-profit, non-degree-granting institutions that award certificates, are an integral part of the postsecondary education and workforce training systems in many states—offering alternative routes for non-traditional students to obtain a postsecondary credential. To better accommodate working adult students, some CTE centers are utilizing technology by incorporating distance learning online. However, under current law, any independent study program offered through these institutions that includes an online component is ineligible because CTE centers are non-degree-granting and are therefore not considered institutions of higher learning.

This bill would update existing law to mirror the Post-9/11 Veterans Educational Assistance Improvement Act's incorporation of non-degree-granting institutions as an option for veterans, while also recognizing the expanding role of technology in these institutions. This legislation would accomplish this much-needed update by providing an exception for accredited independent study programs that lead to certificates from non-degree-granting institutions.

DAV has no resolution concerning this issue; however, we would not oppose its enactment because it would appear to be beneficial to veterans.

S. 3023, THE ARIA HARRELL ACT

This bill would establish procedures to address mustard gas or lewisite testing done on servicemembers by the Department of Defense during World War II.

This legislation would require the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, to reconsider claims for compensation relative to these experiments and render new determinations. The legislation would establish

a presumption of exposure, unless proven otherwise, thus creating a lower evidentiary standard to demonstrate exposure to mustard gas or lewisite.

DAV is pleased to offer our support for this legislation consistent with Resolution No. 010, which calls on Congress to vigorously support VA's expeditious handling of veterans' claims and payment of fair and just compensation for all conditions associated with exposure to toxic and environmental hazards.

S. 3032, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2016

This bill would provide for an increase in the rates of compensation, commensurate with an increase for Social Security recipients with no "round down," effective December 1, 2016.

Mr. Chairman, DAV strongly supports this legislation, especially since it does not mandate that the cost-of-living adjustment (COLA) it would authorize be rounded down to the next lowest whole dollar amount.

Many disabled veterans and their families rely heavily, or solely, on VA disability compensation, or DIC payments, as their only means of financial support, and they have struggled during recent years. Their personal economic circumstances have been negatively affected by rising costs of many essential items, including food, medicines and gasoline.

In FY 2016, no COLA increase was authorized due to depressed inflation, so it seems only fitting that no round-down be imposed in 2017 to help offset the loss of COLA in 2016. It is imperative that veterans and their dependents receive a full COLA; on the strength of DAV Resolution No. 013, DAV supports enactment of this legislation.

S. 3035, Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016

DAV supports this legislation that would require VA to carry out an 18-month pilot program in at least five VA medical centers to use medical scribes to transcribe provider comments during visits with patients, thereby saving the provider time to manage the medical documentation process while also allowing more visual contact and better communication between provider and patient.

DAV resolution 126 calls for quality care for veterans to be achieved when health care providers are given the freedom and resources to provide the most effective and evidence-based care available. In response to the growing complexity of health care and the electronic medical record, medical scribes have been used in the private sector to improve productivity, clinical documentation, completion of medical records, as well as provider satisfaction.

We understand VA has been exploring the scope of responsibilities for medical scribes. DAV believes this bill, if enacted, would help provide a wider scope through which meaningful information could be produced to help determine the most effective integration of scribes within the various patient aligned care teams and across care settings in VA.

S. 3042, THE JUSTICE FOR SERVICEMEMBERS ACT OF 2016

This bill would improve the scope of procedural rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and improve the enforcement authority of the Department of Justice.

Section 1 would clarify employment and reemployment rights of servicemembers by proposing any agreement to arbitrate a claim under USERRA is unenforceable, unless all parties consent to arbitration after a complaint on the specific claim has been filed in court or with the Merit Systems Protection Board and all parties knowingly and voluntarily consent to have that particular claim subjected to arbitration. Under the bill, consent would not be considered voluntary when a person is required to agree to arbitrate an action, complaint, or claim alleging a violation under USERRA as a condition of future or continued employment, advancement in employment, or receipt of any right or benefit of employment.

Section 2 would enhance enforcement of employment and reemployment rights of servicemembers with respect to employment with State or private employers. This section would provide that the Attorney General may commence an action for relief under USERRA, further clarifying Congressional intent to effectively protect servicemembers.

DAV has no specific resolution pertaining to the issues addressed by this bill; however, these changes would appear to improve servicemembers' employment and reemployment rights; thus, we would not oppose its favorable consideration.

S. 3055, DEPARTMENT OF VETERANS AFFAIRS DENTAL INSURANCE REAUTHORIZATION ACT OF 2016

If enacted, this measure would make permanent and existing pilot program of VA dental insurance for veterans, survivors and dependents of veterans as mandated under Section 510 of Public Law 111–163, by allowing eligible veterans plus family members receiving care under the Civilian Health and Medical Program of VA (CHAMPVA), to purchase dental insurance.

DAV recognizes that oral health is integral to the general health and wellbeing of a patient, and is part of comprehensive health care irrespective of service-connected disability. The law defines preventive health services as a broad collection of VA health services that improve, protect and sustain the general health and wellbeing of veterans enrolled in VA health care, to include "such other health care services as the Secretary may determine to be necessary to provide effective and economical preventive health care." It is for this reason that DAV supports the intent of this bill in accordance with DAV resolution 049, which supports providing VA outpatient dental care to all enrolled veterans. However, DAV opposes any copayments that this program would require. DAV resolution 114, adopted at our most recent convention, calls for legislation to eliminate or reduce VA and DOD health care out-of-pocket costs for service-connected disabled veterans.

Veterans, through service to their Nation, have made extraordinary sacrifices and contributions, and have earned the right to certain benefits in return. Premiums, health care cost sharing and deductibles are features of health care systems in which some costs are shared by the insured and the insurer in a contractual relationship between the patient and the insurer.

S. 3076, CHARLES DUNCAN BURIED WITH HONOR ACT OF 2016

Currently, VA reimburses the purchase of a casket or urn used only when the deceased veteran is interred in a VA National Cemetery. The veteran must have no identifiable next of kin and insufficient resources to pay for a casket or urn. This bill would extend the benefit to such veterans interred in state and tribal cemeteries.

DAV has no resolution pertaining to this issue; however, we would not oppose passage of this legislation because it appears to be beneficial to veterans.

S. 3081, WORKING TO INTEGRATE NETWORKS GUARANTEEING MEMBER ACCESS NOW ACT

This bill would provide certain permanent Congressional employees with read-only remote access to the electronic VBA claims records of veterans who are constituents of Members. These employees would be prohibited from modifying any data, processing, preparing or prosecuting of claims.

These designated Congressional staff members could utilize this system to provide their constituents with information relevant to the processing of their claims or appeals. Designated staff members would require certification by the VA in order to access this system in the same manner currently required for agents or attorneys. Any costs associated with gaining access to these VA systems would be incurred by the particular Member of Congress whose staff accessed these records.

DAV has no resolution relative to this issue, but would not oppose passage of the legislation.

DRAFT BILL, TO EXPAND ELIGIBILITY FOR READJUSTMENT COUNSELING TO CERTAIN MEMBERS OF THE SELECTED RESERVE OF THE ARMED FORCES (JOHN B.)

This bill, if enacted, would authorize VA Readjustment Counseling Centers to provide counseling in Vet Centers to members of the Selected Reserve, for psychological trauma or behavioral conditions, and would protect the privacy of these individuals in seeking out such counseling by not requiring them to obtain referrals, presumably from their commands or military medical authorities, before seeking counseling.

VA Resolution No. 103 urges Congress, the Administration and VA to enable Vet Centers to continue expanding and extending their rehabilitative and readjustment services, including in more rural communities, to veterans of past, present and future military service, and to their family members when necessary to aid in the recovery of veterans suffering the latent effects of combat exposure. Therefore, DAV strongly supports this proposal.

DRAFT BILL, TO AUTHORIZE PAYMENT BY THE DEPARTMENT OF VETERANS AFFAIRS FOR THE COSTS ASSOCIATED WITH SERVICE BY MEDICAL RESIDENTS AND INTERNS AT FACILITIES OPERATED BY INDIAN TRIBES AND TRIBAL ORGANIZATIONS, TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO CARRY OUT A PILOT PROGRAM TO EXPAND MEDICAL RESIDENCIES AND INTERNSHIPS AT SUCH FACILITIES

This bill would expand into health care facilities of Indian tribal organizations VA's current responsibilities and costs incurred in its graduate medical education programs. The bill would require VA to establish a five-year program of residency training in Alaska and two as-yet unidentified locations, and to reimburse tribal facilities selected for some of their costs in hosting VA medical residencies as specified in the bill. After three years of operation, the bill would require VA to report to Congress on the feasibility and advisability of expanding the pilot program to additional tribal health care sites, and on making the program or any aspect of it permanent.

VA has executed an extensive memorandum of agreement with the Indian Health Service to ensure that veterans of Indian ancestry receive adequate health care and other services. It is unclear from the language of this bill whether this new academic program would impact this agreement, and to what extent. Also, an authorization of $20 million per year over a five-year period for a three-site pilot program seems excessive; we recommend the amount be reconsidered.

While DAV has no resolution supporting this concept of VA medical residencies in Indian tribal facilities, we would not offer opposition to this bill; nevertheless, we recommend the sponsor consult with the VA Office of Rural Health, as well as the Office of Academic Affiliations, on the implications of the bill prior to its further advancement through the legislative process.

DISCUSSION DRAFT TO AUTHORIZE THE AMERICAN BATTLE MONUMENTS COMMISSION TO ACQUIRE, OPERATE, AND MAINTAIN THE LAFAYETTE ESCADRILLE MEMORIAL IN MARNES-LA-COQUETTE, FRANCE

This bill would authorize the American Battle Monuments Commission to take ownership and operational control of an important World War I memorial in France. DAV has received no resolution dealing with this particular topic and takes no position on this bill.

Mr. Chairman, this concludes DAV's testimony. We thank the Committee for inviting DAV to submit this testimony for the record. DAV is prepared to respond to any questions by Committee Members on the positions we have taken with respect to the bills under consideration.

PREPARED STATEMENT OF ALLEN DOEDERLEIN, PRESIDENT, DEPRESSION AND BIPOLAR SUPPORT ALLIANCE

Depression and Bipolar Support Alliance

June 28, 2016

The Honorable Johnny Isakson
Chair
Senate Veterans Affairs Committee
United States Senate
412 Russell Senate Building
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
Senate Veterans Affairs Committee
United States Senate
825A Hart Senate Building
Washington, DC 20510

Dear Chairman Isakson and Ranking Member Blumenthal,

On behalf of the Depression and Bipolar Support Alliance (DBSA), it is with great honor that I submit comment for the United States Senate Committee on Veterans' Affairs Hearing: Pending Legislation, held on June 29, 2016. Two pieces of legislation are of particular importance to improving the lives and mental health of our nation's Veterans: S. 2210 (Blumenthal) Veteran Partners' Efforts to Enhance Re-integration (PEER) Act and S. 2279 (Merkley/Brown/Murray/Rounds/Tester/Tillis) Veterans Health Care Staffing Improvement Act.

Studies have shown that 18.5% of all OEF/OIF veterans have post-traumatic stress disorder, Major Depression, or both PTSD and Major Depression.[1] Additionally, some studies indicate that up to 60% of mental health conditions are treated in the primary care setting.[2] These facts make it all the more important that Veterans' Affairs (VA) hospitals and facilities are staffed appropriately to support Veterans in receiving behavioral health care.

S. 2210 addresses a critically important gap within the U.S. Department of Veterans Affairs (VA) that inhibits access to behavioral health services by locating peer specialists in the primary care setting. Peer specialists, individuals in recovery from mental health and/or substance use disorders who have been trained and certified to work as an integral part of behavioral health care treatment teams, help their fellow veterans gain hope and move forward in their own recovery by providing peer support services. They act as trusted and motivating role models, assisting veterans in navigating often confusing health care systems, getting the most out of treatment, developing recovery plans, building skills in daily living, identifying community resources and obtaining needed services.

The VA has successfully been using peer specialists in the mental health service areas for more than 10 years. Yet, a majority of veterans in need of behavioral health care enter the VA system through a primary care center. To help create the necessary connection from primary care to behavioral health services, the PEER Act will utilize behavioral health peer support specialists to assist veterans in various primary care settings.

Specifically, the bill will require the VA to establish a pilot program to assess the feasibility and advisability of establishing peer support specialists in Patient Aligned Care Teams within VA medical centers to promote the use and integration of mental health services into the primary care setting. DBSA strongly supports the requirement that VA medical centers give special consideration to the needs of female veterans when designing the pilot programs and ensure that female peer support specialists are available in each of the pilot locations. We also welcome the collection and reporting of data that will be provided to Congress every six months detailing results from the pilot. The VA is the largest employer of peer specialists in the nation. As such, this data will help improve the role of the peer specialists within the VA and throughout America's entire health care system.

55 E. Jackson Blvd., Suite 490 • Chicago, IL 60604 USA
(312) 642-0049 • Toll-free (800) 826-3632 • Fax (847) 642-7243 • DBSAlliance.org

Depression and Bipolar
Support Alliance

S. 2279 the Veterans Health Care Staffing Improvement Act has the potential to support the initiative outlined in S 2210 with inclusion of trained and certified peer specialists as designated health care professionals. This bill allows the Secretary of Veterans Affairs at his/her discretion to identify health care professionals to be included in a program to increase efficiency in the recruitment and hiring by the VA of service personnel undergoing separation from the Armed Forces. This bill, which creates uniform credentialing standards for health care professionals, would make it easier for peer specialists to transition to the VA without requiring them to be retrained and certified.

As the leading peer-led organization supporting individuals with mood disorders and their families, DBSA understands the importance of peer support for individuals living with behavioral health conditions. We feel strongly that expanded use of peer specialists within the VA will increase veteran engagement in their care, and lead to better outcomes and sustained wellness.

Sincerely,

Allen Doederlein
President
Depression and Bipolar Support Alliance

[1] The National Council For Behavioral Health, Veterans Behavioral Health Needs Report, 2013
[2] Rick Hafer, Ph.D. clinical professor of psychiatry and vice-chairman of clinical services in the department of psychiatry at the University of Wisconsin, School of Medicine and Public Health

55 E. Jackson Blvd., Suite 490 • Chicago, IL 60604 USA
(312) 642-0049 • Toll-free (800) 826-3632 • Fax (312) 642-7243 • DBSAlliance.org

PREPARED STATEMENT OF THE CIVIL RIGHTS DIVISION AND THE SERVICEMEMBERS AND VETERANS AFFAIRS INITIATIVE, U.S. DEPARTMENT OF JUSTICE

Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee, thank you for the opportunity to present the views of the Department of Justice (the Department) on legislation currently pending before the Committee. The Department welcomes the Committee's focus on protections for servicemembers and veterans, as we share the priority of protecting the civil rights of our men and women in uniform. The Department especially thanks Senator Blumenthal for his commitment to expanding protections and preventing employment discrimination of our servicemembers through his introduction of legislation amending the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Our servicemembers and veterans have made countless sacrifices around the world to ensure our freedom here at home. In return, the Department has the responsibility to protect them from fraud, job discrimination, financial scams, unsafe equipment, and unlawful voting restrictions.

That's why last year the former Attorney General launched the Servicemembers and Veterans Initiative (the Initiative). The Initiative is building a comprehensive legal and support network for servicemembers and veterans so they know their rights and know what to do if they suspect their rights have been violated. The Initiative's goal is to coordinate and expand the Department's existing efforts to protect servicemembers and veterans through outreach, enforcement assistance, and training. In the past year, the Initiative has held outreach events at eight major military installations nationwide and the first convening of the Judge Advocate Generals for all military branches. The Initiative prepared a legal toolkit, provided legal training to Assistant United States Attorneys, and launched a revamped website designed to educate servicemembers, veterans, military family members, and legal practitioners on the military statutes enforced by the Department, as well as the work of the Department's litigating components.

The Department protects servicemembers' rights, among other ways, by vigorously enforcing USERRA, which prohibits discrimination against persons based upon their military service. USERRA entitles servicemembers to return to their civilian employment upon completion of their military service with the seniority, status, and rate of pay that they would have obtained had they remained continuously employed by their civilian employer. Since 2004, we have filed 95 USERRA lawsuits and favorably resolved 151 USERRA complaints either through consent decrees obtained in those suits or through facilitated private settlements. The Department's USERRA program is critically important because the cases typically involve small dollar amounts of back pay, and without the Department's help, many servicemembers would not be able to find or afford private attorneys to take their cases.

The Civil Rights Division has had numerous recent USERRA victories, including on March 13, 2015, when the Department settled its lawsuit with the Missouri National Guard (MNG) alleging that the MNG had violated the USERRA rights of its dual service technicians by forcing them to resign their civilian employment prior to entering into active duty. The Department alleged that MNG's refusal to place dual service technicians on furlough or leave of absence from their civilian jobs, by forcing a separation, resulted in the loss of paid military leave. Under the terms of the settlement agreement, which was approved by the district court, MNG has agreed to rescind its current policy requiring separation in order to enter active duty and to compensate 138 total Missouri National Guardsmen and women over 2000 days of paid leave for past alleged USERRA violations.

On December 9, 2014, the United States secured an appellate ruling in favor of Plymouth Police Department Officer Robert DeLee in *DeLee v. City of Plymouth*, No. 14 – 1970, where the United States Court of Appeals for the Seventh Circuit held that the City of Plymouth, Indiana, violated USERRA when it reduced DeLee's longevity payment while he was serving on active duty military leave. Officer DeLee, who was represented by the Department, initially sued the City in 2012 when it reduced his longevity payment in 2011 because he served time on active military duty. Initially the U.S. District Court for the Northern District of Indiana ruled that the benefit reduction did not violate USERRA because the longevity bonus was not a seniority-based benefit. On an appeal brought by the Department, the Seventh Circuit overturned the district court decision, ruling that the City's ordinance pro-rating the bonus violates USERRA because it fails to place the "servicemember at the 'precise point he would have occupied had he kept his position continuously' while away from the job for his military service."

The Department also has actively participated as *amicus curiae* in appeals involving the important rights of servicemembers, including the Supreme Court case of *Staub v. Proctor Hospital*, the Second Circuit appeal in *Serrichio v. Wachovia Securities*, and the First Circuit appeal in *Rivera-Melendez v. Pfizer Pharmaceuticals, LLC*. The Department also intervened and participated as *amicus curiae* on appeal to defend USERRA's constitutionality and applicability in *Clark v. Virginia Dept. of State Police*, No. 151857 (Vir. S. Ct. 2016), *Weaver v. Madison City Bd. of Educ.*, No. 13-14624 (11th Cir.), filed in 2014, and *Ramirez v. State of New Mexico Youth and Family Services*, No. S-1-SC-34613 (N.M. S. Ct.), filed in 2014. The United States also filed a statement of interest in 2014 in *Joseph v. Virgin Islands*, CV No. ST-11-CV-419, in order to defend Congress's authority to subject territories, like the United States Virgin Islands, to private suits in territorial courts under USERRA.

As part of our effort to grow and strengthen the USERRA enforcement program, the Civil Rights Division has also ramped up partnerships with U.S. Attorneys' Offices (USAOs) as a force multiplier for our efforts, and we have seen tangible results: since mid-2010, at least 46 USAOs have participated in the Department's USERRA/USAO program resulting in 30 of the 62 USERRA lawsuits this Administration has filed.

The Department believes that the amendments to USERRA this Committee is considering would provide the Department with critical enhanced enforcement capabilities and buttress current servicemember protections. Indeed, the dual goals of enhanced enforcement and stronger protections led the Administration in 2015, to formally transmit to Congress a package

of proposals to amend the Servicemembers Civil Relief Act (SCRA) and USERRA, as well as the Military Lending Act (MLA) and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which are attached. In addition to our legislative proposals, the Department stands ready to protect the rights of those who make such tremendous sacrifices for our nation and plans to expand our enforcement of USERRA, UOCAVA, and SCRA. The FY 2017 President's Budget request provides an increase of $587,000 and five positions to support the Department's capacity to effectively address this increased workload. The Department urges the Senate to take action in this Congress on these critical proposals.

In its previous and current servicemembers legislative package, the Department has proposed legislation that would significantly improve USERRA enforcement tools. This legislation is currently included in the proposed bill before the Committee. These proposals to amend USERRA include:

- **Allowing the United States to serve as a plaintiff in all suits filed by the Attorney General.** Presently, the U.S. can serve as a plaintiff only in suits filed against State employers. The proposed legislation also would preserve the right of the aggrieved persons to intervene in such suits, or to bring their own suits where the Attorney General has declined to file suit.

- **Providing the Department with pattern-or-practice authority to enforce USERRA.** The proposed legislation also would strengthen enforcement by granting independent authority to the Attorney General to investigate and file suit to challenge a pattern or practice in violation of USERRA. The pattern or practice language is modeled after Title VII of the Civil Rights Act of 1964 and would provide immediate support to our working servicemembers. On February 1, 2016, in a case brought by the Department, a court found that the Pension Plan of the Ironworkers of New England Pension Fund violated USERRA in *Thomas Shea v. Ironworkers of New England, et al., No.* 13-12725-NMG (D.Mass.). However, the Department can currently only represent the individual in this case against the Pension Fund. With self-starter authority, the Department could get relief for servicemembers around the country who work with similarly illegal pension plans.

- **Explicitly abrogating state sovereign immunity.** The proposed legislation would allow servicemembers to bring an action against a state employer in state court or federal district court. The United States has filed several *amicus* briefs in state court on this issue. One example of this work is the on-going litigation involving Jonathan R. Clark, a sergeant in the Virginia State Police (VSP) and a Senior Captain in the U.S. Army Reserve in *Clark v. Virginia Dept. of State Police,* No. 151857 (Vir. S. Ct. 2016). From 2008 through 2011, Capt. Clark served in Operation Enduring Freedom. In 2015, Capt. Clark filed a complaint alleging that the VSP had violated USERRA by engaging in a pattern or practice of harassment and discrimination against him related to his military service. Clark alleged that because of his service, VSP members made derogatory statements about his military commitments, filed baseless charges of misconduct against him, and denied him several opportunities for promotion. In response, VSP filed a special plea of sovereign immunity, arguing that because Clark was a state employee

trying to sue the Commonwealth of Virginia in a state court, his USERRA claims were barred by the 11th Amendment. The state court sustained that plea and entered a final order dismissing the action without written opinion on September 9, 2015. Clark then appealed to the Supreme Court of Virginia.

To help protect Capt. Clark's interests, the Department filed an amicus brief attached hereto, which argues that USERRA's jurisdictional provision subjects all states to private suit in their own courts, regardless of whether a state has consented to suit. The brief also argues that Congress has this authority under the War Powers clauses of the Constitution, which give Congress the power to declare war, raise and support an army and navy, and regulate the land and naval forces. Consequently, the state court made a mistake when it sustained VSP's amended special plea of sovereign immunity and dismissed Clark's complaint.

The United States has filed similar briefs in the Fifth and Eleventh Circuit Courts of Appeal and the New Mexico Supreme Court arguing that Congress has authority under its War Powers to authorize private individuals to bring USERRA claims against state employers.

- **Revising pension contribution calculations.** The proposed legislation would revise the pension contribution calculations for servicemembers in service over one year, and whose pension contributions during service are not reasonably certain, so that the servicemember's pension contribution is comparable to the average contribution of similarly-situated employees.

- **Adding compensatory and punitive damages.** The proposed changes to USERRA's damages provisions were reached as a result of negotiation and consideration. By replacing liquidated damages with compensatory and punitive damages, we were seeking to better compensate servicemembers for the losses they suffer from USERRA violations. Frequently servicemembers face non-wage damages from their USERRA violations, including emotional distress, pension and retirement benefit losses ancillary to the USERRA violation (i.e., servicemembers cashing out their benefits in order to replace lost income), and out of pocket medical bills caused by lost insurance. Currently these types of damages are not covered by the USERRA statute. In addition, the amendment allows for punitive damages when the employer acts with reckless indifference to the rights under the statute. This standard is well litigated under Title VII and will provide welcome relief to employees who work for employers who violate the statute in the same manner as liquidated damages did.

  With regard to the limits on the damages, this area is also well litigated. Even without statutory limits on damages, courts have imposed equitable limits on compensatory and liquidated damages, and thus the statutory limits provide a guide for courts.

Other helpful provisions that are included in this proposed USERRA legislation clarify the enforceability of arbitration agreements and the employers' burden with regard to latent service related disabilities. This USERRA amendment also provides for civil investigative

demand authority in the Department's USERRA investigations. The Department is especially supportive of the clarifying language regarding forced arbitration. USERRA gives servicemembers the right to enforce their rights under USERRA in federal court and to request legal representation from the Department of Justice. If servicemembers are forced into arbitration through one-sided employment agreements, these rights would be jeopardized.

The Department appreciates the opportunity to submit its views on servicemembers civil rights legislation currently pending before the Committee. We stand ready to provide any technical assistance on the bill discussed above and will strive to work with the Committee in advancing important legislative efforts to strengthen the cornerstone civil rights laws protecting servicemembers' rights.

[The *Clark* 50-page brief can be seen here:]
https://www.justice.gov/archives/opa/blog-entry/file/861466/download

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 10, 2015

The Honorable Joseph R. Biden, Jr.
President
United States Senate
Washington, DC 20510

Dear Mr. President:

Members of the armed forces make tremendous sacrifices in order to protect our Nation, and safeguarding the civil rights of these servicemembers and their families is therefore one of the highest priorities of the Department of Justice. We are pleased to transmit to Congress the enclosed legislative proposals, which would significantly strengthen the protections afforded to servicemembers and their families under existing civil rights laws.

This legislative package contains four titles. Title I would strengthen enforcement mechanisms under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Title II would bolster protection of housing and lending rights under the Servicemembers Civil Relief Act (SCRA). Title III would enhance enforcement authority and broaden coverage under the Military Lending Act (MLA). Title IV proposes changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to better ensure that servicemembers and overseas citizens have the opportunity to vote and have their votes counted. These proposals are summarized below.

Title I. Title I would strengthen the protection of employment rights for military servicemembers. USERRA entitles servicemembers to return to their civilian employment upon completion of their military service with the seniority, status, and rate of pay that they would have obtained had they remained continuously employed by their civilian employer. The proposed changes clarify the statute's venue section in order to simplify the process of filing a claim by a servicemember and update the damages provisions to ensure that USERRA claimants are made whole through their USERRA claims. Because servicemembers are sometimes unable to bring claims themselves, these proposals would authorize the Department to investigate and bring suit to stop a pattern or practice of USERRA violations, in addition to its authority to challenge individual instances of USERRA violations under existing law. We also propose to improve USERRA enforcement by allowing the United States to serve as a named plaintiff in all suits filed by the Department, rather than in only those suits filed against State employers. Finally, to enhance the Department's enforcement of servicemembers' employment rights, these

proposals would provide for civil investigative demand authority to obtain documents necessary for the Department to conduct investigations under USERRA.

Title II. The SCRA suspends certain civil legal obligations of active duty servicemembers so that they can focus full attention on their military responsibilities without adverse consequences for themselves and their families. The relief authorized under the SCRA includes civil protections and the temporary suspension of judicial and administrative proceedings in areas such as mortgage interest rate payments and foreclosure, rental agreements, credit card and auto loans, and other civil proceedings. As explained in more detail in the attached section-by-section analysis, we propose to strengthen enforcement of the SCRA by, among other things, doubling the civil penalties currently available and authorizing the Attorney General to issue civil investigative demands to obtain documents in SCRA investigations.

Title III. The MLA caps interest rates on certain types of loans to active duty servicemembers at 36%. The statute originally did not designate any agency to enforce it. In 2012, enforcement authority was given to the Federal Trade Commission and the bank regulatory agencies, including the Consumer Financial Protection Bureau, over the lenders that each agency supervises. This proposal would give the Attorney General authority to bring pattern or practice enforcement actions under the MLA. Such authority would be beneficial for the following reasons: (1) as noted above, the Department currently enforces the SCRA, and there is overlap in the population protected and in the potential defendants; (2) providing the Department enforcement authority will ensure that one agency can bring enforcement actions against all actors, as the current designated agencies have limited enforcement jurisdiction; and (3) the Department should be in a position to enforce a statute aimed at preventing predatory lending, which ultimately hurts troop readiness and undermines national security.

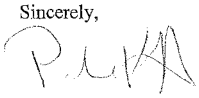
Title IV. These proposals would strengthen enforcement of the voting rights of military personnel and American citizens living overseas. The Military and Overseas Voter Empowerment Act of 2009 amended UOCAVA to establish new voter registration and absentee ballot procedures that States must follow in all federal elections. As a result of the Department's enforcement actions during recent election cycles, thousands of military and overseas voters were afforded an opportunity to cast ballots that were counted despite the failure of some election officials to send out ballots on time. The Department has assessed the causes of these delays and developed proposals designed to remedy these problems.

In particular, we recommend the addition of pre-election reporting requirements on the status of ballot transmission to provide the Department with comprehensive and timely information regarding whether enforcement actions may be needed. We also propose to eliminate the hardship waiver provision (authorizing waiver of the 45-day ballot transmission deadline upon a showing of undue hardship) in favor of a uniform, nationwide standard that equally protects all military and overseas voters. To further strengthen the Act's protections and provide additional incentives for States to comply, we also propose an express mail requirement, and the establishment of civil penalties and a private right of action for an individual voter aggrieved by a violation of the Act.

The Department of Justice is committed to vigorous enforcement of the housing, lending, employment, and voting rights established by federal civil rights laws. We believe that the enclosed proposals would strengthen our ability to enforce these laws on behalf of servicemembers.

Thank you for the opportunity to present these proposals. The Office of Management and Budget has advised us that there is no objection to submission of this proposal from the perspective of the Administration's program.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

Enclosure

IDENTICAL LETTER SENT TO THE HONORABLE PAUL RYAN, SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES

Department of Justice
Servicemembers Legislative Package
114th Congress

I. Amendments to the Uniformed Services Employment and Reemployment Rights Act (USERRA).....1

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Amendments to the Uniformed Services Employment and Reemployment Rights Act (USERRA)

1 **SEC. ___. ENFORCEMENT OF RIGHTS UNDER CHAPTER 43 OF TITLE 38,**
2 **UNITED STATES CODE, WITH RESPECT TO A STATE OR PRIVATE**
3 **EMPLOYER.**
4 (a) ACTION FOR RELIEF.—
5 (1) INITIATION OF ACTIONS.—Paragraph (1) of subsection (a) of section 4323 of
6 title 38, United States Code, is amended by striking the third sentence and inserting the
7 following new sentences: "If the Attorney General is reasonably satisfied that the person
8 on whose behalf the complaint is referred is entitled to the rights or benefits sought, the
9 Attorney General may commence an action for relief under this chapter. The person on
10 whose behalf the complaint is referred may, upon timely application, intervene in such
11 action and may obtain such appropriate relief as provided in subsections (d) and (e).".
12 (2) ATTORNEY GENERAL NOTICE TO SERVICEMEMBER OF DECISION.—Paragraph
13 (2) of such subsection is amended to read as follows:
14 "(2)(A) Not later than 60 days after the date the Attorney General receives a referral
15 under paragraph (1), the Attorney General shall transmit, in writing, to the person on whose
16 behalf the complaint is submitted—
17 "(i) if the Attorney General has made a decision about whether the United States
18 will commence an action for relief under paragraph (1) relating to the complaint of the
19 person, notice of the decision; and
20 "(ii) if the Attorney General has not made such a decision, notice of when the
21 Attorney General expects to make such a decision.

1 "(B) If the Attorney General notifies a person of when the Attorney General expects to
2 make a decision under subparagraph (A)(ii), the Attorney General shall, not later than 30 days
3 after the date on which the Attorney General makes such decision, notify, in writing, the person
4 of such decision.".
5 (3) PATTERN OR PRACTICE CASES.—Such subsection is further amended—
6 (A) by redesignating paragraph (3) as paragraph (4); and
7 (B) by inserting after paragraph (2) (as amended by paragraph (2) of this
8 subsection) the following new paragraph (3):
9 "(3) Whenever the Attorney General has reasonable cause to believe that a State (as an
10 employer) or a private employer is engaged in a pattern or practice of resistance to the full
11 enjoyment of any of the rights or benefits secured by this chapter, the Attorney General may
12 commence a action under this chapter.".
13 (4) ACTIONS BY PRIVATE PERSONS.—Subparagraph (C) of paragraph (4) of such
14 subsection, as redesignated by paragraph (3)(A), is amended by striking "refused" and all
15 that follows and inserting "notified by the Department of Justice that the Attorney
16 General does not intend to bring a civil action.".
17 (b) SOVEREIGN IMMUNITY. —Paragraph (2) of subsection (b) of section 4323 of such title
18 is amended to read as follows:
19 "(2)(A) In the case of an action against a State (as an employer), any instrumentality of a
20 State, or any officer or employee of a State or instrumentality of a State acting in that officer or
21 employee's official capacity, by any person, the action may be brought in the appropriate district
22 court of the United States or in a State court of competent jurisdiction, and the State,
23 instrumentality of the State, or officer or employee of the State or instrumentality acting in that

officer or employee's official capacity shall not be immune under the Eleventh Amendment of the Constitution, or under any other doctrine of sovereign immunity, from such action.

"(B)(i) No State, instrumentality of such State, or officer or employee of such State or instrumentality of such State, acting in that officer or employee's official capacity, that receives or uses Federal financial assistance for a program or activity shall be immune, under the Eleventh Amendment of the Constitution or under any other doctrine of sovereign immunity, from suit in Federal or State court by any person for any violation under this chapter related to such program or activity.

"(ii) In an action against a State brought pursuant to subsection (a), a court may award the remedies (including remedies both at law and in equity) that are available under subsections (d) and (e).".

(c) VENUE FOR CASES AGAINST PRIVATE EMPLOYERS.—Subsection (c)(2) of such section is amended by striking "United States district court for any district in which the private employer of the person maintains a place of business." and inserting "United States district court for—

"(A) any district in which the employer maintains a place of business;

"(B) any district in which a substantial part of the events or omissions giving rise to the claim occurred; or

"(C) if there is no district in which an action may otherwise be brought as provided in subparagraph(A) or (B), any district in which the employer is subject to the court's personal jurisdiction with respect to such action.".

(d) COMPENSATORY AND PUNITIVE DAMAGES.—Subsection (d)(1) and d(2) of such section is amended by striking subparagraph (d)(1)(C) and d(2) and inserting the following new subparagraphs:

1 "(C) The court may require the employer to pay the person compensatory damages
2 suffered by reason of such employer's failure to comply with the provisions of this chapter.
3 "(D) The court may require the employer (other than a government, government agency,
4 or political subdivision) to pay the person punitive damages if the court determines that the
5 employer failed to comply with the provisions of this chapter with reckless indifference to the
6 federally protected rights of the person.
7 "(E) The sum of the amount of compensatory damages awarded under subparagraph C of
8 this section and the amount of punitive damages awarded under subparagraph D of this section,
9 may not exceed, for each person the following:
10 "(i) In the case of an employer who has more than 14 and fewer than 101
11 employees in each of 20 or more calendar weeks in the current or preceding calendar
12 year, $50,000.
13 "(ii) In the case of an employer who has more than 100 and fewer than 201
14 employees in each of 20 or more calendar weeks in the current or preceding calendar
15 year, $100,000.
16 "(iii) In the case of an employer who has more than 200 and fewer than 501
17 employees in each of 20 or more calendar weeks in the current or preceding calendar
18 year, $200,000.
19 "(iv) In the case of an employer who has more than 500 employees in each of 20
20 or more calendar weeks in the current or preceding calendar year, $300,000.".
21 (d)(1) CONFORMING AMENDMENTS.—Subsection (2) of such section is amended to read
22 as follows:

"(2)(A) Any compensation awarded under subparagraph (B) or (C) or (D) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.

"(B) In the case of an action commenced in the name of the United States for which the relief includes compensation awarded under subparagraph (B) or (C) or (D) of paragraph (1), such compensation shall be held in a special deposit account and shall be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the person because of inability to do so within a period of 3 years, the compensation shall be covered into the Treasury of the United States as miscellaneous receipts."

(e) STANDING. —Subsection (f) of such section is amended—

(1) by inserting "by the United States or" after "may be initiated only"; and

(2) by striking "or by the United States under subsection (a)(1)".

(f) ATTORNEY FEES AND OTHER LITIGATION EXPENSES.—Subsection (h)(2) of such section is amended striking "subsection (a)(2)" and inserting "subsection (a)(1) or subsection (a)(4)".

(g) PENSION CONTRIBUTION CALCULATIONS.—Subsection (b) of section 4318 of such title is amended—

(1) in paragraph (3)(B), by striking "on the basis of" and all the follows and inserting "on the basis specified in paragraph (4)."; and

(2) by adding at the end the following new paragraph:

"(4) The basis for a computation under paragraph (3) to which subparagraph (B) of that paragraph applies is as follows:

"(A) If the period of service described in subsection (a)(2)(B) is one year or less, the computation shall be made on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period or, if shorter, the period of employment immediately preceding such period.

"(B) If the period of such service is more than one year, the computation shall be made on the basis of the average rate of compensation during such period of service of employees of that employer who are similarly situated to the servicemember in terms of having similar seniority, status, and pay.".

(h) DISABILITY DISCOVERED AFTER EMPLOYEE RESUMES EMPLOYMENT.—Subsection (a)(3) of section 4313 of such title is amended by inserting "including a disability that is brought to the employer's attention within five years after the person resumes employment," after "during, such service,".

(i) BURDEN OF IDENTIFYING PROPER REEMPLOYMENT POSITIONS.—Section 4313 of such title is amended by adding at the end the following new subsection:

"(c) For purposes of this section, the employer shall have the burden of identifying the appropriate reemployment positions.".

(j) CIVIL INVESTIGATIVE DEMANDS.—Section 4323 of such is amended by adding at the end the following new subsection:

"(j) ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY GENERAL.—(1) Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this chapter, the Attorney General may, before commencing a civil action under subsection (a),

1 issue in writing and cause to be served upon such person, a civil investigative demand
2 requiring—
3 "(A) the production of such documentary material for inspection and copying;
4 "(B) that the custodian of such documentary material answer in writing written
5 questions with respect to such documentary material; or
6 "(C) the production of any combination of such documentary material or answers.
7 "(2) The provisions governing the authority to issue, use, and enforce civil investigative
8 demands under section 3733 of title 31 (known as the 'False Claims Act') shall govern the
9 authority to issue, use, and enforce civil investigative demands under paragraph (1), except that
10 for purposes of that paragraph—
11 "(A) a reference in that section to false claims law investigators or investigations
12 shall be applied as referring to investigators or investigations under this chapter;
13 "(B) a reference to interrogatories shall be applied as referring to written
14 questions, and answers to such need not be under oath;
15 "(C) the statutory definitions for purposes of that section relating to 'false claims
16 law' shall not apply; and
17 "(D) provisions of that section relating to qui tam relators shall not apply.".

Section-by-Section Analysis

This proposal would amend chapter 43 of title 38, United States Code, to improve the enforcement of reemployment rights under that chapter with respect to a State or private employer. That chapter is popularly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Subsection (a) strengthens enforcement of USERRA rights by allowing the United States to serve as a plaintiff in all suits filed by the Attorney General, as opposed to only suits filed against State employers. The amendment preserves the right of the aggrieved persons to intervene in such suits, or to bring their own suits where the Attorney General has declined to file suit. This section also strengthens enforcement by granting independent authority to the Attorney General to investigate and file suit to challenge a pattern or practice in violation of USERRA. The pattern or practice language is modeled after Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6(a)).

Subsection (b) explicitly abrogates sovereign immunity so that servicemembers can bring an action against a State employer in State court or Federal district court.

Subsection (c) amends USERRA's venue provision to allow servicemembers to file actions against private employers in district courts with jurisdictional requirements that are similar to the general venue statute, 28 U.S.C. 1391(b).

Subsection (d) adds compensatory and punitive damages provisions that are similar to the damages provisions in title VII of the Civil Rights Act of 1964.

Subsection (e) authorizes either the United States or the aggrieved individual to serve as a plaintiff in all USERRA suits.

Subsection (f) makes conforming amendments to the amendments made by subsection (a).

Subsection (g) would revise the pension contribution calculations for servicemembers in service over one year so that the servicemember's pension contribution is comparable to a similarly situated employee.

Subsection (h) modifies USERRA to include disabilities discovered within five years after a servicemember resumes work for purposes of reemployment determinations.

Subsection (i) clarifies that the employer has the burden of identifying proper reemployment positions.

Subsection (j) grants authority to the Attorney General to issue civil investigative demands in its USERRA investigations. The authority is similar to that provided under the False Claims Act (31 U.S.C. 3733), except that it does not include the authority to compel oral testimony or sworn answers to interrogatories.

Amendments to the Servicemembers Civil Relief Act (SCRA)

1 **SEC. 100. STATUTORY REFERENCES.**

2 Any reference in this title to the "SCRA" shall be treated as a reference to the
3 Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.).

4 **SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.**

5 Paragraph (1) of section 201(b) of the SCRA (50 U.S.C. App. 521(b)) is amended to read
6 as follows:

7 "(1) PLAINTIFF TO FILE AFFIDAVIT.—

8 "(A) In any action or proceeding covered by this section, the plaintiff,
9 before seeking a default judgment, shall file with the court an affidavit—

10 "(i) stating whether or not the defendant is in military service and
11 showing necessary facts to support the affidavit; or

12 "(ii) if the plaintiff is unable to determine whether or not the
13 defendant is in military service, stating that the plaintiff is unable to
14 determine whether or not the defendant is in military service.

15 "(B) Before filing an affidavit under subparagraph (A), the plaintiff shall
16 conduct a diligent and reasonable investigation to determine whether or not the
17 defendant is in military service, including a search of available Department of
18 Defense records and any other information available to the plaintiff. The affidavit
19 shall set forth all steps taken to determine the defendant's military status and shall
20 have attached the records on which the plaintiff relied in preparing the affidavit.
21 Attached records shall include at least a copy of the certificate produced by the
22 Department of Defense Manpower Data Center.".

1 **SEC. 101a. OBLIGATIONS OF ATTORNEY APPOINTED TO REPRESENT**
2 **DEFENDANT IN MILITARY SERVICE.**
3 Paragraph (2) of Section 201(b) of the SCRA (50 U.S.C. App. 521(b)) is amended to read
4 as follows:
5 "(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY
6 SERVICE.—
7 "(A) If in an action covered by this section it appears that the defendant is
8 in military service, the court shall not enter a judgment until after the court
9 appoints an attorney to represent the defendant.
10 "(B) The court appointed attorney shall act only in the best interests of the
11 defendant. The court appointed attorney, when appropriate to represent the best
12 interests of the defendant, shall request a stay of proceedings under this Act.
13 "(C) The court appointed attorney shall use due diligence to locate and
14 contact the defendant. The plaintiff must provide to the court appointed attorney
15 all contact information it has for the defendant. A court appointed attorney unable
16 to make contact with the defendant shall report to the court on all of the attorney's
17 efforts to make contact.
18 "(D) Upon making contact with the defendant, the court appointed
19 attorney shall advise the defendant of the nature of the lawsuit and the defendant's
20 rights provided by the Act, including rights to obtain a stay and to request the
21 court to adjust an obligation. Regardless of whether contact is made, the court
22 appointed attorney shall assert such rights on behalf of defendant, provided that

1 there is an adequate basis in law and fact, unless the defendant provides informed
2 consent to not assert such rights.
3 "(E) The court shall require the court appointed attorney to perform duties
4 faithfully and, upon failure to do so, shall discharge the attorney and appoint
5 another.
6 "(F) If an attorney appointed under this section to represent a defendant in
7 military service cannot locate the defendant, actions by the attorney in the case
8 shall not waive any defense of the servicemember or otherwise bind the
9 servicemember."
10 Paragraph (1) of Section 201(g) of the SCRA (50 U.S.C. App. 521(g)) is amended to read
11 as follows:
12 "(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS.—
13 "(1) Authority for court to vacate or set aside judgment
14 If a default judgment is entered in an action covered by this section against a
15 servicemember during the servicemember's period of military service (or within 60 days
16 after termination of or release from such military service), the court entering the
17 judgment shall, upon application by or on behalf of the servicemember, reopen the
18 judgment for the purpose of allowing the servicemember to defend the action if it appears
19 that—
20 "(A) (i) the servicemember was materially affected by reason of that military
21 service in making a defense to the action; and
22 (ii) the servicemember has a meritorious or legal defense to the action or
23 some part of it; or

"(B) an attorney appointed to represent the servicemember failed to adequately represent the best interests of the defendant.

SEC. 102. RESIDENCY OF DEPENDENTS OF MILITARY PERSONNEL.

(a) EXTENSION OF SPOUSE COVERAGE TO ALL DEPENDENTS.—Subsection (b) of section 705 of the SCRA (50 U.S.C. App. 595) is amended—

(1) by striking "SPOUSES" in the subsection heading and inserting "DEPENDENTS"; and

(2) by striking "spouse" and inserting "dependent".

(b) TECHNICAL AMENDMENTS FOR STATUTORY CONSISTENCY.—Such section is further amended by striking "or naval" in subsections (a) and (b).

(c) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

"SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL AND DEPENDENTS OF MILITARY PERSONNEL."

(2) TABLE OF CONTENTS.—The item relating to that section in the table of contents in section 1(b) of the SCRA is amended to read as follows:

"705. Guarantee of residency for military personnel and dependents of military personnel.".

SEC. 103. INCREASE IN CIVIL PENALTIES.

Subsection (b)(3) of section 801 of the SCRA (50 U.S.C. App. 597) is amended—

(1) in subparagraph (A), by striking "$55,000" and inserting "$110,000"; and

(2) in subparagraph (B), by striking "$110,000" and inserting "$220,000".

1 **SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.**

2 Section 801 of the SCRA (50 U.S.C. App. 597) is amended by adding at the end the
3 following new subsections:

4 "(d) ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE DEMANDS.—Whenever the
5 Attorney General, or a designee, has reason to believe that any person may be in possession,
6 custody, or control of any documentary material relevant to an investigation under this Act, the
7 Attorney General, or a designee, may, before commencing a civil action under subsection (a),
8 issue in writing and cause to be served upon such person, a civil investigative demand
9 requiring—

10 "(1) the production of such documentary material for inspection and copying;

11 "(2) that the custodian of such documentary material answer in writing written
12 questions with respect to such documentary material; or

13 "(3) the production of any combination of such documentary material or answers.

14 "(e) RELATION TO FALSE CLAIMS ACT.—The statutory provisions governing the authority
15 to issue, use, and enforce civil investigative demands under section 3733 of title 31, United
16 States Code (popularly known as the 'False Claims Act'), shall govern the authority to issue, use,
17 and enforce civil investigative demands under this section, except that for purposes of this
18 section—

19 "(1) references in that section to false claims law investigators or investigations
20 shall be read as references to investigators or investigations;

21 "(2) references in that section to interrogatories shall be read as references to
22 written questions, and answers to such need not be under oath;

23 "(3) the statutory definitions relating to 'false claims law' shall not apply; and

1 "(4) provisions relating to qui tam relators shall not apply.

2 "(f) APPLICATION.—This section applies to any violation of this Act occurring on, before,

3 or after October 13, 2010.".

4 **SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.**

5 Section 802 of the SCRA (50 U.S.C. App. 597a) is amended by adding at the end the

6 following new subsection:

7 "(c) APPLICATION.—This section applies to any violation of this Act occurring on, before,

8 or after October 13, 2010.".

9 **SEC. 106. DEFINITION OF MILITARY ORDERS AND CONTINENTAL UNITED**

10 **STATES.**

11 (a) DEFINITIONS FOR ENTIRE ACT.—Section 101 of the SCRA (50 U.S.C. App. 511) is

12 amended by adding at the end the following new paragraphs:

13 "(10) MILITARY ORDERS.—The term 'military orders', with respect to a

14 servicemember, means official military orders, or any notification, certification, or

15 verification from the Secretary or the servicemember's commanding officer, with respect

16 to the servicemember's current or future military duty status.

17 "(11) CONUS.—The term 'continental United States' means the 48 contiguous

18 States and the District of Columbia.".

19 (b) CONFORMING AMENDMENTS.—Such Act is further amended—

20 (1) in section 305 (50 U.S.C. App. 535), by striking subsection (i); and

21 (2) in section 207 (50 U.S.C. App. 527(b)(2)) by striking "calling a

22 servicemember to military service".

23

1 **SEC. 107. ORAL NOTICE SUFFICIENT TO INVOKE INTEREST RATE CAP.**

2 Paragraphs (1) and (2) of section 207(b) of the SCRA (50 U.S.C. App. 527(b)) are
3 amended to read as follows:

4 "(1) NOTICE TO CREDITOR.—In order for an obligation or liability of a
5 servicemember to be subject to the interest rate limitation in subsection (a), the
6 servicemember shall provide to the creditor oral or written notice of military service and
7 any further extension of military service, not later than 180 days after the date of the
8 servicemember's termination or release from military service. The creditor shall retain a
9 record of the servicemember's oral or written notification.

10 "(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY.—Upon
11 receipt of oral or written notice of military service, the creditor shall conduct a search of
12 Department of Defense records available through the Department of Defense Manpower
13 Data Center, and if military service is confirmed by such search shall treat the debt in
14 accordance with subsection (a), effective as of the date on which the servicemember is
15 called to military service. If the search of Department of Defense records does not
16 confirm military service, the creditor shall notify the servicemember and may require the
17 servicemember to provide a copy of the servicemember's military orders prior to treating
18 the debt in accordance with subsection (a), effective as of the date on which the
19 servicemember is called to military service.".

20 **SEC. 108. NON-DISCRIMINATION PROVISION.**

21 (a) PROHIBITION ON DISCRIMINATION AGAINST SERVICEMEMBERS.—Section 108 of the
22 SCRA (50 U.S.C. App. 518) is amended—

1 (1) by striking ''Application by a servicemember for, or receipt by a
2 servicemember of, a stay, postponement, or suspension'' and inserting ''(a) APPLICATION
3 OR RECEIPT.—Application by a servicemember for rights or protections''; and
4 (2) by adding at the end the following new subsection:
5 ''(b) ELIGIBILITY.—
6 ''(1) IN GENERAL.—In addition to the rights and protections under subsection (a),
7 an individual who is eligible, or may become eligible by virtue of current membership in
8 the reserves or a commitment to perform future military service, for rights or protections
9 under any provision of this Act may not be denied services, including access to housing,
10 or refused credit or be subject to any other action described under paragraphs (1) through
11 (6) of subsection (a) by reason of such eligibility.
12 ''(2) CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit a
13 lender or service provider from considering all relevant factors, other than the potential
14 eligibility of an individual for rights or protections under a provision of this Act, in
15 making a determination as to whether it is appropriate to provide services or extend
16 credit.''.
17 (b) CLERICAL AMENDMENTS.—
18 (1) SECTION HEADING.—The heading of such section is amended to read as
19 follows:
20 "SEC. 108. PROHIBITION ON DISCRIMINATION AGAINST SERVICEMEMBERS."
21 (2) TABLE OF CONTENTS.—The item relating to that section in the table of contents
22 in section 1(b) of the SCRA is amended to read as follows:
23 "108. Prohibition on discrimination against servicemembers.".

1 **SEC. 109. EXTENSION OF PROTECTION AGAINST REPOSSESSION FOR**
2 **INSTALLMENT SALES CONTRACTS.**
3 Subsection (a)(1) of section 302 of the SCRA (50 U.S.C. App. 532) is amended by
4 striking "during that person's military service" and inserting "during and for one year after that
5 person's military service".
6 **SEC. 110. HARMONIZATION OF SECTIONS.**
7 Section 303 of the SCRA (50 U.S.C. App. 533) is amended—
8 (1) in subsection (b), by striking "filed" and inserting "pending"; and
9 (2) in subsection (c)(1), by striking "with a return made and approved by the
10 court".
11 **SEC. 111. EXPANSION OF PROTECTION FOR TERMINATION OF RESIDENTIAL**
12 **AND MOTOR VEHICLE LEASES.**
13 (a) TERMINATION OF LEASES.—Subsection (a) of section 305 of the SCRA (50 U.S.C.
14 App. 535) is amended—
15 (1) in paragraph (1)—
16 (A) in subparagraph (A), by striking ''or'' at the end;
17 (B) in subparagraph (B), by striking the period at the end and inserting ''';
18 or"; and
19 (C) by adding at the end the following new subparagraph:
20 ''(C) in the case of a lease described in subsection (b)(1) and subparagraph
21 (C) of such subsection, the date the lessee is assigned to or otherwise relocates to
22 quarters or a housing facility as described in such subparagraph.''; and

(2) in paragraph (2), by striking "a dependent of the lessee" and inserting "a co-lessee".

(b) COVERED LEASES.—Subsection (b)(1) of such section is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B)—

(A) by inserting "(as defined in the Joint Federal Travel Regulations, Chapter 5, paragraph U5000B)" after "permanent change of station"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(C) the lease is executed by or on behalf of a person who thereafter and during the term of the lease is assigned to or otherwise relocates to quarters of the United States or a housing facility under the jurisdiction of a uniformed service (as defined in section 101 of title 37, United States Code), including housing provided under the Military Housing Privatization Initiative.".

(c) MANNER OF TERMINATION.—Subsection (c)(1) of such section is amended—

(1) in subparagraph (A)—

(A) by inserting "in the case of a lease described in subsection (b)(1) and subparagraph (A) or (B) of such subsection," before "by delivery"; and

(B) by striking "and" at the end;

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

"(B) in the case of a lease described in subsection (b)(1) and subparagraph (C) of such subsection, by delivery by the lessee of written notice of such termination, and a

1 letter from the servicemember's commanding officer indicating that the servicemember
2 has been assigned to or is otherwise relocating to quarters of the United States or a
3 housing facility under the jurisdiction of a uniformed service (as defined in section 101 of
4 title 37, United States Code), to the lessor (or the lessor's grantee), or to the lessor's agent
5 (or the agent's grantee); and''.
6 (d) WAIVER IMPERMISSIBLE—Such section is amended by inserting the following new
7 subsection—
8 "(i) Waiver not permitted. The provisions of this section may not be waived or
9 modified by the agreement of the parties under any circumstances."
10 **SEC. 112. MILITARY FAMILY PROFESSIONAL LICENSE PORTABILITY.**
11 (a) PORTABILITY.—The SCRA (50 U.S.C. App. 501 et seq.) is amended by inserting after
12 section 595 the following new section:
13 "SEC. 595A. PORTABILITY OF PROFESSIONAL LICENSES AND CERTIFICATIONS
14 FOR SERVICEMEMBERS AND THEIR SPOUSES."
15 "Any professional license or commercial license provided to a servicemember or the
16 spouse of a servicemember shall be fully recognized and honored in any jurisdiction of the
17 United States in which that servicemember or spouse of a servicemember resides due to the
18 military orders of the servicemember for the duration of the orders, if the servicemember or the
19 servicemember's spouse—
20 "(1) provides a copy of the military orders calling the servicemember to duty in
21 that jurisdiction to the licensing entity in that jurisdiction;
22 "(2) remains in good standing with the licensing entity of the original jurisdiction;
23 and

1 "(3) agrees to be subject to the authority of the licensing entity in the new
2 jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any
3 continuing education requirements.".
4 (b) TABLE OF CONTENTS.—The table of contents in section 1(b) of the SCRA is amended
5 by inserting after the item relating to section 595 the following new item:
6 "595A. Portability of professional licenses and certifications for servicemembers and their
7 spouses.".
8 **SEC. 113. FEDERAL CLAIMS UNDER SCRA EXEMPT FROM FEDERAL**
9 **ARBITRATION ACT.**
10 Section 102 of the SCRA (50 U.S.C. App. 512) is amended by adding at the end the
11 following new subsection:
12 "(d) ELECTION OF ARBITRATION.—
13 "(1) CONSENT REQUIRED.—Notwithstanding any other provision of law, whenever
14 a contract with a servicemember provides for the use of arbitration to resolve a
15 controversy pursuant to this Act and arising out of or relating to such contract, arbitration
16 may be used to settle such controversy only if, after such controversy arises, all parties to
17 such controversy consent in writing to use arbitration to settle such controversy.
18 "(2) EXPLANATION REQUIRED.—Notwithstanding any other provision of law,
19 whenever arbitration is elected to settle a dispute pursuant to paragraph (1), the arbitrator
20 shall provide the parties to such contract with a written explanation of the factual and
21 legal basis for the award.
22 "(3) APPLICABILITY.—This subsection shall apply to any controversy pursuant to
23 this Act occurring on, before, or after the date of the enactment of this subsection.".

Section-by-Section Analysis

SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

This section clarifies that the plaintiff in a default judgment action has an affirmative obligation to determine the defendant's military status and that the plaintiff must take steps accordingly, including but not limited to reviewing and attaching available Department of Defense records.

SEC. 101a. OBLIGATIONS OF ATTORNEY APPOINTED TO REPRESENT DEFENDANT IN MILITARY SERVICE.

This section clarifies basic obligations for attorneys appointed by a court to represent defendants in military service. It imposes an affirmative obligation on each such attorney to use due diligence to locate and contact the defendant, and to act in that defendant's best interests. It also provides a remedy for defendants in military service who have been harmed by a court appointed attorney's failure to meet these affirmative obligations.

SEC. 102. RESIDENCY OF DEPENDENTS OF MILITARY PERSONNEL.

This section clarifies that a dependent family member of a servicemember does not have to accompany that servicemember who is absent from a State in compliance with military or naval orders in order for the dependent family member to retain a residence or domicile in that State. Often if a servicemember is called to Iraq or Afghanistan or deploys on ship for 6-12 months a dependent family member will return to a parent or other extended family's home during that time for the support network, particularly when there are small children, rather than remaining in a place with no family support. This clarification will allow the dependent family member the same residency rights as a servicemember even if the dependent family member is unable to accompany the servicemember to the duty station and due to the change in duty station needs to also move to a different place during that deployment.

SEC. 103. INCREASE IN CIVIL PENALTIES.

This section doubles the amount of civil penalties currently authorized.

SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.

This section grants authority to the Attorney General to issue civil investigative demands in investigations under the SCRA. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories. This section also clarifies that the Attorney General's authority to enforce the Act applies to violations of the Act that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such authority explicit.

SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.

This section clarifies that a private right of action may be filed by any person aggrieved by a violation of the SCRA that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such right explicit.

SEC. 106. DEFINITION OF MILITARY ORDERS AND CONTINENTAL UNITED STATES.

This section would add definitions for "military orders" and "continental United States." The amended definition of "military orders" will allow for use of a commanding officer letter in place of orders, similar to the language proposed in S. 3322 in the 112th Congress, so that this provision would apply to the whole SCRA, and not just to lease terminations.

SEC. 107. ORAL NOTICE SUFFICIENT TO INVOKE INTEREST RATE CAP.

This section allows servicemembers to give oral or written notice when they wish to invoke the interest rate cap, instead of just written notice, and requires the creditor to retain a record of the servicemember's oral or written notification. It also allows them to invoke the interest rate cap without sending in a copy of their military orders. Upon receipt of notice, the creditor must conduct a search of Department of Defense records available through the Defense Manpower Data Center (DMDC). If those records confirm military service, the creditor shall grant the interest rate benefit, effective as of the date on which the servicemember was called to military service. If the records do not confirm military service, the creditor may require the servicemember to provide a copy of his or her military orders.

SEC. 108. NON-DISCRIMINATION PROVISION.

This section provides for a nondiscrimination provision that is modeled after a similar provision in S. 3322 in the 112th Congress.

SEC. 109. EXTENSION OF PROTECTION AGAINST REPOSSESSION FOR INSTALLMENT SALES CONTRACTS.

This section provides harmonization of the tail coverage periods for installment sales contracts in section 532 to match mortgages in section 533.

SEC. 110. HARMONIZATION OF SECTIONS.

This section changes "filed" to "pending" in section 533(b), so that servicemembers get stays of proceedings or adjustments of the obligation even if the action was filed before they entered service, or during a break in service. This section also removes "with a return made and approved by the court" to harmonize it with other provisions.

SEC. 111. EXPANSION OF PROTECTION FOR TERMINATION OF RESIDENTIAL AND MOTOR VEHICLE LEASES.

This section extends lease termination protection to individuals ordered to move onto a military base. The language is similar to section 103 of the mark up for S. 3322 in the 112th Congress. In addition, this section provides that the rights with respect to termination of

residential and motor vehicle leases conferred in section 535 may not be waived under any circumstances.

SEC. 112. MILITARY FAMILY PROFESSIONAL LICENSE PORTABILITY.

This section creates a requirement that states in which a military spouse resides due to the servicemembers' orders recognize the spouse's professional licenses that have been awarded by other states. The Administration has called upon all 50 states to pass this type of legislation by 2014 (approximately 25 states currently have laws on this).

SEC. 113. FEDERAL CLAIMS UNDER SCRA EXEMPT FROM FEDERAL ARBITRATION ACT.

This section makes arbitration clauses unenforceable unless all parties consent to arbitration after a dispute arises. The language is similar to another statutory exception to the Federal Arbitration Act (15 U.S.C. 1226(a)(2)).

Amendments to the Military Lending Act (MLA)

1 **SEC. ____. ENHANCED ROLE FOR DEPARTMENT OF JUSTICE UNDER**
2 **MILITARY LENDING ACT.**
3 (a) ENFORCEMENT BY THE ATTORNEY GENERAL.—Subsection (f) of section 987 of
4 title 10, United States Code, is amended by adding at the end the following new
5 paragraph:
6 "(7) ENFORCEMENT BY THE ATTORNEY GENERAL.—
7 "(A) IN GENERAL.—The Attorney General may commence a civil
8 action in any appropriate district court of the United States against any
9 person who—
10 "(i) engages in a pattern or practice of violating this
11 section; or
12 "(ii) engages in a violation of this section that raises an
13 issue of general public importance.
14 "(B) RELIEF.—In a civil action commenced under subparagraph
15 (A), the court—
16 "(i) may grant any appropriate equitable or declaratory
17 relief with respect to the violation of this section;
18 "(ii) may award all other appropriate relief, including
19 monetary damages, to any person aggrieved by the violation; and
20 "(iii) may, to vindicate the public interest, assess a civil
21 penalty—

1 "(I) in an amount not exceeding $110,000 for a first
2 violation; and
3 "(II) in an amount not exceeding $220,000 for any
4 subsequent violation.
5 "(C) INTERVENTION.—Upon timely application, a person aggrieved
6 by a violation of this section with respect to which the civil action is
7 commenced may intervene in such action, and may obtain such
8 appropriate relief as the person could obtain in a civil action under
9 paragraph (5) with respect to that violation, along with costs and a
10 reasonable attorney fee.
11 "(D) ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE DEMANDS.—
12 Whenever the Attorney General, or a designee, has reason to believe that
13 any person may be in possession, custody, or control of any documentary
14 material relevant to an investigation under this section, the Attorney
15 General, or a designee, may, before commencing a civil action under
16 subparagraph (A), issue in writing and cause to be served upon such
17 person, a civil investigative demand requiring—
18 "(i) the production of such documentary material for
19 inspection and copying;
20 "(ii) that the custodian of such documentary material
21 answer in writing written questions with respect to such
22 documentary material; or

1 "(iii) the production of any combination of such
2 documentary material or answers.
3 "(E) RELATIONSHIP TO FALSE CLAIMS ACT.—The statutory
4 provisions governing the authority to issue, use, and enforce civil
5 investigative demands under section 3733 of title 31 (known as the 'False
6 Claims Act') shall govern the authority to issue, use, and enforce civil
7 investigative demands under subparagraph (D), except that—
8 "(i) any reference in that section to false claims law
9 investigators or investigations shall be applied for purposes of
10 subparagraph (D) as referring to investigators or investigations
11 under this section;
12 "(ii) any reference in that section to interrogatories shall be
13 applied for purposes of subparagraph (D) as referring to written
14 questions and answers to such need not be under oath;
15 "(iii) the statutory definitions for purposes of that section
16 relating to 'false claims law' shall not apply; and
17 "(iv) provisions of that section relating to qui tam relators
18 shall not apply.".
19 (b) CONSULTATION WITH DEPARTMENT OF JUSTICE.—Subsection (h)(3) of such
20 section is amended by adding at the end the following new subparagraph:
21 ''(H) The Department of Justice."

Section-by-Section Analysis

Subsection (a)—ENFORCEMENT BY THE ATTORNEY GENERAL

Subsection (a) of this proposal would amend subsection (f) of 10 U.S.C. 987, the so-called Military Lending Act (MLA) to include Attorney General enforcement authority for the MLA, with civil penalties and civil investigative demand authority.

Subsection (b)—CONSULTATION WITH THE DEPARTMENT OF JUSTICE ON MILITARY LENDING ACT PROVISIONS.

Subsection (b) of the proposal would add the Department of Justice to the list of agencies (the banking regulators, FTC, and Treasury) with which the Defense Department must consult on a regular basis about the MLA's regulations.

Amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)

1 **SEC. 1401. PRE-ELECTION REPORTING REQUIREMENTS ON**
2 **AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.**
3 (a) IN GENERAL.—Subsection (c) of section 102 of the Uniformed and Overseas
4 Citizens Absentee Voting Act (52 U.S.C. 20302) is amended—
5 (1) by designating the text of that subsection as paragraph (3) and
6 indenting that paragraph, as so designated, two ems from the left margin; and
7 (2) by inserting before paragraph (3), as so designated, the following new
8 paragraphs:
9 "(1) PRE-ELECTION REPORT ON ABSENTEE BALLOT AVAILABILITY.—Not
10 later than 55 days before any election for Federal office held in a State, such State
11 shall submit a report to the Attorney General and the Presidential Designee, and
12 make that report publicly available that same day, certifying that absentee ballots
13 are available for transmission to absentee voters, or that it is aware of no
14 circumstances that will prevent absentee ballots from being available for
15 transmission by 46 days before the election. The report shall be in a form
16 prescribed by the Attorney General and shall require the State to certify specific
17 information about ballot availability from each unit of local government which
18 will administer the election.
19 "(2) PRE-ELECTION REPORT ON ABSENTEE BALLOTS TRANSMITTED.—Not
20 later than 43 days before any election for Federal office held in a State, such State
21 shall submit a report to the Attorney General and the Presidential Designee, and
22 make that report publicly available that same day, certifying whether all absentee

1 ballots validly requested by absent uniformed services voters and overseas voters
2 whose requests were received by the 46th day before the election have been
3 transmitted to such voters by such date. The report shall be in a form prescribed
4 by the Attorney General and shall require the State to certify specific information
5 about ballot transmission, including the total numbers of ballot requests received
6 and ballots transmitted, from each unit of local government which will administer
7 the election.".
8 (b) CONFORMING AMENDMENTS.—
9 (1) SUBSECTION HEADING.—The heading for such subsection is amended
10 to read as follows: "REPORTS ON ABSENTEE BALLOTS.—".
11 (2) PARAGRAPH HEADING.—Paragraph (3) of such subsection, as
12 designated by subsection (a)(1), is amended by inserting "POST-ELECTION REPORT
13 ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—" before "Not
14 later than 90 days".
15 **SEC. 1402. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER**
16 **PROVISION.**
17 (a) IN GENERAL.—Subsection (a)(8) of section 102 of the Uniformed and
18 Overseas Citizens Absentee Voting Act (52 U.S.C. 20302) is amended by striking
19 "voter—" and all that follows in that subsection and inserting "voter by the date and in
20 the manner determined under subsection (g);".
21 (b) BALLOT TRANSMISSION REQUIREMENTS AND REPEAL OF WAIVER
22 PROVISION.—Subsection (g) of such section is amended to read as follows:
23 "(g) BALLOT TRANSMISSION REQUIREMENTS.—

1 "(1) REQUESTS RECEIVED AT LEAST 46 DAYS BEFORE AN ELECTION FOR
2 FEDERAL OFFICE.—For purposes of subsection (a)(8), in a case in which a valid
3 request for an absentee ballot is received at least 46 days before an election for
4 Federal office, the following rules shall apply:
5 "(A) TIME FOR TRANSMITTAL OF ABSENTEE BALLOT.—The State
6 shall transmit the absentee ballot not later than 46 days before the election.
7 "(B) SPECIAL RULES IN CASE OF FAILURE TO TRANSMIT ON TIME.—
8 "(i) GENERAL RULE.—If the State fails to transmit any
9 absentee ballot by the 46th day before the election as required by
10 subparagraph (A) and the absent uniformed services voter or
11 overseas voter did not request electronic ballot transmission
12 pursuant to subsection (f), the State shall transmit such ballot by
13 express delivery.
14 "(ii) EXTENDED FAILURE.—If the State fails to transmit any
15 absentee ballot by the 41st day before the election, in addition to
16 transmitting the ballot as provided in clause (i), the State shall—
17 "(I) in the case of absentee ballots requested by
18 absent uniformed services voters with respect to regularly
19 scheduled general elections, notify such voters of the
20 procedures established under section 103A for the
21 collection and delivery of marked absentee ballots; and
22 "(II) in any other case, provide, at the State's
23 expense, for the return of such ballot by express delivery.

1 "(iii) ENFORCEMENT.—A State's compliance with this
2 subparagraph does not bar the Attorney General from seeking
3 additional remedies necessary to effectuate the purposes of this
4 Act.
5 "(2) REQUESTS RECEIVED AFTER 46TH DAY BEFORE AN ELECTION FOR
6 FEDERAL OFFICE.—For purposes of subsection (a)(8), in a case in which a valid
7 request for an absentee ballot is received less than 46 days before an election for
8 Federal office, the State shall transmit the absentee ballot within one business day
9 of receipt of the request.".
10 **SEC. 1403. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL**
11 **PENALTIES, AND PRIVATE RIGHT OF ACTION.**
12 (a) ENFORCEMENT.—Section 105 of the Uniformed and Overseas Citizens
13 Absentee Voting Act (52 U.S.C. 20307) is amended to read as follows:
14 **"SEC. 105. ENFORCEMENT.**
15 "(a) IN GENERAL.—The Attorney General may bring a civil action in an
16 appropriate district court for such declaratory or injunctive relief as may be necessary to
17 carry out this title. In any such action, the only necessary party defendant is the State. It
18 shall not be a defense to such action that local election officials are not also named as
19 defendants.
20 "(b) CIVIL PENALTY.—In a civil action brought under subsection (a), if the court
21 finds that the State violated any provision of this title, it may, to vindicate the public
22 interest, assess a civil penalty against the State—
23 "(1) in an amount not exceeding $110,000, for a first violation.

1 "(2) in an amount not exceeding $220,000, for any subsequent violation.
2 "(c) ANNUAL REPORT TO CONGRESS.—Not later than December 31 of each year,
3 the Attorney General shall submit to Congress a report on any civil action brought under
4 subsection (a) during that year.
5 "(d) PRIVATE RIGHT OF ACTION.—A person who is aggrieved by a State's
6 violation of this Act may bring a civil action in an appropriate district court for such
7 declaratory or injunctive relief as may be necessary to carry out this Act.
8 "(e) ATTORNEY'S FEES.—In a civil action under this section, the court may allow
9 the prevailing party (other than the United States) reasonable attorney's fees, including
10 litigation expenses, and costs.".
11 (b) REPEAL OF CLARIFICATION REGARDING DELEGATION OF STATE
12 RESPONSIBILITY.—Section 576 of the Military and Overseas Voter Empowerment Act
13 (52 U.S.C. 20302 note) is repealed.
14 **SEC. 1404. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE**
15 **ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN**
16 **ABSENTEE BALLOT.**
17 (a) STATE RESPONSIBILITIES.—Section 102(a)(3) of the Uniformed and Overseas
18 Citizens Absentee Voting Act (52 U.S.C. 20302(a)(3)) is amended by striking "general".
19 (b) WRITE-IN ABSENTEE BALLOTS.—Section 103 of such Act (52 U.S.C. 20303) is
20 amended—
21 (1) by striking "**GENERAL**" in the title of the section; and
22 (2) by striking "general" in subsection (b)(2)(B).
23

1 **SEC. 1405. TREATMENT OF BALLOT REQUESTS.**

2 (a) IN GENERAL.—Section 104 of the Uniformed and Overseas Citizens Absentee
3 Voting Act (52 U.S.C. 20306) is amended—

4 (1) by striking "A State may not" and inserting
5 "(a) PROHIBITION OF REFUSAL OF APPLICATIONS ON GROUNDS OF EARLY
6 SUBMISSION—A State may not";

7 (2) by inserting "or overseas voter" after "an absent uniformed services
8 voter";

9 (3) by striking "members of the" before "uniformed services";

10 (4) by inserting "voters or overseas voters" before the period; and

11 (5) by adding at the end the following new subsection:

12 "(b) APPLICATION TREATED AS VALID FOR SUBSEQUENT ELECTIONS.—

13 "(1) IN GENERAL.— If a State accepts and processes a request for an
14 absentee ballot by an absent uniformed services voter or overseas voter and the
15 voter requests that the application be considered an application for an absentee
16 ballot for each subsequent election for Federal office held in the State through the
17 next regularly scheduled general election for Federal office (including any runoff
18 elections which may occur as a result of the outcome of such general election),
19 and any special elections for Federal office held in the State through the calendar
20 year following such general election, the State shall provide an absentee ballot to
21 the voter for each such subsequent election.

22 "(2) EXCEPTION FOR VOTERS CHANGING REGISTRATION.— Paragraph (1)
23 shall not apply with respect to a voter registered to vote in a State for any election

1 held after the voter notifies the State that the voter no longer wishes to be
2 registered to vote in the State or after the State determines that the voter has
3 registered to vote in another State.".
4 (b) CONFORMING AMENDMENT.— The heading of such section is amended to
5 read as follows:
6 "SEC. 104. "TREATMENT OF BALLOT REQUESTS.".
7 **SEC. 1406. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE**
8 **DEFINITION OF "STATE" FOR PURPOSES OF THE UNIFORMED**
9 **AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.**
10 Paragraphs (6) and (8) of section 107 of the Uniformed and Overseas Citizens
11 Absentee Voting Act (52 U.S.C. 20310) are each amended by striking "and American
12 Samoa" and inserting "American Samoa, and the Commonwealth of the Northern
13 Mariana Islands".
14 **SEC. 1407. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE**
15 **THE FEDERAL POST CARD APPLICATION TO ALLOW VOTERS TO**
16 **DESIGNATE BALLOT REQUESTS.**
17 (a) REQUIREMENT.—The Presidential designee shall ensure that the official post
18 card form (prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens
19 Absentee Voting Act (52 U.S.C. 20301(b)(2))) enables a voter using the form to—
20 (1) request an absentee ballot for each election for Federal office held in a
21 State through the next regularly scheduled general election for Federal office
22 (including any runoff elections which may occur as a result of the outcome of

1 such general election) and any special elections for Federal office held in the State
2 through the calendar year following such general election; or
3 (2) request an absentee ballot for a specific election or elections for
4 Federal office held in a State during the period described in paragraph (1).
5 (b) DEFINITION.—In this section, the term "Presidential designee" means the
6 individual designated under section 101(a) of the Uniformed and Overseas Citizens
7 Absentee Voting Act (52 U.S.C. 20301(a)).

8 **SEC. 1408. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS**
9 **AND GUAM FEDERAL ELECTIONS.**

10 Section 2(a) of the Act entitled "An Act to provide that the unincorporated
11 territories of Guam and the Virgin Islands shall each be represented in Congress by a
12 Delegate to the House of Representatives" approved April 10, 1972 (48 U.S.C. 1712(a)),
13 is amended—
14 (1) by striking "majority" in the second and third sentences and inserting
15 "plurality"; and
16 (2) by striking the fourth sentence.

17 **SEC. 1409. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL**
18 **REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF**
19 **ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.**

20 (a) ELIMINATION OF REPORTS FOR NON-ELECTION YEARS.—Section 105A(b) of
21 the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 1973ff-4a(b)) is
22 amended—

1 (1) by striking "March 31 of each year" and inserting "September 30 of
2 each odd-numbered year"; and
3 (2) by striking "the following information" and inserting "the following
4 information with respect to the Federal elections held during the preceding
5 calendar year".
6 (b) CONFORMING AMENDMENTS.—Such section is further amended—
7 (1) by striking "ANNUAL REPORT" in the subsection heading and inserting
8 "BIENNIAL REPORT"; and
9 (2) by striking "In the case of" in paragraph (3) and all that follows through "a
10 description" and inserting "A description".
11 **SEC. 1410. TREATMENT OF POST CARD FORM REGISTRATIONS.**
12 Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (52
13 U.S.C. 20302) is amended by adding at the end the following new subsection:
14 "(j) Treatment of Post Card Registrations.—A State shall not remove any absent
15 uniformed services voter or overseas voter who has registered to vote using the official
16 post card form (prescribed under section 101) from the official list of registered voters,
17 except in accordance with subparagraph (A), (B), or (C) of section 8(a)(3) of the National
18 Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(a))."

Section-by-Section Analysis

SEC. 1401. PRE-ELECTION REPORTING REQUIREMENTS ON AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense, and amends Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require that States submit two pre-election reports to the Departments of Justice and Defense on the status of ballot transmission to military and overseas voters. It requires that States submit the first report 55 days before the election and identify any jurisdictions that may not be able to send ballots by the 46th day before the election. It requires that States submit the second report 43 days before the election and certify whether each of its jurisdictions transmitted its ballots by the 46th day. These two pre-election reports would provide the Department with information necessary to assess, at the most critical and timely stages, whether enforcement actions are needed, and alleviate the need to rely on voluntary reporting by the States.

SEC. 1402. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER PROVISION.

Except as noted below, the substance of this section is substantially the same as section 202 of the Department of Justice 2011 proposal as coordinated with the Department of Defense. In addition, it includes Section 204 of the 2011 proposal, repeal of the waiver provision.

This provision, which changes the 45-day deadline under the MOVE Act to a 46-day deadline, addresses the substance of Section 205 of the Department of Justice's 2011 proposal. The 2011 proposal offered a "Saturday Mailing Date Rule," while maintaining the 45-day deadline. Initially, Senate staff proposed the 46-day rule as a cleaner way of accomplishing the same goal of clarifying the general ballot deadline. We propose incorporating the 46-day deadline in our proposals. Conforming changes to the 46 day deadline are made throughout this proposal.

This section amends Section 102 of UOCAVA to require States that have failed to mail absentee ballots by the 46-day deadline to voters who request ballots by the 46th day to send them by express delivery, and to require States that have failed to mail absentee ballots by the 41st day to enable such voters to return their ballots by express delivery. These requirements would increase the likelihood that ballots arrive in time for the voters to receive, mark, and return the ballots by Election Day, and would create a strong financial incentive for strict State compliance with the 46-day rule. The 2011 proposal triggered the requirement to provide for the express return of ballots at the State's expense after the 40th day, *i.e.*, when a ballot was sent late by 5 days or more. The 41st day reference here (in Section 102(g)(1)(B)(ii)) conforms to the new 46 day transmission standard, and provides the same 5 day trigger we envisioned in our 2011 proposal.

This section also repeals UOCAVA's hardship waiver provision, Section 102(g), which currently waives the 45-day deadline for States that cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating

ballots due to a legal contest; or (3) a prohibition in the State's Constitution. The Department's experience with the waiver provision during the 2010 Federal general election cycle shows that its marginal benefits are outweighed by its downsides, including the significant enforcement and administrative resources expended on its implementation. All 11 States that applied for a waiver did so based on the date of their primary elections, and a majority of them were denied a waiver, which required them to take additional, immediate steps to come into compliance at a time when the Federal general election date was fast approaching. Repealing the waiver provision would strengthen the protections of the Act by ensuring that the 46-day deadline is the standard that all States should meet, even if it requires changing the date of their primary elections. A uniform, nationwide standard ensures that all military and overseas voters are afforded its benefits equally.

Section 102(g)(2) is amended because the MOVE Act language (currently in Section 102(a)(8)(b) of UOCAVA) affords no specific requirement to ensure ballots requested between 45 and 30 days of the election (or a later date where states accepted ballot requests closer to the election) are promptly transmitted to voters. Some states have a law or practice of sending ballots promptly; others do not. There remains confusion as to what this provision mandates, if anything. This amendment would ensure that that ballot requests are promptly transmitted by directing that ballots be sent within one business day of receipt.

SEC. 1403. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense. This section amends Section 105 of UOCAVA to clarify that States bear the ultimate responsibility for ensuring timely transmission of absentee ballots; to provide for civil penalties for violations of the Act in appropriate circumstances; and to provide for an express private right of action. The clarifying language in this amendment would preclude State officials from successfully arguing, contrary to Congress's intent and the Act's legislative history, that they lack sufficient authority to be held responsible for localities' failures to timely send overseas ballots. This section also repeals 52 U.S.C. 20302 note, which addresses the delegation of administrative control of absentee voting, to avoid confusion regarding State responsibility for compliance with the Act. The inclusion of civil penalties and an express private right of action strengthens the Act's protections by providing additional incentives for State compliance.

SEC. 1404. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN ABSENTEE BALLOT

Section 581 of the MOVE Act extended UOCAVA voters' eligibility to use a Federal Write-In Absentee Ballot (FWAB) to all elections for Federal office, effective December 31, 2010. Prior to that time, FWABs could only be cast in federal general elections. Section 581 effects a number of conforming amendments, but fails to revise these two other FWAB references in the Act.

SEC. 1405. TREATMENT OF BALLOT REQUESTS.

This section amends Section 104 of UOCAVA and is based in part on Section 206 of the Department of Justice's 2011 proposal as coordinated with the Department of Defense. As in the 2011 proposal, this section amends Section 104 of UOCAVA to add overseas civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election. The inclusion of overseas civilian voters in this provision is consistent with other provisions of the Act.

This proposal also restores, in part, language the 2009 MOVE Act deleted related to treating a ballot application as valid for subsequent elections. Rather than allowing a voter to use the application to request ballots through two general election cycles as the pre-MOVE Act law did, this proposal would provide that applications are valid for one general election cycle, which includes any runoff elections that are held after that general election, a provision contained in Senator Brown's bill (S. 3322). We propose one addition to extend the period to cover any special Federal elections that occur between the general election and the end of the following year. It also provides that all absent uniformed services voters and overseas voters have the option of applying for ballots for all Federal elections held during the period prescribed by this section.

SEC. 1406. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE DEFINITION OF "STATE" FOR PURPOSES OF THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

This section is substantially the same as Section 207 of the Department of Justice 2011 proposal coordinated with the Department of Defense. This section amends UOCAVA to make its requirements applicable to the Commonwealth of the Northern Mariana Islands, which, as of 2008, has a nonvoting Delegate to the House of Representatives.

SEC. 1407. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE THE FEDERAL POST CARD APPLICATION (FPCA) TO ALLOW VOTERS TO DESIGNATE BALLOT REQUESTS.

The provision for FVAP to revise the FPCA was included in the Department of Justice 2011 proposal as coordinated with the Department of Defense. We revised the language to conform to the change referenced in Section 1705, and contained in Senator Brown's bill (S. 3322), which would allow voters to request ballots through the next general election and included the additional option we propose to extend it to special Federal elections that may be held after the general election through the following calendar year.

SEC. 1408. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS AND GUAM FEDERAL ELECTIONS.

The MOVE Act required that absentee ballots be transmitted 45 days in advance of an election for Federal office. The Department of Justice has interpreted this requirement to apply to all Federal elections, including runoff elections, and the United States Court of Appeals for the

Eleventh Circuit recently affirmed that interpretation. See *U.S. v. State of Alabama*, No. 14-11298 (11th Cir. Feb. 12, 2015), *reh'g denied* April 21, 2015.

In response to the MOVE Act's 45-day deadline, some States changed their State laws to allow sufficient time in their election calendars to transmit runoff ballots if a primary election triggers a runoff. The Virgin Islands and Guam are not able to make a similar change to their runoff election calendars because 48 U.S.C. 1712 requires that runoff elections be held within 14 days after a Federal general election, if no candidate receives a majority of the votes cast at the general election. This proposal provides that the Delegates for the Virgin Islands and Guam be elected by plurality vote. It is consistent with the general rule for the election of Delegates to the other territories and the District of Columbia.

SEC. 1409. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.

Section 1409 would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to September 30 of odd-numbered years. It also would clarify that the information submitted in the report should cover the previous calendar year – the year in which the regularly scheduled elections for Federal office occurred. Therefore, the Department of Defense seeks these changes to ensure that the report provides the best quality information about FVAP's program, voter registration and participation in the election and enhance the validity of post-election survey results.

The Department of Defense strongly believes that developing and publishing this report for odd-numbered calendar years in which few Federal elections occur does not provide sufficient information to warrant the time, effort and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. In 2009 there were a total of only four elections for Federal office. Again in 2011, only four elections occurred. In 2013 there were eight elections for federal office; there were three in 2015.

Evaluation and analysis of FVAP activities for special primary or general elections requires the Department of Defense to obtain the election data from the local jurisdiction involved and, in many cases, the specific data required to make accurate analysis is not available or is not available in a timely manner. The Department of Defense has concluded that analysis of odd-numbered year elections could lead to poor policy decisions based upon incomplete data and/or conclusions which may not be valid in even-numbered election years, which have greater public participation and FVAP activity.

In addition, the Department of Defense has determined that the post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed and reported by the current March 31 deadline. General elections for Federal office are held in November (potentially with some States conducting run-off elections for Federal office in December). The FVAP's survey instruments will be fielded in January and the Department believes they need to be open for at least three months to garner sufficient participation to make

them statistically valid. Further, for the Department to compare the voting behavior rates of active duty military members with those of the citizen voting age population, it must compare data released by other federal agencies. However, the data are historically not available until the summer months following a general election. Thus, the March 31 deadline provides little time after the elections to collect, synthesize and thoughtfully analyze post-election survey data to base program evaluations and policy decisions. Accordingly, the Department of Defense recommends that the reporting deadline be extended from March 31 to September 30, and that the report only be submitted in odd-numbered years.

SEC. 1410. TREATMENT OF POST CARD FORM REGISTRATIONS.

This provision addresses the concern that some jurisdictions may be treating voters who register to vote by the federal post card application prescribed by UOCAVA as "temporary" registrants whose voter registration expires when the voters' absentee ballot request expires (under current law that request expires after just one year). This new provision would clarify that UOCAVA registrants will not have their voter registrations cancelled except as allowed under the National Voter Registration Act of 1993 (i.e., at the request of the registrant; as provided by State law, by reason of criminal conviction or mental incapacity; or in accordance with the procedures and notice requirements of a general removal program governed by the NVRA). This is a new section to address an issue that arose during the Department's technical assistance process in connection with the SENTRI Act. Section 104 of the SENTRI Act (S. 1728) would add a provision with nearly identical language.

PREPARED STATEMENT OF MICHAEL MICHAUD, ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, Thank you for the opportunity to provide the views of the Department of Labor (DOL) on pending legislation aimed at helping the men and women who served, or are serving, this country succeed in the civilian workforce. As Assistant Secretary of the Veterans' Employment and Training Service (VETS), I look forward to working with the Committee to ensure that these brave and committed individuals have the employment support, assistance and opportunities they deserve.

While this hearing will address numerous bills pending before the Committee, my statement will focus on Ranking Member Blumenthal's draft legislation, which would make a number of important amendments to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301–4335, (USERRA or the Act), which is enforced by VETS, the Department of Justice (DOJ), and the U.S. Office of Special Counsel (OSC). My statement also will briefly discuss S. 2958, which would "establish a pilot program on partnership agreements to construct new facilities for the Department of Veterans' Affairs."

USERRA prohibits discrimination in employment based on an individual's prior service in the uniformed services; current service in the uniformed services; or intent to join the uniformed services. An employer is also prohibited from discriminating against a person because of such person's attempt to enforce his or her rights under the Act. In addition, an employer may not retaliate against an individual for filing a USERRA claim or testifying or otherwise providing assistance in any proceeding under the Act. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is entitled to be reemployed with the status, seniority, and rate of pay as if he or she had been continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and State and local governments. It also applies to United States employers operating overseas and foreign employers operating within the United States.

USERRA protects civilian job rights and benefits for veterans and members of the Uniformed Services. VETS provides assistance to those persons experiencing service-connected problems with their civilian employment, and provides information about USERRA to employers. In Fiscal Year (FY) 2015, the Department reviewed a total of 1,288 USERRA cases. 77 of those cases were referred to DOJ and OSC for further review and possible litigation in either U.S. District Court or before the Merit Systems Protection Board (MSPB). In addition, DOL staff provided technical assistance to more than 10,000 servicemembers and other individuals in FY 2015, and well over a million individuals since September 11, 2001. The rights USERRA affords our servicemembers and veterans are critical, and we are committed to doing everything possible to ensure those rights are protected and preserved.

S. XXXX—A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO CLARIFY THE SCOPE OF PROCEDURAL RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES WITH RESPECT TO THEIR EMPLOYMENT AND REEMPLOYMENT RIGHTS, TO IMPROVE THE ENFORCEMENT OF SUCH EMPLOYMENT AND REEMPLOYMENT RIGHTS, AND FOR OTHER PURPOSES.

DOL strongly supports the Ranking Member's draft bill. The significant USERRA improvements it would provide mirror those we have urged the Congress to enact, as reflected both in the Administration's recent legislative proposal, and in several of our USERRA Annual Reports to Congress. We applaud this effort to strengthen enforcement of USERRA, and believe the proposed statutory amendments, some of which are discussed in more detail, below, will address several critical issues.

Section 1 of the draft bill is intended to make clear the scope of employment and reemployment rights of covered individuals, by clarifying the definitions of "rights" and "benefits" under USERRA, and by clarifying the status of arbitration agreements under the Act. These amendments guarantee the availability and protection of procedural rights included in the statute, ensuring that USERRA operates to safeguard both substantive and procedural rights and benefits from reduction, limitation, or elimination. We are particularly grateful that, to ensure the procedural right of adjudication of USERRA claims, the bill expressly provides that agreements to arbitrate are unenforceable "unless all parties consent to arbitration after a complaint on the specific claim has been filed in court or with the MSPB and all parties knowingly and voluntarily consent to have that particular claim subjected to arbitration."

DOL supports limiting the ability to consent to arbitration until after a claim is filed in court or with the MSPB because, at that stage of the adjudication process,

claimants already have a sense of their rights and likely have consulted with an attorney. Section 1(c)(2) is not necessary, and is potentially harmful, because there may well be other circumstances, not specifically provided for, where a claimant's agreement might not be voluntary. DOL believes that the determination as to whether a USERRA claimant's consent to arbitrate is voluntary is best left to the adjudicator, who will decide that question based upon the particular facts and circumstances of the case.

Federal judicial circuits are presently divided as to whether USERRA protections apply to procedural as well as substantive rights. It has long been the Department's interpretation of USERRA, as well as that of DOJ and OSC, that USERRA applies to procedural rights, regardless of how such rights may be construed. Clarifying that USERRA applies to both procedural and substantive rights provides certainty in legal interpretation, and would resolve the ambiguity that currently exists among Federal judicial circuits. It also reassures our servicemembers and veterans that they have proper recourse when they believe their USERRA rights have been violated.

The amendments contained in Section 2 of the bill would make a number of substantial improvements to the enforcement of employment and reemployment rights with respect to a State or private employer. Significantly, subsection (a) would strengthen enforcement under USERRA by allowing the United States to serve as a plaintiff in all suits filed by the Attorney General (AG), rather than only in those suits filed against State employers. This amendment would ensure that USERRA is consistent with other civil rights laws by allowing the United States to bring suit in its own name as the plaintiff, to vindicate the public interest in ensuring the statute is enforced. The aggrieved person on whose behalf the AG files suit would retain the right to intervene in such suits, or to bring his or her own action if the AG declines to file suit.

This section also grants independent authority to the AG to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. This amendment, modeled after Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e–6(a)), would strengthen significantly DOJ's ability to enforce USERRA to address a systemic violation (such as an employer policy prohibiting extended absences, including absences for military service) that could adversely affect the employment rights of multiple servicemembers.

In support of this new pattern-or-practice authority, the bill also would amend USERRA to provide the AG with the authority to issue civil investigative demands to compel the production of relevant documentary materials and unsworn answers to written questions from the custodian of such documents. DOL has the power to issue subpoenas in the conduct of its investigations under USERRA. However, with no investigatory role under current law, the AG has no authority to compel the production of evidence prior to filing suit. Because the section now empowers the AG to initiate an investigation, this further amendment would provide appropriate and much-needed investigative tools.

Finally, DOL also supports other amendments section 2 would make to enable servicemembers and veterans to more ably exercise their USERRA rights, and to enhance the available remedies for violations of USERRA rights. For instance, subsection (b) explicitly abrogates sovereign immunity to eliminate any question whether Congress intends that USERRA claimants be able to bring an action against a State employer in State court or Federal district court. And, subsection (d) adds compensatory and punitive damage provisions that are similar to damages provisions in Title VII of the Civil Rights Act of 1964.

S. 2958—A BILL TO ESTABLISH A PILOT PROGRAM ON PARTNERSHIP AGREEMENTS TO CONSTRUCT NEW FACILITIES FOR THE DEPARTMENT OF VETERANS' AFFAIRS

This bill would authorize the Secretary of Veterans' Affairs to enter into up to five partnership agreements with certain designated entities to conduct one or more super construction projects; major medical facility projects; or major construction projects to construct new cemeteries, or develop additional gravesites or columbarium niches at existing cemeteries. Section 1(b) of the bill provides that this authority may be carried out "notwithstanding any other provision of law (including section 8103(e) of title 38, Untied States Code), except for Federal laws relating to environmental and historic preservation; and, subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the 'Davis Bacon Act')."

Like VA, DOL strongly supports the bill's authorization of these partnership agreements, provided the legislation does not roll back key civil rights protections for veterans and other employees who will be working to construct the facilities resulting from these partnership agreements. These safeguards protect millions of

workers, including veterans. DOL looks forward to working with the Committee to revise the language of section 1(b) to ensure that S. 2958 provides VA the authority it needs while maintaining the applicability of laws that protect against employment discrimination or that otherwise ensure equal employment opportunities.

CONCLUSION

Every day, we at DOL do our best to serve the civilian employment needs of our veterans, transitioning servicemembers, and military families. It is the least we can do to honor the tremendous sacrifices made by our service men and women and their families. Secretary Perez and VETS strongly believe that the reforms included in Ranking Member Blumenthal's draft bill to amend USERRA will not only help our veterans and servicemembers find good jobs, but also ensure that they can retain their civilian employment when they must leave it to serve our Nation. We look forward to working with the Committee on these important issues and are available to provide any technical assistance you request with respect to these proposed amendments. DOL also stands ready to assist the Committee and VA to make certain that S. 2958 does not operate to exclude veterans and other workers from important equal opportunity and employment protections.

I again thank the Committee for your commitment to our Nation's veterans and servicemembers and for the opportunity to submit this statement for the record.

LETTER FROM ALEXANDER BLUMROSEN, PRESIDENT, THE LAFAYETTE ESCADRILLE MEMORIAL FOUNDATION

La Fondation du Mémorial de l'Escadrille La Fayette
(The Lafayette Escadrille Memorial Foundation)
Fondation reconnue d'utilité publique
5, Boulevard Paymond Poincaré
92430 Marnes-la-Coquette
France
www.lafayetteescadrille.org

June 29, 2016

The Honorable Johnny Isakson
Chairman
United States Senate
Committee on Veterans Affairs

By email: heather_vachon@vetaff.senate.gov

Re: Written testimony by the Lafayette Escadrille Memorial Foundation about pending legislation concerning the ABMC

Mr. Chairman and Members of the Committee:

Thank you for your letter of June 17, 2016, and this opportunity to offer written testimony in support of the proposed legislation to authorize the American Battle Monuments Commission to acquire, operate and maintain the Lafayette Escadrille Memorial (the "Memorial") in Marnes-la-Coquette, France, a suburb of Paris.

The Memorial is both a monument and a burial crypt that pays tribute to the 38 members of the Lafayette Escadrille but also to the 241 other American pilots of the broader "Lafayette Flying Corps" who flew under French command between April 1916 and February 1918, when many of the American pilots transferred to the U.S. Air Service of the American Expeditionary Force. A total of 269 American pilots flew under French command during this period, and of these 68 died in the war and have tombs in the Memorial crypt, though 17 tombs are empty. Of the 49 pilots buried in the crypt, all died after April 1917, and many of them died in American uniform after having transferred to the U.S. Air Service.

The memorial to these air combat pioneers is a private memorial inaugurated on July 4, 1928, and owned by the Lafayette Escadrille Memorial Foundation (the "Foundation"), a French non-profit that operates the Memorial site. The Memorial is located just outside Paris in the 1130 acre "Parc de Saint Cloud" nature reserve, and sits on 12 acres of land donated by the French government.

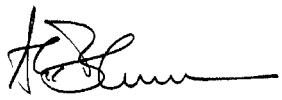
The Foundation, however, does not have the financial resources to take care of the Memorial, the crypt and the grounds, and over the last fifteen years has relied increasingly on the financial assistance of the French and U.S. governments, as well as French regional and municipal governments, to cover the expenses of maintaining the site. The Foundation has just completed a renovation of the Memorial that was financed by the French government, by the limited funds of the Foundation, and by private donors in the United States. But the Foundation has no endowment or regular source of income that can cover the costs of ongoing maintenance or future renovation projects.

The Foundation has worked very closely with the ABMC over the past 18 months of renovation, and is convinced that the transfer of the Memorial site to the ABMC is the best way to preserve the Memorial for future generations.

Indeed, on April 19, 2016, the Foundation Board voted unanimously to offer the site to the ABMC, by gift or in exchange for a symbolic consideration. Importantly, the April 19 resolution was reviewed and approved by the French Ministry of the Interior, which has oversight over the activities of all non-profits in France, including the Foundation. Also, representatives from both the French Ministries of Interior and Defense sit on the Foundation's Board, participated in the discussion about the transfer to the ABMC, and approved the resolution. I meet regularly with the Ministries of Interior and Defense, and have received assurances that these ministries will do everything they can to facilitate the transfer of the site to the ABMC. The French government is more than just supportive of this transfer; they are enthusiastic, much like we are at the Foundation.

The Foundation's close cooperation with the ABMC will hopefully extend well beyond the renovation of the Memorial and the transfer to the ABMC, and we look forward to working closely with the ABMC regarding the organization of ceremonies at the Memorial site. The Foundation organizes several large ceremonies each year and dozens of French and American associations attend these events with their members, and lay wreaths beneath the triumphal arch of the Memorial, most often accompanied by local school children and US girl and boy scouts troops. We will coordinate with the ABMC and this network of associations so that the Memorial can continue to play a central role in the community by commemorating the Lafayette pilots, the birth of the US Air Force, French-American military cooperation, and the central role of the United States in bringing WWI to an end.

Very truly yours,



Alexander Blumrosen
President

PREPARED STATEMENT OF FREDERICK R. SALANTI, MAJ, US ARMY (USAR), FOUNDER/ EXECUTIVE DIRECTOR, MISSING IN AMERICA VETERANS RECOVERY PROGRAM

MISSING IN AMERICA VETERANS RECOVERY PROGRAM

WWW.MIAP.US

IRS EIN: 20-840-8832

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS
Hearing: Pending Legislation
June 29, 2016, 2:30 p.m.
Russell Senate Office Building, Room 418

Refer: S.3076 & S.3035

The Missing in America Veterans Recovery Program is in complete support of the referenced proposed legislation under consideration (S.3076 and S. 3035).

S. 3076 (Cotton), ***Charles Duncan Buried with Honor Act of 2016, a bill to authorize the Secretary of Veterans Affairs to furnish caskets and urns for burial in cemeteries of States and tribal organizations of veterans without next of kin or sufficient resources to provide for caskets or urns, and for other purposes.***

Missing in America Veterans Recovery Program: Why We're Here

The purpose of the Missing in America Project is to locate, identify and inter the unclaimed cremated remains of American veterans through the joint efforts of private, state and federal organizations. To provide honor and respect to those who have served this country by securing a final resting place for these forgotten heroes

1. **No veteran should be buried in a pauper's grave,** denied the Honor and Respect to have a casket or urn provided for their burial regardless of income as long as they are Verified by the Dept. of Veterans Affairs and meet the financial requirements as determined to become indigent or are unclaimed and forgotten.

2. The **highest priority** for those veterans classified as Unclaimed, Forgotten or as an Indigent after service in the U.S. Military to this nation.

MISSING IN AMERICA VETERANS RECOVERY PROGRAM

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IRS EIN: 20-840-8832

3. The Missing in America Program has these records available for the veterans and dependents that we have processed to date: (Nov 9, 2006, to present)

    - **Total Funeral Homes Visi**ted - 1,987 out of 23,000+ in the U.S.*
    - **Cremains Found** - 13,311
    - **Veterans** Cremains Identified - 3,072
    - **Veterans** Interred - 2,765

*multiply by remaining Funeral Homes to visit for total estimates. MIAP finds 10-35 % of unclaimed remains in funeral homes shelves are veterans or eligible dependents. Oldest Veterans have been 15 Civil War Veterans and five eligible spouses including Isaiah Mays, Buffalo, Soldier, Medal of Honor now at Arlington.

4. **No veteran penalized for the location of their burial**, Federal, State, Indian Tribal Burial. New Laws must include Cemeteries approved by the Dept. of Veterans Affairs that can record burial sites on the VA Worldwide Locater system. If it is approved or funded by the VA Caskets and Urns should be provided to all unclaimed veterans.

5. There are **some states with closed or no VA Federal Cemetery** nearby POD (place of Death) to transport or deny them the right to a Casket or Urn and to be buried close to their home is not conscionable. Hundreds of miles separate Place of Death with VA Federal Cemeteries, especially as you get further out West. VA is working diligently to correct this, but for now, not completed. Everyone should be buried as close as possible to their home, friends, and choice of place to live.

MISSING IN AMERICA VETERANS RECOVERY PROGRAM

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6. *The mission of the MIAP project is to locate, identify and inter the unclaimed cremains of veterans through the joint efforts of private, state and federal organizations. These forgotten veterans have served our country and, as such, deserve to be buried with honor and respect. The impetus for our little program began in November 2006. The Idaho State Veterans Cemetery interred 21 cremains of forgotten veterans, with full military honors and the dignity these fallen heroes so richly deserved. Recently, a state hospital announced that 3500 cremains were on shelves to be verified. On the shelf were cremains for the time span of the 1890s to 1971. It is estimated 350 to 1,000 of these cremains could be veterans. Burial without verifiation is happening in every state.*

   This project has just begun. We need to blanket every mortuary and cemetery in the United States and let them know there are people who desire to claim our veterans. We need to let them know it is our desire to see they are interred with the honor and respect they deserve. They served our great nation. It is now our great nation's turn to serve them.

   The veterans languishing on shelves need us. They need America to step forward and ensure they are buried with honor. They need America to show their thanks for their service. Without them, we would not have the freedoms we enjoy today.

Frederick R. Salanti, Maj, US Army (USAR), MIAP Founder/Executive Director

Frederick R Salanti

Digitally signed by: Frederick R Salanti
DN: CN = Frederick R Salanti email = ducpho@miap.us C = US O = Missing in America Veterans Recovery Program OU = MIAP
Date: 2016.06.26 10:36:29 - 08'00'

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2. MIAP fully supports S. 3035 proposed legislation as well.

S. 3035 (Heller/Tester). *Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016, a bill to require the Secretary of Veterans Affairs to carry out a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at medical facilities of the Department of Veterans Affairs.*

An accurate and detailed medical record is paramount for clinical history, billing, research, outcome measures, performance improvement, and patient safety. Globally, the medical record adds to aggregation of health data to health information exchanges contributing to meaningful use of data and improving population health. The Veteran Health Administration (VHA) VHA is a trailblazer in the use of electronic medical records, amassing millions of records with a plethora of health care data. Daily, VHA providers review hundreds of clinical reminders, alerts, notifications, and clinical dashboards for their patients. Unfortunately, the electronic medical record has taken away from sole purpose of VHA, caring for Veterans. The patient experience is now reduced to provider eyes glued to a computer monitor gathering and reviewing important information for clinical decision-making, ensuring patient-centered care. Most importantly, diligent and deliberate review of medical records ensures patient safety.
The time it takes for data entry and documentation takes away from the patient experience. This is a bitter complaint of Veterans; the doctor is always looking at the computer and typing.

Health care is changing, and one fundamental paradigm shift is empowering patients with knowledge and engaging them in their health care plan and treatment recommendations. The use of medical scribes will enhance and develop trusted partnerships, an integral part in VHA strategic plan, and will improve patient satisfaction, patient safety, contribute to meaningful use of health care data and improve provider satisfaction, as well.

The use of scribes at medical facilities of the Department Veterans Affairs achieves a premier goal of Department of Veterans Affairs Secretary McDonald's, Blueprint for Excellence, "Grow an organizational culture, rooted in VA's core

Values and mission, which prioritizes the Veteran first, engaging and inspiring employees to their highest possible level of performance and conduct" (Blueprint for Excellence-Fact Sheet, 2014). The benefits of medical scribes will:

- Improve Veteran experience with improvement in communication and continuity of care
- Increase productivity of providers
- Facilitate patient safety and reduce medical errors
- Improve health care for Veterans and contribute to aggregation of health care data to improve overall population health and health outcomes
- Efficient use of health data, accuracy of documentation to health information exchanges, facilitates meaningful use (AHIMA, 2012)

Communication is essential in physician-patient relationship. Direct eye contact, observation of body language, and active listening helps the provider assess the Veteran's understanding of medical information and willingness to accept treatment recommendations. Veteran attitude and trust are improved when the Veteran experiences undivided attention and engagement from provider eliciting a partnership.

Productivity is increased when the medical scribe can navigate the chart for information. During a 30-minute visit the provider is expected to navigate the patient medical record for laboratory results, imaging and diagnostic results, records received from non-VA providers and hospitalization, outcome of consults, and medications. The trained medical scribe navigates the medical record collecting and compiling the information for clinical documentation leaving more time for provider and direct patient engagement. The provider spends quality time talking with patient, listening to what the patient is saying and uses the opportunity for motivational interviewing and coaching to gain trust and buy-in from patient to adhere to treatment recommendations.

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Accurate and comprehensive clinical documentation is critical for patient safety and reduction in medical errors. Scribes navigating the medical record minimizes the risk for omission of important information. For example, Veterans travel across the country and may visit multiple VA medical centers. The provider has ability to access remote data to review medical information from other facilities. Scanned documents are found in the medical record but take time to load during the visit and risk being overlooked when making medical decisions.

The use of medical scribes has proven effective in the private sector. The Joint Commission provides guidelines to ensure uniformity in roles and responsibilities such as job description, orientation and training, competency and evaluations, information management standards, HIPAA, HITECH, confidentiality, patient rights, signing and dating of entries in medical record distinguishable from physician or licensed independent practitioner, authentication, and performance improvement process (Joint Commission, 2011). The use of medical scribes in VHA is needed now to comply with a paradigm shift in health care to improve patient experience, empowers patients in health care, demands provider engagement, and ensures patient-centered care and patient safety.

AHIMA. (2012, November). Using Medical Scribes in a Physician Practice. *Journal of AHIMA*, pp. 64-69. Retrieved from Journal of AHIMA: http://library.ahima.org/doc?oid=106220#.V2iUDjVdeXs

Blueprint for Excellence-Fact Sheet. (2014, September). Retrieved from VA.gov: http://www.volunteer.va.gov/docs/blueprintforexcellence_factsheet.PDF

Joint Commission. (2011). *Compliance with Joint Commission Standards.* Retrieved from Joint Commission: https://www.jointcommission.org/standards_information/jcfaqdetails.aspx?StandardsFaqId=1208&ProgramId=46

PREPARED STATEMENT OF MILITARY OFFICERS ASSOCIATION OF AMERICA

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, The Military Officers Association of America (MOAA) is pleased to present its views on veterans' health care and benefits legislation under consideration by the Committee.

MOAA does not receive any grants or contracts from the Federal Government.

EXECUTIVE SUMMARY

On behalf of our more than 390,000 members, MOAA thanks the Committee for holding this important hearing and for your continued support of our Nation's servicemembers, veterans and their families. MOAA is especially grateful for the Committee's leadership in introducing S. 2921, the Veterans First Act, a comprehensive bill to improve the delivery of health care and benefits in the Department of Veterans Affairs (VA).

We believe many of the bills being considered today will buildupon the work of the Committee in the Veterans First Act, further enhancing VA's health and benefits systems. Our Association looks forward to working with the Members and staff to strengthen and improve the legislation for enactment this year.

MOAA's position and recommendations are provided on the following bills:

- S. 603, Rural Veterans Travel Enhancement Act of 2015
- S. 2210, Veteran Partners' Efforts to Enhance Reintegration (PEER) Act
- S. 2279, Veterans Health Care Staffing Improvement Act
- S. 3035, Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016
- S. 244, Review of the Disability Compensation Process for Traumatic Brain Injuries
- S. 2791, Atomic Veterans Healthcare Parity Act
- S. 3023, The Arla Harrell Act
- S. 3032, Veterans' Compensation Cost-of-Living Adjustment Act of 2016
- Draft Bill, Clarification of Procedural Rights Under the Uniform Services Employment and Reemployment Rights Act (USERRA)

HEALTH CARE

S. 603, Rural Veterans Travel Enhancement Act of 2015. The bill would give the Secretary of VA permanent authority to transport individuals to and from any VA facility which provides rehabilitation, counseling, examination, treatment, and care.

The measure specifically authorizes the Secretary to cover the actual expenses of travel or allowances for a veteran using a VA Veterans Readjustment and Counseling Program or 'Vet Center' facility.

Vet Centers provide important services to help guide veterans and their family members through the major life changes that often occur when a member returns from combat. Services include individual, group and family counseling in such areas as post-traumatic stress, alcohol and drug assessment, and suicide prevention.

Currently VA covers travel expenses for care at VA medical centers and community-based outpatient clinics. Vet Centers provide a critical capability within VA's health system, thus inclusion of these facilities for purposes of payments for beneficiary travel and allowances should also be a covered benefit for consistency and continuity of care throughout the system.

MOAA supports S. 603, but recommends funds be appropriated to support the bill. We would urge against trading funding from other medical programs to offset these costs as MOAA believes medical care and services, including associated travel expenses and allowances, are central components to opening up access and delivering high quality health care to our veterans.

S. 2210, Veteran Partners' Efforts to Enhance Reintegration (PEER) Act. MOAA strongly supports this measure which would establish a two-year pilot program to incorporate peer specialists in patient aligned care teams at 25 VA medical centers to promote the use and integration of mental health services in the primary care setting.

MOAA has long endorsed peer support programs as a means to enhance the delivery of health care services. Extending VA's existing mental health peer support model into the primary care setting will help to further reduce barriers in accessing mental health services while concurrently increasing system capacity.

We greatly appreciate Senator Richard Blumenthal's (D-CT) leadership on this significant issue. We are particularly grateful for the legislation's special consideration of gender specific peer support services for female veterans and focus on veterans living in rural or underserved areas.

S. 2279, Veterans Health Care Staffing Improvement Act. This bill would increase efficiency in the recruitment and hiring of health care professionals in VA. The bill contains a number of innovative and much needed solutions to addressing critical health care staffing shortfalls and veterans' access to care.

The Department of Defense (DOD) would be required, at least annually, to submit a list of transitioning military members serving in health care fields to the VA for recruitment and hiring consideration.

Additionally, the measure would create uniform credentialing standards for certain health care professionals working in the agency so employees are allowed to practice in any location in the VA Health Administration (VHA) system.

MOAA is also pleased to see a provision granting full practice authority to Advanced Practice Nurses and Physician Assistants, bringing VHA in line with other practicing professionals in the DOD, Indian Health Service, and the Public Health Service systems.

Our Veterans need all the skills Advanced Practice Nurses can provide them. The implementation of the Veterans Health Care Staffing Improvement Act would help fill a critical system need today.

VA's current health system, where 10 Advanced Practice Nurses in a single medical facility have 10 different state licensures, and 10 different scopes of practice, imposes unnecessary supervision requirements, further limiting system capability and capacity. This aspect of the system needs to be corrected.

By aligning VA nurse workforce with other Federal healthcare services, we better serve and honor our veterans.

MOAA fully supports S. 2279 and urges immediate passage of the bill.

S. 3035, Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016. MOAA also supports this measure which would require the Department to carry out an 18-month pilot program using medical scribes to support physicians in at least five VHA facilities.

The purpose of the pilot is to collect data to determine the effectiveness of the program in increasing efficiency of physicians, reduce average wait times for appointments, improve access of patients to electronic medical records, and mitigate physician shortages through increased productivity.

Medical scribes are a health care innovation broadly used outside of VHA to assist physicians by alleviating paperwork and electronic health record burdens, allowing physicians to spend more time treating patients while at the same time being able to see more patients.

MOAA urges the Committee to support funding of this important program and swift passage of the bill. VA needs innovative solutions like S. 3035 to address its current physician shortages and growing demand for health care in the coming years.

BENEFITS

S. 244, Review of the Disability Compensation Process for Traumatic Brain Injuries. MOAA supports this bill, which would fund research into Traumatic Brain Injuries. Traumatic Brain Injuries are tremendously complex, and a recent study found brain injuries incurred due to war-related events such as blasts differ from those incurred during sports-related activities. War-related brain injury requires further study, and VA should be provided the resources to buildupon current expertise in this arena and provide veterans with the most up-to-date options in treatment.

S. 2791, Atomic Veterans Healthcare Parity Act. MOAA supports the inclusion of veterans who participated in the cleanup of Enewetak Atoll as radiation-exposed veterans. The nuclear testing performed at Enewetak Atoll should entitle these veterans to the same presumptions for radiation-related illnesses when applying for VA disability compensation as in other incidents of service-related toxic exposure. There is no discernable reason why these veterans should be denied equal treatment under the law.

S. 3023, The Arla Harrell Act. MOAA supports the passage of this bill, which would require VA to reconsider claims that have previously been denied for veterans exposed to mustard gas or lewisite testing by the DOD. It is a matter of fairness to these veterans that our government should be obligated to compensate these human test subjects for the resulting effects of those studies. The bill would close this loophole for this group of veterans seeking relief.

S. 3032, Veterans' Compensation Cost-of-Living Adjustment Act of 2016. MOAA supports the passage of this bill to provide veterans with the same type of cost-of-living increases in their disability compensation and survivor annuities that Social Security recipients receive in theirs.

Draft Bill, Clarification of Procedural Rights Under the Uniform Services Employment and Reemployment Rights Act (USERRA). MOAA supports passage of this bill to close the loophole that currently exists in USERRA. Presently, servicemembers returning to their civilian jobs who find their employer has violated USERRA may not be fully protected if he or she has signed an employment contract that requires disputes be mediated by an arbitrator vice litigated in court.

Arbitration provides no opportunity for a servicemember to appeal an unfavorable decision and places the employer in a much more advantageous position than the servicemember. Closing this loophole is important to ensure our servicemembers are fully protected, as Congress intended in enacting USERRA.

MOAA thanks the Committee for considering this important legislation and for your continued support of our veterans and their families.

PREPARED STATEMENT OF THE MILITARY ORDER OF THE PURPLE HEART

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee, on behalf of the Military Order of the Purple Heart of the U.S.A. (MOPH) we would like to thank you for including *S. 3042, the Justice for Servicemembers Act of 2016* on today's hearing agenda. We are grateful for the opportunity to provide written testimony in support of this legislation and in support of restoring the rights of servicemembers in the face of forced arbitration. We would like to urge Congress to quickly pass this important legislation on behalf of all of our brave men and women who serve.

Throughout history, Congress has enacted laws that provide additional rights and protections for the men and women who serve our country. Congress did so in recognition of the significant, additional burdens that being called away from your family and your job to serve our country places on these brave individuals; burdens that civilians do not face. One of these landmark laws is the Uniformed Services Employment and Reemployment Act (USERRA). Passed in 1994, the USERRA protects our servicemembers from employment discrimination and guarantees that when called for military service, they can perform their duties with the knowledge and security that they have the right to return to their jobs with the same pay, benefits, and status they would have attained had they not been called away.[1] This law is one of the most important protections for members of the uniformed services and one of the strongest employment-protection laws in our country.

Just as important as the substantive rights afforded by USERRA are the procedural and enforcement rights guaranteed under the law. Under USERRA, when servicemembers' rights are violated, they have the right to bring a USERRA claim to court.[2] The bill expressly dictates that any employment agreement that limits or eliminates a right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any such right, is facially void.[3]

Nevertheless, servicemembers and veterans are increasingly unable to enforce their rights under USERRA for one specific reason: forced arbitration clauses buried in the fine print of their employment contracts. Presented on a take-it-or-leave-it basis, employers across the country are requiring servicemembers to sign forced arbitration agreements that effectively eliminate the important rights afforded by USERRA. Forced arbitration clauses undermine the very protections of USERRA, and other laws that Congress has deemed necessary and appropriate to afford to our military, by kicking claims out of court, and funneling them into a rigged, secretive system where all the rules, including who decides the outcome of the forced arbitration, are chosen by the employer that violated the law in the first place.

While forced arbitration clauses used in employment contracts can be harmful and oppressive for all employees, the ramifications are even more serious when these clauses are enforced against our men and women in uniform. When servicemembers become distracted from the mission at hand due to fears of unemployment, paying bills, providing for their family and other financial stresses upon returning home from duty, it directly impacts our national security.

Congress intended for USERRA to ensure servicemembers did not lose their right to take an employer who wronged them to a court of law in order to have their story heard. This bill would honor that intent. Given the expansive use of these clauses by financial institutions and employers in contracts with servicemembers, prohibiting the use of forced arbitration clauses is now more critical than ever. We strong-

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[1] Leisha Self, *A Guide to the Uniformed Services Employment and Reemployment Rights Act and the Recent Hostile Work Environment Amendment*, 28 ABA J. Lab. & Emp. L. 449 (2013)

[2] 38 U.S.C. § 4323(a) (2).

[3] 38 U.S.C. § 4302(b).

ly urge you to support the Justice for Servicemembers Act and any other legislative efforts to prohibit the use of forced arbitration clauses against our Nation's heroes: our servicemembers and veterans.

MOPH would also like to add our comments on several other pieces of legislation on today's agenda.

MOPH supports S. 244, a bill to require an independent comprehensive review of the process by which the Department of Veterans Affairs assesses cognitive impairments that result from Traumatic Brain Injury for purposes of awarding disability compensation. Due in part to the devastating effects of improvised explosive devices used on the battlefields of Iraq and Afghanistan, more veterans than ever are claiming disabilities associated with Traumatic Brain Injuries (TBI). Still, not enough is currently known about TBI, and the way it affects veterans' abilities to function properly. By requiring the Institute of Medicine to conduct a review of TBI examinations provided by the Department of Veterans Affairs (VA), this bill will help ensure that injured veterans receive the proper health care and compensation they need.

MOPH supports S. 603, the Rural Veterans Travel Enhancement Act of 2015, which would improve transportation options for veterans traveling to and from VA for medical appointments. It would do so by permanently authorizing the Veterans Transportation Service program, which allows VA to offer rides to veterans that need them; allowing veterans to receive travel reimbursement for episodes of care received at Vet Centers; and reauthorizing grants for Veterans Service Organizations that provide veterans with transportation. These provisions are critical to ensuring that no veteran is forced to forgo VA medical care, simply because they cannot provide their own transportation due to impairment or financial reasons.

MOPH supports S. 2210, the Veteran PEER Act, which would require VA to establish peer specialists in patient aligned care teams at medical centers of the department. The utilization of peer specialists at VA is a proven model of success. Veterans consistently report that having access to peer support greatly improves their comfort level at VA facilities, as well as their ability to navigate the often confusing processes they encounter there when newly enrolled. Adding peer specialists to patient aligned care teams would help grant veterans access to this important resource at every stage of their medical care.

MOPH supports some provisions of S. 2279, the Veterans Health Care Staffing Improvement Act. We strongly support section 2, which would require VA and the Department of Defense (DOD) to cooperatively facilitate the recruitment of recently separated veterans who served in medical fields in the military as VA health care professionals, known as the "Docs-to-Doctors Program." Not only have these personnel received superior training in the military, they have also proven their leadership and desire to serve their country, which can only benefit VA. Further, they are uniquely qualified to provide care to their fellow veterans, as they have a first-hand understanding of their military experience. We believe that this program will improve VA's ability to recruit top talent, while simultaneously increasing patient satisfaction. MOPH also supports section 3, which would require VA to implement a uniform credentialing process for employees of the Veterans Health Administration.

MOPH does not support section 4 of S. 2279, which would require VA to provide full practice authority to advanced practice registered nurses (APRN), physician assistants (PA), and such other licensed health care professionals of the department. While we fully appreciate the importance of APRNs and PAs in in the modern health care industry, we would defer to VA on this matter. We note that VA recently published regulations to allow flexibility in full practice authority to meet the access needs of the department. This would allow VA to implement full practice authority in specialties where it is needed, but not require them to do so in specialties where it is not. Accordingly, we do not believe a legislative fix to this issue is necessary or appropriate at this time.

MOPH supports S. 2316, which would improve VA oversight of fiduciaries, and allow for the reissuance of veterans benefits in cases of misuse by fiduciaries. Generally speaking, fiduciaries provide an invaluable service to veterans who are incapable of handling their own finances due to disability. However, there have been cases where fiduciaries, both family members and professional firms, have misused veterans' benefits for their own personal gain. MOPH believes it is critically important that vulnerable veterans in need of assistance with their finances be properly protected from theses unscrupulous actors. For this reason, we believe it is fully reasonable that all fiduciaries be subject to robust oversight, to include the auditing of their bank accounts. Furthermore, we believe it is the right thing to do to restore benefits that are found to have been intentionally misused, to ensure that veterans who are taken advantage of are made whole in those unfortunate cases.

MOPH supports S. 2791, the Atomic Veterans Parity Act, which would grant a presumption of service connection for certain cancers to veterans who participated in

the cleanup of Enewetak Atoll and the Marshall Islands between January 1, 1977 and December 31, 1980. These veterans would be treated the same as other veterans who were exposed to known sources of radiation for the purposes of VA benefits. Current law provides presumptive service connection for veterans who participated in atomic testing between 1944 and 1958, but not those who were assigned to clean up the debris years later. MOPH strongly believes that toxic wounds incurred in service are wounds just the same, and should be treated with the same urgency as physical or mental wounds. We are aware that many of these veterans are now suffering from tell-tale cancers associated with radiation exposure, and believe that granting them access to VA health care and benefits as a result is long overdue.

MOPH supports S. 3021, which would allow veterans to use their GI Bill benefits to pursue programs of independent study at schools that do not meet the industry definition of an "institution of higher learning," such as a state university or a community college. This bill would provide veterans with more options by allowing them to use their benefits to obtain certificates and professional credentials from institutions such as area career and technical education schools. We note that these programs would still be accredited and subject to review by State Approval Agencies, as provided in statute for all courses of study approved for GI Bill use.

MOPH supports S. 3023, the Arla Harrell Act, which would provide for the reconsideration of claims for disability compensation for veterans who participated in DOD experiments with mustard gas and lewisite on a presumptive basis. During World War II, thousands of servicemembers were used as subjects in experiments to test the effects of these harmful agents on the human body. Not surprisingly, this left many of them with chronic health issues. However, most veterans were routinely denied disability compensation for these conditions, as the experiments remained classified for decades. MOPH strongly believes that these claims should be reconsidered on a presumptive basis in order to finally grant these veterans the health care and benefits they need and deserve.

MOPH supports S. 3032, the Veterans' Compensation Cost-of Living Adjustment Act of 2016, which would increase the rate of compensation for disabled veterans and their survivors, effective December 1, 2016. Unlike Social Security benefits, which are automatically increased by statute, Congress must pass a bill each year to ensure that the benefits that disabled veterans and their survivors have earned are increased to keep pace with inflation. This is absolutely critical, given the ever rising prices of food, housing, health care, and other essential goods and services. By providing reasonable increases to those benefits, your legislation would ensure that the most basic needs of disabled veterans and their survivors are met. MOPH is especially pleased that your legislation does not include the "round down" provision of previous years, which is nothing more than a cost-saving device that requires veterans to pay for their own benefits.

MOPH supports S. 3035, the Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016, which require the Department of Veterans Affairs (VA) to carry out an 18 month pilot program to increase the use of medical scribes at no fewer than five medical facilities in rural areas where there is a shortage of physicians and each physician has a high caseload. These medical scribes would be responsible for assisting VA physicians with administrative tasks that are normally done by support staff in the private sector.

It is well documented that rural areas across the country suffer from physician shortages. This affects the ability of VA to recruit and retain an adequate number of physicians, resulting in longer appointment wait times. For this reason, MOPH believes that it is absolutely critical that VA physicians in these areas are able to practice medicine as efficiently as possible. The increased use of medical scribes would accomplish this by allowing VA doctors to spend less time on administrative tasks such as data entry and more time doing what is most important; providing care to veterans.

MOPH supports S. 3055, the Department of Veterans' Affairs Dental Insurance Reauthorization Act of 2016, which would require VA to contract with a private insurance company to offer a voluntary dental insurance plan to veterans and certain dependents. Generally, VA only provides dental care to veterans who incurred dental trauma while in service, or who are rated 100 percent service-connected. Veterans who are service-connected but rated less than 100 percent are generally not offered dental care at VA. MOPH believes that dental care should be considered the same as health care, as a number of serious comorbidities affecting a veterans' overall health can arise from dental neglect, including diabetes and heart disease. These conditions, which may have been preventable with routine dental care, then have to be treated at far greater expense by VA. While MOPH would rather see full VA dental care eligibility extended to all service-connected veterans, we would still sup-

port the establishment of a voluntary, reasonably priced dental insurance program for veterans and their families, as envisioned by this legislation.

Finally, *MOPH opposes the draft bill entitled the Working to Integrate Networks Guaranteeing Member Access Now Act, or WINGMAN Act*. While we appreciate Senator Cassidy's intent to provide faster service to veteran constituents who request assistance from congressional offices, we are concerned that there would be unintended consequences to allowing congressional staff access to veterans' VA claims files. It is yet unclear to us how VA would ensure that staff only gains access to the records of veterans who have provided them with privacy releases. Further, we are concerned that granting congressional staff this access would create confusion in their role in the claims process as it relates to veterans, VA and Veterans Service Organizations. While we cannot support the bill as written, we would be happy to work with Senator Cassidy and his staff on ways to improve congressional offices' ability to provide veteran constituents with more timely responses.

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, once again, we thank you for the opportunity to submit our views on these important bills.

PREPARED STATEMENT OF KEITH KIEFER, DIRECTOR AT LARGE, NAAV MINNESOTA STATE CO-COMMANDER & ENEWETAK RADIOLOGICAL CLEANUP VETERAN (1978), NATIONAL ASSOCIATION OF ATOMIC VETERANS

National Association of
Atomic Veterans, Inc.

Including Nuclear Veterans

To: Committee on Veterans' Affairs

Honorable Johnny Isakson Chairman
Honorable Jerry Moran
Honorable John Boozman
Honorable Dean Heller
Honorable Bill Cassidy
Honorable Mike Rounds
Honorable Thom Tilles
Honorable Dan Sullivan

Honorable Richard Blumental Ranking Member
Honorable Patty Murray
Honorable Bernnard Sanders
Honorable Sherrod Brown
Honorable Jon Tester
Honorable Mazie K. Hirond
Honorable Joe Manchin III

From: Mr. Keith Kiefer, NAAV (National Association of Atomic Veterans) Director at Large. NAAV Minnesota State Co-Commander, & Enewetak Radiological Cleanup Veteran (1978)

Thank you for the opportunity to represent NAAV, Enewetak Radiological Cleanup Veterans and myself before this committee. NAAV, during this legislative session, is advocating for three pieces of legislation. Those being; HR3870/S2791 Atomic Veteran Healthcare Parity Act (Senate version before this committee), HR2747/S3033 Atomic Veteran Service Medal Act and H. Res. 377 Recognizing "National Atomic Veterans Day" on July 16. We would like to thank Senators Al Franken and Thom Tilles for coauthoring S2791 and Senator Edward Markey for authoring S3033. We are presently looking for a Senate author of the Senate version of H. Res. 377. The Enewetak Radiological Cleanup Veterans are particularly interested in HR3870/S2791.

NAAV, AMAC (Association of Mature American Citizens, 1.5 million members and growing), American Legion (2.4 million members), VFW (Veterans of Foreign Wars, 1.4 million members) and other veterans organizations support all three pieces of legislation.

HR3870/S2791 and HR2747/S3033 are time sensitive legislation. We have had seven Enewetak Radiological Cleanup Veterans pass away in the last eighteen months. Most of these Veterans range in age from late fifties to early sixties. In reference to HR2747/S3033, of those alive they are in their early seventies to nineties. We can not afford to delay this legislation to word smith or over analyze these pieces of legislation.

HR3870/S2791 are not addressing a Veterans Administration (VA) Medical care problem. They are however, addressing a law/possible VA administration issue. We recommend passage of these Bills immediately and address the issues mentioned herein, not addressed by this Bill, next session. I now will address the Senate version of these Bills with the understanding it applies equally to the House (Congress) version.

14944 295th Ave NW Zimmerman, MN 55398 PH: 612 232 6596
130 Cleveland St. Lebanon, OR 97355 PH: 541 258 7453

Presently, the Enewetak Radiological Cleanup Veterans are in a state of limbo. They are not included in the Federal definition of an "Atomic Veteran" in Section 1112(c)(3)(B) of title 38, United States Code (see Exhibit 1) nor has the VA administration and/or law included them as "Occupational Exposure" Veterans.

Since documentation of radiation exposure levels for Atomic Veterans has been non existent, missing, destroyed, or in question as to the reliability, a list of twenty-one diseases are contained in Section 1112(c)(2) of title 38, United States Code (Exhibit 1) "Presumed" to be caused by ionization radiation during a "radiation risk activity".

Section 1112(c)(3)(B) of title 38, United States Code (Exhibit 1) presently does not include the Enewetak Radiological Cleanup Operation as a "radiation risk activity". S2791 seeks to rectify this situation.

Additionally, the Enewetak Radiological Cleanup Veterans have not been included as "Occupational Exposure" Veterans. I have not yet expended the energy to determine if this is a law issue or VA administration issue. It should be noted that VA web site includes many veterans, as it should, such as: Fukushima nuclear accident and Depleted Uranium (DU) as "Occupational Exposure" Veterans (see Exhibit 2). As an "Occupational Exposure" Veteran you should be placed in "Priority Groups" , "Group 6". The difference of being included in this group is even with out an approved compensate-able "Service Connected" disability, "Occupational Exposure" related prescriptions are eight dollars instead of nine dollars for a 30 day supply. Additionally, "Occupational Exposure" related services and prescriptions are covered 100%.

It may come as a surprise that, like the Enewetak Radiological Cleanup Veterans, Congress and possibly the Senate has been misled by a number of agencies. There are some highly edited documents prepared by spin doctors that would lead one to believe there was less radiation than you would see in the United States. These same documents contradict themselves. To those that are predisposed to believe these documents, I would ask the common sense question: If the level of radiation was safe, why was the name of the project titled " Enewetak Atoll Radiological Cleanup Project"? Why wasn't it titled " Enewetak Atoll Cleanup Project"? Why are the islands still considered unsafe for human habitation? Why is the thyroid incidence at a twenty eight percent rate when the national average is 0.028%, and of that 7 out of 8 are women? Why did approximately 111,000 cubic yards of contaminated soil have to be scraped up and transported to Cactus Crater on Ruint Island, then capped with eighteen inch thick concrete? Why are the Coconuts from the island containing Cesium 137 unsafe for human consumption? How did Plutonium, with a half life of 24,100 years disappear in about 30 years? Why are their numerous documents and evidence disputing these reports? The list goes on. Some of the erroneous information is touched on by Harold A. "Harry" Rumzek, PH.D. Major, USAF Retired (see Exhibit 3).

As I mentioned earlier, I am an Enewetak Radiological Cleanup Veteran. I would not benefit from the passage of S2791. That being said I, NAAV and the other Veteran organizations strongly advocate for its passage. Veterans like Paul Edward Laird II that has dealt with Kidney cancer Renal Cell Carcinoma Bladder cancer at the same time. Both were a different type of cancer. To date he has had three different forms of cancer among a number of other diseases (see Exhibit 4).

I was stationed at Nellis AFB, Nevada at the time I received TDY (Temporary Duty) orders to go to Enewetak Atoll for 180 days as part of the Enewetak Atoll Radiological Cleanup Project. I was told by those handling the project from Nellis AFB that I would not receive any more radiation than walking the streets of New York City or wearing a watch with a Radium dial. As part of the project I received no baseline Sperm count, Blood analysis or Urine analysis. I was young, naive, a late bloomer (going into the service at 6 ft 1" 160 lbs. and leaving the service at 6 ft 5" 160 lbs.) and believed I would not knowingly be put in harms way. Prior to leaving for Enewetak Atoll, on my own I had a Sperm Count test completed which came back normal. I arrived at Hickham AFB late on a Saturday. On Monday I was issued several Jungle fatigues, Combat boots and a "Rat Patrol" hat. No orientation or any other instructions. Tuesday morning, I believe, I was on a C130 landing On Wake Island for a several hour layover and refueling. We arrived late evening, possibly Wednesday. I was placed, by myself, in what appeared to be an abandoned building with no sides, a hole ridden corrugated roof, no fan, just my duffle bag, a cot, and a sheet. The

heat and humidity was intense. I awoke the next morning with several Geckos on my stomach. I was amazed at the dilapidated state of everything, lack of vegetation and existence of abandoned damaged WW II ships and other military equipment. This was more primitive than any of my duties in remote Alaska. Again, I received no orientation related to the Radiological Cleanup Project or associated risks.
My AFSC (US Air Force Specialty Code) was 30434 Ground Radio Repair and Maintenance. Like many of my assignments, because of our expertise and versatility we were assigned tasks outside of our normal duty and function. Enewetak was not a exception. I was on just about every island digging up damaged/cut communication lines, repairing and burying the cables. Often new trenches would have to be hand dug to place and bury cables. The soil was contaminated with radioactive material. I was never issued a film badge or dosimeter. I had no respirator or even dust mask. I never saw any of the soil wetted down when being excavated and there always was dust due to winds and other operations. I was involved with the operation, maintenance and repair of the three 10KW HF transmitters, teletype, MARS (Military Amateur Radio Station) and PBX (phone system). We were also responsible for emergency generators. I was involved with most communications for Medivac operations (communication to aircraft and doctors in Hawaii or Kwajalein during emergency medical situations.) Most of the medical situations were due to shark or eel attacks (they were particularly mean and aggressive) and heat stroke. The communications equipment was salvaged from a Navy ship. We worked 10 to 12 hour days, six days a week for $345 a month. We received an air lift of fresh vegetables, fruit , milk, meat and mail once a week. We were allowed one five minute call a week back state side. The toilets and other none potable water was sea water drawn in from the lagoon. Potable water was provided through a desalinization plant. The water again was pulled from the lagoon. The lagoon water which we bathed in, swam, snorkeled, dived and boated in was more than likely contaminated with radioactive material due to the past underwater nuclear tests and pushing contaminated soil into it. The EIS (Environmental Impact Study) and other documents state this was not done, but I saw it in progress. Hind sight, it was not very smart getting water from the lagoon. While on the atoll many of us drank coconut milk and the meat of coconuts grown on the islands as well as some fish caught. I was not told or aware these items were contaminated until years later. The first indication I had that my health was more than likely compromised by my time on the atoll was upon getting out of the service and returning home to my wife. During the entire time we have been married we have never used any birth control methods. My wife was not getting pregnant. After months I was tested and found to be considered sterile. The Gonads and reproductive organs are the most sensitive to radiation. Many studies have shown both Military and civilian pilots flying at high altitude have a lower sperm count and more likely to have daughters than sons due to the higher level of cosmic radiation exposure. The order of the body's sensitivity to radiation most sensitive to least is the Gonads, Thyroid, immune system, blood, bones, etc. Radiation causes premature aging and the younger the person is, the greater the effect. Some are more sensitive to radiation than others. I continued for years having unexplained fevers, muscle and deep bone pain that would come and go without any of the normal causes being present. I went to doctors trying to find answers to the cause of these symptoms . I even had one doctor suggest it was all in my head. I felt the doctors were not competent to solve my problems and I was wasting my time, money, and their time. I stopped going to the doctors for years, still suffering. Through my wife's research, she believed I had an auto immune disorder call Lupus SLE. I didn't test positive for this. I continued to suffer with these symptoms and intermittent diarrhea for years until one day while in bed, my lower back felt like it was on fire. I called my wife over, asking her if it was my imagination or was my back on fire. She said "Yes, your back is burning up" and "Have you been laying on a heating pad?" to which I replied "No". I thought maybe I had a kidney infection, so once again went to the doctor. The first doctor ran a number of tests and exams believing I had Rheumatoid Arthritis. Prior to referring me to a Rheumatologist, he wanted me to have a full physical first. I had a full physical and this doctor found I had a thyroid problem. This was after 1996 and the Atomic Veteran oath of Secrecy had been lifted. I explained to the doctor about Enewetak and the Radiological Cleanup Project. He told me that it was clear to him that my problems were, more likely than not, due to my radiation exposure, I would have a life time of health problems and should apply for VA healthcare and a Service Connected Disability. My father had applied for VA Healthcare over a year earlier to the same facility. Within three months I was accepted and in the VA Healthcare. My father waited almost another year before being accepted. My Service Connected Disability claim was for Sperm count (sterile) and the thyroid condition due to Ionization Radiation. Over a year later, without any questions or communications, the claim was denied using the Sperm count which was normal before going over to Enewetak as the basis for denial, the thyroid condition was never addressed. This illustrates the predisposition to denial of a claim. My health continued to deteriorate. At about age forty I was told I had the bone structure of a ninety year old and needed to

have both hips replaced. I have not been in sports or an occupation that would account for excessive wear and tear. Up until now I have been denied hip replacement claiming I was too young and would have them worn out prior to dying. I have had three surgeries on my feet due to abnormal bone growth. Strontium 90 found on Enewetak Atoll is known to affect bones. I have abnormal bone growths on my spine, degenerative bone disease, arthritis and spinal stenosis among other issues. I have a number of autoimmune diseases (radiation affects the immune system,) and have an abnormal blood disorder which causes blood clots. I have had five Pulmonary Embolisms (PE); on one occurrence a bilateral PE in which I came within seconds of dying. This has been, after much testing, determined to be caused by a disease called Lupus Anticoagulant, an autoimmune disorder. Again, blood and the immune system is affected by radiation. I have non diabetic neuropathy also know to be caused by radiation. Some of the additional aliments are a a duodenal ulcer, an enlarged prostrate, pre cancerous pulps in the colon and several teeth that have broken (fallen apart) while eating scrambled eggs. I also have severe sleep apnea. I have no approved Service Connected Disabilities, and no Social Security Disability while the State of Minnesota DMV (Department of Motor Vehicles) and Metro Transit classify me as disabled. I can add additional information as well as back up my statements with factual documentation should this committee desire it.

Just a few notes:

A film badge will not detect radiation from Plutonium.

It is difficult to determine the internal radiation dose due to cuts, inhalation or ingestion.

Islands were contaminated with other toxic materials such as Beryllium and Agent Orange.

Documents obtained under FOIA question why certain radioactive elements were not found at Enewetak Atoll during radiological surveys; i.e. uranium, since this is a decayed state of Plutonium.

I did not see any military personal wearing PPE (Personal Protective Equipment,) only scientists.

The veterans involved with this operation are proud to have served their country and, if disappointed, it would be that the operation was not more successful and that the government is not acknowledging the health risks of the operation, nor taking care of those with radiation induced illnesses.

The first I knew the mission was not successful was from a CBS March 1980 60 Minutes report with Morley Schaffer titled Remember Enewetak.

Dupont stated in a memo that of those using respirators, they were the wrong type and would be ineffective with Radiation.

The Enewetak Atoll Radiological Cleanup Project was either the best planned scenario for plausible deniability or the poorest planned Radiological Cleanup Project.

Keith Kiefer
NAAV Director at Large,
NAAV Minnesota State Co-Commander,
& Enewetak Radiological Cleanup Veteran (1978)
14944 295th Ave NW
Zimmerman, Minnesota 55398
612 232-6596

Prepared Statement of National Alliance on Mental Illness

NAMI, National Alliance on Mental Illness

Senate Committee on Veterans' Affairs
June 29, 2016

Chairman Isakson, Ranking Member Blumenthal, and distinguished members of the Committee, thank you for affording NAMI, the National Alliance on Mental Illness the opportunity to submit written testimony about the importance of peer support as an integral part to veterans' aligned care teams at VA medical centers.

NAMI is the nation's largest grassroots mental health organization, dedicated to building better lives for the millions of Americans affected by mental illness. NAMI has over 900 affiliates and more than 200,000 grassroots leaders and advocates across the United States—all committed to raising awareness and building a community of hope for all of those in need, including our men and women in uniform, veterans, and military families.

S. 2210, the *Veteran Partner's Efforts to Enhance Reintegration (PEER) Act*

Ensuring veterans not only have increased access to mental health care, but access to *high-quality* and *effective care* is imperative. An important part of a veteran's decision to initially seek and stay active in treatment involves a level of cultural competency on the part of the provider. As the Interagency Task Force on Military and Veterans Mental Health noted "...many veterans are willing to seek treatment and share their experiences when they share a common bond of duty, honor, and service with the provider."

Our men and women who have served can face extraordinary challenges from their experiences, and as a result require specialized treatment environments that are understanding and judgement-free. Therefore, NAMI strongly supports S. 2210, the *Veteran Partners' Efforts to Enhance Reintegration (PEER) Act,* sponsored by Senator Blumenthal. NAMI believes that the addition of peer specialists to patient aligned care teams is a positive step for VA health centers to increase the capacity of focused support available to veterans, while integrating mental health services more seamlessly within primary care settings.

It is critical to underscore that a peer support specialist is an important member of a clinical care team, which should also include an appropriate array of qualified health and mental health care professionals.

Peer support is an important treatment tool that promotes mental wellness, reduces the stigma on seeking care, and empowers veterans by improving coping skills and overall quality of life. Additionally, peer support is specifically beneficial to the veterans' community for addressing concerns including post-traumatic stress disorder (PTSD), combat and operational stress, traumatic brain injury (TBI), and military sexual trauma (MST).

Invisible Wounds

As the Committee is well aware, the signature wounds of the Iraq and Afghanistan wars are invisible. In a culture that demands strength, it is often difficult to step forward and seek help for an injury that remains unseen. For this reason, there is a larger barrier facing America's veterans in accessing necessary mental health care services.

Peer support often serves as a bridge to receiving treatment and is a positive first step. As highlighted previously but cannot be underscored enough, cultural competence is key in establishing trust with a veteran, and peer support is often the best tool for this purpose.

Rural Veterans

NAMI appreciates that specific considerations have been made in S. 2210 concerning access to peer support services for rural veterans. Requiring the Secretary to make facility determinations with the mental health care needs of rural veterans in mind, helps ensure that this underserved subset of the veterans' population receives better access to care.

Women Veterans

NAMI is pleased that S. 2210 contains a specific provision on service considerations for female veterans. As the Committee is aware, the fastest growing population within the veteran community is women. It is time for VA and the nation to fully recognize the ways women have contributed to the military overall, and specifically in the most recent conflicts. Although female service members have found themselves in combat over the past 14 years in Iraq and Afghanistan, women are starting to play an even larger role in direct combat positions. With the repeal of the ban on combat jobs for women by Secretary Ash Carter in late 2015, three female soldiers earning the U.S. Army's coveted Ranger tab, and the recent appointment of the first female Combatant Commander—women veterans, now more than ever need equivalent health care services from VA.

Female veterans are six times more likely than the overall civilian population to be at risk for suicide, and twice as likely as their male veteran counterparts to develop PTSD. Considering these disturbing facts, coupled with the knowledge that female veterans are at a significantly higher risk of experiencing sexual assault from their time in service—it is essential that specialized mental health services be expanded for women. NAMI believes increased peer support is a vital tool for female veterans on their path to recovery and mental wellness.

Suicide Prevention

As we are all aware, 22 veterans commit suicide every day—this alarming figure has been a national tragedy for far too long. While the addition of peer support services cannot harm national efforts to reduce the number of suicides in the veterans' community, NAMI wants to be clear that these services have not yet proven fidelity for suicide prevention.

Accordingly, NAMI advises the Committee to consider requesting a research study led by the National Institute of Mental Health (NIMH) in coordination with VA, on the effect peer support services have on suicide-specific outcomes such as suicidal ideation, attempts, and overall reduction in suicide death.

NAMI is grateful to the Chairman, Ranking Member, and the entire Committee for its commitment to improving mental health services for our nation's veterans. Further, NAMI is committed to working with Congress, VA, and Veterans Service Organizations (VSOs) in addressing these growing mental health concerns—ensuring that veterans, too have a community of hope and realize that recovery is achievable.

Thank you for inviting NAMI to submit written testimony on this important bill; we always appreciate being a resource on mental health issues in the veterans' community.

PREPARED STATEMENT OF JOSEPH W. WESCOTT II, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee: The National Association of State Approving Agencies (NASAA) is pleased to provide its views on certain education benefits legislation under consideration by the Committee today, June 29, 2016, particularly S. 3021.

NASAA does not receive any grants or contracts directly from the Federal Government, though its member organizations are state agencies operating in whole or in part under Federal contracts funded by Congress and administered by the Department of Veterans Affairs (VA).

On behalf of fifty-five SAAs in 49 states and the territory of Puerto Rico, NASAA thanks the Senate Committee on Veterans Affairs for its strong commitment to a better future for all servicemembers, veterans and their families through its continued support of the GI Bill® educational program.

S. 3021, A BILL TO AUTHORIZE THE USE OF POST-9/11 EDUCATIONAL ASSISTANCE TO PURSUE INDEPENDENT STUDY PROGRAMS AT CERTAIN EDUCATIONAL INSTITUTIONS THAT ARE NOT INSTITUTIONS OF HIGHER LEARNING

State approving agencies take seriously our role as "the gatekeepers of quality" and the "boots on the ground" defending the integrity of the GI Bill and making sure that only quality programs are approved by applying Federal and state law and regulation. An additional and equally important role is the continued oversight of these programs after their initial approval. We do so in conjunction with other stakeholders in veteran and higher education, including state licensing agencies, state higher education departments, the Department of Veterans Affairs, the Department of Education and national and regional accrediting agencies.

Congress, in establishing the laws and regulations governing the manner and method by which education could be approved for veterans, wisely provided that Non College Degree training could be delivered by way of independent study (online education) only when affiliated with or provided by an accredited institution of higher learning (IHL). Certainly, in view of the uncertain quality of distance learning in the early years of its development, it made sense to make sure that regionally accredited IHLs were the only places that online NCD training would be approved. This also recognized the fact that many unaccredited NCD programs are offered in a clock-hour as opposed to a credit hour format and as such, it is virtually impossible to ensure that veterans met approved program attendance standards outside of the classroom.

S. 3021 seeks to expand Post-911 GI Bill to provide for the approval of independent study programs at certain educational institutions that are not institutions of higher learning, namely stand-alone NCD granting institutions. Though this bill does include language to restrict the extent of this expansion somewhat, some of that language could be problematical. As this is a radical departure from the inherent safeguard provided in the code of disallowing the approval of "any independent study program except an accredited independent study program (including open circuit television) leading (A) to a standard college degree, or (B) to a certificate that reflects educational attainment offered by an institution of higher learning," NASAA cannot support this legislation. However, we would not oppose it as long as the following concerns are addressed.

First, as regards proposed subsection (C)(ii): The definition of a "postsecondary vocational institution" as defined in the Higher Education Act, does seem to contain adequate parameters to protect the integrity of the GI Bill. The institution must be limited to high school graduates or equivalent; authorized by the State to offer the program; is public or nonprofit; and is accredited by a nationally recognized accrediting agency or granted preaccreditation status by an agency authorized to grant such status. This definition would seem to bar predatory institutions providing training of questionable quality which might or might not lead to a job or career from seeking approval.

However, NASAA is concerned that proposed subsection (C)(i) is problematical. If you solely look at the definition that is cited, the Perkins Act limits the institutions covered to public and nonprofit institutions, but it does not require that the institutions be accredited, nor does it require that the institution be authorized by the State. So, upon reviewing the definition that the proposed language cites, the schools might not be required to have a license to operate. Also, although the lead-in provision in 3680A(4) requires the independent study program to be accredited, there is nothing that requires the accrediting agency for career and technical education schools to be nationally or regionally recognized, as, unlike the definition of a "postsecondary vocational institution," the definition of an "area career and technical education school" does not mention accreditation. Therefore, as the proposed language currently stands, an area career and technical education school could be accredited by an unrecognized accrediting entity, and still be able to qualify for the GI Bill. Finally, the Perkins Act definition of "career and technical education" includes entrepreneurship, which, as you'll recall, is currently restricted under the GI Bill when the program is a non-degree program.

We would also seek to point out to the Committee that though we would not expect that a large number of proprietary schools would rush to become non-profits accredited by unrecognized accrediting entities, some predatory institutions might seek to do so in order to fit into the otherwise broad definition of an "area career

and technical education school." Also, some institutions might seek to provide programs of questionable quality under contract with institutions granted access under this proposed legislation. For these and other reasons cited above, NASAA respectfully requests that the language of this bill be changed so that only NCD institutions that are either public or not-for-profit institutions AND are accredited by a nationally recognized accredited agency be allowed to seek approval.

Finally, we would respectfully remind the Committee that even with the passage of this legislation, it is important to note that programs would still have to meet appropriate statutory approval criteria in order for an SAA to grant approval. We are concerned that some CTE programs do not maintain appropriate standards of academic progress and that in other cases some CTE programs could not be approved as they are self-paced without any fixed limitation as to how long a student takes to complete the program. Given our very generous housing allowance under the Post-9/11 GI Bill, such policies would provide a disincentive for students to complete such a program in a reasonable time.

Today, SAAs throughout our Nation, composed of approximately 175 professional and support personnel, are supervising over 10,000 active facilities with 100,000 programs. We pledge to you that we will not fail in our critical mission and in our commitment to safeguard the public trust, to protect the GI Bill and to defend the future of those who have so nobly defended us.

Mr. Chairman, NASAA thanks the Committee for the opportunity to share our concerns and suggestions and we commit to working together with you and your staff to enhance the pending legislation.

LETTER FROM TERISA E. CHAW, EXECUTIVE DIRECTOR, NATIONAL EMPLOYMENT LAWYERS ASSOCIATION

June 30, 2016

The Honorable Johnny Isakson
Chairman
U.S. Senate Committee on Veterans' Affairs
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
U.S. Senate Committee on Veterans' Affairs
Washington, DC 20510

Re: Written Testimony Of The National Employment Lawyers Association For The June 29, 2016 Hearing Of The Senate Committee On Veterans' Affairs Regarding Pending Legislation

Dear Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Thank you for inviting the National Employment Lawyers Association (NELA) to participate in the June 29, 2016 hearing of the Senate Committee on Veterans' Affairs by providing written testimony expressing our strong support for the Justice for Servicemembers Act (JSA, S. 3042). NELA commends Senators Blumenthal, Leahy, Durbin, and Franken on the introduction of the Justice for Servicemembers Act. We also commend Chairman Isakson on this hearing and the timely consideration of this important bill. Our testimony also addresses additional proposed amendments to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) contained in the Discussion Draft that is under consideration by the Committee.

Founded in 1985, NELA is the largest professional membership organization in the country comprised of lawyers who represent employees in civil rights, employment, and labor disputes. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. With 69 circuit, state, and local affiliates, NELA has a membership of over 4,000 attorneys working on behalf of those who are illegally treated in the workplace.

Many of our members represent servicemembers and veterans who seek representation for legal claims arising under USERRA. Thus, our members understand the employment-related challenges faced by those who sacrifice a great deal to serve our nation. As lawyers and as Americans, we must do all we can to help servicemembers and veterans who have suffered violations of their employment and reemployment rights as a result of their military service. It is critical that we strengthen USERRA and especially important that we restore enforcement rights that have been undermined by court decisions.

National Office • 2201 Broadway, Suite 402 • Oakland, California • 94612 • TEL 415.296.7629
Washington DC Office • 1828 L Street, NW, Suite 600 • Washington DC • 20036 • TEL 202.898.2880
email: nelahq@nelahq.org • www.nela.org • FAX 866.593.7521

I. USERRA Overview

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 *et seq.*, ensures that the civilian jobs of servicemembers and veterans (including members of the Reserves and National Guard) will not be jeopardized by their military service. USERRA provides reemployment rights and benefits to employees who leave civilian jobs to perform military service, protects against employment discrimination due to military membership or service, and entitles employees to certain rights and benefits while away for military service. USERRA covers all civilian employers in the United States, regardless of size or number of employees. USERRA is the most recent in a series of federal laws originating in 1940 that provide reemployment rights and job protection to servicemembers and veterans.

USERRA's enforcement mechanisms permit persons who believe their USERRA rights have been violated to file a complaint with the U.S. Department of Labor (DOL) Veterans' Employment and Training Service (VETS). If VETS does not resolve the complaint, the servicemember or veteran may request that the U.S. Department of Justice (DOJ) pursue litigation on their behalf. USERRA also grants servicemembers and veterans a private right of action if they choose not to file a complaint with VETS or to pursue the DOJ representation procedure, or if DOJ declines to pursue the alleged violation. Remedies for violations of USERRA include back pay, liquidated damages for willful violations (in cases against private, state, and local government employers), and injunctive relief.

II. NELA Strongly Supports The Justice For Servicemembers Act

The Justice for Servicemembers Act is a critically important bill that will amend Section 4302 of USERRA to clarify that servicemembers cannot be precluded from filing claims alleging violations of their USERRA rights in a court of law, and instead be forced to arbitrate such claims. Servicemembers typically find themselves bound by a forced arbitration clause, not because they had the opportunity to negotiate or to accept or decline such a provision, but rather because the forced arbitration clause was a prerequisite to being hired and keeping their jobs. When such clauses are in effect, servicemembers and veterans are forced to challenge employer conduct that violates their USERRA rights in arbitration rather than in a court of law. Forced arbitration clauses are a significant problem for servicemembers who are fired because of their military obligations or who cannot get their jobs back after returning from military service.

Properly construed, Section 4302(b) of USERRA, which is USERRA's anti-waiver provision, prohibits contracts requiring servicemembers to give up their enforcement rights under USERRA in order to gain employment or keep their jobs.[1] USERRA's legislative history confirms this interpretation. In explaining Section 4302(b), the House Committee on Veterans' Affairs stated that "resort to . . . arbitration . . . is not required," and that "[a]n express waiver of future statutory rights, such as one that an employer might wish to require as a condition of employment, would be contrary to the public policy embodied in [USERRA] and would be

[1] Section 4302(b) provides:

> (b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

void."[2] Moreover, DOL interprets Section 4302(b) as prohibiting arbitration clauses waiving a servicemember's right to pursue a court action under USERRA.[3]

That servicemembers cannot be compelled to relinquish their statutory enforcement rights is a principle established long before USERRA's enactment. In 1958, the U.S. Supreme Court held servicemembers cannot be forced by employers to grieve or arbitrate their reemployment claims before enforcing their rights in court.[4] In enacting Section 4302(b), Congress intended to reaffirm and codify this longstanding principle.[5]

In 2006, however, the U.S. Court of Appeals for the Fifth Circuit in *Garrett v. Circuit City Stores, Inc.*, held USERRA claims can be subject to forced, binding arbitration.[6] The Fifth Circuit so held despite the express language in Section 4302(b) voiding "any" agreement that limits "any right or benefit" provided to servicemembers by USERRA, "including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit." The Fifth Circuit misconstrued Section 4302(b) as protecting only USERRA's substantive rights and excluding the enforcement rights granted to servicemembers by the Act.

In the wake of the Fifth Circuit's decision, numerous courts, including the U.S. Court of Appeals for the Sixth Circuit, have enforced forced arbitration clauses against servicemembers who sought to exercise their rights under USERRA to have their claims heard in court.[7] The arbitration clauses enforced in these cases, like that in the Fifth Circuit case, were imposed by employers as a mandatory condition of employment before the claims had arisen.

Passage of the JSA will restore and safeguard servicemembers' procedural rights under USERRA that have been eroded by the decisions of the Fifth and Sixth Circuits and their progeny. The JSA will amend USERRA to clarify that servicemembers' and veterans' procedural and enforcement rights are protected by Section 4302(b) of USERRA, just as their substantive rights are protected, and that pre-dispute clauses forcing USERRA claims into arbitration are unenforceable because they violate Section 4302(b).

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[2] H.R. REP. No. 103-65, pt. 1, at 20 (1993) ("House Report").

[3] Department of Labor, Preamble to USERRA Regulations, 70 Fed. Reg. 75,246, 75,257 (Dec. 19, 2005) (stating that Section 4302(b) "includes a prohibition against the waiver in an arbitration agreement of an employee's right to bring a USERRA suit in Federal court.").

[4] *McKinney v. Missouri-Kansas-Texas R.R. Co.*, 357 U.S. 265, 268-69 (1958).

[5] House Report at 20 (explaining that "section [4302(b)] would reaffirm that additional resort to mechanisms such as grievance procedures or arbitration or similar administrative appeals is not required") (citing *McKinney*, 357 U.S. at 270; *Beckley v. Lipe-Rollway Corp.*, 448 F. Supp. 563, 567 (N.D.N.Y. 1978)).

[6] *Garrett v. Circuit City Stores, Inc.*, 449 F.3d 672 (5th Cir. 2006) (employer's pre-dispute arbitration policy provided to servicemember treated as agreement to arbitrate his USERRA claims arising years later by virtue of his failure to opt out of policy within 30 days of receipt).

[7] *See, e.g., Landis v. Pinnacle Eye Care*, LLC, 537 F.3d 559 (6th Cir. 2008); *Ziober v. BLB Resources, Inc.*, No. 8:14-cv-00675-CJC-DFM (C.D. Cal. July 31, 2014); *Bodine v. Cook's Pest Control, Inc.*, No. 2:15–cv–00413–RDP, 2015 WL 3796493 (N.D. Ala. June 18, 2015); *McGee v. Armstrong*, No. 5:11CV2751, 2014 WL 3012879 (N.D. Ohio July 3, 2014); *McLean v. Byrider Sales of Ind. S, LLC*, No. 2:13–cv–524, 2013 WL 4777199 (S.D. Ohio Sept. 5, 2013); *Palmer v. Midland Food Servs. Inc.*, No. 1:11 CV 1343, 2011 WL 4458781 (N.D. Ohio Sept. 23, 2011); *Will v. Parsons Evergreene, LLC*, No. 08–cv–00898–DME–CBS, 2008 WL 5330681 (D. Colo. Dec. 19, 2008); *Ohlfs v. Charles Schwab & Co., Inc.*, No. 08–cv–00710–LTB–MEH, 2008 WL 4426012 (D. Colo. Sept. 25, 2008); *Ernest v. Lockheed Martin Corp.*, No. 07–cv–02038–WYD–KLM, 2008 WL 2958964 (D. Colo. July 29, 2008); *Kitts v. Menards, Inc.*, 519 F. Supp. 2d 837 (N.D. Ind. 2007).

We urge Congress to enact the JSA in the 114th Congress. Given the Armed Forces' heavy reliance on Guard and Reserve members to staff our military's operations, it is essential for servicemembers and veterans to be assured that they can serve in the military and return to their jobs. Any servicemember or veteran facing adverse action that is prohibited under USERRA should be assured that she or he can seek enforcement of their USERRA rights in a court of law.

III. NELA Testimony On The Discussion Draft

The Discussion Draft provided to us by the Committee on Veterans' Affairs includes the language of the JSA, but also goes further and addresses additional proposals for amending USERRA. NELA's testimony below addresses each proposal contained in the Discussion Draft.

a. NELA Supports Section 1 Of The Discussion Draft Clarifying The Scope Of Procedural Rights Under USERRA

The language of Section 1 of the Discussion Draft is identical to that of the Justice for Servicemembers Act. For the reasons stated above, NELA also strongly supports Section 1 of the Discussion Draft.

b. NELA Opposes Proposed Elimination Of The Remedy Of Liquidated Damages As Set Out In The Discussion Draft

Section 2(d)(1)(A) of the Discussion Draft would delete Section 4323(d)(1)(C) of USERRA, which authorizes awards of liquidated damages in an amount equal to a plaintiff's lost wages and benefits against private, state, and local government employers who willfully violate USERRA.

NELA opposes reducing remedies presently available under USERRA. The existing provision for liquidated damages should be improved to strengthen USERRA enforcement, and NELA strongly opposes eliminating liquidated damages as a remedy. One important improvement would be to amend the provision to eliminate the "willfulness" requirement. This change would align the provision more closely with the liquidated damages provisions in the Fair Labor Standards Act[8] and the Family and Medical Leave Act.[9]

Depending on the amount of lost wages and benefits awarded to a plaintiff, a liquidated damages award under the existing Section 4323(d)(1)(C) can be substantial and the potential for such an award can deter employers from violating USERRA. Importantly, unlike the compensatory and punitive damages provisions proposed in the Discussion Draft, the existing Section 4323(d)(1)(C) imposes no cap on the amount of liquidated damages, sets no threshold for the number of employees necessary for the employer to be liable for awards of liquidated damages, and treats public employers the same as private employers.

[8] *See* 29 U.S.C. §§ 216(b), 260.
[9] *See* 29 U.S.C. § 2617(a)(iii).

c. NELA Supports Strengthening USERRA Enforcement To Include Compensatory And Punitive Damages, But Opposes The Limits And Exemptions Proposed In The Discussion Draft

The enforcement mechanisms contained in USERRA should be strengthened by adding compensatory and punitive damages as remedies. NELA, however, opposes the language of the compensatory and punitive damages provisions in the Discussion Draft at Section 2(d). As drafted, the language in the Discussion Draft would have the unintended consequence of removing important remedies currently available. This language would remove relief for some servicemembers and provide inadequate relief for others.

The proposed compensatory and punitive damages provisions borrow from 42 U.S.C. § 1981a, which governs awards of compensatory and punitive damages under Title VII of the Civil Rights Act and the Americans with Disabilities Act (ADA). Although not identical to Section 1981a, the compensatory and punitive damages provisions in the Discussion Draft largely replicate Section 1981a, including setting caps on the combined amount of compensatory and punitive damages.

The Section 1981a caps on compensatory and punitive damages, enacted in 1991, are woefully inadequate to compensate victims of unlawful employment practices as the tragic story of the Henry's Turkey Service case illustrates (see http://nyti.ms/1oAJhgi). The caps limit full and just relief and reduce the amount of many damages awards to a level that renders them merely a cost of doing business for employers. Further, capped damages fail to deter employers from violating the law.

The Section 1981a caps ostensibly were adopted to protect businesses from potential financial ruin that could result from very large verdicts. The Section 1981a caps, and the caps included in the Discussion Draft, however, are based on the number of employees working in a business, and bear no relationship to an employer's actual financial profile. In the absence of caps, an employer would be free to move for remittitur based on its financial profile. If caps are to be incorporated into USERRA, caps based on an employer's net financial worth would be preferable to capping damages based on number of employees.

Another deficiency in Section 1981a, which is also reflected in the Discussion Draft, is that in both instances the caps are applied on a per person, rather than a per claim, basis. This approach provides a windfall to an employer who is the defendant in a lawsuit in which a plaintiff prevails on two or more claims and precludes adequate relief for the plaintiff. This approach also weakens the value of the remedy as a deterrent to employers.

Further, as proposed in the Discussion Draft, compensatory and punitive damages would be unavailable to USERRA plaintiffs suing employers with fewer than 15 employees. The Discussion Draft only allows for awards of compensatory damages against employers with 15 or more employees. This is inconsistent with other aspects of USERRA and makes no sense. Although Title VII and the ADA cover employers with 15 or more employees, USERRA applies to *all civilian employers* regardless of the number of employees.

The Discussion Draft also would weaken USERRA enforcement by exempting public employers from a penalty for willful violations of the Act. USERRA's current liquidated damages penalty allows for awards of liquidated damages (doubling of back pay) against state employers and

local government employers, as well as private employers who willfully violate USERRA. As noted above, the provisions of the Discussion Draft not only would eliminate the liquidated damages remedy, but also would immunize public employers from liability under the proposed punitive damages provision.

NELA further notes that compensatory damages under the Discussion Draft would be even more restrictive than under Section 1981a. Section 1981a does not cap past pecuniary losses.[10] The caps on compensatory damages under Section 1981a do not apply to past pecuniary losses, whereas the proposal in the Discussion Draft would cap all compensatory damages, including past pecuniary losses.

d. NELA Opposes Amending USERRA's Pension Rights Section

Section 4318 of USERRA is the Act's pension rights provision. It requires employers to treat persons reemployed after an absence for military service as having been continuously employed for pension purposes, and to make pension contributions covering the period of the person's absence. As drafted, the amendment to Section 4318 proposed in section 2(g) of the Discussion Draft could be detrimental to the pension rights of employees who take military leave. It would also create uncertainty for both employees and employers, as well as a potential for abuse by employers.

USERRA establishes rules governing the method for computing a reemployed employee's compensation for the period of the employee's military absence, for purposes of determining the amount of retroactive pension contributions to be made for such period. The compensation normally is the rate or rates of pay the employee would have received had the employee remained continuously employed.[11] If, however, the employee's rate of compensation "is not reasonably certain," the employee's compensation must be based on "the employee's average rate of compensation during the 12-month period immediately preceding" the employee's military absence, or, if shorter than 12 months, the period of employment immediately preceding such absence.[12] Examples of employees whose compensation "is not reasonably certain," include pilots whose wages routinely vary from month to month, or police officers who may, but do not always, earn substantial overtime pay.

The proposed language in the Discussion Draft amending Section 4318 retains this approach for employees whose compensation is not reasonably certain and who take military leave for one year or less. It also creates a new and separate methodology for employees whose compensation is not reasonably certain and who take military leave for *more* than one year. Pursuant to the Discussion Draft language for calculating pension contributions for employees whose military leave exceeds one year, the employee's compensation would be "the average rate of compensation during such period of service of employees of that employer who are similarly situated to the servicemember in terms of having similar seniority, status, and pay."

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[10] Compensatory damages subject to the caps under Section 1981a are "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." 42 U.S.C. § 1981a(b)(3). *See also id.* § 1981a(b)(2) ("Compensatory damages awarded under [§ 1981a] shall not include backpay, interest on backpay, or any other type of relief authorized under [Title VII].").
[11] 38 U.S.C. § 4318(B)(3)(A).
[12] 38 U.S.C. § 4318(b)(3)(B).

For an individual employee whose compensation is not reasonably certain, it may be difficult to determine properly and fairly which other employees he or she "is similarly situated to" in terms of seniority, status, and pay. In some cases the employer's decision about which employees are "similarly situated" may leave the employee with far smaller pension contributions than if the employer had applied the current rule under Section 4318(b)(3)(B) by using the employee's average rate of compensation during the 12-month period before the military service.

In addition, this "similarly situated" standard creates potential for abuse by employers, as many employers would refuse to disclose to their employees how their pension contributions are calculated under Section 4318, leaving employees without the ability to determine whether their pension contributions were calculated in a manner consistent with the requirements of USERRA. (Currently, some employers do not disclose to their employees how their pension contributions under Section 4318 were calculated.) Furthermore, employees who begin a period of military leave and are subject to having their military service extended will not know in advance how their pension contributions will be calculated at the conclusion of their military leave, eliminating the certainty that the current bright line rule provides. This proposal also creates greater uncertainty for an employer seeking to plan for pension contributions to those employees on military leave for longer than one year.

NELA strongly recommends that the language in § 4318 of USERRA be left unchanged.

e. NELA Opposes Time Limits On Protection Of Employees With Service-Related Disabilities Discovered After Reemployment

The proposal at Section 2(h) of the Discussion Draft to restrict service-related disabilities covered under Section 4313(a)(3) of USERRA to those brought to an employer's attention within five years after a person's reemployment would weaken existing USERRA rights. Section 4313(a)(3) provides job placement and accommodation rights to returning servicemembers who cannot perform the duties of their otherwise applicable reemployment position due to a disability incurred or aggravated while away for military service. When liberally construed (as required in interpreting USERRA),[13] Section 4313(a)(3) covers latent service-related disabilities of reemployed servicemembers. DOL has interpreted the provision in this way.[14] Section 4313(a)(3) sets *no time limit* for notifying an employer of an employee's need for accommodation of a service-related disability.

By limiting covered disabilities to those discovered within five years after reemployment, this proposed amendment would cut off the current rights of veterans with latent or undiagnosed service-related disabilities that are discovered more than five years after reemployment. It is not

[13] *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) (holding that the federal reemployment law "is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need"). *Accord Alabama Power Co. v. Davis*, 431 U.S. 581, 584 (1977) (reaffirming that the "guiding principle" of liberal construction for the benefit of servicemembers "govern[s] all subsequent interpretations of the re-employment rights of veterans"). *See also King v. St. Vincent's Hosp.*, 502 U.S. 215, 220 n.9 (1991); *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980); *Tilton v. Missouri Pac. R. Co.*, 376 U.S. 169, 181 (1964).

[14] Department of Labor, preamble to USERRA regulations, 70 Fed. Reg. 75246, 75277 (Dec. 19, 2005) ("The disability [subject to § 4313(a)(3)] must have been incurred or aggravated when the service member applies for reemployment, even if it has not yet been detected. If the disability is discovered after the service member resumes work and it interferes with his or her job performance, then the reinstatement process should be restarted under USERRA's disability provisions.").

unusual for service-related cancers and psychiatric problems to manifest or be diagnosed after five years have elapsed. Further, many known but non-disabling service-related conditions progress to the point of being disabling in a period of time longer than five years.

It is our recommendation that language be added clarifying that service-related disabilities under Section 4313(a)(3) include those discovered after a servicemember resumes work, which is consistent with the intent of USERRA. Conversely, it would be unjust to servicemembers who take great risks and often expose themselves to both known and unknown dangers, to establish an arbitrary time limit for protection under Section 4313(a)(3).

f. NELA Supports USERRA Language Clarifying That Employers Have The Burden Of Identifying Reemployment Positions

NELA supports the proposal at Section 2(i) of the Discussion Draft to add a new provision to Section 4313 stating that "the employer shall have the burden of identifying the appropriate reemployment positions." Under a proper construction of Section 4313, which requires employers to reemploy returning servicemembers in accordance with the dictates of that Section, an employer bears that burden.

Amending Section 4313 to make the employer's responsibility explicit would clarify the reemployment obligations of employers and thereby protect the reemployment rights of servicemembers. Legislation amending Section 4313 to include the proposed language should state that the amendment is a clarification of reemployment rights.

g. NELA Recommends Revision Of The Proposed Sovereign Immunity Provision To Include Congress' War Powers As A Basis To Abrogate Immunity And Restore Jurisdiction To The Federal Courts

Servicemembers seeking to bring lawsuits to enforce their USERRA rights against state employers have increasingly been denied access to courts. When enacted in 1994, USERRA authorized servicemembers to sue state employers in federal court. Based on well-established case law under USERRA's predecessor legislation, Congress' War Powers under Article I of the Constitution fully authorized Congress to subject states to private lawsuits to enforce servicemembers' civilian employment and reemployment rights.[15]

The tide turned, however, with the U.S. Supreme Court's 1996 decision in *Seminole Tribe of Florida v. Florida*, which held Congress cannot use its commerce powers under Article I of the Constitution to override states' immunity under the Eleventh Amendment from private suits for damages.[16] Although *Seminole Tribe* did not concern Congress' War Powers, broad language in the decision suggested no Article I power authorized Congress to override the Eleventh Amendment. In the immediate aftermath of *Seminole Tribe*, some federal courts held states

[15] *See Reopell v. Commonwealth of Mass.*, 936 F.2d 12 (1st Cir. 1991); *Peel v. Florida Dep't of Transportation*, 600 F.2d 1070, 1084 (5th Cir. 1979); *Jennings v. Illinois Office of Educ.*, 589 F.2d 935, 938 (7th Cir. 1979); *Moore v. State of Kan.*, No. 78-1079, 1979 WL 1866 (D. Kan. May 31, 1979); *Sheely v. Idaho Falls Sch. Dist. No. 91*, No. 78-4012, 1978 WL 1667 (D. Idaho Nov. 8, 1978); *Camacho v. Public Svc. Com. of Commonwealth of Puerto Rico*, 450 F.Supp. 231 (D.P.R. 1978).
[16] *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

enjoyed Eleventh Amendment immunity from USERRA claims.[17] The U.S. Court of Appeals for First Circuit, however, ruled that *Seminole Tribe*'s "hold[ing] that Congress lacks the power to abrogate the Eleventh Amendment under the Commerce Clause ... does not control the War Powers analysis."[18]

In response to the post-*Seminole Tribe* decisions holding states have Eleventh Amendment immunity from private USERRA suits filed in federal court, and in an effort to ensure state employees a forum to bring lawsuits to enforce USERRA, in 1998 Congress amended USERRA's enforcement provisions to (among other things) replace federal court jurisdiction over private suits against states with state court jurisdiction over such suits.[19] The understanding at the time was that states would have no immunity from federal claims brought in state courts. In 1999, however, the U.S. Supreme Court ruled in *Alden v. Maine* that Congress' authority under Article I did not include the power to subject nonconsenting states to private suits for damages in state courts.[20] *Alden* was not a USERRA case and did not concern Congress' War Powers. Rather, *Alden* was brought under the Fair Labor Standards Act, which is a commerce powers enactment. Nonetheless, in the wake of *Alden*, a number of state courts have held that state employers enjoy immunity from USERRA claims brought in state court, such as those in Alabama, Delaware, and Georgia.[21] As a result, no forum is available for state employees in these states to bring private suits to enforce their rights under USERRA. State courts in New Mexico, Ohio, South Carolina, and Wisconsin have found no state immunity from USERRA claims.[22] A Tennessee statute waives state immunity from USERRA claims arising on or after July 1, 2014, but not for USERRA claims that accrued before that date.[23] Few other states have enacted laws waiving sovereign immunity from USERRA claims.[24] State employees in most other states have no assurance they can sue to enforce their USERRA rights.

As a solution, NELA recommends that Congress amend USERRA to provide explicitly once again for federal court jurisdiction over private USERRA suits against states. NELA believes Congress' War Powers authorize Congress to subject unwilling states to lawsuits in federal court

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[17] *See Velasquez v. Frapwell*, 160 F.3d 389, 395 (7th Cir. 1998), *vacated in part*, 165 F.3d 593 (7th Cir. 1999); *Palmatier v. Michigan Dept. of State Police*, 981 F. Supp. 529 (W.D. Mich. 1997).

[18] *Diaz-Gandia v. Dapena-Thompson,* 90 F.3d 609, 616 n.9 (1st Cir. 1996).

[19] *See* 38 U.S.C. § 4323(b)(2). Note: Federal appellate courts addressing the issue have ruled the 1998 amendment divested the federal courts of jurisdiction to hear private suits against states. *See Velasquez v. Frapwell*, 165 F.3d 593, 593–94 (7th Cir. 1999); *McIntosh v. Partridge*, 540 F.3d 315, 320–21 (5th Cir. 2008); *Townsend v. University of Alaska*, 543 F.3d 478, 484–85 (9th Cir. 2008); *Wood v. Florida Atlantic University Bd. of Trustees*, 432 Fed. Appx. 812, 815 (11th Cir. 2011) (citing *Velasquez*, *McIntosh*, and *Townsend*). *See also Rimando v. Alum Rock Union Elementary School Dist.*, 356 Fed. Appx. 989 (9th Cir. 2009) (California public school district is treated same as state for jurisdictional purposes under USERRA.).

[20] *Alden v. Maine*, 527 U.S. 706, 119 S. Ct. 2240 (1999).

[21] *Anstadt v. Board of Regents of University System of Ga.*, 303 Ga. App. 483, 693 S.E.2d 868 (2010); *Janowski v. Division of State Police, Dept. of Safety and Homeland Sec., State of Delaware*, 981 A.2d 1166 (Del. 2009); *Larkins v. Department of Mental Health and Mental Retardation*, 806 So. 2d 358 (Ala. 2001).

[22] *Ramirez v. State, CYFD*, No. S–1–SC–34613, —P.3d—, 2016 WL 1459129 (N.M. Apr. 14, 2016); *Copeland v. South Carolina Dept. of Corrections*, No. 2013-CP-42-2498 (S.C. Ct. Com. Pl. Mar. 28, 2014); *Scocos v. State Dept. of Veteran Affairs*, 2012 WI App 81, 343 Wis. 2d 648, 819 N.W.2d 360 (Wis. Ct. App. 2012); *Panarello v. State*, No. PC 03-5569, 2009 WL 301888 (R.I. Super. Ct. Jan. 22, 2009).

[23] *Smith v. The Tennessee Nat'l Guard*, No. M2014–02375–COA–R3–CV, 2015 WL 3455448, at *3 (Tenn. Ct. App. May 29, 2015) (holding waiver of sovereign immunity for USERRA claims in Tenn. Code Ann. § 29-20-208 only applies to causes of action that accrue on or after July 1, 2014), *appeal denied*, (Sept. 17, 2015).

[24] *See* Fla. Stat. Ann. § 250.82; Minn. Stat. Ann. § 1.05; Mont. Code Ann. §§ 10-1-1003 (3)(a), 10-1-1004, 10-1-1020, 10-1-1021; Ohio Rev. Code Ann. §§ 5903.02.

under USERRA.[25] NELA notes that a decade after deciding *Seminole Tribe*, the U.S. Supreme Court held in *Central Virginia Community College v. Katz* that the language in *Seminole Tribe* suggesting that Article I power cannot be used to override states' Eleventh Amendment immunity was dicta based on an "assumption" that "was erroneous."[26] Significantly, *Katz* went on to hold that Congress's power under Article I to enact bankruptcy laws included authority to subject states to bankruptcy proceedings.[27] Certainly, the case for Congress' War Powers overriding states' claims of sovereign immunity is even stronger.[28] Indeed, the United States has taken the position that Congress' constitutional War Powers empower Congress to subject nonconsenting states to private suits under USERRA.[29]

As a result of the 1998 amendment's elimination of federal court jurisdiction over private suits against states under USERRA, the question of whether the War Powers authorize Congress to subject nonconsenting states to private suits in federal court under USERRA was not fully litigated and thus never reached the U.S. Supreme Court. NELA believes jurisdiction should be restored to the federal courts so that the matter can be fully litigated with possible ultimate review by the Supreme Court. Accordingly, NELA supports the Discussion Draft's proposal to restore to the federal courts jurisdiction over private suits to enforce USERRA against state employers.[30]

NELA, however, recommends that the Discussion Draft's proposed amendment addressing state sovereign immunity[31] be revised to provide that Congress' War Powers under Article I of the Constitution continue as the basis to abrogate state immunity for any action under USERRA against a state employer. While dismissal of USERRA claims against states on sovereign immunity grounds remains a major obstacle to enforcement of USERRA rights by state employees, Congress should not abandon its reliance on the War Powers to abrogate state immunity from private actions under USERRA.

NELA supports the Discussion Draft's provision that uses the Constitution's Spending Clause as a new source of power to abrogate state immunity. NELA does not support, however, the Discussion Draft's apparent exclusive reliance on the Spending Clause to accomplish abrogation.

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[25] For excellent law review articles on this subject, *see* Harner, *The Soldier and the State: Whether the Abrogation of State Sovereign Immunity in USERRA Enforcement Actions Is a Valid Exercise of the Congressional War Powers*, 195 Mil.L.Rev. 91 (2008); Hirsch, *Can Congress Use its War Powers to Protect Military Employees from State Sovereign Immunity?*, 34 Seton Hall L.Rev. 999 (2004). *See also* Brief for The United States as *Amicus Curiae* in Support of the Petitioner, *Ramirez v. State of N.M. Children, Youth, and Families Dep't* (N.M. Aug. 6, 2014) (No. No. 34,613), *available at* http://1.usa.gov/1BR29l1.

[26] *Central Virginia Community College v. Katz*, 546 U.S. 356, 363 (2006).

[27] *Id.* at 379.

[28] *Cf. Lichter v. United States*, 334 U.S. 742, 781 (1948) ("'[Congress' war] power, explicitly conferred and absolutely essential to the safety of the Nation, is not destroyed or impaired by any later provision of the constitution or by *any one of the amendments*.'") (quoting address by Hon. Charles E. Hughes) (emphasis added); *In re Tarble*, 80 U.S. 80 U.S. 397, 408 (1871) (Congress' war powers are "plenary and exclusive").

[29] *See* Brief for The United States as *Amicus Curiae* in Support of the Petitioner, *Ramirez v. State of N.M. Children, Youth, and Families Dep't* (N.M. Aug. 6, 2014) (No. No. 34,613), *available at* http://1.usa.gov/1BR29l1; Brief for the United States As Intervenor-Appellee, *Weaver v. Madison City Bd. of Educ.*, (11th Cir. Mar. 14, 2014) (No. 13-14624-F), *available at* http://1.usa.gov/2931Lrb.

[30] NELA also supports the Discussion Draft's authorization for concurrent jurisdiction of the state courts over such suits. Servicemembers should have a right to choose between a federal and state forum to enforce their USERRA rights.

[31] Sec. 2(b) of the Discussion Draft.

While the Spending Clause may solve the sovereign immunity problem going forward, the proposed Spending Clause fix, in contrast to reliance on the War Powers, would not abrogate claims of state immunity arising previously. Furthermore, the War Powers, which are sweeping, may ultimately prove more effective in accomplishing abrogation.

h. NELA Supports The Proposals To (1) Grant Individuals A Right To Intervene In Lawsuits Brought By The Attorney General On Their Behalf, (2) Authorize The Attorney General To Bring "Pattern Or Practice" Suits, (3) Expand The Bases For Venue, And (4) Authorize The Attorney General To Issue And Serve Civil Investigative Demands

NELA supports the Discussion Draft's proposed amendments that would grant individuals a right to intervene in lawsuits brought by the Attorney General on their behalf, authorize the Attorney General to bring "pattern or practice" suits, expand the bases for venue, and authorize the Attorney General to issue and serve civil investigative demand. Each of these provisions would further strengthen enforcement of USERRA and the protections USERRA is intended to provide for our nation's servicemembers and veterans.

Finally, NELA supports the proposed conforming amendments on standing and attorneys' fees.

In conclusion, NELA strongly supports passage of the JSA as well as additional legislation that is consistent with our written testimony and ensures the enforcement of the employment and reemployment rights of our nation's servicemembers and veterans.

Thank you for the opportunity to provide written testimony on the above important legislation.

Respectfully submitted,

Terisa E. Chaw
Executive Director

PREPARED STATEMENT OF THE NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

Dear Chairman Isakson and Ranking Member Blumenthal and other distinguished Senators of the Veterans Committee: On behalf of the almost 45,000 members of the National Guard Association of the United States and the nearly 500,000 soldiers and airmen of the National Guard, we deeply appreciate this opportunity to share with you our thoughts on today's hearing topics for the record. We also thank you for the tireless oversight you have provided to ensure accountability and improve our Nation's services to veterans and their families.

Today's slate of bills under consideration bears witness to the importance of continuing reforms that improve choice, access and standard of care to our Nation's veteran population. In our testimony to the Committee in March, we have provided our views on some of these bills, so this testimony will focus on those bills that are specifically focused on veterans within the National Guard, as requested.

Since 9/11, National Guardsmen have mobilized roughly 780,000 times in support of the Nation's national security objectives abroad, creating possibly the largest number of National Guard veterans since World War II.

The vast majority of these deployments involve members of the Guard who also have civilian or government employers making the Veterans' Reemployment Rights statute and the Uniformed Services Employment and Reemployment Rights Act of 1994 two of the most important laws protecting the National Guard members who step away from their jobs to serve their country. Under USERRA, all uniformed servicemembers are protected within their civilian employment. Guard members may not be discriminated against because of their past, present or future service, includ-

ing training or deployment. USERRA establishes a right to prompt reinstatement after service and ensures certain health care benefits during and after.

At NGAUS, we receive calls from our members asking about their civilian employment rights as well as from citizens considering enlisting in the National Guard. USERRA enforcement offices of the Department of Labor and the Office of Special Counsel receive tens of thousands of calls annually asking for assistance. The National Guard is also heavily reliant on Employer Support for the Guard and Reserve (ESGR), a Department of Defense program established in 1972 to promote cooperation and understanding between reserve-component servicemembers and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. Many employers have rightfully received awards for their commitment to their National Guard employees, but there are still many instances where lack of understanding has caused problems.

We strongly support Senator Blumenthal's efforts under S. 3042, legislation that will clarify in law the procedural rights of Guard members within USERRA. Unfortunately, current USERRA language surrounding forced arbitration is not clear, and there are conflicting court decisions that do not always protect Guard members' procedural rights. NGAUS asks you champion changes in law to clarify congressional intent, stop misinterpretations, protect our Guard members and grant them due process in these workplace circumstances.

NGAUS also strongly supports Senator Tester's bill, S. 832 to amend Title 10, United States Code, to authorize the provision of behavioral-health readiness services to certain members of the Selected Reserve of the Armed Forces based on need and to expand eligibility to such members for readjustment counseling from the Department of Veterans Affairs.

Guardsmen and Reservists struggle to access the same care as their active-component counterparts because they often live far from military installations. Additionally, outreach efforts to address mental-health conditions may not always reach those in need. The suicide rate for members of the National Guard and Reserve is consistently much higher than the rate for civilians and the rate for active-duty military as a result. Currently, members of the National Guard and Reserves undergo annual health assessments to identify medical issues that could impact their ability to deploy, but any follow-up care is often pursued at their own expense. Senator Tester's legislation would allow Guardsmen and Reservists to access Vet Centers for mental-health screening and counseling, employment assessments, education training, and other services to help them.

We strongly urge you to champion language that will address the military's highest suicide rates . . . those men and women in the National Guard who have never deployed, yet stand ready and trained to serve when called.

Although today this Committee is only considering part of Senator Tester's bill, NGAUS strongly supports the entire bill.

Thank you again, Chairman Isakson and Ranking Member Blumenthal, for allowing NGAUS to submit testimony for this hearing, and for your interest and commitment to the members of the National Guard.

PREPARED STATEMENT OF HON. CAROLYN N. LERNER, SPECIAL COUNSEL, U.S. OFFICE OF SPECIAL COUNSEL

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

The U.S. Office of Special Counsel (OSC) welcomes this opportunity to provide written testimony for the Committee's June 29, 2016 hearing on pending legislation. OSC is the federal sector prosecutor of claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA). We provide comments on Ranking Member Blumenthal's legislation, which clarifies the scope of procedural rights of members of the uniformed services with respect to their employment and reemployment rights.

USERRA was enacted in 1994 to provide more robust mechanisms for service members to enforce their employment and reemployment rights, including through actions in the U.S. district courts (private employers), state courts (state employers), and the U.S. Merit Systems Protection Board (federal employers). In section 4302(b) of USERRA (38 U.S.C. 4302(b)), Congress attempted to ensure that these enforcement rights could not be curtailed, limited, or otherwise restricted:

> *This chapter supersedes any state law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.*

Congress specifically intended section 4302(b) to prevent employers from undermining USERRA's procedural protections through the use of arbitration and collective bargaining agreements. As the House Committee report notes:

> *Section 4302(b) would reaffirm a general preemption as to state and local laws and ordinances, as well as to employer practices and agreements, which provide fewer rights or otherwise limit rights provided under chapter 43 or put additional conditions on those rights.... Moreover, this section would reaffirm that additional resort to mechanisms such as grievance procedures or arbitration or similar administrative appeals is not required.... It is the Committee's intent that, even if a person protected under the Act resorts to arbitration, any arbitration decision shall not be binding as a matter of law.*
>
> H. Rept. No. 103-65 (April 28, 1993), USCCAN 2449, 2453.

Nevertheless, in *Garrett v. Circuit City Stores Inc.*, 449 F.3d 672 (5th Cir. 2006), the U.S. Court of Appeals for the Fifth Circuit ruled that section 4302(b) does not preclude the enforceability of binding arbitration agreements to resolve USERRA disputes. The court opined that section 4302(b) encompasses only "substantive," not "procedural," rights under USERRA, and that the right to have a USERRA claim independently adjudicated in court is not "substantive." The only other circuit court to rule on the issue simply adopted the *Garrett* ruling. *See Landis v. Pinnacle Eye Care LLC*, 537 F.3d 559 (6th Cir. 2008).

Given Congress's clear intent in enacting section 4302(b), OSC believes these rulings were erroneous and have impermissibly narrowed the scope of protections afforded to service members under USERRA. Section 1 of Ranking Member Blumenthal's proposed bill would correct this misinterpretation by explicitly clarifying that USERRA's procedural protections are part of the "rights and benefits" guaranteed by the statute. OSC supports this clarification and believes it advances the intent of this important law.

Thank you for the opportunity to comment on matters important to those who serve our nation in uniform.

PREPARED STATEMENT OF PARALYZED VETERANS OF AMERICA

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, on behalf of Paralyzed Veterans of America (PVA), we would like to thank you for the opportunity to submit our views on pending legislation before the Committee.

S. 244

PVA recognizes that the effects of Traumatic Brain Injuries (TBI) are under-studied, and there is a significant need with the current population of veterans for care and treatment. This bill seeks to ensure that when veterans submit disability claims related to TBI, VA is using the appropriate personnel and protocols to conduct the examinations. This measure is a common sense step toward ensuring veterans with TBI receive a fair analysis of their disability claim.

Unfortunately, if implemented, this bill will likely be prevented from reaching its full potential because of current VA practices. Too often we see doctors doing Compensation and Pension exams outside of their practice area. For example, a claimant might have a podiatrist conduct an exam for a vascular disease, and this exam in turn forms the basis of his or her disability claim. Sometimes, an appropriate specialist is simply not available to provide an opinion, but more often it is because VA is inundated with the backlog of claims and appeals which creates an overwhelming incentive to complete as many exams as possible rather than ensure the right type of doctor is conducting the exam. Naturally, claims appeals based on faulty exams are an outcropping of this policy failure, and until issues like these are addressed we will continue to struggle to fix the bigger problems, such as appeals reform, that pervade VA.

S. 603, "THE RURAL VETERANS TRAVEL ENHANCEMENT ACT OF 2015"

PVA supports S. 603, the "Rural Veterans Travel Enhancement Act of 2015," a bill that would increase access to transportation options for veterans with disabilities who need vocational rehabilitation, counseling, and medical care from the Department of Veterans Affairs. This legislation includes three important components. First, it would make permanent the Secretary's authority to transport veterans to and from VA facilities. Second, it would make veterans who use the services provided by Vet Centers eligible for beneficiary travel. Finally, it would extend the authorization for grants to veterans service organizations and state departments of veterans' affairs for transporting veterans in highly rural areas.

Paralyzed Veterans supports extension of VA's authority to transport veterans to and from VA facilities as these services are critical for veterans who have mobility impairments and benefit from the accessible transportation options available through VA. We also support allowing veterans to access needed financial assistance to help them benefit from the services provided through Vet Centers. Without this assistance, some veterans may be forced to forgo this important resource. Last, we also support the extension of the Highly Rural Transportation Grants. These grants provide additional transportation options for veterans with disabilities who live in hard to reach areas, particularly those with mobility impairments, because all vehicles must operate under Department of Transportation standards for accessibility under the Americans with Disabilities Act.

S. 2210, THE "VETERAN PEER ACT"

PVA supports S. 2210, the "Veterans Partners' Efforts to Enhance Reintegration (PEER) Act." This bill would carry out a program to establish peer specialists in patient aligned care teams (PACTs) at VA polytrauma and rural medical centers. The effectiveness of the peer support model has been an overall success. These specialists help veterans access mental health services, navigate the healthcare system, and perhaps most importantly, they offer familiarity and acceptance to veterans who may find those experiences lacking. While the stigma surrounding mental health care is declining, for older veterans it can remain a firm barrier to care. In the wake of the jarring statistic that veterans over 50 are committing suicide in greater numbers than the post-9/11 generation, this bill is aptly timed, and necessary.

S. 2279, THE "VETERANS HEALTH CARE STAFFING IMPROVEMENT ACT"

PVA supports S. 2279, the "Veterans Health Care Staffing Improvement Act." This bill would carry out a program to allow servicemembers who have served in medical roles to transition directly into the VA. By rapidly absorbing qualified, experienced health care providers, this bill could ease some of the strains on VA's hiring

process. VA would be entitled to a list of recently separated servicemembers who have served in a health care capacity, allowing them direct access to recruit in a more expeditious hiring process. Further, it would allow for Advanced Practice Registered Nurses and Physicians Assistants to provide a wider range of health care, through full practice authority, based on the scope of practice recommended by the appropriate professional organizations. This in turn, would help expand care in rural areas.

S. 2316

S. 2316 would make changes to the Department of Veterans Affairs' fiduciary program by requiring the Secretary to reissue or promptly remit as recouped to beneficiaries any benefits misused by their fiduciaries in a broader range of situations than currently required under the statute. According to the VA's Office of Inspector General's August 27, 2015, report titled "Audit of Fiduciary Program Controls Addressing Beneficiary Fund Misuse," in 16 of 16 cases reviewed, fiduciary hubs failed to restore approximately $347,000 of misused funds to beneficiaries. Some of the delay in restoring those funds appears to have been due to misunderstanding when a determination of negligence is currently required prior to reissuance. In all of those cases, a negligence determination was not required. We hope that simplifying the requirement for reissuing benefits to all beneficiaries when those funds are misused, without requiring a negligence determination in certain cases, will lead to prompt restoration of needed financial resources for these beneficiaries. This legislation would also provide increased access to the financial records of fiduciaries in an effort to improve oversight of the use of beneficiary's funds. Overall, these changes would likely be helpful to beneficiaries who have been harmed due to the actions of their fiduciaries.

S. 2791, THE "ATOMIC VETERANS HEALTH CARE PARITY ACT"

While PVA has no formal position on this issue, we believe that this a clearly reasonable proposal. Over the years, significant numbers of veterans have been denied access to VA health care and benefits due to participation in highly classified and secret activities. Atomic testing and subsequent clean-up activities are no exception. These veterans should be afforded access necessary health care and benefits as a result of their service. Denying these men this opportunity simply because the Department of Defense would never admit to these secret activities at atomic sites is morally unjust.

S. 2958

PVA generally supports this proposed bill. Late last year, PVA, along with our partners in *The Independent Budget*—DAV and VFW—provided a framework for veterans health care reform that included a recommendation that Congress and the Administration consider the development of public-private partnerships to improve and expedite the process for major medical facility construction. It is a well-established fact that the process for designing and building new facilities currently takes far too long to complete. By leveraging public-private partnerships, VA can align its already limited capital infrastructure dollars to ensure adequate services are provided in given locations while allowing the efficiency of private sector capital planning and building to position the VA to actually provide those services. Ultimately, public-private partnerships will allow VA to bring new health care facilities online faster thereby assuring faster access to critically needed services.

S. 3021

PVA supports this legislation. Not all military members wish to pursue a standard college degree when they leave service. Career and Technical Education (CTE) at area career and technical centers comprise an important part of our education system. Credential-granting programs offered at these institutions span across many industries, from health care to information technology, and provide a solid pathway to employment for many of our veterans.

S. 3023, "THE ARLA HARRELL ACT"

PVA supports the "Arla Harrell Act." Veterans who have for so long quietly suffered the effects of Mustard Gas or Lewisite exposure as a result of Department of Defense testing deserve to receive critically need care from the VA. Senator McCaskill's report indicates that the number of servicemembers exposed numbers around 4,000, and yet only 610 have been identified. Currently, only 40 veterans have successfully filed claims and are receiving related benefits. The fact that only

1 percent of the veterans exposed are receiving benefits is attributed to the 90 percent rejection rate of claims. Shifting the burden of proof relating to events that occurred so long ago from the veteran to VA is an appropriate and deserved step toward rectifying the failure to fully identify this population and ensure they are receiving their earned benefits. We would also note that with a new presumption comes increased stress on VA resources. It is imperative that Congress ensure resources are appropriately adjusted to prevent VA from having to rob Peter to pay Paul.

S. 3032, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2016"

PVA supports S. 3032, the "Veterans' Compensation Cost-of-Living Adjustment (COLA) Act of 2016," which would increase, effective as of December 1, 2016, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. This would include increases in wartime disability compensation, additional compensation for dependents, clothing allowance, and dependency and indemnity compensation for children.

S. 3035, THE "MAXIMIZING EFFICIENCY AND IMPROVING ACCESS TO PROVIDERS AT THE DEPARTMENT OF VETERANS AFFAIRS ACT OF 2016"

PVA supports S. 3035, the "Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016." This legislation would allow for a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at medical facilities of the Department of Veterans Affairs. A medical scribe helps to decrease the burden of data entry on the part of the medical provider. They accompany a provider to document the physician-patient interaction, and enter it into the Electronic Health Record (EHR) at that time. The physician later reviews and approves the data entry. This dynamic allows for the physician to spend more uninterrupted time interacting with the patient, and less time dictating notes. Multiple studies have indicated that medical scribes increase physician-patient satisfaction. Further, because the physician is relieved of data entry, they are able to see more patients, thus impacting wait times. We see no reason why VA would should not avail themselves of this pilot program. In a time when VHA is struggling to hire and retain physicians, allowing for medical scribes to help existing providers carry the patient volume is essential.

S. 3055, THE "DEPARTMENT OF VETERANS AFFAIRS DENTAL INSURANCE REAUTHORIZATION ACT OF 2016"

PVA supports S. 3055, the "Department of Veterans Affairs Dental Insurance Reauthorization Act of 2016." This bill would reauthorize the VA administered dental insurance program for five years, allowing current users to maintain their care. The original pilot program began in 2014 and will expire in 2017 without action. While PVA previously expressed concerns about the cost of the program, and the role of VA as insurer, the success of the program is unquestionable. Veterans and their families markedly agree that the care is high quality and low cost. As researchers are beginning to more clearly identify the links between dental care and overall care, particularly cardiac care, this program can only be considered a sound investment into the lifelong well-being of veterans and their families.

S. 3076, THE "CHARLES DUNCAN BURIED WITH HONOR ACT OF 2016"

PVA supports this draft bill to furnish caskets and urns for burial in cemeteries of States and Indian tribes of veterans without next of kin or sufficient resources. Currently, veterans without next of kin or sufficient resources who are buried in state of tribal cemeteries are not furnished a casket or urn. These veterans buried in state and tribal cemetery are no less deserving of a dignified resting place than those in a national cemetery. This bill is, without question, the decent thing to do.

S. 3081, THE "WINGMAN ACT"

PVA supports the goal of ensuring veterans receive timely information regarding the status of their claims. We appreciate that this bill ensures that Congressional employees granted access to such a program undergo the same training and certification program that VA currently uses to certify VSO representatives and attorneys representing claimants. This legislation, however, allows access to a claimant's information regardless of whether the covered employees are acting under a power of attorney. Claims files contain the most private information about that particular veteran and, often times, information of other individuals consulted during the

claim's development. PVA believes that in the interest of maintaining strict protection of such private information, this legislation should be limited to those who hold a power of attorney. Other logistical issues may also arise in the form of the added administrative burden on VA of managing the certification process and tracking users. Certainly we do not want to see resources that should be applied to adjudicating claims shifted to facilitating Congressional involvement unless it produces a significant increase in productivity. Finally, we believe that VSO national service officers and VBA employees are best suited to answering questions regarding a claimant's file. Unlike a Congressional aide viewing the file in isolation, they have the ability to view the file in context and identify the issues holding up the claim.

DISCUSSION DRAFT, "USERRA"

PVA supports strengthening the Uniformed Services Employment and Reemployment Rights Act (USERRA). The Supreme Court of the United States has firmly established a "liberal policy of favoring arbitration agreements."[1] Courts of inferior jurisdiction have examined servicemembers' employment and reemployment rights under USERRA and determined that the forum in which a claim is adjudicated is a procedural consideration.[2] Case law holds that whether the claim is adjudicated through arbitration or the U.S. District Courts has no bearing on the substantive statutory rights meant to be protected. While the Courts are free to believe enforcement of substantive rights is equally effected by arbitration and the courts, the servicemember may not be so persuaded and should be free to determine his forum.

One might argue that a servicemember exercised a choice by waiving his or her right to avail themselves of the court when they signed the arbitration clause. But this implies that job prospects are elastic to the extent that employees hold a bargaining position strong enough to reject a job solely on the basis of that clause. More and more employers are beginning to require arbitration clauses as conditions of employment. Current employment conditions effectively make that choice for the servicemember; few, if any, walk away from a job on this basis. As this pattern evolves, the servicemember is slowly being stripped of his or her choice to employ the court system. To put the choice back in the hands of the servicemember, Congress must specifically indicate its intent to preclude a waiver of judicial remedies for the statutory rights at issue.[3] This bill would accomplish this by rendering arbitration agreements enforceable only after a complaint has been filed in court. There is an additional threshold requirement of the parties making a knowing and voluntary decision. We also support the additional touch of expanding the venue options to be more in line with those applied in the Federal Rules of Civil Procedure.

DISCUSSION DRAFT, "TO EXPAND ELIGIBILITY TO CERTAIN MEMBERS OF THE SELECTED RESERVE OF THE ARMED FORCES FOR READJUSTMENT COUNSELING FROM THE DEPARTMENT OF VETERANS AFFAIRS."

While we appreciate the intent of this bill, PVA has concerns with this legislation as written because it extends the intended benefits to any and all members of the Selected Reserve but does not equally include veterans who served on active duty. The current law under 38 U.S.C. 1712A provides certain mental health services to delineated groups of veterans or members of the Armed Forces, including a reserve component of the Armed Forces. To qualify for these services, individuals must meet one of the listed qualifications, such as deploying to a theatre of combat operations or participating in mortuary services to casualties of combat operations. In essence, current law requires a triggering event or circumstance which demonstrates a nexus between the servicemember or veteran's mental health condition and their military service. This bill would allow Selected Reserve members to avoid this requirement while still subjecting those who served on active duty to the existing requirements.

DRAFT BILL ON MEDICAL RESIDENTS AT FACILITIES OPERATED BY TRIBES

PVA supports the draft bill to authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian tribes and tribal organizations, and to carry out a pilot program to expand such residencies and internships at those facilities. While recruiting and retaining capable providers continues to be a struggle for VA, rural communities feel these vacancies two fold. In Indian Country particularly, the mini-

[1] *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 23 (1991) (citing *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)).

[2] See *Garrett* v. *Circuit City Stores, Inc.*, 449 F.3d 672 (5th Cir. 2006) and *Landis* v. *Pinnacle EyeCare, LLC,* 537 F.3d 559 (6th Cir. 2008).

[3] *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626–27 (1985).

mal availability of consistent high quality health care has resulted in some of the worst health care outcomes in the United States. The United States government has a centuries-old legal obligation to provide health care to two groups—Native Americans and veterans. The overlapping, and at times inter-reliability of these two systems is necessary, as Native Americans serve the Armed Forces at the highest rate of any demographic. In Alaska, where this health care system interoperability is most prevalent, the need for primary care providers is critical. Vacancies are expected to increase in the coming decade, leaving health care systems with a high volume need and little capacity.

This bill would likely provide some relief, by incentivizing medical residents and interns to work at tribal facilities that have existing reimbursement agreements with VA. The five-year pilot program would have VA reimburse the tribal facilities for the recruitment and training of residents. These participants would then be eligible for loan forgiveness through the Indian Health Services Loan Repayment Program. This bill offers a sound step forward to ensuring we meet the needs of those who have served, no matter their zip code.

DISCUSSION DRAFT ON AMERICAN BATTLE MONUMENTS COMMISSION

PVA has no formal position on this issue.

This concludes our statement for the record. We appreciate the opportunity to submit our views before this Committee.

PREPARED STATEMENT OF RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

STATEMENT

ROA appreciates the opportunity to discuss S. 3042, Justice for Servicemembers Act, which is proposed legislation to clarify the scope of procedural rights of members of the uniformed services with respect to their employment and reemployment rights, to improve the enforcement of such employment and reemployment rights, and for other purposes.

The Justice for Servicemembers Act would amend section 4302 by adding a new subsection (c) to the Uniformed Services Employment and Reemployment Rights Act (USERRA), as follows:

> (1) Pursuant to this section and the procedural rights afforded by Subchapter III of this chapter [USERRA], any agreement to arbitrate a claim under this chapter is unenforceable, unless all parties consent to arbitration after a complaint on the specific claim has been filed in court or with the Merit Systems Protection Board and all parties knowingly and voluntarily consent to have that particular claim subjected to arbitration.
>
> (2) For purposes of this subsection, consent shall not be considered voluntary when a person is required to agree to arbitrate an action, complaint, or claim alleging a violation of this chapter as a condition of future or continued employment or receipt of any right or benefit of employment.

USERRA

Section 4302 makes it clear that USERRA is a floor and not a ceiling on serevicemember's rights as a person who is serving or has served. USERRA does not supersede or nullify any other law, policy, agreement, practice, or other matter that gives greater or additional rights. 38 U.S.C. 4302(a).

Section 4302(a) of USERRA provides:

> Nothing in this chapter [USERRA] shall supersede, nullify, or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

USERRA does supersede state laws, contracts, policies, agreements, etc. that reduce, limit, or eliminate USERRA rights or that impose additional prerequisites on a servicemember's exercise of those rights. 38 U.S.C. 4302(b).

Section 4302(b) provides:

> This chapter supersedes any State law (including any local law or ordinance) *contract, agreement*, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, *including the establishment of additional prerequisites* to the exercise of any such right or the enjoyment of any such benefit.

Despite section 4302(b), both the 5th Circuit and the 6th Circuit have held that USERRA does not override employer-employee agreements that purport to bind employees to submit future disputes about USERRA rights to binding arbitration, in lieu of filing suit or filing a formal complaint with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS). *See Garrett* v. *Circuit City Stores, Inc.*, 449 F.3d 672 (5th Cir. 2006) and *Landis* v. *Pinnacle Eye Care LLC*, 537 F.3d 559 (6th Cir. 2008).

ROA member, and USERRA drafter, Mr. Samuel F. Wright explains, "Employers can make a mockery of USERRA by demanding that individuals agree to binding arbitration as a condition of initial employment or continued employment. S. 3042 is necessary to ensure effective enforcement of USERRA."

BINDING ARBITRATION

Arbitration is defined as, "The settling of disputes (especially labor disputes) between two parties by an impartial third party, whose decision the contending parties agree to accept. Arbitration is often used to resolve conflict diplomatically to prevent a more serious confrontation," as defined by dictionary.com. In and of itself this is not a bad thing. There are times when the problem between employee and employer does not rise to the level or complexity requiring court review.

The problem is that binding arbitration takes away the employee's choice to pursue the level of resolution they consider necessary with their employment. If an employee believes his or her case should be reviewed by the courts and he or she is willing to accept the time, cost, and complexity of this legal review that should be the employee's choice. If an employee believes the case is not complicated but believes an independent person or body should settle the dispute, then arbitration should also be a choice.

What is not right is when employees do not have a choice on resolution of future employment issues based on a boiler plate provision in an agreement he or she was required to sign as a condition of employment; especially as these decisions affect his or her ability to provide for their family.

The Bill of Rights includes the right to "life, liberty and the pursuit of happiness." In the decision of S. 3042, we should be reminded that liberty requires that no one can rule citizens without consent—each of us, whether as individuals or as companies, should respect the equal rights of others.

RESERVE COMPONENT PARTICIPATION

During the present war, nearly a million Guard and Reserve members have been mobilized, proving essential to the war effort. The reliance of the Nation on its Reserve Components will not diminish.

Since September 11, 2001, more than 900,000 members of our reserve components—the National Guard and Reserves of our Army, Navy, Air Force, Marines and Coast Guard—have served in support of the war on terrorism. According to DOD more than 10,000 Guard and Reserve members were casualties in that fight. https://www.dmdc.osd.mil/dcas/pages/report—sum—comp.xhtml

Guard and Reserve Title 10 Contingency Support

Unique SSAN Activations as of: June 21, 2016

Currently Activated:	**28,279**	(+1495)
Deactivated Since 9/11:	**900,207**	
Total:	**928,486**	

Reserve Component	* Current Involuntary Activations		** Current Voluntary Activations		Total Currently Activated		***Total Deactivated Since 9/11	***Total Activated Since 9/11
ARNG	7,821	(+905)	424	(-229)	8,245	(+676)	382,164	390,409
USAR	7,861	(+210)	832	(+14)	8,693	(+224)	218,820	227,513
USNR	2,679	(-9)	156	(-3)	2,835	(-12)	55,453	58,288
USMCR	319	(-9)	700	(+0)	1,019	(-9)	62,508	63,527
ANG	3,350	(-106)	1,601	(+17)	4,951	(-89)	103,092	108,043
USAFR	1,391	(-87)	802	(+33)	2,193	(-54)	69,922	72,115
USCGR	228	(+0)	115	(+0)	343	(+0)	8,248	8,591
TOTAL	23,649	(+904) change from last week	4,630	(+32) change from last week	28,279	(+906) change from last week	900,207	928,486

Notes:
* Includes members placed on Active Duty under 10 USC Sections 688, 12301(a), 12302 and 12304
** Includes members placed on Active Duty under 10 USC 12301(d) and members categorized as unknown in CTS statute co
*** Includes members who were activated for Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom,
Operation New Dawn, Operation Inherent Resolve and Operation Freedom Sentinel
DRSN 23800
Source: Active Service File
Produced by the Defense Manpower Data Center

"War is a national challenge, and, for our part, we cannot execute without the Guard and the Reserve," said Army Chief of Staff Gen. Mark Milley. "You can't talk to a general or admiral for more than five minutes without hearing a variation on that theme," according to ROA Executive Director, Jeff Phillips.

The chart below shows that the Guard and Reserve have been used in increasingly higher amounts per year. While usage is dropping it will not go down to previous peacetime levels because threats to the Nation and world have increased.

Usage of the Reserve Components

Fiscal Year	Man-Days Per Year
1986-1989	1 million
1996-2001	13 million
2002	41.3 million
2005	68.3 million
2012	25.8 million

Data from the Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA).

The reserves are now considered "operational." They are used continually, like the active force. In the late 1980s, usage of the reserves was 1 million man-days per year; it is now about 25 million man-days.

Guard and Reserve members will continue to face employment issues as they support increased operational levels. They should not be penalized for serving their nation by being forced into binding arbitration.

CONCLUSION

The Reserve Officers Association supports the enactment of S. 3042 which would make clear that the individual servicemember cannot be forced to submit his or her USERRA complaint to binding arbitration. The matter of using arbitration or not should remain the employee's option. The choice should be made when a dispute has arisen—not 10 years earlier when the servicemember is hired or rehired.

PREPARED STATEMENT OF SOUTHCENTRAL FOUNDATION

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee: Thank you for the opportunity to submit testimony on behalf of the Southcentral Foundation ("SCF") Thank you also to Senator Sullivan, for championing legislation today that will help SCF make important progress toward bridging the provider gap in isolated geographic communities and helping the next generation of doctors learn the holistic, customer-centered, and relationship-based systems of care we believe are vital to high-quality healthcare in our communities.

BACKGROUND

SCF is an Alaska Native owned and governed tribal health organization in Anchorage, Alaska. We provide medical, dental, optometry, a range of maternal child health services, behavioral health, and substance abuse treatment services to over 52,000 Alaska Native and American Indian beneficiaries living within the Municipality of Anchorage, the Matanuska-Susitna Borough to the north, and nearby villages. SCF also provides services to an additional 13,000 residents of 55 rural Alaska villages covering an area exceeding 100,000 square miles, extending from near the Canadian border in the east to the Pribilof Islands in the west. Finally, SCF provides statewide tertiary OB/GYN and pediatric services for approximately 150,000 Alaska Native people. We also co-manage the Alaska Native Medical Center, a 167 bed hospital, which is the tertiary care referral point for all IHS facilities in the state. We employ over 1900 people to do this work.

SCF's Nuka System of Care is a name given to the whole health care system created, managed and owned by Alaska Native people to achieve physical, mental, emotional and spiritual wellness. This relationship-based Nuka System of Care is comprised of organizational strategies and medical, behavioral, dental, and traditional practices processes and supporting infrastructure that work together—in relationship—to support wellness. By putting relationships at the forefront of what we do we and how we do it, the Nuka System of Care will continue to develop and improve healthcare delivery for future generations.

Our Nuka System of Care is acclaimed nationally and internationally for its numerous innovative practices including: same day access to an individual's own primary care provider; patient-centered medical home services that have received the highest level of certification; and provision of primary care through interprofessional teams that include behavioral health, health education, and pharmacy consultants. In 2011, we received the National Malcolm Baldrige Award for Performance Excellence from the United States Department of Commerce. SCF is the only Native organization to ever be honored with this distinction, and one of only about 20 United States healthcare organizations of any type to receive this difficult-to-achieve award.

DISCUSSION

The Veterans' Administration ("VA") medical residency legislation being discussed today is intended to address several interlocking issues. In general, providing quality healthcare for veterans in rural areas is challenging for a number of reasons, but central to the issue is the lack of physicians. This legislation would increase the number of primary care physicians serving rural and remote areas by adding a new section to the existing provisions found in 38 U.S.C. § 7406 authorizing a pilot program that would make specific tribal health care providers eligible to work with the VA to expand or create new medical residency programs. The bill would allow non-VA facilities to access this critical funding and allow for additional expenses. SCF supports this effort and this legislation because we understand the need for more—and better trained—physicians to serve the veterans in the communities we serve, and communities like it.

As this Committee well knows, the Nation is facing a shortage of primary care physicians, and this gap is exacerbated throughout rural Alaska. This shortage exists nationally, and is likely to increase over time. According to the Department of Health and Human Services, if changes do not occur to meet the physician demand, reports indicate a projected shortage by 2020 of 20,400 physicians. The Association of American Medical Colleges predicts a shortage of 12,500–31,100 primary care physicians by 2025. This provider shortage is likely to hit hardest in places like Alaska and Native American communities that are already struggling to attract primary care and other physicians to practice. In Alaska, for example, there will need to be a 40% increase in the total number of primary care physicians, an increase of 237 positions, by 2030.

One of the single most effective ways to increase the number of physicians practicing in our communities would be to train them in our communities. This legisla-

tion provides VA the authority to do just that. The VA system is uniquely situated to partner with Native American community healthcare providers because medical residents who train in these programs will help reduce this provider gap by serving multiple, overlapping underserved communities to whom the country has significant healthcare obligations: veterans and Native Americans. In addition, studies show that doctors who train in certain communities are more likely to stay, and we are confident that the opportunity to train directly in the Nuka System of Care both will not only increase the number of physicians who are likely to practice in rural and Native American communities, but will also enhance the quality of care they will be providing to veterans and other patients throughout their careers.

Through the Nuka System of Care, SCF has been able to decrease the per-capita use of the Emergency Department by over 36% between 2000 and 2015. In addition:

- SCF's diabetes management measures put SCF among the top 5% of health care organizations in the country;
- SCF ranks in the top 10% for per-capita use of the Emergency Department and hospital admissions measures;
- SCF's customer-owner satisfaction ratings consistently are 96–99% positive, well above the average compared to other health care organizations;
- SCF's total employee turnover is one quarter of earlier levels, and is now in the top 25% nationally, despite SCF's difficult location for recruiting and retention;
- SCF's Alaska Native Medical Center received magnet status in 2011 for nursing excellence, an honor bestowed only to 5 percent of hospitals, nationally; and
- SCF has had a Level III certified Patient Centered Medical Home since 2009.

Despite these successes, workforce development is one of the major challenges SCF faces as an innovative, constantly-improving organization. And given the provider shortage, it is not likely to get any easier. Exacerbating the challenge is the gap between the knowledge and skills needed to perform in our health care system and the knowledge and skills of graduates from health professional training programs at United States colleges and universities. However, medical residents who are trained in the Nuka System of Care and similar systems will be able to help to transform health care throughout the United States by bringing the innovations SCF and other programs have developed to the VA and to healthcare systems around the country. The pilot program authorized by this legislation would serve as an incubator for positive change in our healthcare systems, and is worthy of your support.

CONCLUSION

The Southcentral Foundation is an innovative healthcare organization on the cutting edge of holistic, customer centered, and relationship based healthcare delivery. We would be thrilled to participate in the pilot program authorized by this legislation, and are confident that the legislation would be a strong step in the right direction for the VA and rural healthcare providers. We thank the Committee for its consideration of this bill, and Senator Sullivan for his leadership on it.

PREPARED STATEMENT OF DEREK FRONABARGER, DIRECTOR OF POLICY, STUDENT VETERANS OF AMERICA

Chairman Johnny Isakson, Ranking Member Richard Blumenthal and members of the Committee:

Thank you for inviting Student Veterans of America (SVA) to submit our written testimony on "S. 3021 – A bill to amend title 38, United States Code, to authorize the use of Post-9/11 Education Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning". With over 1,300 chapters across the country, we are pleased to share the perspective of those most directly impacted by this subject with this committee.

Established in 2008, SVA has grown to become a force and voice for the interests of veterans in higher education. With a myriad of programs supporting their success, rigorous research development seeking ways to improve the landscape, and advocacy throughout the nation, we place the student veteran at the top of our organizational pyramid. As the future leaders of this country, nothing is more paramount than their success in school to prepare them for productive and impactful lives.

SVA's top priorities include accelerating veteran success in institutes of higher learning through better access to information on institutes of higher learning , financial aid, pathways to degrees, clear understanding of transfer credits from service to college, articulation agreements between community colleges and four year colleges and universities, understanding application and recruitment to institutes of higher learning, and much more.

We appreciate the opportunity to discuss S. 3021 and will explain SVA's stance on the amendment including recommended changes to S. 3021. Our overall goal is to protect the Post 9/11 GI Bill from fraud and abuse while keeping this benefit available to those veterans who are attempting to obtain a degree in higher education.

Changes to S. 3021:

> "(C) to a certificate that reflects completion of a course of study offered by—
>
> "(i) an area career and technical education school (as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302)) that provides education at the postsecondary level; or
>
> "(ii) a postsecondary vocational institution (as defined in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c))) that provides education at the postsecondary level.".

S. 3021 – A bill to amend title 38, United States Code, to authorize the use of Post-9/11 Education Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning:

Student Veterans of America understands the intent of the amendment to Chapter 38 but would like to caution the overarching implications if this change were applied. In the past SVA has seen well-intended alterations to the GI Bill abused by less than reputable institutions of higher learning. The result being the Corinthian College collapse and the current ITT Technical Institute debacle. This change, would allow less than reputable non-profit

institutions to use the Post 9/11 GI Bill in a manner that is not intended by the amendment. Specifically, this amendment allows institutions little to no oversight in degree programs that do not lead to diplomas or certificates. While SVA does see a need for independent study programs we currently does not see the proper oversight in how the Post 9/11 GI Bill is administered for these programs. Deregulation of the already existing guidelines would be detrimental in the overall effectiveness of the Post 9/11 GI Bill.

Additionally, Student Veterans of America is concerned by subsection (C)(i): the Perkins Act does not require an institution to be accredited or authorized at a State level. Accreditation of programs are essential in determining the quality of education an institution delivers. Without proper oversight, the ability for fraud is possible. Lastly, the Perkins Act leaves the possibility to use the Post 9/11 GI Bill for entrepreneurship actives that are not degree seeking programs. This is something that SVA has opposed in the past and will continue to oppose in the future.

Any change in deregulating the Post 9/11 GI Bill opens the door to fraud. It is our goal to protect the intent of the Post 9/11 GI Bill while still making it available to those who need to use the Bill in a non-traditional way. This change, although well intended, opens the door for abusive institutions to pray on veterans while offering degrees worth less than the paper they are printed on. Because of this, we cannot support the amendment to Chapter 38. Student Veterans of America would support the amendment if changes were made to the amendment.

We strongly suggest the following changes to S. 3021 be made to insure the integrity of the Post 9/11 GI Bill:

- Do not allow schools that are currently under investigation for fraud or deceptive practices to participate in the use of the Post 9/11 GI Bill in this manner.
- State Approving Agencies (SAA) should be the leading approval agency when deciding if an institution/program would be eligible to receive the Post 9/11 GI Bill for an independent study program.
- If this change applies to non-profit or private institution then *require* the Veterans Affairs to act as an approving agency and authorize the VA to use their discretion in revoking the use of the GI Bill at that institution. This is particularly important in areas with no SAA.
- Recommend the ability to use the Post 9/11 GI Bill in this method only be applicable to public institutions; not private, non-profit, or for-profit institutions.

Student Veterans of America's goal is to protect the Post 9/11 GI Bill from abusive practices. Regulations are in place to insure that the GI Bill will remain for future generations. Unfortunately, too many instances of malpractice have led to the need of strict regulations of how one can use the Post 9/11 GI Bill. The proposed amendment to S. 3021 could be used in a less than reputable manner. Because of this, we recommend the above changes before SVA supports the Bill.

We thank the Chairman, Ranking Member, and the subcommittee members for your time, attention, and devotion to the cause of veterans in higher education. As always, we welcome your feedback and questions, and we look forward to continuing to work with this subcommittee, the House Committee on Veterans' Affairs, and the entire Congress to ensure the success of all generations of veterans through education.

LETTER FROM BRUCE R. JOSTEN, EXECUTIVE VICE PRESIDENT, GOVERNMENT AFFAIRS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

June 29, 2016

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Chairman Isakson and Ranking Member Blumenthal:

The U.S. Chamber of Commerce strongly values servicemembers and their contributions both at home and abroad. However, the Chamber opposes S. 3042, the "Justice for Servicemembers Act of 2016," about which the Committee will hear testimony at today's hearing, which would make it harder for servicemembers to obtain relief pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) by effectively eliminating arbitration as an available means of resolving USERRA disputes.

Arbitration provides a simple, effective, and low-cost mechanism for vindicating servicemembers' rights under USERRA. Arbitration procedures are more flexible than the court system; indeed, individuals often can proceed without retaining a lawyer. Arbitration is also a quicker way to resolve disputes, putting money into servicemembers' pockets sooner. And studies demonstrate that individuals do at least as well in arbitration as they do in court. In short, arbitration allows servicemembers to obtain relief more easily—without being dependent on plaintiffs' lawyers.

Removing arbitration and forcing class actions on servicemembers' attempts to resolve USERRA appears intended to profit trial lawyers, rather than servicemembers. Claims brought as class actions rarely yield real benefits for class members. Most class actions are settled without any benefit to the class members, and even when class members are eligible to receive a settlement payment, they rarely bother to file a claim. Thus, the primary beneficiaries of class actions are not class members, but plaintiffs' lawyers—who receive a sizable cut of every settlement in fees, even when very little benefit is received by the class members.

Furthermore, removing arbitration provisions would have serious harm for servicemembers because so many USERRA claims are individualized and therefore ineligible for class adjudication. In such cases, in order to sue in court, a servicemember would be forced to obtain a lawyer—but many USERRA claims are too small to attract the attention of a contingency-fee lawyer. And even if a servicemember manages to obtain a lawyer, the lawyer

may demand such a share of any recovery in addition to fees awarded under the statute's fee-shifting provision that any amount awarded to a service member would be seriously curtailed.

Attached is a copy of recent testimony by Andrew J. Pincus, counsel to the U.S. Chamber and the Chamber's Institute for Legal Reform, before the House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit explaining in greater detail the benefits of arbitration, the significant obstacles to pursuing claims in court, and the false promise of class actions.

The proponents of the bill will surely claim that it preserves arbitration by allowing parties to agree to arbitrate after a dispute arises. But that possibility is entirely illusory; employers cannot afford to make arbitration available if they must also face the possibility of class action lawsuits, and in any event, once a dispute has arisen, parties almost never agree to arbitration. Thus, servicemembers must retain the option to agree to arbitration before disputes arise.

The Chamber urges you and the other members of the Committee to oppose S. 3042 in its current form.

Sincerely,

Bruce R. Josten

Attachment

cc: Members of the Committee on Veterans' Affairs