

# HEARING ON PENDING BENEFITS LEGISLATION

---

## HEARING BEFORE THE COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

MAY 13, 2015

Printed for the use of the Committee on Veterans' Affairs



Available via the World Wide Web: <http://www.fdsys.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

94-845 PDF

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

## COMMITTEE ON VETERANS' AFFAIRS

JOHNNY ISAKSON, Georgia, *Chairman*

JERRY MORAN, Kansas

JOHN BOOZMAN, Arkansas

DEAN HELLER, Nevada

BILL CASSIDY, Louisiana

MIKE ROUNDS, South Dakota

THOM TILLIS, North Carolina

DAN SULLIVAN, Alaska

RICHARD BLUMENTHAL, Connecticut, *Ranking Member*

PATTY MURRAY, Washington

BERNARD SANDERS, (I) Vermont

SHERROD BROWN, Ohio

JON TESTER, Montana

MAZIE K. HIRONO, Hawaii

JOE MANCHIN III, West Virginia

TOM BOWMAN, *Staff Director*

JOHN KRUSE, *Democratic Staff Director*

# C O N T E N T S

MAY 13, 2015

## SENATORS

	Page
Isakson, Hon. Johnny, Chairman, U.S. Senator from Georgia .....	1
Brown, Hon. Sherrod, U.S. Senator from Ohio .....	59
Cassidy, Hon. Bill, U.S. Senator from Louisiana .....	61
Murray, Hon. Patty, Chairman, U.S. Senator from Washington .....	78

## VISITING SENATORS

Ayotte, Hon. Kelly, U.S. Senator from New Hampshire .....	1
Shaheen, Hon. Jeanne, U.S. Senator from New Hampshire .....	3
Gillibrand, Hon. Kirsten, U.S. Senator from New York .....	65

## WITNESSES

Kurta, Anthony, Deputy Assistant Secretary of Defense, Military Personnel Policy, U.S. Department of Defense .....	5
Prepared statement .....	6
Response to posthearing questions submitted by Hon. Johnny Isakson .....	11
Gerton, Teresa W., Deputy Assistant Secretary for Policy, Veterans Employment and Training Service, U.S. Department of Labor .....	12
Prepared statement .....	14
McLenachen, David R., Acting Deputy Under Secretary for Disability Assistance, U.S. Department of Veterans Affairs; accompanied by Renee Szybala, Assistant General Counsel .....	18
Prepared statement .....	19
Additional views .....	33
Maldon, Alphonso, Jr., Chairman, Military Compensation and Retirement Modernization Commission; accompanied by Michael R. Higgins, Commissioner, Military Compensation and Retirement Modernization Commission .....	62
Prepared statement .....	63
Phillips, Jeffrey E., Executive Director, Reserve Officers Association .....	67
Prepared statement .....	69
Morosky, Aleks, Deputy Legislative Director, National Legislative Service, Veterans of Foreign Wars .....	72
Prepared statement .....	73

## APPENDIX

Daines, Hon. Steve, U.S. Senator from Montana; prepared statement .....	83
Gibson, Hon. Chris, U.S. Representative from New York; prepared statement .....	84
Air Force Association; prepared statement .....	85
American Federation of Government Employees, AFL-CIO and the AFGE National VA Council; prepared statement .....	86
Blue Water Navy Vietnam Veterans Association; prepared statement .....	90
Concerned Veterans for America; prepared statement .....	102
Varela, Paul R., Assistant National Legislative Director, Disabled American Veterans (DAV); prepared statement .....	103
Enlisted Association of the National Guard of the United States (EANGUS); prepared statement .....	112
Snee, Thomas J., M.Ed., NCCM (SW), USN, (Ret), Fleet Reserve Association (FRA); prepared statement .....	137

# IV

	Page
Tomek, Jamie, Chair, Government Relations Committee, Gold Star Wives of America, Inc. (GSW); prepared statement .....	140
Stacy, David, Government Affairs Director, Human Rights Campaign; prepared statement .....	141
Military Officers Association of America (MOAA); prepared statement .....	142
Polisuk, Bryan, General Counsel, United States Merit Systems Protection Board (MSPB); letter .....	147
Wells, John B., USN (Ret), Executive Director, Military-Veterans Advocacy (MVA); prepared statement .....	154
Levins, Scott, Director, National Personnel Records Center, National Archives and Records Administration (NARA); prepared statement .....	167
Duffy, Peter J., Colonel, USARMY (Ret), Legislative Director, National Guard Association of the United States (NGAUS); prepared statement .....	168
National Military and Veterans Alliance (NMVA); letter .....	172
Carpenter, Kenneth M., Founding Member, National Organization of Veterans' Advocates, Inc. (NOVA); prepared statement .....	174
National Veterans Legal Services Program (NVLSP); prepared statement .....	182
Paralyzed Veterans of America (PVA); prepared statement .....	194
Bonosaro, Carol A., President, Senior Executives Association (SEA); letter .....	198
The American Legion; prepared statement .....	199

## HEARING ON PENDING BENEFITS LEGISLATION

---

WEDNESDAY, MAY 13, 2015

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

The Committee met, pursuant to notice, at 3 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Cassidy, Murray, and Brown.

### **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. Let me make an editorial comment, if I can.

I am going to waive opening statements for both myself and Senator Blumenthal. Senator Blumenthal is in a SASC meeting. They are doing a markup on NDAA, which I know Senator Ayotte is at, as well. We have six Members of the Veterans' Committee who serve on the Armed Services Committee. I have to leave at 3:45 to meet with Secretary McDonald on an urgent matter which I cannot delay, and we have so many Members in so many meetings, I may not have anybody to fill in for me as Chair, so I am going to go as quickly as I can through the bills—Ms. Ayotte, Ms. Gillibrand, and Ms. Shaheen's bills—then immediately to panel one and panel two, try to ward off editorial speeches by Members so we can get all the testimony in by 3:45, and then if we have to adjourn without somebody to preside, at least we will have filled the record on what we intended to do.

With that said, it is a pleasure for me to introduce Senator Ayotte from New Hampshire and recognize her for comments on her bill. Senator Ayotte.

### **STATEMENT OF HON. KELLY AYOTTE, U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Well, thank you, Chairman. I appreciate your important leadership on this Committee and the invitation to testify today. I know that my colleagues, Senator Shaheen and Senator Gillibrand, will be joining us shortly. We all serve on the Armed Services Committee together.

Americans were horrified last year as the scandal at the VA unfolded and we heard reports of veterans unable to get timely care, while VA employees manipulated appointment wait lists to hide

the fact that the VA could not ensure that veterans would get the care that they needed and deserved. The manipulation of wait lists contributed to the deaths of veterans who needed more urgent care.

It is unacceptable that Americans who defended our Nation and who sacrificed so much have died or become more ill because they were not able to rely on the VA for critical care. That veterans face delays or outright denial of care is particularly disturbing given that it was a result of VA employees deliberately cooking the books.

To make matters worse, in the aftermath of the wait list scandal, the VA failed to sufficiently hold those who manipulated the wait lists responsible. That is an additional bureaucratic failure in its own right, and, I know, something that this Committee has been working diligently on.

That is why I introduced bipartisan legislation with Senator McCaskill to improve accountability at the VA by requiring the Secretary to claw back bonuses that were paid to VA employees who were involved in the manipulation of the electronic wait lists. Because the VA used wait time metrics as a factor in determining employees bonuses, some VA employees were incentivized to use secret wait lists to artificially inflate compliance data in order to maximize their bonus payments to themselves.

According to one report, employees at the Phoenix VA hospital, ground zero for this scandal, received approximately \$10 million in bonuses since 2011, while simultaneously using secret wait lists to hide delays for our veterans who needed care. In addition, the VA paid out \$278 million in bonuses in 2013, millions of which went to employees in facilities being investigated for wait list manipulations.

It is outrageous that VA employees who deliberately manipulated wait lists receive bonus pay at taxpayers' expense. They must be held fully accountable for their misconduct, starting with repaying the funds they wrongly received, which this bipartisan legislation that you will be considering today would require.

This legislation directs the VA Secretary to require employees who received bonuses in 2011 or later to repay those bonuses if they were involved in the deliberate manipulation of electronic wait lists. The employees' superiors are also required to pay back bonuses if they knew or reasonably should have known of their subordinates' purposeful omission of the names of veterans from the actual wait lists. The bill requires the VA Secretary to identify these VA employees through reports issued by the Department's Inspector General.

I am encouraged that the House of Representatives has passed similar legislation. It is important that we work together to bring more accountability to the VA and individuals who are responsible for wrongdoing.

I appreciate this Committee's attention and dedication to solving the problems at the VA and thank the Chairman for holding this hearing and inviting me to participate. I urge you all—I appreciate very much the Chairman's leadership and working with Senator McCaskill—to pass this legislation to make sure that individuals who perpetrated the wait list fraud are held fully accountable and that they pay back the bonuses that they should have never received.

So, I thank the Chairman for allowing me to be before this important Committee today.

Chairman ISAKSON. I thank the distinguished Senator from New Hampshire for bringing an important issue of accountability to the Committee. As those who have attended our other committee meetings since the first of January know, we are all about accountability, and there is a lot that needs to be held accountable at the VA.

Your bill will be considered in a markup which we will schedule for the month of June, if I am not mistaken. Is that correct?

Mr. BOWMAN. That is correct.

Chairman ISAKSON. In fact, all the bills that are addressed today will be brought up at a markup in June. We appreciate your attention to it and appreciate your being here today and what you are doing on Armed Services.

Senator AYOTTE. Thank you, Mr. Chairman.

Chairman ISAKSON. Since there are no other Members present and I am in charge, I am not going to raise any questions, because I want to give everybody a chance to have their say.

Senator Shaheen, you are recognized.

**STATEMENT OF HON. JEANNE SHAHEEN,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SHAHEEN. Thank you very much, Mr. Chairman. I also appreciate the opportunity to be here. Like Senator Ayotte, I am downstairs in the Defense markup, but really appreciate this chance to testify in support of the Charlie Morgan Military Spouses Equal Treatment Act.

As I think you know, Mr. Chairman, this bill is named for Charlie Morgan, who was a former soldier and Chief Warrant Officer in both the New Hampshire and Kentucky National Guards. She was a military veteran with a career that spanned more than 30 years.

I first met Charlie in 2011. She had just gotten back from a deployment in Kuwait and, sadly, had just been diagnosed for the second time with breast cancer. She was very concerned about the well-being of her wife, Karen, and their young daughter. And, Charlie, as the result of her diagnosis, became an outspoken critic of the Defense of Marriage Act, which at that time prohibited her spouse and their daughter from receiving the benefits she had earned during her service.

Sadly, Charlie did not live to see the Supreme Court overturn the Defense of Marriage Act. And, despite the Court's ruling, there are still provisions in the U.S. Code that deny equal treatment to LGBT families. One of those provisions is Title 38 regarding veterans' benefits.

Today, if you are a gay veteran living in a State like New Hampshire that recognizes same sex marriage, your family is entitled to all the benefits you have earned through your military service. However, a veteran with the exact same status, the same service record, same injuries, same family obligations, but living in a State that does not recognize same sex marriage, will receive less.

There are even reports that the VA has required gay veterans to pay back benefits because their State will not recognize their marriage. In one case that we were notified about, a young woman, 50

percent disabled, a combat veteran, was initially approved for benefits for her wife and child. Later, however, she was told by the VA that because her home State did not recognize same sex marriages, she was not only going to lose a portion of her benefits, but the VA was also going to withhold her future payments until the excess funds had been recovered. Perhaps for her the most frustrating part of that story is knowing that if she had moved across the border to another State, she would never have had a problem.

I hope that this Committee and in the Senate we can work together to correct this injustice. These young men and women have volunteered to serve in our Armed Forces. They have volunteered to put themselves in harm's way, to leave their families and their homes to travel around the world to protect our way of life, and yet they are being deprived of the very rights that they have risked their lives to protect.

I think it is just unfair, Mr. Chairman, and we have an opportunity now to end this kind of discrimination against our veterans, to make our Nation a fairer place, and I hope the Committee will approve this legislation and that we can move it to a vote as soon as possible.

Thank you very much.

Chairman ISAKSON. Thank you, Senator Shaheen.

For your information as well as those in attendance today, we received a request, as is normal, from the Senate Armed Services Committee (SASC) for an amendment that does the exact same thing to be considered—to waive our jurisdictional right and let them consider it in SASC. Because this is a posthumous or retirement veterans' issue, it really should be handled by the Veterans' Affairs Committee, which last year voted, as you know, on this very same proposal.

Senator SHAHEEN. Right.

Chairman ISAKSON. So, out of no discourtesy to you, but out of respect for the Committee jurisdiction, I told the Armed Services Committee that we would maintain our jurisdiction and your bill will come up at the same time Senator Ayotte's bill comes up in June.

Senator SHAHEEN. Well, thank you, Mr. Chairman. I appreciate that explanation. We were just trying to cover as many bases as possible.

Chairman ISAKSON. The Senator from New Hampshire is always trying to cover every base possible—in fact, both of them are. [Laughter.]

Senator SHAHEEN. Thank you.

Senator AYOTTE. Thank you.

Senator SHAHEEN. We try.

Chairman ISAKSON. The State is lucky to have two great women leading them. We appreciate you being here very much.

If you wish to be excused, you may. Thank you very much for your time. And, do you know if Senator Gillibrand is coming or not?

Senator SHAHEEN. She was just getting ready to offer a number of amendments, so I would suspect she will be here, but it may be a few minutes.

Chairman ISAKSON. I will let her break in on our panel.



Thank you all very much for being here.

Senator SHAHEEN. Thank you.

Senator AYOTTE. Thank you.

Chairman ISAKSON. Let us go ahead and set up for panel one and take advantage of the time. [Pause.]

I would like to welcome the panelists for our first panel. We will open the testimony. I hope you will limit your remarks to approximately 5 minutes. We will have a clock running and it will be indicated on the clock in front of you. I will introduce the panel all together at once and then we will go, starting with Mr. Kurta, though Mr. Kurta, you are sitting out of order from what I have written down. We will start with you, Mr. Kurta, but I am going to introduce you in another order.

David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Department of Veterans Affairs, accompanied by Renee—all right, Renee—

Ms. SZYBALA. Szybala.

Chairman ISAKSON. An Isakson guy ought to be able to pronounce that, but I am sorry—

Ms. SZYBALA. I ignore the dead letters.

Chairman ISAKSON. When it is “i”s and “z”s, people go crazy.

Ms. SZYBALA. And “s” and “z”s.

Chairman ISAKSON. Anthony Kurta, Deputy Assistant Secretary of Defense, Military Personnel Policy, Department of Defense.

And, Teresa W. Gerton, Deputy Assistant Secretary for Policy, Veterans Employment and Training Service, Department of Labor.

We appreciate you being here today and we will start with Mr. Kurta.

**STATEMENT OF ANTHONY KURTA, DEPUTY ASSISTANT SECRETARY OF DEFENSE, MILITARY PERSONNEL POLICY, U.S. DEPARTMENT OF DEFENSE**

Mr. KURTA. Good afternoon, Chairman Isakson. I am pleased to appear before you today to discuss proposed benefits legislation. In order to be expeditious, I will focus my comments only on those proposals that will affect the Department of Defense.

The G.I. Bill Fairness Act of 2015 would consider active duty performed under the authority of Title X, U.S. Code Section 12301(h), as qualifying active duty for the purposes of Post-9/11 G.I. Bill education benefits. DOD supports this provision.

Section 101 of the 21st Century Veterans Benefits Delivery Act would deny servicemembers the ability to complete the Transition Assistance Program online. Another provision requires the Secretary of Defense, in collaboration with the Secretaries of Labor, Homeland Security, and Veterans Affairs, to establish a process to allow a representative of a Veterans Service Organizations to be present at any portion of the TAP program relating to the submission of claims to the Department of Veterans Affairs. Finally, this section contains a requirement to provide a report on the participation of VSOs in TAP.

DOD does not support the provisions in this section for a number of reasons, but primarily because we do not feel they would improve current processes and will create an undue burden. More

specific details which explain the Department's position are provided in my written statement.

You also asked for comments on the Military Compensation and Retirement Modernization Commission Report. First, I would like to take the opportunity to commend the Departments of Labor, Education, and Veterans Affairs for their expert collaboration and I especially thank the Commission for its superb cooperation. DOD agrees with the Commission's objectives of safeguarding education benefits for servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs.

We support sunseting both the Montgomery G.I. Bill and the Reserve Education Assistance Program with a view to maintaining the Post-9/11 G.I. Bill as the primary education benefit. The Commission and DOD also agree that in order to keep faith with our servicemembers, we must grandfather those who already have the benefits that will be phased out.

However, without data enabling DOD to understand the potential effects on retention, and the Joint Chiefs are particularly concerned on this point, we do not support the recommendation to sunset the Post-9/11 G.I. Bill Housing Stipend for dependents or the recommendation to increase the eligibility requirements for transferring Post-9/11 G.I. Bill benefits.

DOD also does not support the recommendation that would prohibit ex-servicemembers from receiving unemployment while simultaneously receiving G.I. Bill benefits, as we believe this would have unintended consequences.

Finally, DOD supports the Commission's objectives of better preparing servicemembers for transition to civilian life, but we do not believe that additional legislation is required. We have significantly redesigned the Transition Assistance Program over the last 2 years and implemented the Vow to Hire Heroes Act legislation enacted in 2011. These modifications significantly address the Commission's objectives.

Detailed comments on both recommendations are provided in my written statement.

Mr. Chairman, this concludes my statement. I thank you for the opportunity to appear here with you today and look forward to any questions.

[The prepared statement of Mr. Kurta follows:]

PREPARED STATEMENT OF ANTHONY KURTA, DEPUTY ASSISTANT SECRETARY OF  
DEFENSE, MILITARY PERSONNEL POLICY, U.S. DEPARTMENT OF DEFENSE

Good afternoon, Chairman Isakson, Ranking Member Blumenthal, and esteemed Members of the Committee. I am pleased to appear before you today to discuss pending benefits legislation.

Per the agenda for today's hearing, the Committee requested the Department of Defense's view on a series of bills and proposals. Since both funding and administration of the Post-9/11 GI Bill fall under the purview of the Department of Veterans Affairs, I will focus my comments only on those proposals that will affect the Department of Defense and generally defer to the Departments of Labor and Veterans Affairs to provide responses on those with no significant DOD impacts. This statement will follow the order on the printed agenda.

#### S. 602, GI BILL FAIRNESS ACT OF 2015

The Committee asked for comments on S. 602, "GI Bill Fairness Act of 2015," a bill that would consider active duty performed under the authority of title 10, United States Code, section 12301(h), as qualifying active duty for the purposes of Post-9/

11 GI Bill Education Benefits. Reserve component members wounded in combat are often given orders to active duty under this provision to receive authorized medical care; to be medically evaluated for disability; or to complete a required health care study. However, as currently written, section 3301(1)(B), of title 38, United States Code, does not include active duty performed under 12301(h) as qualifying active duty for purposes of Post-9/11 GI Bill educational assistance.

Currently, when a member of the Reserve Component on active duty sustains an injury due to military operations, the Servicemember is not discharged, but remains in the Selected Reserve on active duty under 12301(h), title 10, United States Code. None of the time spent in recovery under this status is qualifying time for purposes of the Post-9/11 GI Bill. In this case, the Servicemember would return to Selected Reserve status with less qualifying time than those who served an entire period of active duty without an intervening injury. As a result, the Servicemember would not receive an educational benefit equivalent to the other members of his or her cohort. In effect, the Servicemember is being penalized for having being wounded or injured in theater. This legislation would correct this inequity by simply extending eligibility for the Post-9/11 GI Bill to service under 12301(h).

DOD recognizes the inequity of not including this active duty time for purposes of Post-9/11 GI Bill benefits, and has included a provision similar to this bill in our FY 2016 legislative proposal package as section 514. However, the DOD proposal would include only active duty performed after enactment. In contrast, S. 602 would be retroactive; categorizing all duty performed under 12301(h) since September 11, 2001, as qualifying active duty for purposes of the Post-9/11 GI Bill. We estimate that approximately 5,000 Reserve Component members performed active duty under 12301(h) each year since September 11, 2001. Accordingly, we believe that S. 602 would generate an additional cost to the Department of Veterans Affairs. Given that both the funding and administration of the Post-9/11 GI Bill fall under the purview of the Department of Veterans Affairs, we would defer to that agency to determine the costs and effects of the bill on their Department.

#### DRAFT BILL, 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

Section 101, "Improvements To Transition Assistance Program," of this bill states that an individual subject to the requirement under subsection (c), which requires participation in the program ( defined as employment assistance, job training assistance and other transitional services), may not satisfy such requirement by participating in the program carried out under this section solely through an Internet Web site. The Department of Defense does not support that portion of the language. The Administration should have flexibility in determining what methods and tools, to include Internet Web sites, should be used to deliver transition services to eligible transitioning Servicemembers and their spouses. This language would take away the flexibility to make such decisions. The Department of Defense and our inter-agency partners have agreed to allow Servicemembers who are subject to a short-notice separation or are geographically remote and isolated, to use the Department of Veterans Affairs Benefits module (part of full Transition Assistance Program (TAP) virtual curriculum) and the Department of Labor Employment Workshop through Joint Knowledge Online, which connects to other Department of Defense systems for mandatory attendance tracking. Implementation of this restrictive language would end that initiative and the millions of dollars invested in our on-line curriculum would be lost. The Department of Defense must have the flexibility to meet the needs of our Servicemembers; we strongly advocate that the Congress not deprive the Secretary of Defense of this flexibility.

Section 101 also requires the Secretary of Defense, in collaboration with the Secretaries of Labor, Homeland Security, and Veterans Affairs to establish a process to allow a representative of a Veteran Service Organization (VSO) to be present at the benefits portion of the program under Section 1144, title 10, United States Code (the program under Section 1144 pertains to employment assistance, job training assistance and other transitional services) relating to the submission of claims to the Secretary of Veteran Affairs. The Department of Defense does not support this provision. The Department of Defense recognizes and appreciates the tremendous support VSOs provide to Servicemembers who file claims with the VA. However, we believe that process best occurs outside the standard TAP classroom in a one-on-one private conversation between the Servicemember and the VSO representative. The redesigned TAP focus is to make Servicemembers career ready by meeting Career Readiness Standards. The preparation occurs in the classroom with the delivery of Transition GPS (Goals, Plans, Success) curriculum. The Department of Veterans Affairs provides two robust classes: VA Benefits I, which focus on VA Benefits, and VA Benefits II, which introduces Servicemembers to, and walks them through, the

process of filing a claim for Department of Veterans Affairs benefits. It would be more appropriate at the conclusion of VA Benefits II briefing for the Department of Veterans Affairs instructor delivering the briefing to introduce the VSO representative who can assist Servicemembers with their claims. The VSO representative can connect with Servicemembers at the end of the class. At that time the VSO representative can set up one-on-one appointments to assist those Servicemembers planning to file a claim.

Finally, the Department of Defense opposes that provision in section 101 that requires the Secretary of Defense to provide a report to Congress that assesses the compliance of facilities of the Department of Defense per the Secretary's Memorandum title "Installation Access and Support Services for Nonprofit Non-Federal Entities" dated December 23, 2014. This would require a tracking and reporting system to capture how many Veterans and Military Service organizations and other Nonprofit Non-Federal Entities are on each installation and the number of installations in compliance with the Secretary's Memorandums. This will pose a significant burden/hardship upon the installation staff and cause a diversion of already limited and stretched transition resources from the primary mission of the redesigned TAP.

#### MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION REPORT

The committee requested input from the Department of Defense on the legislative proposals in two of the recommendations in the recently released Military Compensation and Retirement Modernization Commission Report: Recommendation 11: Safeguard education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs, and Recommendation 12: Better prepare Servicemembers for transition to civilian life by expanding education and granting states more flexibility to administer the Jobs for Veterans State Grants Program. I would like to state up front that the Department of Defense worked closely with the Commission in evaluating its recommendations, and included experts from the Departments of Labor and Veterans Affairs, as well as the Office of Management and Budget, in our working groups designed to formulate DOD's response to the President.

#### *Recommendation 11: Safeguard education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs*

The Department agrees with the Commission's objectives of safeguarding education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs. We support sun-setting both the Montgomery GI Bill (chapter 30 of title 38, United States Code, also known as MGIB-AD) and the Reserve Education Assistance Program (REAP), with a view to maintaining the Post-9/11 GI Bill as the primary education benefit. The Commission and the Department also agree that in order to keep faith with our Servicemembers, we must grandfather those who already have the benefits that will be phased out. Further, the Department and the Commission agree on how best to achieve the objective of collecting, tracking, and reporting on Servicemember, Veteran, or dependent education related data. The Commission recommends requiring that Tuition Assistance be used for "professional development" courses only. DOD has already issued policy guidance to the Services to this effect where all signatories of the Department of Defense Education Partnership Memorandum of Understanding must provide an approved education plan for each Tuition Assistance recipient. This plan provides the roadmap for their educational goal development to include supporting courses.

The Department would like to ensure that once the MGIB-AD sunsets, Servicemembers will be able to combine Post-9/11 GI Bill benefits with Tuition Assistance (commonly referred to as "top up") using the same "top up" usage method as currently available under the MGIB-AD.

The Department submitted a legislative proposal to Congress on May 1 that would sunset the MGIB-AD and REAP, grandfather Servicemembers currently receiving those benefits, and provide a "top up" benefit.

Without data enabling the Department of Defense to understand the potential effects on retention, the Department of Defense—and the Joint Chiefs are particularly concerned on this point—cannot support the recommendation to sunset the Post-9/11 GI Bill housing stipend for dependents, or the recommendation to increase the eligibility requirements for transferring Post-9/11 GI Bill benefits. To this end, the Department of Defense has sponsored a study with RAND National Defense Research Institute to review education benefits for Servicemembers, including the benefits of the Post-9/11 GI Bill and their impacts on retention (with a focus on impacts of transferability). We anticipate the study to be completed in the summer of 2016, allowing the Department of Defense to evaluate the potential effects of altering the features of the benefit on retention.

Lastly, the Department of Defense does not support the recommendation that would prohibit ex-Servicemembers from receiving unemployment compensation (as authorized under chapter 85, subchapter II, of title 5, United States Code) while simultaneously receiving the living stipend as part of Post-9/11 GI Bill benefits. State-level unemployment compensation programs already provide guidance regarding students' status within the workforce and eligibility to receive benefits (as detailed in Congressional Research Service Report, (Unemployment Compensation (UC): Eligibility for Students Under State and Federal Laws, dated September 7, 2012). Eliminating concurrent receipt of educational benefits and Unemployment Compensation for Ex-Service Members (UCX) may be viewed as penalizing Servicemembers who are pursuing courses at trade/vocational schools to acquire skills/certifications that would make them more employable. This Commission recommendation could also have a disproportionate impact on Reserve Component Servicemembers because both separated and currently serving Reserve Component members may be affected.

*Recommendation 12: Better prepare Servicemembers for transition to civilian life by expanding education and granting states more flexibility to administer the Jobs for Veterans State Grants Program.*

The Department of Defense supports the Commission's objective of better preparing Servicemembers for transition to civilian life, but does not believe additional legislation is required. The Department of Defense has significantly re-designed the Transition Assistance Program over the last 2 years and implemented the VOW to Hire Heroes Act legislation enacted in 2011; these modifications significantly address the Commission's objectives.

The Department of Defense, together with the Departments of Labor and Veterans Affairs, has developed Transition Assistance Program curriculum to support Servicemembers' educational goals. The Accessing Higher Education (AHE) track focuses on transitioning Servicemembers on selecting an institution of higher education and achieving academic success. The Career Technical Training (CTT) track focuses on credentials earned during military service and higher education in select technical training schools and fields. The Department of Defense concurs with mandatory participation in the AHE or CTT track, for Servicemembers who identify an interest in attending college or a career technical school after separation, with authorized exemptions. Contrary to the re-designed Transition Assistance Program, the Commission proposal does not enable transition planning according to the individual goals and needs of each transitioning Servicemember. The proposed legislation is a "one size fits all" approach and does not take into consideration the numerous other education benefits active duty Servicemembers have, or are eligible for, prior to separating, such as tuition assistance and the GI Bills. These other benefits require an education plan and individual counseling with an education professional. Furthermore, the proposed legislation does not appear to consider how it might affect those Servicemembers who enter on active duty with a college diploma, credential and/or license.

The Department of Veterans Affairs is developing a module specifically focused on the benefits, eligibility, and transferability of the Post-9/11 GI Bill as part of military career deliberations. The goals of the Commission's recommendation will be met as a result of Servicemembers attending the new Department of Veterans Affairs training for Post-9/11 GI Bill benefits prior to developing an education program plan or using their Post-9/11 GI Bill benefits. Expected implementation date for the new Post-9/11 GI Bill training is October 1, 2015.

The Commission's legislative proposal to review and evaluate the core Transition Goals, Plans, Success (GPS) curriculum is aligned with the current Department of Defense and TAP Inter-agency Evaluation Strategy. New legislation is not required because an interagency annual review is a pillar of the Office of Management and Budget approved TAP Evaluation Strategy. This strategy requires analysis of metrics and benchmark performance criteria to enable the Department of Defense to provide programs and support to meet the needs of transitioning Servicemembers. It necessitates an annual review of all curriculum components in concert with participant feedback to ensure curriculum and training resources support the achievement of career readiness standards and career success post military service.

The Transition Assistance Program Inter-agency Curriculum Working Group, comprised of members from each of the TAP Inter-agency partners, the Military Services, and relevant subject matter experts, conducts an annual review of the Transition GPS curriculum. The Working Group develops changes based on content relevancy, participant assessments, Servicemember feedback, roles and responsibilities of partners, facilitator recommendations, and best practices and lessons learned

as a result of staff assistance visits to installations. Proposed curriculum revisions are vetted and approved by the TAP Inter-agency Executive Council.

#### DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

The Committee requested input on several of the Legislative Proposals included in the Department of Defense National Defense Authorization Act for Fiscal Year 2016 submission.

*Sec. 514. Inclusion of duty performed by a reserve component member under a call or order to active duty for medical purposes as qualifying active duty time for purposes of Post-9/11 GI Bill education benefits.*

Similar to S. 602, "GI Bill Fairness Act of 2015," this section includes active duty performed under the authority of title 10, United States Code, section 12301(h), as qualifying active duty for the purposes of Post-9/11 GI Bill Education Benefits. As pointed out in my discussion of that bill, the Department's proposal differs in that it is not retroactive to September 11, 2001. The Department of Defense urges adoption of this proposal.

*Sec. 522. Retention of entitlement to educational assistance during certain additional periods of active duty*

This section would amend chapter 1606, (Montgomery GI Bill-Selected Reserve (MGIB-SR)) of title 10, United States Code. Specifically this proposal would add 10 United States Code 12304a and 12304b to the existing list of authorities in 10 United States Code 16131 under which a servicemember may regain lost payments. Further, both 10 United States Code 12304a and 12304b would be added to 10 United States Code 16133 under which a Servicemember may regain lost entitlement time for MGIB-SR benefits. The Department of Defense urges adoption of this proposal.

*Sec. 542. Update to involuntary mobilization duty authorities exempt from 5-year limit under the Uniformed Services Employment and Reemployment Rights Act.*

This section would amend section 4312 of title 38, United States Code, to update the involuntary mobilization authorities exempted from the Uniformed Services Employment and Reemployment Rights Act (USERRA) 5-year limit. Adding references to sections 12304a and 12304b of title 10 will complete the list of current involuntary mobilization authorities exempted from that limit in section 4312 of title 38.

USERRA, codified in 38 U.S.C. 4301-4335, protects individuals performing, or who have performed or will perform, uniformed service from employment discrimination on the basis of their uniformed service. It provides for prompt reemployment when they return to civilian life. The Department of Defense urges adoption of this proposal.

*Sec. 545. Required provision of pre-separation counseling.*

This section would amend section 1142 and 1144 of Title 10, United States Code to authorize Pre-separation, Employment Assistance and all other transition services prescribed in Department of Defense policy by the Secretary of Defense for ALL Active Component Servicemembers of the Armed Forces and for ALL National Guard and Reserve Servicemembers called or ordered to active duty or full-time operational support after completion of their first 180 continuous days or more under Title 10, United States Code, (other than for full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as service school by law or by the Secretary of the military department concerned), whose discharge or release from active duty is anticipated as of a specific date. The Department of Defense urges adoption of this proposal.

*Sec. 1041. Transfer of functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense.*

This section would repeal the statutory requirement for a Federal Advisory Committee Act (FACA) advisory board for the Radiation Dose Reconstruction Program. The Department of Defense believes that this advisory board has achieved its objectives, and that its functions can now be more effectively conducted through an inter-agency effort rather than through a FACA advisory board. The Department of Defense urges adoption of this proposal.

The final item on the agenda is a discussion of provisions derived from a series of pending bills. I will comment only on those that affect the Department of Defense.

## S. 151. FILIPINO VETERANS PROMISE ACT.

This bill would require the Secretary of Defense to establish a process to determine whether individuals claiming certain service in the Philippines during World War II are eligible for certain benefits despite not being on the so-called "Missouri List." The Department does not support any further legislation concerning determining service eligibility for the WWII Filipino Guerilla Veterans. The Army has a program in place that is verifiable. This program, due to its thorough processes, is the foundation for the Army's position, past and current, for making final service determinations for eligibility. The Army maintains complete confidence that the records and files completed in 1948 provide the best and most accurate determinations that could have been made from that time until today.

## S. 743. HONOR AMERICA'S GUARD-RESERVE RETIREES ACT OF 2015

This bill amends title 38, United States Code, to recognize the service in the reserve components of the Armed Forces of certain persons by honoring them with status as Veterans under law, and for other purposes. The Department recognizes and values the service of these Servicemembers who qualify for a Reserve retirement, but may not be Veterans, but opposes identifying these Servicemembers with any type of honorary Veteran status. Although S. 743 defines this honorary status to be without eligibility for Veteran's benefits from the Department of Veterans Affairs, the Department of Defense believes this honorary status would create confusion about eligibility for the Department of Veterans Affairs benefits among the current and former Servicemembers and could increase the potential for error in determining benefits entitlements.

Mr. Chairman this concludes my statement. As has been stated numerous times in hearings before this Committee, post service education benefits have been a cornerstone of our military recruiting and retention efforts since 1985, and a major contributor to the continued success of the All-Volunteer Force. Money for education has been and remains at the forefront of reasons cited by young Americans for joining the military. From its inception we fully expected the Post-9/11 GI Bill to continue to have this impact and we are seeing that happen in the form of sustained recruiting success. I thank you and the members of this Committee for your outstanding and continuing support of the men and women of the Department of Defense. We look forward to working closely with you to strengthen the All-Volunteer force through a balanced program of recruiting, retention, and vital education benefits, and to recognize the service of our Veterans.

---

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON TO HON. ANTHONY KURTA, DEPUTY ASSISTANT SECRETARY OF DEFENSE, MILITARY PERSONNEL POLICY, U.S. DEPARTMENT OF DEFENSE

*Question 1.* Chairman Maldon noted at the hearing on Pending Benefits Legislation that the Department of Defense (DOD) had asked the Military Compensation and Retirement Modernization Commission for more flexibility in managing the force profile and that the Commission thought extending the service requirement for transfer of education benefits would help mid-career retention. Would DOD clarify its desire for flexibility in shaping the force and its position on using transfer of education benefits for retention?

Response. The Department of Defense, in general, supports increased flexibility in managing our force profiles. However, the Department did not ask the Military Compensation and Retirement Modernization Commission (MCRMC) to modify the service requirement for transfer of education benefits nor do we believe the proposed modification enhances our flexibility in force management. The Department's position was accurately articulated in Mr. Kurta's oral statement (as well as his written statement and detailed comments), "that without data enabling the Department of Defense to understand the potential effects on retention, the Department of Defense—and the Joint Chiefs are particularly concerned on this point—cannot support the recommendation to sunset the Post-9/11 GI Bill housing stipend for dependents, or the recommendation to increase the eligibility requirements for transferring Post-9/11 GI Bill benefits."

*Question 2.* If funding of transferred education benefits moves from the Department of Veterans Affairs budget to the Defense budget, how would that impact DOD's use of transferability as a retention tool?

Response. The Department sees no benefit to moving funding for transferability to the DOD. The DOD is currently studying the effect on retention of the transferability benefit and is therefore not able to evaluate the impact of a change in budg-

etary responsibility. Although enacted as a recruiting and retention tool, transferability provides Servicemembers who earned the veteran benefit of the Post-9/11 GI Bill during this time of armed conflict, and choose to remain in service, an alternative means to use that earned benefit.

*Question 3.* You noted in your written testimony that DOD has proposed legislation to sunset certain education benefits and to specify benefit levels under a “Top Up” benefit for the Post-9/11 GI Bill. If enacted, how would this “Top Up” change the benefits servicemembers receive from combining Tuition Assistance and the Post-9/11 GI Bill under current rules?

Response. Currently there is no “Top-Up” provision in law for the Post-9/11 GI Bill. This legislative proposal would add such a provision and align the benefits usage rate for active duty members using the Post-9/11 GI Bill to supplement tuition assistance (TA) with the current “Top-Up” usage rate for the Montgomery GI Bill (MGIB).

*Question 4.* You noted in your testimony that DOD sponsored a RAND study on education benefits for military personnel. Please provide copies of any documentation outlining the scope of that work and the objectives.

Response. As Requested—documentation outlining the scope of RAND’s work and the objectives is attached. A final report is not scheduled until September 2016. [Privileged and Confidential, for use by U.S. Government only and cannot be printed in the public record.]

Chairman ISAKSON. For Senator Brown’s benefit, Senator Blumenthal cannot be here today. Most of our Members are in SASC, so I went ahead and accelerated the testimony of the non-committee members who had submitted bills. We are now going to panel one and two.

I am going to make a comment before I go to Ms. Gerton, just to make sure I understood what you said. You are talking about terminating those benefits for education in a prospective nature, meaning future volunteers of the military, not past volunteers who already are eligible, is that correct?

Mr. KURTA. What we are saying, sir, is those that currently have either the Reserve Education Assistance Program or the Montgomery G.I. Bill benefits and are taking those, that they be allowed to use those benefits if they have earned them vice having to switch to the G.I. Bill.

Chairman ISAKSON. They are grandfathered in.

Mr. KURTA. Grandfathered in.

Chairman ISAKSON. I just wanted to make sure that was clear.

Mr. KURTA. Yes, sir.

Chairman ISAKSON. Ms. Gerton, thank you for being here. We welcome your testimony.

**STATEMENT OF TERESA W. GERTON, DEPUTY ASSISTANT SECRETARY FOR POLICY, VETERANS EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR**

Ms. GERTON. Good afternoon, Chairman Isakson and distinguished Members of the Committee. Thank you for the opportunity to participate in today’s hearing.

I would also like to thank the Commission members who were assigned to develop the Military Compensation and Retirement Modernization Report for all their hard work. The Commission’s questions provoked our thought and action, and we have already taken many steps that are in line with their recommendations. It is our hope that the Committee will consider the progress we have made and the changes we have implemented. We are always open



to working with Committee Members to provide additional technical assistance.

I would also like to take a moment to thank you, Mr. Chairman, as co-author of the Workforce Innovation and Opportunity Act of 2014, for your longstanding dedication to America's workers. This landmark legislation will be instrumental in improving our Nation's workforce system, including services for veterans provided at the nearly 2,500 American Jobs Centers across the country.

In its report, the Commission seeks to expand servicemembers' knowledge of educational benefits, improve Transition GPS, and improve the Jobs for Veterans State Grants Program, or JVSG. We support those aims, as well. DOL believes it has already met the intent of two of the sub-recommendations.

DOD, VA, and DOL review the core curriculum for Transition GPS annually to ensure the current curriculum most accurately addresses the needs of transitioning servicemembers. Our first evaluation in 2014 included analysis of results from the Web-based Transition GPS participant survey instrument developed by DOD and input from various stakeholders. Based on this evaluation, the Department revised the TAP Employment Workshop curriculum to include Equal Employment Opportunity and Americans with Disability Act content, the Veterans Employment Center content, and enhanced information on the Workforce Investment Act training, Dislocated Worker training, and Registered Apprenticeship Programs.

The fiscal year 2015 curriculum review began in April 2015. Any changes that may result from this review should be available to transitioning servicemembers this November, and we would be happy to brief the Committee on any changes that we make.

We believe we have also met the intent of the sub-recommendation to permit State Departments of Labor or their equivalent agencies to work directly with State Veterans Affairs Directors or Offices to coordinate implementation of the JVSG Program.

The Department's standards of performance for each of our Directors for Veterans Employment and Training, or our State DVETs, specifies in their duties and responsibilities section that each DVET must coordinate with State Departments of Labor and other agencies, including State Departments of Veterans Affairs. Moreover, current law does not prohibit interagency coordination with respect to JVSG, including coordination with the VA. In fact, the Workforce Innovation and Opportunity Act supports greater interagency cooperation.

Regarding the sub-recommendation that DOL should track American Jobs Center staff attendance at jobs fairs, the Department is focused on developing and tracking outcome-related metrics in accordance with the Workforce Innovation and Opportunity Act. These metrics will be based on participant outcomes instead of staff activity, and we believe this is the right approach in measuring the effectiveness of our programs.

The Department supports the intent of the recommendation that DOD, VA, and DOL should submit a one-time joint report on the challenges employers face when seeking to hire veterans. However, we have already gathered much of this information from employers

and are working with our agency partners to address many of those challenges.

In addition, given the volume of information and the workload required to obtain additional data, we recommend that we work with our agency partners to develop the information you believe would be helpful in assessing issues related to barriers to employers who wish to hire veterans. We can then meet with you to share the requested material.

We at the Department of Labor remain committed to our Nation's veterans and we look forward to working with the Committee to ensure the continued success of our efforts. We also praise the hard work of the Commission in developing their recommendations.

We welcome each of you to come and see the services we provide for veterans at an American Jobs Center in your State or the improvements we have made to the TAP class for transitioning servicemembers on military installations around the country.

Mr. Chairman, this concludes my statement. Thank you again for the opportunity to testify today, and I am happy to take any questions.

[The prepared statement of Ms. Gerton follows:]

PREPARED STATEMENT OF TERESA W. GERTON, DEPUTY ASSISTANT SECRETARY FOR POLICY, VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR

#### INTRODUCTION

Good afternoon, Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee. Thank you for the opportunity to participate in today's hearing. I would like to thank the Commission, which was assigned to develop the Military Compensation and Retirement Modernization (MCRMC) Report, for all its hard work. As President Obama indicated, the report's recommendations "represent an important step forward in protecting the long-term viability of the All-Volunteer Force," and "improving quality-of-life for servicemembers and their families." As Deputy Assistant Secretary for Policy at the Veterans' Employment and Training Service (VETS) at the Department of Labor (DOL or Department), I appreciate the opportunity to discuss the Department's views on pending legislation and proposals impacting veterans.

The Department's charter, for over 100 years, has been to "foster, promote and develop the welfare of working people, to improve their working conditions, and to enhance their opportunities for profitable employment." The Department's collective resources and expertise are integrated with state workforce agencies and local communities to meet the employment and training needs of all Americans, including veterans, transitioning servicemembers, members of the National Guard and Reserve, their families, and survivors.

As the Federal Government's leader on veterans' employment, VETS ensures that the full resources of the Department are readily available for veterans and servicemembers seeking to transition into the civilian labor force. VETS' mission is focused on four key areas: (1) preparing veterans for meaningful careers; (2) providing them with employment resources and expertise; (3) protecting their employment rights; and, (4) promoting the employment of veterans and related training opportunities to employers across the country.

While this hearing addresses several legislative proposals, the Department limits its remarks to those legislative proposals that have a direct impact on the programs administered by the Department, specifically, the "21st Century Veterans' Benefits Delivery Act," and the legislative proposals based on MCRMC Recommendations 11 and 12.

#### S. 1203, "21ST CENTURY VETERANS BENEFITS DELIVERY ACT"

The draft Senate bill, "21st Century Veterans Benefits Delivery Act," seeks to amend title 38 of the U.S. Code, to improve the processing by the Department of Veterans Affairs (VA) of claims for benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

### *Section 101*

Section 101 would amend section 1144 of title 10 of the U.S. Code, adding subsection (f) to require modifications to the VA's eBenefits Web site, which would ensure that servicemembers, veterans, and their spouses have access to the Transition Assistance Program (TAP) online curriculum, as administered by the Secretary of Labor, the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs. The Department believes that it has already met the intent of this proposal. DOL has worked with the Department of Defense (DOD) and VA to host the TAP curriculum online. Currently, servicemembers and their spouses are able to access the entire Transition GPS curriculum online via DOD's Joint Knowledge Online, the VA's eBenefits Web site, or DOL VETS' Web site. Section 101 also states: "An individual subject to a requirement under subsection (c) may not satisfy such requirement by participating in the program carried out under this section solely through an Internet Web site." DOL appreciates the intent of this statement and notes that the vast majority of servicemembers who attend our employment workshop do so in person. We defer to DOD on the impact of this requirement, and to the VA on the inclusion of our Veterans Service Organization (VSO) partners.

### LEGISLATIVE PROPOSALS FROM THE MCRMC REPORT

The Administration has indicated its general support for Recommendations 11 and 12, in the Presidential Memorandum issued on April 30, 2015. As DOL recently shared with the staff of this Committee, the Department has initiated many of the Commission's recommendations prior to publication of the Commission's report. Accordingly, any legislative proposal to implement these recommendations should be modified to reflect these recent VETS program improvements, as well as to ensure continued access to unemployment benefits for servicemembers who need income support, while availing themselves of educational and training programs.

### *Recommendation 11*

Recommendation 11, "Safeguard education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs," is primarily directed toward DOD and VA, who administer a myriad of benefit programs for servicemembers. The Department generally supports Recommendation 11. The sub-recommendation of interest to DOL would prevent individuals receiving housing stipend benefits under the Post-9/11 GI Bill from simultaneously receiving unemployment insurance (UI). This sub-recommendation would amend title 5 of the U.S. Code, at section 8525, on Unemployment Compensation for Ex-Servicemembers (UCX), as well as any other regulation and policy pertaining to section 8525. The MCRMC's companion legislative proposal to implement this sub-recommendation is contained in Section 1109, Unemployment Insurance.

To achieve the goal of safeguarding education benefits of servicemembers, it is necessary that servicemembers have adequate income support to take advantage of these programs. The Department would like to ensure equitable treatment for servicemembers compared to their civilian counterparts, who also are seeking UI benefits for approved training. The receipt of other benefits, such as the Post-9/11 GI Bill retraining incentives or housing benefits, currently do not prevent veterans from taking advantage of the same provision given to regular (civilian) unemployment insurance (UI) recipients when training is approvable/approved under state law.

Providing income support for servicemembers eligible for UCX helps to ensure that their retraining leads to employment in a more sustainable labor market after specialized military service. Unemployment insurance is designed to provide benefits for workers to enable their successful transition to new employment; it is affirmatively intended to provide for costs of living beyond housing. Additionally, State UI laws contain requirements regarding an individual's availability for work, which entails being ready, willing, and able to work. This includes the requirement that a claimant receiving UCX register with the public employment service. Thus, receipt of UCX benefits connects veterans to reemployment services through the public workforce system, which in conjunction with receiving GI Bill benefits, helps to more effectively support the individual's successful reentry to civilian employment. Therefore, preventing GI Bill beneficiaries from receiving unemployment compensation may be a detriment to their successful reemployment. While the Department does not favor Section 1109 as currently drafted, we would be willing to continue discussions with Congress and the Department of Veterans Affairs on this issue.

*Recommendation 12*

Recommendation 12, “Better prepare Servicemembers for transition to civilian life by expanding and granting states more flexibility to administer the Jobs for Veterans State Grants Program,” seeks to expand servicemembers’ knowledge of educational benefits, improve Transition GPS, and improve the Jobs for Veterans State Grant (JVSG) program. The Department generally supports Recommendation 12; for purposes of this hearing, the Department will focus specifically on the following sub-recommendations:

(1) The Congress should require DOD, VA, and DOL to review and report on the core curriculum for Transition GPS to reevaluate if the current curriculum most accurately addresses the needs of transitioning Servicemembers. This report should include review of the current curriculum; the roles and responsibilities of each Department and whether they are adequately aligned; and the distribution of time between the three departments in the core curriculum and whether it is adequate to provide all information regarding important benefits that can assist transitioning Servicemembers. This review should indicate whether any of the information in the three optional tracks should be addressed instead in mandatory tracks. It should also include a standard implementation plan of long-term outcome measures for a comprehensive system of metrics. This review should identify any areas of concern regarding the program and recommendations for addressing those concerns.

DOL notes that processes already in place address the intent of this proposal, and would be pleased to share our curriculum review results with this Committee. The MCRMC’s companion legislative proposal to implement this sub-recommendation is contained in Section 1204, Transition GPS Program Core Curriculum Review and Report.

In Fiscal Year (FY) 2014, as a member of the TAP Senior Steering Curriculum Working Group with DOD and VA, the Department began an annual curriculum evaluation. This evaluation included analysis of results from the web-based Transition GPS participant survey instrument developed by DOD, and input from various stakeholders. Based on this evaluation, the Department revised the TAP Employment Workshop curriculum to include Equal Employment Opportunity and Americans with Disability Act content, the Veterans Employment Center content, and enhanced information on Workforce Investment Act training, dislocated worker training, and Registered Apprenticeship programs.

The FY 2015 curriculum review began in April 2015, in conjunction with the TAP Senior Steering Curriculum Working Group’s planned review of the entire Transition GPS curriculum. Any changes that may result from this review should be available to transitioning servicemembers in November 2015. Additionally, the Department will address this sub-recommendation before the TAP Senior Steering Group for consideration in the FY 2015 curriculum review.

(2) The Congress should amend the relevant statutes to permit state departments of labor or their equivalent agencies to work directly with state Veterans Affairs directors or offices to coordinate implementation of the JVSG program.

DOL believes that it has already met the intent of this proposal, which is contained in Section 1202, Coordination with State Departments of Labor and VA. The process this proposal seeks to implement is already in place; the Department’s standards of performance for each of the Directors for Veterans’ Employment and Training (DVET) specifies in the “duties and responsibilities” section that each DVET must coordinate with state Departments of Labor and Veterans Affairs. Moreover, current law does not prohibit inter-agency coordination with respect to JVSG, including coordination with the VA (title 38, U.S. Code 4102A(b)(3)). In fact, the Workforce Innovation and Opportunity Act, passed in 2014, supports greater inter-agency cooperation. The public workforce system is designed to be a decentralized network of strong partnerships at the Federal, state, local, and regional levels.

(3) DOL should require One-Stop Career Centers to track the number of job fairs their employees participate in and the number of veterans they connect with at each job fair. This information should be included in each state’s annual report to the DOL, and provided to the Congress.

The Department does not find American Job Center (AJC) staff attendance at Transition GPS Employment Workshops, job fair participation rates, or the number of transitioning servicemembers and veterans with whom JVSG staff interact to be measures reflective of meaningful outcomes data. Tracking these activities may, in fact, result in the unintended consequence of incentivizing the quantity of interactions between AJC staff and veterans, rather than the quality and effectiveness of the services AJC staff provide to veterans. Also, this proposal, contained in Section 1201, Job Fair Participation Rates, seeks to amend the Workforce Investment Act of 1998, which has been superseded by the Workforce Innovation and Oppor-

tunity Act (WIOA), making it difficult to interpret how it would be executed. Nevertheless, this proposal is not in keeping with Section 116 of WIOA (which replaced section 136 of WIA), which establishes common performance accountability measures that apply across the Department's core employment and training programs to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by related programs. While JVSG is not a core program under WIOA, 38 U.S.C. 4102A requires JVSG performance measures to "be consistent with" those under WIOA. The Departments of Labor and Education on April 16 jointly issued a WIOA Notice of Proposed Rulemaking seeking public comments on such topics as performance accountability to ensure that Federal employment and training program investments report on common performance indicators such as how many individuals, including veterans, entered employment and their median wages. The Departments welcome comments from this Committee on our proposal.

(4) The Congress should require a one-time joint report from DOD, VA, and DOL to the Senate and House Committees on Armed Services and Veterans' Affairs regarding the challenges employers face when seeking to hire veterans. The report should identify the barriers employers face gaining information identifying veterans seeking jobs. It should also include recommendations addressing barriers for employers and improving information sharing between Federal agencies that serve veterans and separating Servicemembers, so they may more easily connect employers and veterans. The report should also review the Transition GPS career preparation core curriculum and recommend any improvements that can be made to better prepare Servicemembers trying to obtain private-sector employment.

The Department supports the intent of this recommendation and looks forward to continuing our work with our Federal partners on this important issue. However, we already have gathered much information from employers on their challenges in hiring veterans. This is provided in recent reports, such as the 2014 RAND report titled, "Lessons from the 100,000 Job Mission." We already are working with agency partners to address many of those challenges. In addition, and given the volume of information and the workload required to obtain additional data, we recommend that we work with our agency partners to develop the information you believe would be helpful in assessing issues related to barriers to employers hiring veterans. We then can meet with you to share the requested material.

#### OTHER LEGISLATION BEFORE THE COMMITTEE

The Committee also is considering legislation to encourage companies that contract with the VA to hire veterans. DOL's Office of Federal Contract Compliance Programs (OFCCP) enforces a provision of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. 4212, which prohibits covered Federal contractors and subcontractors from discriminating in employment against protected veterans. This provision also requires these contractors to take affirmative action to employ, and advance in employment, protected veterans. Since the legislation addresses contracting preferences of the VA, DOL defers to that agency with respect to this bill, and defers to other agencies affected by the remaining pieces of legislation.

#### CONCLUSION

We at the Department of Labor remain committed to our Nation's veterans and we look forward to working with the Committee to ensure the continued success of our efforts. The Department lauds the hard work the Commission placed into their recommendations. It is our hope that the Committee will consider the modifications we have provided and is open to working with the Committee members to provide technical assistance. Mr. Chairman, Ranking Member Blumenthal, and Members of the Committee, this concludes my statement. Thank you again for the opportunity to testify today. I am happy to answer any questions that you may have.

Chairman ISAKSON. Thank you for your testimony and your kind comments about WIOA. I am glad we finally were able to get that done.

Mr. McLenachen, accompanied by Renee Szybala. Mr. McLenachen.

**STATEMENT OF DAVID R. McLENACHEN, ACTING DEPUTY  
UNDER SECRETARY FOR DISABILITY ASSISTANCE, U.S. DE-  
PARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY  
RENEE SZYBALA, ASSISTANT GENERAL COUNSEL**

Mr. McLENACHEN. Chairman Isakson and Members of the Committee, thank you for the opportunity to present VA's views on several bills that are pending before the Committee.

As you just mentioned, Mr. Chairman, I am accompanied by Ms. Szybala. She is our Assistant General Counsel. She will address any questions that you may have regarding S. 627 on revocation of bonuses.

I want to first thank the Committee for the opportunity to testify concerning the Cost-Of-Living Adjustment bill, which will ensure the value of veterans' and survivors' benefits will keep pace with consumer prices next year. We support this bill.

We are also pleased to support S. 270, which would revise the definition of a spouse for purposes of VA benefits. However, we would like to work with the Committee to address a few technical concerns about the language used in the bill.

We appreciate the opportunity to comment on the bill that addresses preferences for small businesses owned by veterans, our DIC Program for survivors, and other matters. VA fully supports Section 101, which would provide greater flexibility and protection for service-disabled veteran-owned small businesses, their employees, and surviving spouses.

As to Section 102, VA supports the intent behind this provision, which would provide a period of transition for survivors of business owners who die in the line of duty, but we have a few concerns and would welcome the opportunity to work with the Committee to address them.

Although we are committed to improving our processing of claims based on military sexual trauma, we believe that the reporting provisions in Section 202 and 203 are unnecessary because VA has provided the information requested and can provide any additional information that the Committee may need without legislation.

We also believe that the provisions of Section 204, which would prescribe a pilot program to assess the feasibility of expediting DIC claims, is unnecessary, as VA has already achieved significant improvement in processing these claims, to include reducing the backlog by 87 percent and average processing time to 70 days.

Turning to Section 301, VA appreciates continued Congressional support for meeting the needs of veterans whose remains are unclaimed. While we are concerned that the study mandated by this section may be unnecessary or premature in light of VA's recent efforts to ensure that these veterans receive a proper burial, we would appreciate the opportunity to work with the Committee on the requirements for any mandated study.

Finally, we cannot support Section 401, which would expand the definition of veteran to include individuals with 20 years or more of non-regular military service. In VA's view, this would be an unreasonable and confusing departure from active service as the foundation for veteran status.

We thank Senators Heller and Casey for their efforts related to the draft 21st Century Veterans Benefits Delivery Act. VA strongly

supports Section 103 of this draft bill, which would allow for greater use of video conference hearings by the Board of Veterans Appeals. In addition, VA supports Section 211, which would address the increased demand for examinations and allow for flexibility in utilizing non-VA examiners, while ensuring that veterans receive quality compensation and pension examinations. We also have no objection to spinning a joint report with DOD on health records interoperability.

Despite the support, we have a few concerns with other sections of the draft bill. We believe that Section 101 is unnecessary because VA already provides access to the TAP curriculum through e-benefits and allows VSO representatives to attend.

While VA appreciates the intent of Section 301, which is to facilitate records retrieval, we already have extensive ongoing initiatives with other Federal agencies to improve response times to VA's requests for records.

Regarding Sections 205, 207, 209, and 210, we believe that the required reports would be duplicative of information that VA already provides in its budget, through regular updates to Congress, and in Monday morning workload reports. We will work with the Committee to add any information to these reports that the Committee believes is necessary, but we can accomplish this without legislation.

Although we support appeals reform, we do not support Section 102 of the draft bill, as we believe it would not result in a faster resolution of appeals for veterans who are waiting far too long for a final decision on their claims. While some efficiency may result if more appellants filed their notices of disagreement within 180 days, the multi-step open record appeal process that precludes efficient resolution of appeals for all veterans would not change. We would like to work with the Committee to consider the entire appeals process and institute reforms that will result in overall increased efficiency for all veterans.

Mr. Chairman, at this time, the Department does not have views on several bills that are the subject of today's hearing. We will continue to coordinate views on these matters and, upon completion, submit them to the Committee sufficiently in time before the markup that you mentioned this morning.

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

[The prepared statement of Mr. McLenachen follows:]

PREPARED STATEMENT OF DAVID R. MCLENACHEN, ACTING DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation affecting VA's programs, including the following: S. 270, S. 602, S. 627, the "21st Century Veterans Benefits Delivery Act," the "Veterans' Compensation Cost-of-Living Adjustment Act of 2015," and a draft bill concerning VA small business contracting, Veterans benefits, and burial matters. We will separately provide views on the following bills: S. 681; sections 202, 203 and 206 of the "21st Century Veterans Benefits Delivery Act;" the bill associated with legislative proposals from the Report of the Military Compensation and Retirement Modernization Commission; the bill associated with legislative proposals from the Department of Defense (DOD); and sections 201 and 206 of the consolidated bill related to bills

from the 113th Congress. Accompanying me this afternoon is Renée Szybala, Assistant General Counsel.

S. 270

S. 270, the “Charlie Morgan Military Spouses Equal Treatment Act of 2015,” would amend sections 101 and 103 of title 38, United States Code, to revise the definition of spouse for purposes of Veterans’ benefits. Specifically, the bill would remove from the definition of “surviving spouse” under section 101(3) the phrase “of the opposite sex,” and amend the definition of “spouse” under section 101(31) to include an individual if the marriage of the individual is “valid under the laws of any State.” The bill would define “State” in the same way that term is defined in section 101(20) of title 38, United States Code, for purposes of title 38, but include also “the Commonwealth of the Northern Mariana Islands.” Additionally, S. 270 would amend section 103(c) of title 38, United States Code, removing the limitation that a marriage shall be proven as valid “according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.” The bill would amend section 103(c) to follow the revised definition of “spouse” in section 101(31).

VA generally supports the passage of this bill but has some concerns with the bill’s language. Current section 101(3) and section 101(31) of title 38, United States Code, limit the definitions of “surviving spouse” and “spouse,” respectively, for purposes of title 38 to only a person of the opposite sex of the Veteran. The language in these provisions is substantively identical to the language in section 3 of the Defense of Marriage Act, 1 U.S.C. §7, which the Supreme Court, in *United States v. Windsor*, 133 S. Ct. 2675 (2013), declared to be unconstitutional because it discriminates against legally-married, same-sex couples. On September 4, 2013, the President directed VA to cease enforcement of section 101(3) and section 101(31) of title 38, United States Code, to the extent that those provisions preclude the recognition of legally-valid marriages of same-sex couples. Pursuant to the President’s direction, VA is no longer enforcing the title 38 provisions to the extent that they require a “spouse” or a “surviving spouse” to be a person of the opposite sex. Therefore, VA supports this bill as a means to amend the law to be consistent with the Supreme Court’s decision in *Windsor* and the President’s directive. In particular, VA supports the removal of the requirement that a “spouse” or a “surviving spouse” be a person of the opposite sex from subsections (3) and (31) of section 101.

Further, current section 103(c) of title 38, United States Code, requires VA to apply the law of the place in which the couple resided at the time of the marriage or where they resided when the rights to benefits accrued, resulting in unwarranted disparate treatment in the delivery of Federal benefits. For example, VA may be precluded from recognizing a Veteran’s same-sex marriage even though DOD, which is not subject to the limitation of section 103(c), may have recognized the marriage as valid based on a place-of-celebration standard while the Veteran was in service. The “valid under the laws of any State” standard in S. 270 would promote greater consistency in the administration of Federal benefits based on same-sex marriages.

However, VA has some concerns with the new standard. Under the provisions of this bill as currently drafted, the marriage has to be “considered valid under the laws of any State.” The phrase “considered valid under the laws of any State” may have unintended consequences. For example, this bill language may require VA to recognize a purported common law marriage in a State that does not recognize common law marriages, as long as any State would recognize the relationship as a valid common law marriage. Presumably, Congress does not intend to eliminate any and all differences between States regarding the types of relationships that would constitute a valid marriage for purposes of administering Federal benefits, but, rather, intends to obtain greater consistency regarding recognition of same-sex marriages. Furthermore, this bill language may require VA to determine whether a foreign marriage is valid based on a multitude of laws and would require an in-depth legal analysis that is not appropriate in the adjudication of claims.

Costs related to this bill are not available at this time.

S. 602

S. 602, the “GI Bill Fairness Act of 2015,” would amend the term “active duty” under chapter 33 of title 38, to include certain time spent receiving medical care from DOD as qualifying active duty service performed by members of the Reserve and National Guard. Under this bill, individuals ordered to active duty under section 12301(h) of title 10, United States Code, to receive authorized medical care; to be medically evaluated for disability or other purposes; or to complete a required



DOD health care study, would receive credit for this service under the Post-9/11 GI Bill.

S. 602 would apply as if it were enacted immediately after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008, Public Law 110–252.

VA defers to DOD regarding the change to qualifying active duty service under the Post-9/11 GI Bill, with the observation that a similar proposal was submitted by the Administration for inclusion with the 2016 NDAA, with an exception that this bill would be retroactive. Currently, individuals with qualifying active duty service of at least 30 continuous days who are honorably discharged due to a service-connected disability become eligible for 100 percent of the Post-9/11 GI Bill benefit. Because service under 10 U.S.C. § 12301(h) does not meet the current definition of active duty, Guard and Reserve members with such service who are discharged under these circumstances do not automatically qualify for 100 percent of the benefit. If enacted, this change would allow for an increase in benefits from the 40–90 percent benefit tier up to the 100 percent level, and the change would be retroactive to as early as August 1, 2009.

The proposed change to the eligibility criteria under the Post-9/11 GI Bill would require VA to make changes to the type of data that are exchanged between DOD and VA through the VA/DOD Identity Repository (VADIR) and displayed in the Veteran Information System (VIS). In addition, new rules would need to be programmed into the Post-9/11 GI Bill Long Term Solution (LTS) in order to calculate eligibility based on service under section 12301(h) and to allow for benefit payments retroactive to 2009. VA estimates that it would need one year from enactment of S. 602 to complete these changes.

VA estimates that administrative cost requirements associated with the enactment of S. 602 would be insignificant. The Department is still evaluating benefit and resource costs related to this legislation.

#### S. 627

S. 627 would require VA to identify VA employees who, during fiscal years 2011 through 2014, contributed to the purposeful omission of the name of one or more Veterans from a VA medical facility's electronic wait list or supervisors of these employees who knew or reasonably should have known about the employee's actions and received a "bonus" in part as a result of the purposeful omission. The bill would further require VA to identify these responsible individuals within 180 days after VA's Office of the Inspector General (OIG) submits a report to Congress about inappropriate scheduling practices at VA medical facilities, if such report is based on investigations carried out by the OIG in calendar year 2014. VA would also be required, after providing notice and an opportunity for a hearing, to order that these individuals repay bonuses that they received as a result of a purposeful omission. An individual who has been ordered to repay a bonus may appeal that order to the Merit Systems Protection Board (MSPB).

VA has numerous constitutional concerns about the bill, including concerns arising under the Fifth Amendment Takings Clause, the Due Process Clause, and the Ex Post Facto Clause. VA also has policy and procedural concerns about the bill. VA looks forward to working with the Committee in order to address these concerns.

S. 627 is a bill for which there is no precedent. No Federal agencies have the authority to require employees to repay past monetary performance awards or bonuses that were given in accordance with law and without conditions or contractual obligations. This legislation threatens a number of core constitutional rights related to property and due process that the Framers of the Constitution sought to protect,—and the bill would likely give rise to litigation. VA believes that employees should not be penalized by legislation that attaches new penalties on the basis of past behavior and transactions and should have protection from deprivation of life, liberty, or property without due process of law. Further, performance awards are intended to be a key tool in motivating employees to provide outstanding service to Veterans, and the value of that tool should not be undermined by measures that would limit employee confidence in the performance award system. By singling out VA employees for punitive measures, the legislation would likely serve to demoralize a workforce dedicated to serving Veterans and hurt VA's efforts to recruit and retain high performing employees. VA is concerned that S. 627, if passed, would give rise to numerous lawsuits challenging the constitutionality of the provisions and VA's actions pursuant to it.

For these reasons, and as further explained in the below discussion, VA strongly opposes this legislation.

Implementing the bill, as written, would also be impractical for the government. First, the bill does not define the term "bonus" as a "performance award." In accord-

ance with law, VA does not give “bonuses,” but rather awards an employee based on his or her performance. Second, the type of hearing that needs to be provided to an employee before a repayment order must be issued is not specifically addressed in the bill. While the bill states that hearings “shall be conducted in accordance with regulations relating to hearings promulgated by the Secretary under chapter 75 of title 5, United States Code,” chapter 75 references various types of hearings. Consequently, the type of hearing that would need to be provided is not addressed in the bill. Third, the bill raises a number of tax questions. For example, should the Department of Treasury treat a repayment of a performance award as adjustments to prior year compensation, even though the award may have been paid a number of years ago? This tax question, while not addressed in the bill, would have to be addressed.

As noted above, the bill would raise a number of constitutional issues. First, the bill may run afoul of the Fifth Amendment’s Takings Clause by requiring employees to return property that was given to them unconditionally by the government. The Takings Clause prevents the government from “depriving private persons of vested property rights except for a “public use” and upon payment of “just compensation.” *Landgraf v. USI Film Products*, 511 U.S. 244, 266 (1994). In the case of an employee who has already been paid a bonus by the government, that bonus is the property of the employee. The taking would occur if the government collects the bonus or even a portion thereof without just compensation. See, e.g., *Nat’l Educ. Bd. v. Ret. Bd. of R.I.*, 172 F.3d 22, 30 (1st Cir. 1999) (the Takings Clause protects “[p]ension payments actually made to retirees”).

The bill may have a “retroactive effect” by increasing an employee’s liability for conduct that preceded the enactment of the bill. See *Landgraf*, 511 U.S. at 280 (a bill has a “retroactive effect” if it “increases a party’s liability for past conduct”). “The retroactive aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former.” *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984) (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16–17 (1976)). Under the bill, an employee must repay a bonus based on conduct that preceded the enactment of the bill. Because the employee was not aware that he or she would have to repay the bonus at the time of the conduct, the bill may have a “retroactive effect” and may implicate the employees’ due process rights to fair notice. See *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 570 (1996) (“Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.”).

Finally, the legislation may raise constitutional Ex Post Facto Clause concerns. The Ex Post Facto Clause prohibits laws that “impose[] a punishment for an act which was not punishable at the time it was committed; or impose[] additional punishment to that then prescribed.” *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325–26 (1867). In *Hiss v. Hampton*, 338 F. Supp. 1141, 1147–48 (D.D.C. 1972), a three judge panel in the U.S. District Court for the District of Columbia held that a law denying payment of pensions to former employees who falsely testified with respect to Government service was an ex post facto law as it pertained to the conduct of those employees which preceded the passage of the law. *Id.* at 1148. According to the court in *Hiss*, “[t]he proper function of [law] is to guide and control present and future conduct, not to penalize former employees for acts done long ago.” *Id.* at 1148–49; see also *Peugh v. United States*, 133 S. Ct. 2072, 2085 (2013) (noting that “the [Ex Post Facto] Clause ensures that individuals have fair warning of applicable laws and guards against vindictive legislative action”). As currently drafted, the bill could potentially raise some of the same issues as the provision at issue in *Hiss*.

Based on the implementation concerns discussed above, VA is unable to determine the costs for this bill. It is important to note, however, that apart from costs to investigate and identify the employees, as required by the bill, VA would also have to expend significant resources to conduct a hearing prior to issuing a repayment order, defend its repayment order before the MSPB, and assist the Department of Justice in defending the order before the U.S. Court of Appeals for the Federal Circuit.

S. 1203

#### Section 101

Section 101 would amend section 1144 of title 10, United States Code, by adding a subsection (f) to require modifications to the eBenefits Internet Web site to ensure that members of the Armed Forces and spouses have access to the online curriculum for the Transition Assistance Program (TAP), as administered by the Secretary of

Labor, the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs. This would require modifications to the eBenefits Web site to host the online version of the TAP curriculum.

Section 101 would also note Congress' intent that the Secretary of Labor, the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs collaborate to establish a process by which Veterans service organizations may be present for TAP to provide assistance relating to submitting claims for VA compensation and pension benefits. The Secretary of Defense would be required to submit a report to Congress, no later than one year after enactment, on Veterans service organizations' participation.

VA does not support the provision to make TAP curriculum available through eBenefits because it is unnecessary. This provision would be duplicative as all TAP curriculums are already available through the Joint Knowledge Online (JKO) system, which is linked to eBenefits. VA modified the eBenefits portal in fiscal year 2014 to provide an online version of VA's section of the TAP curriculum through the JKO link and facilitate online participation for transitioning Servicemembers and their families. This functionality lends support to geographically dispersed Servicemembers as well as members of the National Guard and Reserve components who are required to participate in VA's section of TAP. Additionally, the online version is beneficial to Veterans and their families if they would like to access the curriculum after separation.

VA defers to DOD and the Department of Homeland Security for comment on proposed new 10 U.S.C. § 1144(f)(2) regarding the feasibility of ensuring that Servicemembers who are mandated to fulfill the TAP requirement can satisfy the requirement through means other than solely through an internet Web site.

VA does not oppose having a process for Veterans service organizations (VSOs) to provide assistance relating to submittal of claims for VA compensation and pension benefits. VA currently provides an overview of the services offered by VSOs and introduces VSOs to Servicemembers during our benefits briefings. VA also partners with VSOs at military installations where they are co-located or available to offer claims support.

VA defers to DOD on subsection (b)(2) of section 101 of the bill regarding the requirement to provide a report on participation of VSOs in TAP.

VA estimates that no administrative or benefit costs to VA would be associated with enactment of this section.

#### *Section 102*

Section 102 would amend 38 U.S.C. § 5104, which provides requirements for VA's decisions and notices of decision. It would require VA, upon issuing a decision for a claimed benefit, to also explain the procedure for obtaining review of the decision and explain the benefits of filing a Notice of Disagreement (NOD) within 180 days.

VA does not support this section. While VA appreciates the effort to encourage individuals to file their NOD in a timelier manner, VA would prefer a more definitive legislative solution.

As noted in VA's Strategic Plan to Transform the Appeal Process, which was provided to the Senate Committee on Veterans' Affairs on February 26, 2014, the current process provides appellants with multiple reviews in the Veterans Benefits Administration (VBA) and one or more reviews at the Board of Veterans' Appeals (Board), depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. The multi-step, open-record appeal process set out in current law precludes the efficient delivery of benefits to all Veterans. The longer an appeal takes, the more likely it is that a claimed disability will change, resulting in the need for additional medical and other evidence and further processing delays. As a result, the length of the process is driven by how many cycles and readjudications are triggered. VA's FY 2016 budget request includes legislative proposals to improve the appeal process, and VA has collaborated with Veterans service organizations to develop an optional fully developed appeals pilot program. VA continues to work with Congress and other stakeholders to explore long-term solutions that would provide Veterans the timely appeals process they deserve.

VA estimates that GOE costs associated with this section would be insignificant.

#### *Section 103*

Section 103 would allow for greater use of video conference hearings by the Board, while still providing Veterans with the opportunity to request an in-person hearing if they so elect. This provision would apply to cases received by the Board pursuant to Notices of Disagreement submitted on or after the date of the enactment of the Act. VA fully supports section 103 as drafted, as this provision would potentially de-

crease hearing wait times for Veterans, enhance efficiency within VA, and better focus Board resources toward issuing more final decisions.

The Board has historically been able to schedule video conference hearings more quickly than in-person hearings, saving valuable time in the appeals process for Veterans who elect this type of hearing. In FY 2014, on average, video conference hearings were held 124 days sooner than in-person hearings before a Veterans Law Judge (VLJ) at a Regional Office Travel Board hearing. Section 103 would allow both the Board and Veterans to capitalize on these time savings by giving the Board greater flexibility to schedule video conference hearings than is possible under the current statutory scheme.

Historical data also shows that there is no statistical difference in the ultimate disposition of appeals based on the type of hearing selected. Veterans who had video conference hearings had an allowance rate for their appeals that was virtually the same as Veterans who had in-person hearings; however, Veterans who had video conference hearings were able to have their hearings scheduled much more quickly. Section 103 would continue to allow Veterans who want an in-person hearing the opportunity to specifically request and receive one.

Enactment of section 103 could also lead to an increase in the number of final decisions for Veterans as a result of increased productivity at the Board. Time lost due to travel and time lost in the field due to appellants failing to show up for their hearing would be greatly reduced, allowing VLJs to better focus their time and resources on issuing final Board decisions for Veterans.

Major technological upgrades to the Board's video conference hearing equipment over the past several years leave the Board well-positioned for the enactment of section 103. This includes the purchase of high-definition video equipment, a state-of-the-art digital audio recording system, implementation of a virtual hearing docket, and significantly increased video conference hearing capacity. Section 103 would allow the Board to better leverage these important technological enhancements.

We observe that section 103 would redesignate current subsection (f) of section 7107 of title 38, United States Code, as subsection (g); however, the draft legislation does not revise the reference to current subsection (f) in subsection (a) of section 7107 of title 38, United States Code. We suggest revising subsection (a)(1) to state: "Except as provided in paragraphs (2) and (3) and in subsection (g), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket."

In short, section 103 would result in shorter hearing wait times, focusing Board resources on issuing more decisions, and providing maximum flexibility for both Veterans and VA, while fully utilizing recent technological improvements. VA therefore strongly endorses this proposal.

#### *Section 201*

We defer to the U.S. Government Accountability Office.

#### *Section 204*

We defer to the VA Office of the Inspector General.

#### *Section 205*

Section 205 would require VA to submit an annual report to Congress on the capacity of VBA to process claims during the next one-year period. The reports would include the number of claims VBA expects to process; number of full-time equivalent (FTE) employees who are dedicated to processing such claims; an estimate of the number of claims a single FTE can process in a year; an assessment of whether VA requires additional or fewer FTE to process such claims during the next one-year, five-year, and 10-year periods; a description of actions VA will take to improve claims processing; and an assessment of actions identified in previous reports required by this section. VA would be required to make the report publicly available on the internet.

VA believes this legislation is unnecessary as VA's current budget reports address these issues adequately, and such budget reports are available publicly.

No administrative costs would be associated with enactment of this section.

#### *Section 207*

Section 207 would require VA to submit to Congress a report on the Department's progress in implementing the Veterans Benefits Management System (VBMS). The report would include (1) an assessment of current VBMS functionality; (2) recommendations from VA's claims processors, including Veterans Service Representatives, Rating Veterans Service Representatives, and Decision Review Officers, on legislative or administrative actions to improve the claims process; and (3) recommendations from VSOs that use VBMS on legislative or administrative actions to

improve VBMS. VA would be required to submit a report within 180 days after enactment of the bill and no less frequently than once every 180 days thereafter until three years after enactment.

VA believes this legislation unnecessary as VA currently provides regular updates to Congress regarding implementation and functionality of VBMS; quarterly briefings to the House and Senate Committees on Veterans' Affairs, advising them of the status of VBA operations and updates to VBMS; and a quarterly report to the House and Senate Appropriations Committees summarizing recent and upcoming changes to VBMS. Additional reporting requirements are not needed at this time.

VA estimates GOE costs associated with this section would be insignificant.

#### *Section 208*

Section 208 would require VA to submit, within 90 days of enactment of this Act, a report to Congress detailing plans to reduce the inventory of claims for dependency and indemnity compensation (DIC) and pension benefits.

VA does not support section 208. It is unnecessary as VBA continues to make significant improvements in processing DIC and pension claims.

VA's Pension and Fiduciary (P&F) Service, which oversees administration of the DIC and pension programs, reviewed the policies and procedures applicable to the adjudication of these claims to identify obstacles to timely processing. P&F Service determined that certain claim processing steps are redundant and appropriate for elimination. On March 22, 2013, P&F Service issued Fast Letter 13-04 (FL 13-04), Simplified Processing of Dependency and Indemnity Compensation (DIC) Claims, which instructs VBA field staff on the procedures to follow when processing DIC claims. P&F Service is working on similar guidance for pension claims.

On July 7, 2014, VA began automating payment of DIC to certain surviving spouses of Veterans rated totally disabled at death. As part of VA's notice of death process, VA systems determine if the deceased Veteran met the requirements of section 1318 and if the surviving spouse met the relationship requirements. If the system determines that both requirements are met it will automatically process and award DIC under section 1318 within six days of notification of the Veteran's death.

Based on these changes and an aggressive workload management plan in VA's Pension Management Centers, VA has reduced its pending DIC claim inventory by 55 percent from its peak of 19,100 claims to 8,600 claims, and backlog by 87 percent from its peak of 8,800 to 1,000. Veterans pension inventory was reduced by 68 percent from its peak of 36,100 to 11,400, and backlog by 96 percent from its peak of 14,500 to 600. Average processing time for DIC has improved by 100 days from its peak of 168 days to 68 days, while maintaining 99 percent accuracy.

No benefits or GOE costs would be associated with enactment of this section.

#### *Section 209*

This section would require VA to include in its Monday Morning Workload Report (MMWR) the number of claims received by regional offices and pending decisions, disaggregated by the number of claims that have been pending for more than 125 days; the number of claims that have been pending for 125 days or less; and the number of claims that do not require a decision concerning a disability rating. This section would also require VA to include in the MMWR, the sections entitled "Transformation" and "Aggregate," the number of partial ratings assigned. Additionally, this section would require VA to include in the MMWR a report on the total number of fully developed claims (FDC) received by regional offices that are pending a decision and the subset of those claims that have been pending for more than 125 days, disaggregated by station.

VA does not support this section. The information required by section 209(a) is already published in the MMWR for rating-related disability compensation and pension claims. The section appears to propose requiring all other non-rating pending compensation and pension workload be added to the MMWR; however information about these pending claims is also already published in the MMWR. The single distinguishing new feature would be the application of the backlog metric of 125 days to all non-rating-related claims by regional office. However, 125 days is not a useful metric for the majority of non-rating-related claims. The significant differences in the work effort required for various types of non-rating-related claims and the fact that much of this work is consolidated to the Pension Management Centers make comparison at the aggregate level across all regional offices a comparison without context or any real capability to inform how one regional office compares to another.

Section 209(b) would elevate tallies of partial ratings of various claim types into a tool of comparison between regional offices. Data on partial ratings that award benefits for some, but not all, claimed conditions are not informative in this way as they reflect the unique circumstances of each claim. Additionally, irrespective of

partial rating decisions, over half of the Veterans with pending claims are already receiving compensation as a result of a previously filed claim. Adding this partial-rating metric would not provide meaningful comparisons at the regional office level.

Section 209(c) would require pending FDC claims, one VBA high-priority claims category, to be added to the MMWR. To the degree making comparisons between regional offices is desired, the existing reporting in the MMWR on claims older than 125 days, VA's largest pending group of high priority claims, provides a better metric for such comparisons than FDC claims. However, should it be determined that a pending FDC metric would be useful, legislation is not required to add this metric to the MMWR.

VA estimates GOE costs associated with this section would be insignificant.

#### *Section 210*

This section would require VA to make available to the public on the internet the "Appeals Pending" and "Appeals Workload by Station" reports. VA would be required to include in one of these reports the percentage of appeals granted by station and the percentage of claims previously adjudicated by VBA's Appeals Management Center that were subsequently granted or remanded by the Board.

VA does not support this section. VBA's MMWR currently includes the total number of appeals pending and other metrics related to appeals. Before adding data elements to reports, VBA needs to ensure that the information is provided in a useful way that can be easily understood by the public.

For example, VBA is changing its workload management strategy by developing the National Work Queue (NWQ), a paperless workload management initiative designed to improve VBA's overall production capacity. In the initial phase of NWQ, VBA is matching its inventory with claims processing capacity at the regional office-level, moving claims electronically from a centralized queue to an office identified as having capacity to complete the work. With this national workload approach, VA will continue to focus on the improvement of its traditional performance metrics, with an emphasis on improving quality and consistency of claims and appeals processing nationwide to ensure Veterans and their families receive timely benefits, regardless of where they reside. Appeals data by station will be less useful to the public as NWQ is implemented.

Additionally, it is unclear how the bill would define "appeals granted by station." Multiple decisions may be appealed in each claim, and it is unclear if VA would be required to report percentages associated with each decision or each appeal. Similarly, it is unclear at what point in the appeal process this metric would be reported. The current process provides appellants with multiple reviews in VBA and one or more reviews at the Board, depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. The longer an appeal takes, the more likely it is that a claimed disability will change, resulting in the need for additional evidence, further processing delays, and less clarity in whether an initial decision was correctly made.

VA estimates GOE costs associated with this section would be insignificant.

#### *Section 211*

Section 211 would revise provisions of the Veterans' Benefits Improvement Act of 1996 relating to contract examinations to clarify that, notwithstanding any law regarding the licensure of physicians, a licensed physician may conduct disability examinations for VA in any state, the District of Columbia, or a commonwealth, territory, or possession of the United States, provided the examination is within the scope of the physician's authorized duties under a contract with VA.

VA supports the provision regarding licensure requirements as a means to ensure the quality of contract examinations. The demand for medical disability examinations has increased, largely due to an increase in the complexity of disability claims, an increase in the number of disabilities that Veterans claim, and changes in eligibility requirements for disability benefits. This authority would help provide flexibility in examinations through non-VA medical providers while maintaining licensure standards and accelerating benefits delivery.

No benefit or discretionary costs would be associated with enactment of this section.

#### *Section 301*

Section 301 would require the appointment of at least one liaison between VA and DOD, and between VA and each of the reserve components. It would also require the National Archives and Records Administration (NARA) to appoint a liaison to VA. The intent of these appointments is to expedite the provision of information needed to process claims by VA, to ensure that such information would be provided

within 30 days of the request. VA would be required to submit a report to Congress annually regarding the timeliness of responses from DOD and NARA.

While VA appreciates the intent to facilitate records retrieval, VA believes that this section of the bill is unnecessary because of the extensive ongoing efforts between VA and other Federal agencies to improve response times to VA requests for records that are required to adjudicate disability claims. For example, a memorandum of understanding (MOU) between VA and DOD provides VA, at time of discharge, certified and complete service treatment records in an electronic, searchable format. As this MOU applies to the 300,000 annually separated Active Duty, National Guard, and Reserve Component members, it will significantly contribute to VA's efforts to achieve its 125-day goal for completion of disability compensation claims.

Costs associated with enactment of this section would be insignificant. DOD and NARA would be required to appoint liaisons; VBA would not hire additional employees. Costs associated with the report required by section 301(d) would be insignificant.

#### *Section 302*

Section 302 would require DOD and VA to jointly submit to Congress a report that sets forth a timeline with milestones for achieving interoperability between the electronic health records systems of both Departments.

The Veterans Health Administration (VHA) runs the largest integrated health care system in the country; delivering the quality care Veterans deserve is not possible without innovative information technology and data sharing. VA's Electronic Health Record (EHR)—Veterans Health Information Systems and Technology Architecture (Vista)—is the most widely used EHR in the United States, and VA is working rapidly to modernize it. VA is developing a new web application and services platform called the Enterprise Health Management Platform (eHMP). eHMP is the Vista application clinicians will use during their clinical interactions with Veterans. eHMP brings exciting new features to the clinician, including Google-like search capabilities and information buttons that help clinicians find needed information much faster than current systems. VA is already piloting eHMP, and expects to deploy it to 30 sites by the end of the calendar year, with full rollout—including regular updates—over the next three years.

VA continues to work with DOD on health data interoperability, but it is important to note that the two Departments already share health care data on millions of Servicemembers and Veterans. In fact, the two Departments share more health data than any other health care entities in the Nation. In addition to sharing health care data, VA and DOD have also paved the way for standardizing health care data, so that regardless of what system a clinician uses, the data is available in the right place and in the right way; for example, Tylenol and acetaminophen appear in the same place in the record because the system understands, through our data standardization, that they are the same medication. Today, VA and DOD clinicians can use the Joint Legacy Viewer (JLV) to see VA and DOD data on a single screen in a Servicemember or Veteran's record. Eventually, eHMP will replace JLV and will allow clinicians to see VA, DOD, and third-party provider data in their regular clinical care tool.

The Department does not object to providing a report. Costs of this report would be insignificant as the Department currently provides a similar report to Congress.

#### DRAFT BILL COST-OF-LIVING-ADJUSTMENT ACT

The Draft bill on the "Veterans' Compensation Cost-of-Living Adjustment Act of 2015," would require the Secretary of Veterans Affairs to increase, effective December 1, 2015, the rates of disability compensation for service-disabled Veterans and the rates of 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, 2015. The bill would also require VA to publish the resulting increased rates in the *Federal Register*.

VA strongly supports this 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 benefits will keep pace with increases in consumer prices.

The cost of the cost-of-living adjustment (COLA) is included in VA's baseline budget because we assume a COLA will be enacted by Congress each year. Therefore, enactment of the draft bill which would extend the COLA adjustment through November 30, 2016, would not result in costs.

DRAFT TO AMEND TITLE 38, UNITED STATES CODE, TO MODIFY THE TREATMENT UNDER CONTRACTING GOALS AND PREFERENCES OF THE DEPARTMENT OF VETERANS AFFAIRS FOR SMALL BUSINESSES OWNED BY VETERANS, TO CARRY OUT A PILOT PROGRAM ON THE TREATMENT OF CERTAIN APPLICATIONS FOR DEPENDENCY AND INDEMNITY COMPENSATION AS FULLY DEVELOPED CLAIMS, AND FOR OTHER PURPOSES

#### *Section 101*

Section 101 would expand the flexibility provided to a service-disabled Veteran-owned small business (SDVOSB) to continue to hold that socioeconomic status upon the death of the service-disabled Veteran owner. Current law provides a transition period for SDVOSBs for up to 10 years after the Veteran's death, if the Veteran had a service-connected disability with a 100-percent rating or died as a result of a service-connected disability. This bill would create a similar transition period for three years, if the Veteran had a service-connected disability with a rating of less than 100 percent and did not die as a result of a service-connected disability.

VA supports this provision because, without the proposed transition period, the death of the Veteran owner could put at risk the jobs and livelihoods of the firm's employees, as well as the surviving spouse. The transition period provides the spouse a reasonable period of time to determine what should be done with the business after the Veteran's death.

VA anticipates enactment of this provision would entail minor administrative costs. VA would incorporate this change into its existing application processes with no material addition to costs.

#### *Section 102*

Section 102 would amend 38 U.S.C. §8127 by providing a transition rule for a member of the Armed Forces who owns at least 51 percent of a small business and is killed in the line of duty. Such a Veteran's surviving spouse who acquires ownership interest in the small business would be treated as a service-disabled Veteran owner until the earliest of the following: 10 years after the Servicemember's death; the date on which the surviving spouse remarries; or the date on which the spouse no longer owns at least 51 percent of the small business. Such a Veteran's dependent child that acquires ownership interest in the small business would be treated as a Veteran owner for 10 years after the Servicemember's death or the date on which the child no longer owns at least 51 percent of the small business, whichever occurs first.

VA supports the spirit behind this provision but notes two substantive concerns with the draft language. First, Congress sought to ensure that Veteran small business owners genuinely own and control the small business receiving benefits under the Veterans First Contracting Program. This would be a challenge for members of the regular Armed Forces, especially those serving in active duty abroad. Moreover, members of the Armed Forces are also Federal employees, which places limits on their ability to receive Federal contracts under conflict of interest rules. In practice, this rule would mainly apply to members of the National Guard and Army Reserve who own small businesses in their civilian lives, become activated, and are killed in the line of duty, leaving survivors to assume operational control of the firm as a service-disabled Veteran-owned small business. Second, if a dependent child owner is still a minor, this may complicate the actual operation of this rule because of limitations on a minor's capacity to enter into binding contracts or engage in commercial transactions as an owner. The firm may need to reside in a trust for the benefit of the dependent minor child with an adult trustee controlling the firm until the dependent reaches adulthood. VA would be pleased to provide technical assistance to seek resolution of these issues.

VA anticipates enactment of this provision would entail minor administrative costs. VA would incorporate this change into its existing application processes with no material addition to costs.

#### *Section 202*

Section 202 would require VA to submit a report on the standard of proof for service-connected disability compensation for military sexual trauma (MST)-based mental health conditions to the House and Senate Committees on Veterans' Affairs no later than 90 days after enactment. The report would include recommendations for an appropriate standard of proof and legislative actions, if necessary.

VA believes this legislation is unnecessary as VA provided a report with this information to the House and Senate Appropriations Committees in March 2015 and can share it with other interested Congressional offices.

No benefit or GOE costs would be associated with enactment of this section.



*Section 203*

Section 203 would require VA to submit a report with data on compensation claims for MST-based PTSD to Congress no later than December 1, 2016 and each year thereafter through 2020. The report would include the following information from the preceding fiscal year:

1. The number of MST-related PTSD claims submitted;
2. The number and percentage of claims submitted by gender;
3. The number of approved claims, including number and percentage by gender;
4. The number of denied claims, including number and percentage by gender;
5. The number of claims assigned to each rating percentage, including number and percentage by gender;
6. The three most common reasons given for denial of such claims under 38 U.S.C. § 5104(b)(1);
7. The number of denials that were based on the failure of the Veteran to report for a medical examination;
8. The number of MST-based PTSD claims resubmitted after denial in a previous adjudication and items 2–7 from this list for this subset of claims;
9. The number of claims that were pending at the end of the fiscal year and separately the number of such claims on appeal; and
10. The average number of days to complete MST-based PTSD claims.

VA believes this legislation is unnecessary as VA provided a report with most of this information to the House and Senate Appropriations Committees in March 2015 and can share it with other interested Congressional offices. If additional information or data for subsequent years are needed, VA can provide this to interested Congressional offices without legislation.

No benefit or GOE costs would be associated with enactment of this section.

*Section 204*

Section 204 would direct VA to establish a one-year pilot program within 90 days of enactment to assess the feasibility and advisability of expediting the treatment of certain DIC claims, to include claims submitted:

1. Within one year of the death of the Veteran upon whose service the claim is based;
2. By dependents of Veterans who received benefits for one or more service-connected conditions as of the date of death;
3. With evidence indicating the Veteran's death was due to a service-connected or compensable disability; and
4. By a spouse of a deceased Veteran who certifies that he or she has not remarried since the Veteran's death.

Section 204 would also require VA to submit a report to the House and Senate Committees on Veterans' Affairs within 270 days of completing the pilot program. The report would include:

1. The number of DIC claims adjudicated under the pilot disaggregated by claims received by a spouse, child, or parent of a deceased Veteran;
2. The number of DIC claims adjudicated but for which benefits were not awarded under the pilot disaggregated by claims received by a spouse, child, or parent of a deceased Veteran;
3. A comparison of accuracy and timeliness of claims adjudicated under the pilot and DIC claims not adjudicated under the pilot;
4. VA's finding with respect to the pilot; and
5. Recommendations the VA may have for legislative or administrative action to improve processing of DIC claims.

VA supports the intent of this legislation, but believes it is unnecessary. As discussed above, in fiscal year 2013, VBA's P&F Service reviewed the policies and procedures applicable to the adjudication of DIC claims to identify obstacles to timely processing. P&F Service determined that VA could quickly grant many DIC claims with little or no additional development, and that certain claim processing steps are redundant and appropriate for elimination. On March 22, 2013, P&F Service issued Fast Letter 13–04 (FL 13–04), Simplified Processing of Dependency and Indemnity Compensation (DIC) Claims, which instructs VBA field staff on the procedures to follow when processing claims.

The new procedures require screening of claims at the intake point and limited or no development of additional evidence when information in VBA systems supports granting benefits. It also clarifies that VA grants DIC under 38 U.S.C. § 1318 based upon total service-connected disability for a prescribed period before death in the same manner as if the death were service-connected. Accordingly, in these cases,

our field staff will grant service-connected burial benefits and presume the permanence of total disability for purposes of establishing the survivor's entitlement to VA education and health care benefits. These new procedures allowed us to grant DIC benefits faster and without unnecessary development.

Also, as discussed above, on July 7, 2014, VA automated some benefits to surviving spouses. VA can now automatically pay certain surviving spouses under section 1318. As part of VA's notice of death process, VA systems determine if the deceased Veteran met the requirements of section 1318 and if the surviving spouse met the relationship requirements. If the system determines that both requirements are met, it will automatically process and award DIC under section 1318 within six days of notification of the Veteran's death.

Based on these changes and aggressive workload management plan in VA's Pension Management Centers, VA has reduced its pending DIC claim inventory by 55 percent from its peak of 19,100 claims to 8,600 claims. Average processing time for these claims has improved by 100 days from its peak of 168 days to 68 days while maintaining 99 percent accuracy.

VA estimates no benefit or GOE costs would be associated with enactment of this section.

#### *Section 205*

Section 205 would require VA, DOD, and military historians recommended by DOD to review the process used to determine if individuals who applied for Filipino Veterans Equity Compensation (FVEC) benefits served during World War II in accordance with the requirements to receive this benefit payment. Section 205 would also require VA to submit a report to the House and Senate Committees on Veterans' Affairs no later than 90 days after enactment. The report would detail any findings, actions taken, or recommendations for legislative action with respect to the review. If a new process is established as a result of this review, the process shall include mechanisms to ensure individuals who receive payments did not engage in any disqualifying conduct during their service, including collaboration with the enemy or criminal conduct.

VA does not support this section. In determining whether a claimant is eligible for a VA benefit, including FVEC, VA is legally bound by service department determinations as to what service a claimant performed. VA regulations provide two methods for establishing service. Under 38 CFR § 3.203(a), VA may accept evidence submitted by a claimant if the evidence is a document issued by a U.S. service department; contains the needed information as to length, time, and character of service; and, in VA's opinion, is genuine and accurate. Otherwise, under 38 CFR § 3.203(c), VA must seek verification of service from the appropriate service department. These regulations are applicable to all claimants. For claims based on Philippine Service in World War II, the U.S. Army is the relevant service department, but VA requests verification from the National Personnel Records Center which, since 1998, has acted as the custodian of the U.S. Army's collection of Philippine Army and Guerrilla records.

No benefit or GOE costs would be associated with enactment of this section.

#### *Section 301*

Section 301 would require VA to conduct a study and report to Congress on matters relating to the interment of unclaimed remains of Veterans in national cemeteries under the control of the National Cemetery Administration (NCA), including: (1) determining the scope of issues relating to unclaimed remains of Veterans, to include an estimate of the number of unclaimed remains; (2) assessing the effectiveness of VA's procedures for working with persons or entities having custody of unclaimed remains to facilitate interment in national cemeteries; (3) assessing State and local laws that affect the Secretary's ability to inter such remains; and (4) recommending legislative or administrative action the VA considers appropriate.

Section 301 would provide flexibility for VA to review a subset of applicable entities in the estimating of the number of unclaimed remains of Veterans as well as assess a sampling of applicable State and local laws.

In December 2014, NCA published a Fact Sheet to provide the public with information on VA burial benefits for unclaimed remains of Veterans. NCA prepared the Fact Sheet in collaboration with representatives from NCA, VBA, and VHA. As well as being posted on VA's Web site, the Fact Sheet was widely distributed to targeted employees in VA, including Homeless Veteran Coordinators, Decedent Affairs personnel, VBA Regional Compensation Representatives, and NCA Cemetery Directors as well as shared in a GovDelivery message sent to over 28,000 funeral director and coroner's office recipients who are entities that may come to NCA seeking assistance to ensure burial of a Veteran whose remains are unclaimed.

NCA strongly supports the goal of ensuring all Veterans, including those whose remains are unclaimed and do not have sufficient resources, who earned the right to burial and memorialization in a national, State, or tribal Veterans cemetery are accorded that honor. NCA appreciates the continued Congressional support to meet the needs of Veterans whose remains are unclaimed. While NCA is remains concerned that the study may be unnecessary or premature at this time, we would appreciate working with the Committee to make sure any study that the Department is mandated to produce is targeting data that can be used to better serve these Veterans.

Over the past several years, Congressional and Departmental actions have increased the Department's ability to ensure dignified burials for the unclaimed remains of eligible Veterans. The Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112-260) authorizes VA to furnish benefits for the burial in a national cemetery for the unclaimed remains of a Veteran with no known next-of-kin and where sufficient financial resources are not available for this purpose. Those benefits include reimbursements for the cost of a casket or urn, for costs of transportation to the nearest national cemetery, and for certain funeral expenses.

NCA is pleased to report that our final rule was published on April 13, 2015, beginning today, we are able to accept 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 where sufficient resources for burial are not available. As this new benefit is administered, NCA will have a new source for collecting data on the number of Veterans whose unclaimed remains are brought to NCA for interment. The data can be used to assist in targeting outreach efforts to partners and getting a fuller understanding of the issue.

The Department continues to identify areas to recommend legislative or administrative action that would support dignified burial of unclaimed remains of Veterans. Two legislative proposals are included in VA's FY 2016 Budget Submission. Currently, VA may furnish a reimbursement for the cost of a casket or urn and for the cost of transportation to the nearest national cemetery. These benefits are based on the Veteran being interred in a VA national cemetery. The legislative proposals are to expand these two benefits to include those Veterans who are interred in a state or tribal organization Veteran cemetery.

In conjunction with discussions we had last year with congressional staff, NCA reviewed its internal procedures and began to follow-up every thirty days with the public officials on any unclaimed remain cases shown as pending until the cases are scheduled for burial and the Veterans' remains are interred. While state and local laws designate who may act as an authorized representative to claim remains, NCA can work with any individual or entity that contacts us to determine a Veteran's eligibility for burial and scheduling the burial in a VA national cemetery.

The great work of the Missing in America Project (MIAP) and individual funeral directors is invaluable in complementing VA's role of ensuring that all Veterans, including those whose unclaimed remains are brought to us, receive the proper resources to ensure receipt of a dignified burial. Over the past several years, NCA has developed a strong working relationship with funeral homes, coroner offices, and medical examiners, to actively provide responses to requests for eligibility reviews. In FY 2014, NCA processed 2,805 MIAP requests to determine eligibility for burial in a VA national cemetery, of which 1,642 were verified as eligible.

In light of VA's recent activities, detailed above, to implement legislation targeted at ensuring appropriate burial of the unclaimed remains of Veterans, NCA feels it is premature to undertake the proposed study. Furthermore, if legislation is passed requiring the study, we do not object to the proposed scope and content, we are concerned that the timeframe for reporting in the bill is unrealistic.

To implement the mandatory requirements outlined in the bill, even with the flexibilities included in the bill language, the Department would be required to contract with one or more private entities to perform such a study. Survey instruments would need to be developed to assess the number of remains in the possession of funeral directors and other entities for individuals with no known next of kin, and an appropriate sample would have to be identified and a legal review of state and local laws conducted regarding unclaimed remains of Veterans.

The bill provides a reporting timeframe of one year. The need to get formal clearances on survey instruments takes several months; therefore, a more realistic timeframe is two years.

The bill does not identify a funding source for this mandate. NCA is still evaluating the cost associated with this legislation.

*Section 401*

Section 401 would honor any person entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who, but for age, would be entitled under this chapter to retired pay for nonregular service, as a Veteran. However, these individuals would not be entitled to any benefit by reason of this honor.

VA does not support this section. It would conflict with the definition of "Veteran" in 38 U.S.C. § 101(2) and would cause confusion about the definition of a Veteran and associated benefits. In title 38, United States Code, Veteran status is conditioned on the performance of "active military, naval, or air service." Under current law, a National Guard or Reserve member is considered to have had such service only if he or she served on active duty, was disabled or died during active duty for training from a disease or injury incurred or aggravated in line of duty, or was disabled or died during inactive duty training from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident. Section 401 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for Veteran status.

VA recognizes that the National Guard and Reserves have admirably served this country and in recent years have played an important role in our Nation's overseas conflicts. Nevertheless, VA does not support this bill because it represents a departure from active service as the foundation for Veteran status. This section would extend Veteran status to those who never performed active military, naval, or air service, the very circumstance which qualifies an individual as a Veteran. Thus, this section would equate longevity of reserve service with the active service long ago established as the hallmark for Veteran status.

VA estimates that there would be no additional benefit or administrative costs associated with this section of the bill if enacted.

This concludes my testimony. We appreciate the opportunity to present our views on these bills and look forward to working with the Committee.

ADDITIONAL VIEWS SUBMITTED AFTER THE HEARING BY HON. ROBERT A. McDONALD,  
SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

JUL 15 2015

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

Dear Mr. Chairman:

The agenda for the Senate Committee on Veterans' Affairs' May 13, 2015, legislative hearing included a number of bills that the Department of Veterans Affairs was unable to address in our testimony. We are aware of the Committee's interest in receiving our views and cost estimates for those bills. By this letter, we are providing views and cost estimates on S. 681; sections 202, 203, and 206 of the "21<sup>st</sup> Century Veterans Benefits Delivery Act;" sections 201 and 206 of the consolidated bill related to bills from the 113<sup>th</sup> Congress; the bill associated with legislative proposals from the Department of Defense; and the bill associated with legislative proposals from the Report of the Military Compensation and Retirement Modernization Commission. In addition, we are providing cost estimates and S. 602 and revised views for S. 270.

We appreciate this 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

Enclosure

**S. 270**

S. 270, the "Charlie Morgan Military Spouses Equal Treatment Act of 2015," would amend sections 101 and 103 of title 38, United States Code (U.S.C.), to revise the definition of spouse for purposes of Veterans' benefits. Specifically, the bill would remove from the definition of "surviving spouse" under section 101(3) the phrase "of the opposite sex," and amend the definition of "spouse" under section 101(31) to include an individual if the marriage of the individual is "valid under the laws of any State." The bill would define "State" in the same way that term is defined in section 101(20) of title 38, U.S.C., for purposes of title 38, but include also "the Commonwealth of the Northern Mariana Islands." Additionally, S. 270 would amend section 103(c) of title 38, U.S.C., removing the limitation that a marriage shall be proven as valid "according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued." The bill would amend section 103(c) to follow the revised definition of "spouse" in section 101(31).

The Department of Veterans Affairs (VA) provided views on S. 270 in our testimony on May 13, 2015. Since the time of that testimony, the United States Supreme Court issued its decision in *Obergefell v. Hodges*. Now VA may recognize the same-sex marriage of all Veterans, where the Veteran or the Veteran's spouse resided anywhere in the United States or its territories at the time of the marriage or at the time of application for benefits. VA will work quickly to ensure that all offices and employees are provided guidance on implementing this important decision with respect to all programs, statutes, and regulations administered by VA. In addition, VA is consulting with the Department of Justice to fully analyze all aspects of the impact of the

Obergefell decision on all Veterans and their spouses. VA stands ready to brief the Committee with an updated assessment of the need for legislation along the lines of S.270 when that analysis is concluded.

#### **S. 602**

S. 602, the "GI Bill Fairness Act of 2015," would amend the term "active duty" under chapter 33 of title 38, to include certain time spent receiving medical care from the Department of Defense (DoD) as qualifying active duty service performed by members of the Reserve and National Guard. Under this bill, individuals ordered to active duty under section 12301(h) of title 10, U.S.C., to receive authorized medical care, to be medically evaluated for disability or other purposes, or to complete a required DoD health care study would receive credit for this service under the Post-9/11 GI Bill.

S. 602 would apply as if it were enacted immediately after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008, Public Law 110 252.

VA provided views on S. 602 in our testimony on May 13, 2015. VA defers to DoD regarding the change to qualifying active duty service under the Post-9/11 GI Bill S. 602 but, as explained in our testimony, VA estimates that it would need one year from enactment of S. 602 to complete changes to the data shared between DoD and VA.

Benefit costs are estimated to be \$19.9 million in 2016, \$106.7 million over 5 years, and \$169.5 million over 10 years. Veterans Benefits Administration (VBA) general operating expenses (GOE) costs are estimated to be insignificant, and information technology costs are estimated to be \$500,000.

**S. 681**

S. 681, the "Blue Water Navy Vietnam Veterans Act of 2015," would amend section 1116 of title 38, U.S.C., by inserting into subsections (a)(1) and (f) the parenthetical "(including the territorial seas of such Republic)" after "served in the Republic of Vietnam" each place it appears. It also would amend section 1710(e)(4) to make a corresponding change in health care eligibility based upon Agent Orange exposure.

VA is obligated to assess the factual and scientific basis for granting disability compensation for all claims, including those associated with Agent Orange exposure. For Veterans who served in the offshore territorial seas of the Republic of Vietnam, there is insufficient evidence to establish a presumption that they were exposed to Agent Orange, which was used over the Vietnam land mass to destroy enemy food crops and reveal enemy activity hidden by jungle foliage. A study by the National Academy of Sciences' Institute of Medicine, *Blue Water Navy Veterans and Agent Orange Exposure* (2011), does not support allegations that ships in Vietnam's territorial seas were significantly exposed to Agent Orange from aerial spray drift or river water runoff.

VA acknowledges that some Veterans qualify for the presumption of Agent Orange exposure because they personally went ashore or their ship entered Vietnam's inland waterways. This is consistent with the use of Agent Orange within the land boundaries of Vietnam and follows the current requirements of 38 U.S.C. § 1116.



However, there is insufficient evidence to extend the presumption of exposure to Veterans whose only service was on Vietnam's offshore territorial seas.

VA will continue to review any new scientific evidence and third party analysis that may arise regarding Agent Orange exposure in the offshore territorial seas of Vietnam. Should evidence be provided that would indicate there was in fact Agent Orange exposure in those areas, the Department will review existing policy and make the appropriate determination based on that evidence.

The benefit costs are estimated to be \$1.3 billion during fiscal year (FY) 2016, \$2.5 billion for five years, and \$4.4 billion over ten years. Discretionary costs arising from the change in health care eligibility cannot be reliably estimated.

#### **S. 1203**

##### Section 202

Section 202 of the draft bill would require VA to establish a training program for Veterans Service Center Managers or employees in successor positions in VBA's regional offices. The training would focus on managerial skills and such other skills the Secretary considers appropriate.

VA supports the intent of this bill, which is to ensure that each regional office has well-trained managers, but opposes it because the proposed legislation is unnecessary. VA's Advanced Management Training Program already provides a one-week residential, instructor-led training for newly appointed senior and division-level managers. This program is conducted at the VBA Professional Development Academy in Baltimore, Maryland. The Advanced Management Training curriculum focuses on

knowledge of VA management policies and regulations, human resources management, budget formulation and execution, employee and labor relations, equal employment opportunity, and diversity management and inclusion.

VBA also offers a number of courses relevant to management skills in its Talent Management System. These courses are generally self-study courses and can either be self-selected by the manager or assigned by a supervisor. In addition, VA provides a number of other supervisory training opportunities, such as programs at Graduate School USA and the Federal Executive Institute.

VA estimates that there are no GOE or benefit costs associated with this section.

#### Section 203

Section 203 of the bill would require VA to ensure each systematic analysis of operations completed by a Veterans Service Center Manager in a regional office includes analysis of communication between the regional office, Veterans service organizations (VSO), and caseworkers employed by Members of Congress.

VA opposes this section of the bill because it is unnecessary. VA already has authority to require each Veterans Service Center Manager to complete a systematic analysis of operations (SAO). Under current policies and procedures, Veterans Service Center Managers must complete ten SAOs annually that generally cover all areas of service center operations, including timeliness, quality, and internal controls, and may conduct additional SAOs on specific areas of operations as necessary. One mandatory SAO already covers correspondence, which includes communication with VSOs and Congressional caseworkers, and compliance with the outreach procedures. As written,

section 203 would impose a redundant administrative requirement that would not improve the analysis of communications with VSOs or Congressional caseworkers.

VA estimates that there are no GOE or benefit costs associated with this section.

#### Section 206

Section 206 of the bill would require VA within 180 days after enactment of the bill to complete its efforts to revise VBA's resource allocation model (RAM) and submit a report to the House and Senate Veterans' Affairs Committees on the revised RAM.

VA opposes section 206 because it is unnecessary. VBA continues to take actions to improve the RAM and ensure appropriate resources are available for future operations. For example, in FY 2014, VBA adjusted the RAM to incorporate additional variables to more closely align with VBA's transformation to a fully electronic claims process.

If Congress enacts section 206, it would not allow VBA to continue to analyze and adjust the RAM as new information becomes available and initiatives are implemented. This would be particularly problematic during VBA's implementation of the National Work Queue (NWQ), a paperless workload management initiative designed to improve VBA's overall production capacity. VBA is currently in a transition phase with rating workload managed and redistributed by four area offices as well as a Virtual Workload Management Team. In the beginning of FY 2016, VBA plans to deploy a staggered rollout of a single NWQ to eight regional offices, followed by national deployment. Work will be distributed based on station capacity, prioritization of claims at the national level, and additional routing rules that can be adjusted without modifying

software. Through initial and subsequent phases of NWQ, VBA will garner more robust data to update and refine the way resources are distributed.

In recent years, VBA has provided several updates to the Committee on the RAM and operational capacity, and VBA would be happy to continue providing updates as needed without legislation.

VA estimates that there are no GOE or benefit costs associated with this section.

### **Draft Consolidated Legislation from the 113th Congress**

#### **Section 201**

Section 201 of the draft bill would amend section 5103A(d) of title 38, U.S.C., which describes when the Secretary of Veterans Affairs must obtain a medical examination or opinion to decide a claim for disability compensation, by adding paragraph (3)(A). This paragraph would require VA to obtain an examination or opinion in claims involving disability compensation based on a mental health condition related to military sexual trauma (MST) when the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant):

1. Contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and
2. Indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

3. Does not contain a diagnosis or opinion by a mental health professional that may assist in corroborating the occurrence of a military sexual trauma stressor related to a diagnosable mental health condition.

Section 201 would allow VA to define MST but would require that the definition include "sexual harassment (as so specified)." It would also require VA to provide Congress with a report on the total number of examinations and opinions conducted pursuant to this new provision and specify the number of examinations conducted by VA using a "standardized disability assessment" versus the number using a "non-standardized clinical interview."

VA does not support section 201 because VA already provides medical opinions in MST-related claims for post-traumatic stress disorder (PTSD) when there is minimal evidence that an in-service MST stressor may have occurred. Under 38 Code of Federal Regulations (C.F.R.) § 3.304(f)(5), VA currently provides a medical opinion when there is evidence of PTSD symptoms and circumstantial evidence that an MST stressor may have occurred. This liberal approach comes into play when the normally required corroborating documentation of an in-service PTSD stressor is not available. VA has been improving its processing of claims based upon MST under its regulations and continues to believe that legislation is not necessary.

VA also opposes the draft bill because it would extend the proposed provisions to any "mental health condition," which is defined in section 202 of the draft bill as PTSD, anxiety, depression, or any other mental health diagnosis designated by the Secretary. According to the American Psychiatric Association, PTSD is a unique mental disorder because symptoms are caused by specific stressors, and these symptoms tend to

appear and persist at some future point in time. Therefore, when service connection for PTSD is at issue, VA looks for evidence of an in-service stressful event that is linked to post-service diagnosis of PTSD. The American Psychiatric Association has not associated the other mental health conditions listed in the definition in section 202 with a stressor that creates delayed onset symptoms many years later. Reactions to an MST stressful event in service may result in depression or anxiety, but these symptoms are not associated with a lengthy delay in onset. As a result of this onset difference, VA created special regulations for PTSD, which are not applicable to other mental disorders. Therefore, the use of an examiner's opinion as "after-the-fact" evidence for an in-service MST event, as proposed by this bill, is not compatible with modern mental health concepts as implemented in VA's current non-PTSD regulations.

Regarding the requirement to report the number of examinations using a standardized disability assessment versus those using a non-standardized clinical interview, VA interprets this as a request for data as to VA's use of clinical interviews conducted by VA clinicians in the course of the "Acceptable Clinical Evidence" (ACE) process. Under this process, VA clinicians prepare a Disability Benefits Questionnaire (DBQ) by considering the available medical evidence and supplementing that information with a telephone interview, if necessary. In appropriate cases, VA uses the ACE process instead of conducting an in-person examination. However, VA does not utilize the ACE process in mental health cases, including claims based on MST. As such, regardless of whether 38 U.S.C. § 5103A(d) is amended to add paragraph (3)(A), VA would have no data to report as to the number of MST cases in which VA conducts

clinical interviews as part of the ACE process in lieu of an in-person, standardized disability assessment.

Benefit costs are estimated to be \$171.0 million during FY 2016, \$2.3 billion for 5 years, and \$7.2 billion over 10 years.

#### Section 206

Section 206 of the draft bill would require VA to report to Congress within 180 days of enactment the following information related to disability examination requests:

- The number of general medical examinations furnished by VA from FY 2011 through FY 2014;
- The number of general medical examinations furnished by VA from FY 2011 through FY 2014 in which a joint examination was conducted, but no joint claim was received;
- The number of specialty medical examinations furnished from FY 2011 through FY 2014;
- The number of specialty medical examinations furnished by VA from FY 2011 through FY 2014 in which one or more joint examinations were conducted;
- A summary with citations to any medical or scientific studies that provide a basis for determining that three repetitions are adequate to determine the effect of repetitive use on functional impairment;
- The names of all examination reports used by VA, including general medical examinations and DBQs, that require measurement of repeated range of motion testing and the number of these examinations conducted in 2014;

- The average amount of time taken by an individual conducting a medical examination to perform three repetitions of movement of each joint;
- A discussion of whether there are more efficient and effective scientifically reliable methods of testing for functional loss on repetitive use of an extremity other than the three-time repetition currently used by the Department; and
- Recommendations as to the continuation of repetitive joint testing.

In addition, VA would be required to report to Congress within 180 days of enactment on efforts to reduce the need for in-person disability examinations. This report would include:

- Criteria used to determine if a claim is eligible for the ACE initiative;
- The number of claims eligible for ACE since the initiative began through enactment of this bill, broken-down by fiscal year and by claims determined eligible based in whole or in part on medical evidence provided by a private health care provider;
- The number of claims eligible for ACE that required a VA employee to supplement evidence with information obtained during a telephone interview with a claimant or health care provider;
- Information on any other initiatives or efforts, including DBQs, to encourage the use of medical evidence and reports provided by private health care providers if the report is sufficiently complete for purposes of adjudicating a claim;
- A plan to measure, track, and prevent ordering unnecessary disability examinations when a claimant provides a medical examination in support of a claim; and,



- A plan with actions VA will take to eliminate requests for disability examinations when a claimant provides a medical exam that is adequate for purposes of adjudicating a claim.

Although VA supports the intent of these reporting requirements, this provision is unnecessary as it would duplicate existing laws and processes requiring VA to measure, track, and prevent the ordering of unnecessary medical examinations. Under 38 U.S.C. § 5103A(d)(2), an examination or opinion is only required when the record does not contain sufficient medical evidence to make a decision. Furthermore, 38 U.S.C. § 5125 explicitly notes that VA need not conduct additional examinations if private examinations are sufficient for adjudicating claims. VA regulations are consistent with these statutory requirements. Therefore, a plan to prevent the ordering of unnecessary medical examinations would be duplicative of current policies and procedures. VA already has authority to adjudicate a claim without an examination if the claimant provides, or VA otherwise obtains, evidence adequate for rating purposes.

Subsection (a)(2)(B) would require VA to report the number of general medical examinations in which a joint examination was conducted, but no joint claim was received. These data would not be meaningful as all general medical examinations include joint examinations.

In addition, VA does not track some of the requested data, which would be burdensome to obtain. Subsection (a)(2)(G) would require VA to report the average time to conduct three repetitions of movement in joint examinations; however, VA does not track these data. Similarly, VA does not track data regarding the number of claims using ACE that are supplemented with a telephone interview. VA does not track when

or if private medical evidence is sufficient for rating purposes. Further, the receipt of new evidence may change decisions regarding the sufficiency of private medical evidence over time. VA's policy is to evaluate a condition without ordering an examination when the evidence of record is sufficient to rate the claim.

VA has conducted extensive training on the use of private medical evidence in deciding claims. Additionally, as part of its quality review process, VA tracks the granting of some issues when the evidence is sufficient, while continuing to develop evidence to decide other issues in the claim. This review also checks whether the requested examinations were necessary, the claim was over-developed, and if any unnecessary development delayed a decision on the claim. VA added the last two items in November 2012 to determine if unnecessary development was contributing to the claims backlog.

No benefit costs are associated with this section. VA is unable to determine the costs associated with the tracking of examination data.

**Draft Bill – Transfer Functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense**

This draft bill would amend title 38, U.S.C., to transfer the functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense so that they may jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose Reconstruction Program. This draft bill would require VA and DoD to conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of VA decisions on claims for service connection of radiogenic diseases. VA would also be required to

provide Veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program. Finally, VA and DoD would be required to carry out any other activities with respect to the review and oversight of the program that the Departments determine are necessary.

VA supports the provisions of this draft bill. The Advisory Board held its final meeting in June 2013 and archived its files in July 2014. VA remains committed to continuing to provide benefits for radiogenic diseases. VA is also committed to providing quality decisions and will continue to audit completed claims for service connection of radiogenic diseases to ensure that they meet VA's quality standards.

No benefit costs are associated with this bill. VA estimates administrative costs would be insignificant.

**Department of Defense Legislative Proposal Regarding Education Benefits Under the Montgomery GI Bill—Selected Reserve (MGIB-SR)—Retention of Entitlement to Educational Assistance During Certain Additional Periods of Active Duty**

This proposal would amend section 16131(c)(3)(B)(i) of title 10, U.S.C., to add two additional authorities (sections 12304a and 12304b) to the existing list of authorities under which a Servicemember's entitlement may be restored under the MGIB-SR. Those authorities permit restoration of entitlement when a Governor requests Federal assistance in response to a major disaster or emergency, or when the Secretary of a military department determines that it is necessary to augment active forces for a preplanned mission in support of a combatant command.

The proposal would also amend 10 U.S.C. § 16133(b)(4) to allow for an extension of the period of eligibility under MGIB-SR when a Servicemember is activated

under 10 U.S.C. § 12304(a) or § 12304(b) as well. Under this amendment, the period of active-duty service, plus four months, would be added to the Servicemember's eligibility period for use of his or her entitlement.

VA does not oppose the proposed legislation. Currently, VA restores educational assistance entitlement under MGIB-SR if the Servicemember had to discontinue school because he or she was ordered to serve on active duty under sections 12301(a), 12301(d), 12301(g), 12302, or 12304, and failed to receive credit or training time toward completion of his or her approved educational, professional, or vocational objective. Additionally, VA extends the period of eligibility under MGIB-SR when a Reserve or Guard member is called to active duty under sections 12301(a), 12301(d), 12301(g), 12302, or 12304.

Based on information provided by DoD, Reservists who are called to active duty under section 12304(a), on average, spend one week or less on active duty. Generally, this timeframe would not cause these individuals to withdraw from school or retake a course of education.

When individuals are called to active duty under section 12304(b), DoD is required to notify these individuals 180 days (6 months) before mobilization. Generally, courses of education are a maximum of five months long. The requirement to give Reservists a 6-month notification should be adequate time for Servicemembers to complete their current semester or term. This timeframe allows Reservists sufficient time to change future courses of education, without any costs to individuals, DoD, or VA.

Therefore, there would be no additional benefit cost to VA associated with enactment of this proposal. Likewise, there would be no additional FTE or GOE costs associated with enactment of this proposal.

**Department of Defense Legislative Proposal Regarding Education Benefits Under the Post-9/11 GI Bill—Inclusion of Duty Performed by a Reserve Component Member Under a Call or Order to Active Duty for Medical Purposes as Qualifying Active Duty Time for Purposes of Post-9/11 GI Bill Education Benefits**

This proposal would amend the current definition of “active duty” found in section 3301 of title 38, U.S.C., to include certain time spent receiving medical care from the Secretary of Defense as qualifying active-duty service performed by members of the Reserve and National Guard. Under the proposed legislation, individuals ordered to active duty under section 12301(h) of title 10, U.S.C., to receive authorized medical care, to be medically evaluated for disability or other purposes, or to complete a required DoD health care study would be eligible for Post-9/11 GI Bill educational assistance.

VA does not oppose the proposed legislation.

Currently, individuals with qualifying active-duty service of at least 30 continuous days who are honorably discharged due to a service-connected disability are eligible for 100 percent of the Post-9/11 GI Bill benefit. Because service under 10 U.S.C. § 12301(h) does not, at present, meet the definition of active duty, the service cannot be used to establish eligibility or increase eligibility under the Post-9/11 GI Bill. If this proposed amendment were enacted, individuals honorably discharged from such service due to a disability after serving 30 continuous days would qualify for Post-9/11 GI Bill at the 100 percent-benefit tier. If discharged for a reason other than disability,

the service would count toward establishing or increasing eligibility, depending on the amount of aggregate qualifying active duty service accrued.

Benefit costs to the readjustment benefits account associated with enactment of this proposal are estimated to be \$9.4 million in FY 2016, \$51.2 million over five years, and \$114 million over 10 years. GOE costs associated with the proposed legislation are estimated to be insignificant, and Information Technology costs are estimated to be approximately \$500,000 for the design, development, testing, and deployment of the new functionality needed to meet the requirements of this legislation.

#### **Military Compensation and Retirement Modernization Commission (MCRMC) Legislative Proposals**

##### Section 1101

Section 1101 of the proposed legislation would amend section 3011(a)(1)(A) of title 38, U.S.C., to limit the availability of the Montgomery GI Bill-Active Duty (MGIB-AD) program to eligible individuals who had a reduction in basic pay for educational assistance under chapter 30 before October 1, 2015.

VA supports legislation that would sunset the MGIB-AD program, as in a similar proposal that the Administration transmitted as part of the National Defense Authorization Act. VA provides educational assistance to eligible persons under multiple programs, including the MGIB-AD program (chapter 30) and the Post-9/11 GI Bill (chapter 33). Individuals eligible under both the MGIB-AD and the Post-9/11 GI Bill will generally receive a greater benefit under the Post-9/11 GI Bill.

Public Law 111-377 expanded the Post-9/11 GI Bill and resulted in that benefit being more advantageous for most Veterans. The Post-9/11 GI Bill can now be used

for non-college degree programs, on-the-job training, and apprenticeships, which were previously only available to individuals eligible for other VA education programs.

Qualifying active duty service for the Post-9/11 GI Bill now includes title 32 service.

This change allowed certain activated National Guard members who were only eligible for other educational assistance programs to now qualify for benefits under the Post-9/11 GI Bill. Additionally, the housing allowance payable under the Post-9/11 GI Bill is now available to individuals pursuing programs of education solely via distance learning.

While VA supports sunsetting the MGIB-AD program, the language suggested for 38 U.S.C. § 3011(a)(1)(A) would create implementation problems from a VA standpoint, and we therefore prefer to accomplish this objective through the Administration proposal that was transmitted by DoD on May 1, for inclusion in the National Defense Authorization Act. VA does not receive information regarding the date on which a Servicemember's pay is reduced for contributions into the MGIB-AD program, as the collection of those funds is a DoD responsibility and pay reduction is not currently a requirement for establishing benefit eligibility. Additionally, VA notes that previous education benefits have been sunsetted based on dates of service. For example, the Post-Vietnam Era Veterans' Educational Assistance Program was sunsetted by limiting participation to those who entered service prior to July 1, 1985. The Administration's proposal addresses these technical concerns.

Increases to VA's outlays associated with the enactment of our transmitted proposal are estimated to be \$142.3 million in FY 2016, \$508.4 million over five years, and \$690.4 million over 10 years.

There are no additional FTE or GOE costs associated with section 1101.

Section 1102

Section 1102 of the proposed legislation would add a new section 16167 to chapter 1607 of title 10, U.S.C. This new section would provide continuing eligibility under the Reserve Educational Assistance Program (REAP) to members who entered service before the date of enactment of this legislation and received educational assistance for a course of study for the period of enrollment immediately preceding the date of enactment. The proposed legislation would also sunset REAP four years after the date of enactment. VA supports legislation that would sunset REAP.

As mentioned above, Public Law 111-377 expanded the Post-9/11 GI Bill and resulted in that benefit being more advantageous for most Veterans. The Post-9/11 GI Bill can now be used for non-college degree programs, on-the-job training, and apprenticeships, which were previously only available to individuals eligible for other VA education programs. Additionally, the housing allowance payable under the Post-9/11 GI Bill is now available to individuals pursuing programs of education solely via distance learning. The number of individuals using REAP decreased 68 percent, from 42,881 beneficiaries in FY 2009, to 13,784 beneficiaries in FY 2014. VA believes most beneficiaries would elect to receive educational assistance under the Post-9/11 GI Bill.

While VA supports sunsetting the REAP program, we prefer to accomplish this objective through the Administration proposal that was transmitted by DoD on May 1, for inclusion in the National Defense Authorization Act. We prefer the Administration's proposal because we believe that the original proposed statutory language from the Commission would disenfranchise some Guard and Reserve members; in addition, the initial implementation would be cumbersome. First, we note that those individuals not



enrolled in the term immediately preceding the date of enactment would lose eligibility for REAP. For this reason, we are concerned that, due to the draft provisions in section 1102, and the prohibition of duplication of eligibility for the Post-9/11 GI Bill and REAP based on the same period of service, some beneficiaries would be left without eligibility for any educational assistance as of the date of enactment.

Second, the requirement that the individual be enrolled in the term immediately preceding enactment would impact VA's ability to process claims for REAP in a timely fashion. We do not routinely check to see if a REAP beneficiary was enrolled in any particular term prior to awarding benefits for reenrollment. The Administration's proposal addresses these technical concerns.

Benefit costs associated with enactment of our transmitted proposal are estimated to be \$50.2 million over five years and \$245.3 million over 10 years. There are no additional FTE or GOE costs associated with section 1102.

#### Section 1104

Section 1104 of the proposed legislation would amend section 3319(b)(1) of title 38, U.S.C., to require Servicemembers to complete 10 years of service and enter into an agreement to serve at least 2 more years to be eligible to transfer their unused Post-9/11 GI Bill education benefits to family members. Currently, Servicemembers must complete at least 6 years of service and agree to serve at least 4 more years to qualify for transferability. Although dependent children are not eligible to receive transferred benefits until the Servicemember has completed a minimum of 10 years in the armed forces, spouses can currently begin using transferred benefits once the Servicemember has completed six years in the armed forces.

Since transferability is a DoD benefit that aids in retention, VA defers to DoD on this section. VA cannot develop a cost estimate related to this section, as it is unclear what the long-term effects on recruitment, retention, and use of transfer of eligibility would be.

There are no additional FTE or GOE costs associated with this section.

#### Section 1105

Section 1105 of the proposed legislation would provide that each Secretary concerned exercise the discretionary authority to transfer unused education benefits to family members under section 3319(a)(2) of title 10, U.S.C., in a manner that encourages retention of individuals in the uniformed services. The proposal also would provide that the Secretary concerned be more selective in permitting such transferability.

VA defers to DoD regarding the provisions in section 1105. However, we note that the reference to title 10 in the proposed legislation should be changed to title 38.

There are no mandatory costs associated with section 1105. Likewise, there are no FTE or GOE costs associated with this section.

#### Section 1106

Section 1106 of the proposed legislation would amend section 3325(b)(1) of title 38, U.S.C., to require the Secretary of Defense to include in the annual report on the programs under chapters 33 and 35 of title 38, information on the highest level of education obtained by each individual who transfers an education benefit under section 3319.

VA defers to DoD for assessing the full impact of this legislation. This proposal would require the Secretary of Defense to provide information on the highest level of education obtained by these individuals; therefore no impact to VA is anticipated.

There are no mandatory costs associated with enactment of section 1106. Likewise, there are no FTE or GOE costs associated with section 1106.

#### Section 1107

Section 1107 of the proposed legislation would add a new subsection (d) to section 1142 of title 10, U.S.C. that would require the Secretary concerned to collect information, at the time of separation, on the highest level of education obtained by individuals who transfer an education benefit under section 3319 of title 38, U.S.C. The proposal would also require the Secretary concerned to prepare and submit annually to Congress a report that contains such information.

VA defers to DoD for assessing the full impact of this proposal. This legislation would not impact VA's administration of the Post-9/11 GI Bill.

There are no mandatory costs associated with section 1107. Likewise, there are no FTE or GOE costs associated with enactment of section 1107.

#### Section 1108

Section 1108 of the proposed legislation would amend section 3319(h)(2) of title 38, U.S.C. to terminate basic allowance for housing payments on or after July 1, 2017, for dependent spouses and children who use transferred education benefits under the Post-9/11 GI Bill.

VA defers to DoD regarding the impact of the provisions of section 1108 on recruitment and retention.

VA notes that the proposed language only removes housing allowance eligibility for those enrolled at an institution of higher learning, while retaining the benefit for those enrolled at non-degree granting schools, as well as for apprenticeship and on-the-job training programs.

Benefit savings associated with the enactment of this section are estimated to be \$287.4 million in FY 2017, \$5.4 billion over 5 years, and \$13.4 billion over 10 years. There are no FTE or GOE costs associated with section 1108.

#### Section 1109

Section 1109 of the proposed legislation would amend section 8525(b) of title 5, United States Code, to prohibit an individual from receiving unemployment compensation for any period for which the individual receives a housing stipend under chapter 33 of title 38, U.S.C.

VA has concerns with this recommendation. Unemployment compensation (UCX) is a critical stabilization component for transitioning Servicemembers and their families. We note that the majority of transitioning Servicemembers do not use UCX for the full allotment of benefits (26 weeks in most states). This proposal could reduce future economic opportunities, mobility, and competitiveness for Veterans and their families.

Under this section, Veterans would have to choose between receiving unemployment compensation and receiving a housing stipend under VA's Post-9/11 GI Bill education benefits (chapter 33). There are numerous variables that are used to determine an individual's weekly employment compensation payment. Drivers, such as an individual's previous salary, length of time employed, state of residence, and state of

employment, play a factor in determining each individual's payment. The length of time an individual can receive unemployment also varies on a case-by-case basis. There are also numerous variables that determine an individual's level of education benefit, including time of service and training time.

Therefore, VA is unable to determine whether there would be any benefit costs or savings to VA's Readjustment Benefits Account under this proposed section due to insufficient data on the number of individuals who are currently in receipt of both a housing allowance and unemployment compensation.

There are no FTE or GOE costs associated with enactment of section 1109.

#### Section 1110

Section 1110 would add a new section 3326 to chapter 33 of title 38, U.S.C., that would require each educational institution receiving a payment on behalf of an individual who receives educational assistance under chapter 33 to report annually to the Secretary of Veterans Affairs information regarding the academic progress of the individual, as the Secretary may require. The legislation would also amend section 3325(c) of title 38, United States Code, to require the Secretary of Veterans Affairs to include this information in its annual report to Congress on the operation of the chapter 33 and 35 programs.

Although the Administration did not submit this proposal for inclusion in the National Defense Authorization Act, VA does not object to the proposed legislation. In accordance with Executive Order 13607: Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members and Public Law 112-249: Improving Transparency of Education

Opportunities for Veterans, the Departments of Education, Veterans Affairs, and Defense were tasked with identifying outcome measures in order to provide information on available educational programs to support informed decision-making about educational choices as they relate to Veterans and Servicemembers.

A set of outcome measures was developed to capture important information on Veterans' experiences during school, upon completion of a degree or certificate, and post-graduation using existing administrative data. These measures include graduation rates, persistence rates, retention rates, transfer-out rates (2-year institutes of higher learning), certificate completion, number of years to complete degree/certificate, number of institutions attended to complete degree, and number of degrees/certifications completed. We are presently collecting the relevant data and anticipate these data will be available for publishing on the Department of Education's College Navigator and VA's website in 2015. This would allow Veterans to view specific Post 9/11 GI Bill statistics for each approved educational institution.

Due to system limitations, the Education Service does not track individual employment data and course enrollment (for example: English 101, Math 120) or the grades associated with each course. Schools provide total credit hours for a specific term and the total allowable tuition and fees associated to those credit hours. Schools provide reductions in the rate of pursuit, but do not report individual course descriptions when completing this process. It is therefore not possible to track course completion rates, course dropout rates, or course failure rates.

In accordance with section 402 of Public Law 112-154 and 38 U.S.C. § 3325(c), VA has submitted two reports to Congress that include information concerning the level

of utilization and expenditures; appropriate student-outcome measures, such as the number of credit hours, certificates, degrees, and other qualifications earned by beneficiaries during an academic year; and recommendations for administrative and legislative changes regarding the provision of educational assistance to Servicemembers, Veterans, and their dependents.

There are no mandatory costs associated with enactment of section 1110.

Likewise, there are no FTE or GOE costs associated with section 1110.

Section 1203

Section 1203 would mandate that Department of Labor (DOL), in consultation with DoD and VA, to conduct a review of Veteran employment matters and challenges. Additionally it would mandate DOL, in consultation with DoD and VA, to prepare a report, no later than 120 days from the date of enactment, that provides recommendations to address employer barriers with respect to hiring Veterans, and recommendations for improving information sharing between the Federal agencies that will serve transitioning Servicemembers and Veterans.

VA defers to DOL on the provisions of this section.

Section 1204 would mandate that DoD, in consultation with DOL and VA, conduct a review of the Transition GPS Program Core Curriculum. Additionally it would mandate DoD, in consultation with DOL and VA, to prepare and submit a report, no later than 120 days from the date of enactment, that provides specific recommendations for improving the Transition GPS Core Curriculum.

VA defers to DoD on this provision.

Chairman ISAKSON. Senator Brown, would you have a question?

**HON. SHERROD BROWN, U.S. SENATOR FROM OHIO**

Senator BROWN. I do not, Mr. Chairman. Thank you.

Chairman ISAKSON. Mr. McLenachen, did you not say in your statement you were deferring any conversation on the Ayotte-Moran bill to Ms. Szybala?

Ms. SZYBALA. Yes.

Chairman ISAKSON. He gives you all the easy work, does he not, Ms. Szybala?

Ms. SZYBALA. Yes. Absolutely.

Chairman ISAKSON. Do you have any comment?

Ms. SZYBALA. I do. I do. Basically, VA supports the goals of the bill, which are to give us more tools to achieve accountability and to hold those responsible for manipulating the wait lists and dis-serving veterans that way. Our problem with the bill is that we count four different ways in which it is constitutionally questionable, constitutionally debatable, and constitutionally attackable so that we are going to be tied up in litigation about this bill for a long time.

The four ways, if you want me to go through them are—they are in David's written testimony, but we have ex post facto law, we have a retroactive law, we have a lack of due process, and we have—what is number 4—oh, we have unconstitutional takings under the Fifth Amendment.

Chairman ISAKSON. Can I interrupt you there?

Ms. SZYBALA. Sure. Please.

Chairman ISAKSON. Has the VA ever considered establishing a rule that would allow it the ability to take back a bonus for somebody that was found to have deprived veterans of benefits that were intended for the veteran?

Ms. SZYBALA. No. I am sure we could not do that by rule. We would need legislation to do that.

Chairman ISAKSON. Let me explain why I made that comment.

Ms. SZYBALA. Yes.

Chairman ISAKSON. Every time the VA is here about something that is embarrassing, which is embarrassing for the VA and it is embarrassing for us in Congress, it is always "somebody else did it," or "something will not let me do it." I have not seen anybody come forward with a proposal stating, we would like to change the law to say X, Y, or Z dealing with taking this compensation situation.

And, I am not afraid of going to the courts. I think it is about time that we—the courts are there—our Constitution has three branches of government. You are in the executive branch, I am the legislative, and the courts are the arbitrators in the judicial branch. I think it is about time agencies of government that are having problems with employees being non-compliant with the rules of the Department or, in fact, doing their job, had regulations that had accountability in them and let us let the courts strike them down rather than just saying we cannot do it. I am going to see Secretary McDonald in about 30 minutes and I am going to tell him the same thing about another subject.

I appreciate the employees at the VA and I appreciate your leadership and what you all do, but it is time that instead of playing defense against us or trying to react to the concerns of our constituents that you all were proactive on making recommendations in terms of how you change the VA to eradicate the culture of some of these problems that are taking place over and over and over again.



I do not mean to lecture to you. I am not blaming you, Ms. Szybala. But, I think it is time that you all—instead of telling me you want to have some comment on some legislation we put up, I would love to see you come forward with legislation that deals with some of the concerns we have had on construction, on bonuses, and on accountability for appointments. I apologize for lecturing, yet I wanted to get that in.

Ms. SZYBALA. No, I appreciate that. If I may, there are ways in which we like this bill. We could use more tools in terms of making sure people are held accountable after the fact, when we find things like this out. The problem with this bill is that it goes too far back in the past. We would like it for now and the future, and we can work with you to try and get a bill that does it that way, that avoids the pitfalls we see here.

Chairman ISAKSON. Well, forewarned is forearmed, so I think if you start working on getting the powers to be—and I am going to talk with Secretary McDonald in just a little bit—start allowing you to think that way and bring some of those forward to us, we would love to have your backside on going after those things and having enforcement that actually works.

Ms. SZYBALA. Thank you.

Chairman ISAKSON. Thank you for your testimony.

Does anybody else have a comment?

[No response.]

Chairman ISAKSON. Mr. McLenachen, you made a comment about S. 270. You said you were for it, but there was a reservation about some application. What was that?

Mr. MCLENACHEN. Sir, it is purely a technical matter as to how the language is written. I believe what Congress intends, or would intend, is something similar to bring us consistent with other Federal agencies, such as DOD, which has a place-of-celebration type rule. As written, the draft bill would have us recognize any marriage as long as that marriage is valid in any State. So, we were questioning whether the intent is really as it is written, which would basically change marriage rules for all States, so—

Chairman ISAKSON. If you would, if you would file that comment with us for the record—

Mr. MCLENACHEN. Yes, sir.

Chairman ISAKSON [continuing]. With Mr. Bowman, my Staff Director, I would appreciate it.

Mr. MCLENACHEN. We would be happy to help out with addressing that.

Chairman ISAKSON. Any other comment? [No response.]

If not, I want to thank panel one for their expeditious and forthright testimony and call panel two.

I'll also draft Senator Casey from Louisiana to be our new Chairman in about 8 minutes. [Laughter.]

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

Senator CASSIDY. Well, it is Cassidy, so we had better get that right. [Laughter.]

Chairman ISAKSON. Oh, what did I say? What did I say?

Senator CASSIDY. You said Casey.

Chairman ISAKSON. Oh, I am sorry.

Senator CASSIDY. My wife——

Chairman ISAKSON. I do not know why I would do that. Are you going to be here for a little bit?

Senator CASSIDY. I will be here for, like, 20 minutes.

Chairman ISAKSON. Well, you and I will be leaving at about the same time, so—thanks for coming. [Pause.]

I would like to welcome the second panel. What I am going to do, for all of your benefit, Senator Gillibrand is on the way. If she gets here during your testimony, we are going to allow her to interrupt that testimony and make her presentation.

I have to walk out of here at 3:45 to meet with Secretary McDonald. Senator Cassidy, as long as he can stay, I am going to designate him to be the presiding officer. If he cannot stay any longer, then before I get back, I am going to designate him the authority to suspend the hearing until I do get back. Is that fair enough to everybody?

[Panel nodding in agreement.]

Chairman ISAKSON. Our second panel is made up of Alphonso Maldon, Jr., Chairman, Military Compensation and Retirement Modernization Commission; accompanied by Michael Higgins, Commissioner, Military Compensation and Retirement Modernization Commission.

Jeffrey E. Phillips, Executive Director of the Reserve Officers Association.

And, Aleks Morosky, Deputy Legislative Director, National Legislative Service, Veterans of Foreign Wars.

Gentlemen, welcome. Mr. Higgins, we will hear from you first.

Mr. HIGGINS. Sir, I will defer to my Chairman, Chairman Maldon.

Chairman ISAKSON. You are the date, that is right. I forgot.

Mr. HIGGINS. I am the date.

Chairman ISAKSON. Mr. Maldon.

**STATEMENT OF ALPHONSO MALDON, JR., CHAIRMAN, MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION; ACCOMPANIED BY MICHAEL R. HIGGINS, COMMISSIONER**

Mr. MALDON. Thank you, Mr. Chairman. Chairman Isakson and Members of the Committee, Commissioner Higgins and I are honored to be here today and we thank you for the opportunity to speak to you about the work of the Commission and the recommendations that we have made.

The all-volunteer force is without peer. Their unwavering commitment to excellence in the service of our Nation has never been clearer than during the past 13 years of war.

As Commissioners, we recognize our obligation to craft a valued compensation system that is both relevant to contemporary servicemembers and able to operate in a modern and efficient manner. Our Commissioners are unanimous in our belief that the recommendations we offered in our report strengthen the foundation of the all-volunteer force, ensure our national security, and truly honor those who served and the family members who support them now and into the future.

In particular, our recommendations safeguard education benefits to servicemembers, reduce redundancy, and ensure the fiscal sustainability of educational programs. DOD and the VA provide many programs that deliver educational benefits to servicemembers and veterans, including the Post-9/11 G.I. Bill, the Montgomery G.I. Bill-Active Duty, the Montgomery G.I. Bill-Select Reserve, and the Reserve Education Assistance Program, as well as the tuition assistance. Streamlining these programs would improve the efficiency and fiscal sustainability of the overall education benefit program.

Adjusting eligibility requirements for transferring Post-9/11 G.I. Bill benefits better support critical mid-career retention and aligns with retention incentives in the Commission's retirement recommendations.

Eliminating the housing stipend for transferred benefit encourages younger veterans to use the education benefit themselves while improving fiscal sustainability.

Our recommendation also better prepares servicemembers for transition to civilian life by expanding education and granting States more flexibility to administer the Jobs for Veterans State Grant Program.

DOD should require mandatory participation in the Transition GPS education track for servicemembers planning to attend school after separation or those who have transferred their Post-9/11 G.I. Bill benefits.

The Department of Labor should permit State Departments of Labor to work directly with State VA offices to coordinate administration of the Jobs for Veterans State Grant Programs.

One-stop Career Center employees should attend transitioning GPS classes to develop personal connections with transitioning veterans.

A review of the core curriculum for Transition GPS should be required to re-evaluate whether the current curriculum accurately addresses the needs of transitioning servicemembers.

DOD, VA, and DOL should be required to produce a one-time joint report regarding the challenges employers face when seeking to hire veterans.

In closing, Mr. Chairman, we again thank you for the opportunity to be here today. It has been our honor and privilege to serve American servicemembers, veterans, and their families as we have assessed the current compensation and retirement programs, deliberated the best path to modernization, and offered our recommendations. We are confident that our recommendations, if adopted, will indeed serve our servicemembers in a positive, profound, and lasting way.

We are pleased to answer any questions you have, Mr. Chairman.

[The prepared statement of Mr. Maldon follows:]

PREPARED STATEMENT OF ALPHONSO MALDON, JR., CHAIRMAN, MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION; ACCOMPANIED BY MICHAEL R. HIGGINS, COMMISSIONER

*Representative of:*

Hon. Alphonso Maldon, Jr., Chairman  
Hon. Larry L. Pressler

Hon. Stephen E. Buyer  
Hon. Dov S. Zakheim

Mr. Michael R. Higgins  
General Peter W. Chiarelli, United  
States Army (Ret.)

Admiral Edmund P. Giambastiani, Jr.,  
United States Navy (Ret.)  
Hon. J. Robert Kerrey  
Hon. Christopher P. Carney

Chairman Isakson, Ranking Member Blumenthal, distinguished Members of the Committee: We are honored to be here and thank you for the opportunity to testify today.

Our All-Volunteer Force is without peer. This fact has been proven during the last 42 years and decisively reinforced during the last 13 years of war. It is our obligation to ensure the Nation has the proper resources to support our veterans. Those resources include a valued compensation system that is relevant to contemporary Servicemembers and veterans, and that is operated in a modern and efficient manner. We are unanimous in our belief that our recommendations strengthen the foundation of the All-Volunteer Force and ensure our national security, now and into the future.

Our work represents the most holistic and comprehensive review of military compensation and benefits since the inception of the All-Volunteer Force. Our Interim Report, published in June, 2014, documents the relevant laws, regulations, and policies; associated appropriated Federal funding; and historical and contextual backgrounds of more than 350 compensation programs. Consistent with our Congressional mandate, programs were reviewed to determine if modernization would ensure the long-term viability of the All-Volunteer Force, enable the quality of life for members of the Armed Forces and the other Uniformed Services, and achieve fiscal sustainability for compensation and retirement systems.

Our report is informed by our life-long experiences, but more importantly by the insights of a broad range of Servicemembers, veterans, retirees, and their families. More than 150,000 current and retired Servicemembers responded to the Commission's survey. The Commission visited 55 military installations, affording us the opportunity to discuss compensation issues with Servicemembers worldwide. We developed an ongoing working relationship with more than 30 Military and Veteran Service Organizations. We also received input from more than 20 Federal agencies; several Department of Defense working groups; and numerous research institutions, private firms, and not-for-profit organizations.

Our recommendations align compensation and benefit programs to the preferences of the modern Force and societal shifts since the inception of the All-Volunteer Force. By maintaining or improving benefits, while concurrently reducing costs, our recommendations address the ongoing tension between maintaining Servicemember benefits and reducing personnel budgets to meet the demands of the new fiscally constrained environment.

#### 11. SAFEGUARD EDUCATION BENEFITS FOR SERVICEMEMBERS BY REDUCING REDUNDANCY AND ENSURING THE FISCAL SUSTAINABILITY OF EDUCATION PROGRAMS

DOD and the VA provide many programs that deliver educational benefits to Servicemembers and veterans. Current education assistance programs include the Post-9/11 GI Bill, the Montgomery GI Bill Active Duty, the Montgomery GI Bill Selected Reserve, the Reserve Education Assistance Program, and Tuition Assistance. There are duplicative and inefficient education benefits that should be streamlined to improve the sustainability of the overall education benefits program.

Montgomery GI Bill Active Duty should be sunset on October 1, 2015. Reserve Education Assistance Program (REAP) should be sunset, restricting any further enrollment and allowing those currently pursuing an education program with REAP to complete their studies. Already enrolled Servicemembers who elect to switch to the Post-9/11 GI Bill should receive a full or partial refund of the \$1,200 that was paid to buy in to the MGIB-AD. Eligibility requirements for transferring Post-9/11 GI Bill benefits should be increased to 10 years of service, plus an additional commitment of 2 years of service. The housing stipend for dependents should be sunset on July 1, 2017. Eligibility for unemployment compensation should be eliminated for anyone receiving housing stipend benefits under the Post-9/11 GI Bill. When providing feedback in comments to the Commission, Servicemembers repeatedly emphasized the importance of education benefits as recruiting and retention tools. Ensuring the robustness of education programs is one of the best ways to guarantee the future of the All-Volunteer Force. This recommendation would also support GI Bill benefits, including transferability, while improving their fiscal sustainability.

12. BETTER PREPARE SERVICEMEMBERS FOR TRANSITION TO CIVILIAN LIFE BY EXPANDING EDUCATION AND GRANTING STATES MORE FLEXIBILITY TO ADMINISTER THE JOBS FOR VETERANS STATE GRANTS PROGRAM

DOD, in partnership with the Department of Labor, the VA, and the Small Business Administration, maintains the Transition GPS program to help Servicemembers and their families prepare for a successful transition to civilian life. Transition GPS services are delivered through a series of workshops administered by each Service. The DOL administers One-Stop Career Centers which offer employment services for job seekers across the country, including veterans after they have transitioned to civilian life. These facilities are part of state workforce agencies or employment commissions and are partially funded through a number of grants under DOL's Jobs for Veterans State Grants program. Despite these services, transitioning from military service to civilian life is more difficult than it needs to be. DOD should require mandatory participation in the Transition GPS education track for Servicemembers planning to attend school after separation or those who have transferred their Post-9/11 GI Bill benefits. The Department of Labor should permit state departments of labor to work directly with state VA offices to coordinate administration of the Jobs for Veterans State Grants program. Furthermore, One-Stop Career Center employees should attend Transition GPS classes to develop personal connections with transitioning veterans. A review of the core curriculum for Transition GPS should be required to reevaluate whether the current curriculum accurately addresses the needs of transitioning Servicemembers, and DOD, VA, and DOL should be required to produce a one-time joint report regarding the challenges employers face when seeking to hire veterans.

Thank you again for the opportunity to testify regarding our recommendations. We also want to thank all who contributed to our final report. The Commission is grateful to have been given the opportunity to make recommendations to strengthen the best All-Volunteer Force in the world. Ensuring our Servicemembers, veterans, retirees, and their families' get the support they need is a responsibility the Commission took very seriously. Thank you to all those who serve, those who have served, and the families that support them.

Chairman ISAKSON. Thank you very much, Mr. Maldon, for your testimony.

I am going to ask Mr. Phillips, if he would, give Senator Gillibrand his seat. Senator Gillibrand.

Mr. PHILLIPS. It would be my honor.

Chairman ISAKSON. This is a non-conventional meeting of the Veterans' Affairs Committee, I can tell you that. [Laughter.]

Mr. PHILLIPS. We are flexible.

Senator GILLIBRAND. Thank you.

Chairman ISAKSON. Roberts Rules of Order do not include all of this, but we have all got a SASC meeting today——

Senator GILLIBRAND. Yes.

Chairman ISAKSON. We are meeting here and there are a lot of other important meetings. We want to make sure you are recognized to present your bill, understanding that when you complete your presentation, I am going to turn over the chairmanship of the Committee to Mr. Cassidy, who will finish the hearing, as long as he can stay.

So, Senator Gillibrand from New York, you are on.

**STATEMENT OF HON. KIRSTEN GILLIBRAND,  
U.S. SENATOR FROM NEW YORK**

Senator GILLIBRAND. Thank you, Mr. Chairman, and I do thank you for letting me come now. We are in the middle of the Armed Services markup, so it was for good reason.

Today's hearing on S. 681, the Blue Water Navy Vietnam Veterans Act of 2015, is a very important piece of legislation that I have talked to veterans over the last 10 years about. This piece of

legislation would ensure that thousands of brave veterans who were exposed to Agent Orange during the Vietnam War receive VA care for illnesses related to their Agent Orange exposure.

Agent Orange was dangerous. It was toxic. It was poisonous. It filled the air and poisoned the water and severely damaged the health of the people who were exposed to it. The U.S. Government has recognized the harmful effects of Agent Orange since the 1960s and the VA actively provides care and coverage to many soldiers who were exposed to Agent Orange.

The problem we face today is that under current VA rules, the only U.S. veterans who are counted as having been exposed to this deadly chemical are the people who were actually on the ground, on Vietnamese soil, and the people who served on boats on Vietnam rivers, referred to as Brown Water Veterans. But, the current VA rules exclude the thousands of Navy veterans who were stationed on ships just off the Vietnamese coastline. This does not make any sense and it is not fair to these men and women.

Agent Orange did not discriminate between those who stood on boats on rivers and those who stood on boats offshore. So, why should the VA discriminate between the two?

Because of this arbitrary and bureaucratic rule, thousands of our Navy veterans are suffering. It is time to right this wrong. Let us cut the red tape that is causing additional suffering.

Bobby Condon is one of those veterans. He is from Brooklyn. He joined the Navy when he was a teenager and he went to Vietnam at the age of 18 because he wanted to serve our country. Like countless others, Bobby was exposed to Agent Orange in Vietnam. He served on the U.S.S. Intrepid, which is now a world class museum on the Hudson River in New York City, which my little boys love.

Bobby moved propeller planes and bomber jets on the Intrepid's flight deck. These planes had dropped Agent Orange and after their missions were done still contained its residue. It was Bobby's job to handle these planes. Bobby was a serial nail biter, and he believes that Agent Orange toxins seeped into his body when he bit his nails. Bobby is in his late 60s now and suffers from leukemia, a disease linked to Agent Orange exposure. He has been dealing with it for almost 20 years.

So, what do you think the Department of Veterans Affairs did when Bobby first went to them for coverage? They said, sorry, your boat was here, not here, so we cannot help you. Sorry, you did not have boots on the ground. All those Blue Water Navy veterans like Bobby were being let down. Bobby said it best. He said, "All I wanted is what I deserve."

We have an obligation to give back to the brave men and women who risked their lives for us, because each day that we delay passage of this bill, Vietnam veterans continue to become ill and go bankrupt from trying to pay medical bills because they are unable to receive coverage from the VA.

Mr. Chairman, because of this urgent issue, I request that this Committee mark up this legislation and expeditiously report it favorably to the floor for consideration by the full Senate.

I would also like to add to the record remarks by Senator Daines, who is the cosponsor of this bill. He is extremely grateful that this

hearing is being held, and he fundamentally believes that our veterans do not deserve subpar care. He believes it is unacceptable that a technicality in the law and a dysfunctional Federal bureaucracy has resulted in the prolonged suffering of thousands of our Nation's heroes. He knows this legislation would make a difference. I submit his statement for the record.

[The prepared statement of Senator Steve Daines of Montana can be found in the Appendix.]

Senator GILLIBRAND. Thank you, Mr. Chairman, and thank you for your indulgence.

Chairman ISAKSON. Well, thank you, Senator Gillibrand. For your information, the Committee will have a markup on your bill and the others that are being presented today sometime in the month of June.

Senator GILLIBRAND. Thank you.

Chairman ISAKSON. You will be notified, as well as Senator Daines. We appreciate your interest in the Committee and the veterans.

Senator GILLIBRAND. Thank you very much.

Chairman ISAKSON. Mr. Phillips, at this point in time, I am going to use executive privilege and turn over to Senator Cassidy the gavel to conduct the rest of the hearing until I get back, with explicit instructions to adjourn the hearing if I do not get back and everybody is through saying what they have got to say. Is that fair enough?

Just 1 second, Mr. Phillips.

Senator CASSIDY [presiding]. Mr. Phillips, you are next.

**STATEMENT OF JEFFREY E. PHILLIPS, EXECUTIVE DIRECTOR,  
RESERVE OFFICERS ASSOCIATION**

Mr. PHILLIPS. Senator Cassidy, distinguished Members of the Senate Committee on Veterans' Affairs, and hard working staff, thank you for inviting the Reserve Officers Association of the United States to testify on issues that affect the National Guard and Reserve of our Nation's Armed Forces.

From north to south, east to west, America's young men and women have for more than two centuries affirmed the wisdom of our founders in their willingness to engage boldly, selflessly, and with great fidelity in the defense of our way of life. Among them are those in our Reserve components whose yearning for service finds outlet in a particularly demanding regimen. They must balance military service, always a consuming and uncompromising business, with the demands of a civilian work life and the care of their families. They ask only for the opportunity, the requisite tools and training, and good leadership.

It is the privilege of us in the advocacy community, such as ROA and our fellow service organizations, to look past official messaging, seek beyond official policy and existing law, and identify opportunities to improve both our Nation's resourcing and support of these young patriots and also their very employment in the furtherance of our national security.

The Selected Reserves contribute more than 820,000 members of our Armed Forces. Since 9/11, more than 900,000 members of the Guard and Reserve have been activated for service in these wars.

These men and women serve us every day, in remote places as well as cities in turmoil right here at home. Each act of service incurs personal risk, voluntarily accepted.

Do you know that many of these members of the Guard and Reserve will never be veterans in the eyes of the law? It is on behalf of these patriots, as well as a matter of sheer honor, that ROA supports S. 743, Honor America's Guard and Reserve Retirees Act of 2015.

A friend of mine, Bonnie Carroll, founded Tragedy Assistance Program for Survivors after her husband, an Army officer, was killed in a military plane crash. TAPS is expert in the care of survivors. They focus on supporting those who have lost a loved one in military service, yet provide expertise to all who ask. Bonnie herself served 32 years in the military, in both the Air National Guard and the Air Force Reserve. Because of the requirement to have so many days on active duty, she is technically not a veteran. Bonnie is focused on others. She would never ask for anything for herself. ROA supports this legislation for her and the many others like her.

Title 38 U.S.C. 101 defines a veteran as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. The word "active" is left very generally here. Ladies and gentlemen, is there any doubt that Reserve component members have met and do meet this definition?

S. 743 helps recognize the fidelity of service demonstrated by members of our Reserve components. We urge passage.

Another bill that supports equity is S. 681, the Blue Water Navy Vietnam Veterans Act of 2015. The Department of Veterans Affairs in 1991 extended presumption of Agent Orange exposure to Vietnam veterans, yet some veterans who were exposed to toxins such as Agent Orange while serving in trust and good faith have yet to be served in return.

Blue Water veterans of the naval services were likely exposed to Agent Orange, and the Institute of Medicine recommended these veterans not be excluded from presumption of exposure. Air Force Reserve C-123 air crews were also exposed to Agent Orange. They deserve inclusion for service disability in connection with Agent Orange exposure, and ROA is working on that.

Many warriors since World War I have been exposed to toxins and related risks, be it mustard gas, asbestos, Agent Orange, and so forth. We must be accountable for this exposure and the resultant effects. We urge the DOD, working with VA, to maintain registries of toxin exposure that would help in identifying maladies and establishing connections as well as treatments, and perhaps offer lessons helpful in the responsible use of toxins.

Finally, S. 602, the G.I. Bill Fairness Act of 2015, will correct a disparity, likely one made unintentionally, between active and Reserve component members. A Reservist placed on orders for medical care no longer earns education benefits. An active component servicemember placed in a similar medical status does continue to earn education benefits. ROA supports the reform offered in S. 602.

Senator, my time is up, and so we respectfully request our written testimony be submitted for the record.



ROA, chartered by Congress in 1950 to support our national defense and those who serve in the Reserve components, appreciates the opportunity to respond to the proposed legislation today and looks forward to helping the Committee in its vitally important work.

Thank you.

[The prepared statement of Mr. Phillips follows:]

PREPARED STATEMENT OF JEFFREY E. PHILLIPS, EXECUTIVE DIRECTOR, RESERVE  
OFFICERS ASSOCIATION OF THE UNITED STATES

The Reserve Officers Association of the United States (ROA) is a professional association of commissioned, non-commissioned and warrant officers of our Nation's seven uniformed services. ROA was founded in 1922 during the drawdown years following the end of World War I. It was formed as a permanent institution dedicated to national defense, with a goal to teach America about the dangers of unpreparedness. Under ROA's 1950 congressional charter, our purpose is to promote the development and execution of policies that will provide adequate national defense. We do so by developing and offering expertise on the use and resourcing of America's reserve components.

The association's members include Guard and Reserve Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen who frequently serve on active duty to meet critical needs of the uniformed services. ROA's membership also includes commissioned officers from the United States Public Health Service and the National Oceanic and Atmospheric Administration who often are first responders during national disasters and help prepare for homeland security.

*President:*

Brigadier General Michael Silva, U.S. Army Reserve (Ret.)  
202-646-7706

*Executive Director:*

Jeffrey Phillips  
202-646-7726

*Legislative Director:*

Lieutenant Colonel Susan Lukas, U. S. Air Force Reserve (Ret.)  
202-646-7713

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Reserve Officers and is a member-supported organization. ROA has not received grants, contracts, or subcontracts from the Federal Government in the past three years. All other activities and services of the associations are accomplished free of any direct Federal funding.

On behalf of our members, the Reserve Officers Association thanks the Committee for the opportunity to submit testimony on legislation proposed by Congress, the Department of Defense and the Military Compensation and Retirement Modernization Commission.

S. 602, G.I. BILL FAIRNESS ACT OF 2015

ROA wholeheartedly supports this proposal to continue eligibility for the Post-9/11 GI Bill when a member of the reserve component is receiving medical care under Title 10 United States Code (U.S.C.) 12301(h). Placing reserve component servicemembers on these active duty orders is done for administrative purposes and Guard and Reserve members should not lose eligibility for education benefits. The change in status from one type of order to 10 United States Code 12301(h) is done to unencumber direct operation support billets. The change from one type of active duty order to another type of order should not be seen as change to a lesser duty status. The proposed legislation removes the disparity between the reserve component and active component, since active duty servicemembers continue to earn education benefits when they are in the same medical care status. Title 38 U.S.C. 3301, which is addressed in the bill, already includes detainee status, 10 U.S.C. 12301(g), and, therefore, does not need to be part of the G.I. Bill Fairness Act of 2015.

## S. 681, BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015

ROA urges Congress to support Blue Water Navy Vietnam Veterans who were exposed to Agent Orange when ships manufactured fresh water by taking sea water, contaminated with Agent Orange off of the coast of Vietnam. This occurred when the rain washed Agent Orange through water tributaries to the South China Sea. On board ship, potable water (sea water distilled one time) is used for showers, shaving, cooking, coffee, laundry and dishwashing, which explains how sailors were directly exposed to the contaminated water. Agent Orange is a nonsoluble salt that migrates to the sides of the distillation equipment. It builds up over time increasing the potency of the chemical. The distillation equipment is cleaned on a 36 month regular overhaul schedule which means sailors on ship are exposed to Agent Orange for a protracted period of time. The Department of Defense does not have a toxic exposure policy to identify and study servicemembers who are exposed to toxic chemicals even though exposure to toxins has occurred in every modern war. A policy that tracks exposure could ultimately reduce health care costs through the collection of verifiable data rather than rely on designation of presumption status through the Department of Veterans Affairs.

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION—  
EDUCATION BENEFITS

Sec 1101: The commission recommendation sunsets the Montgomery G.I. Bill for Reserve Educational Assistance Program (MGIB-REAP) in favor of the Post-9/11 G.I. education bill. Making this change would end education benefits much sooner for Guard and Reserve under the Post-9/11 option. MGIB-REAP allows servicemembers to use the benefit 10 years from the day they leave the Selected Reserve or the day they leave the Individual Ready Reserve. For the Post-9/11 education benefit, they have 15 years from the last day of their active duty order. For example, a reservist is on active duty orders for 90 days until March 25, 2015. This means the reservist can use Post-9/11 education benefits until March 25, 2030. Under the same orders the reservist earns MGIB-REAP and retires from the Selected Reserve on April 1, 2025. The reservist's MGIB-REAP benefit can be used 10 years after retirement, until April 1, 2035. Guard and Reserve members work at two jobs, their civilian job and as reserve component servicemembers. Guard and Reserve members have clearly earned both benefits and should be able to use the education benefit that best serves their education goals or the Post-9/11 G.I. bill should be adjusted to use the same MGIB-REAP expiration of benefits criteria for Guard and Reserve.

Sec 1103: This section applies to the Selected Reserve and Individual Ready Reserve when they agree to remain a member of the Selected Reserve for at least 4 years after completion of the education or training for which the tuition charges are paid. The change allows the service Secretary to deny tuition assistance if the education or training does not contribute to the servicemember's professional development. ROA agrees tuition assistance for professional development is reasonable but we are concerned with the subjective manner that "professional development" may be defined. For example, a noncommissioned officer is a personnel specialist and is pursuing a bachelor of science degree in management with George Mason University, which requires a class in calculus. A determination could be made that calculus is not considered professional development for a servicemember in the personnel career field. The class, if taken in isolation, would not qualify for tuition assistance. To overcome that possibility, ROA recommends changing the proposed legislation to include any courses required by a degree that is considered "professional development."

Sec 1108: ROA has received feedback from our members who state transferability of the Post-9/11 G.I. Bill entitlement with a housing stipend is a motivating reason why they volunteer for deployments. This section terminates the monthly housing stipend beginning on July 1, 2017. ROA is concerned 2017 does not give servicemembers enough time to absorb this cost through their budget, savings, or investment planning. If Congress goes forward with this change, then ROA recommends termination be extended to July 1, 2021 vice July 1, 2017 to ensure all family members now matriculated are covered under the current plan.

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION (MCRMC)—  
TRANSITION ASSISTANCE

SEC 1204: This section recommends, "The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, shall conduct a review of the Department of Defense Transition GPS Program Core

Curriculum \* \* \* ” and the proposal includes several matters that should be reviewed. ROA is concerned that the proposed legislation does not include a review of the effectiveness of the program for Guard and Reserve servicemembers. Transition Goals, Plans, Success (GPS) is divided into several sessions covering finances, family adjustments, VA benefits, employment, education and small business startups that are very appropriate subjects for active component servicemembers who are leaving the service. However, when someone in the reserve components separates at the end of their orders, they remain in the military and return to their unit. ROA believes the proposed legislation should rewrite MCRMC legislative proposal SEC 1204(a)(2)(A) to change “\* \* \* needs of members of the Armed Forces transitioning out of military service.” to “\* \* \* needs of members of the Active and Reserve Components of the Armed Forces transitioning out of military service.” This change would more clearly identify that Guard and Reserve needs would be considered as a separate category of the review.

#### DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

Section 514: This section recommends the same legislation as S. 602 discussed previously.

Section 522: This proposed change adds two involuntary call-up categories (10 U.S.C. 12304a and 12304b) to education benefits in Title 10, Chapter 1606 and this is supported by ROA. The change is for when a servicemember is responding to a major disaster or emergency (123041) or a preplanned mission in support of the combatant commanders (12304b). This would ensure Title 10 legislation, that created new provisions for involuntary call-up in 2011, is included for servicemembers to regain lost payments and lost entitlement time for the Montgomery G.I. Bill—Selected Reserve (MGIB-SR) benefits. It is important that an involuntary call-up should not allow benefits to be lost through no fault of the servicemember. This proposal would ensure all involuntary service does not result in servicemembers absorbing negative impacts to their education benefits, such as, course cancellations, tuition repayments or loss of entitlement time.

Section 542: ROA included the legislative fix to exempt two duty statuses added in 2011 to the 5-year reemployment limit in ROA’s 2015 Legislative Plan. The change is for duty status when a servicemember is responding to a major disaster or emergency (123041) or a preplanned mission in support of the combatant commanders (12304b). USERRA significantly strengthens and expands the employment and reemployment rights of all uniformed servicemembers. Reemployment rights extend to persons who have been absent from a position of employment because of “service in the uniformed services,” which is through the performance of duty on a voluntary or involuntary basis. Until the addition of two involuntary duty statuses, all involuntary service was exempted from the five-year limit but the latest changes were not added to the proposed legislative provision. It is important that an involuntary call-up should not put an individual beyond the five-year limit and cause the individual to lose his or her right to reemployment.

Section 545: The proposed change to exclude Guard and Reserve members from pre-separation counseling when on full-time training duty, annual training duty, and attending service school, has merit on the face of it, but ROA believes servicemembers should have the option to attend pre-separation counseling, if they so need. It is hard to anticipate everyone’s unique needs and a blanket exclusion from receiving the counseling may mean servicemembers do not receive needed information.

#### DISCUSSION DRAFT LEGISLATIVE PROPOSALS

S. 743: The proposed bill to recognize a reserve component member as a veteran, but without benefits, is a legislative goal of The Military Coalition (TMC). The TMC, in a letter to bill sponsors, which ROA supported, stated, “The individuals covered by your legislation have already earned most of the benefits granted to veterans by the Department of Veterans Affairs, and yet they do not have the right to call themselves veterans because their service did not include sufficient duty under Title 10 orders. Because of this they feel dishonored by their government. Your legislation simply authorizes them to be honored as “veterans of the Armed Forces” but prohibits the award of any new benefit. The ‘Honor America’s Guard-Reserve Retirees Act of 2015’ is a practical way to honor the vital role members of the Reserve Components have had in defending our Nation throughout long careers of service and sacrifice. And it can be done at no-cost to the American tax-payer because of your legislation.”

## CONCLUSION

ROA appreciates the opportunity to submit testimony and looks forward to working with Congress, whereby, we can offer our support and perspective of the reserve components.

Senator CASSIDY. Thank you, Mr. Phillips.  
Mr. Morosky.

**STATEMENT OF ALEKS MOROSKY, DEPUTY LEGISLATIVE DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS**

Mr. MOROSKY. Good afternoon, Mr. Chairman. On behalf of the men and women of the Veterans of Foreign Wars and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

I would like to open by saying that the VFW generally supports all bills and proposals under discussion today and thanks the Committee for its good work in bringing them forward. Due to time constraints, however, I will focus the majority of my statement on the areas in which we believe they may be further strengthened.

The Charlie Morgan Military Spouses Equal Treatment Act: The VFW supports this legislation, which amends Title 38 to align the definition of marriage with the Supreme Court's ruling on the Defense of Marriage Act. Simply put, if a veteran is legally married in a State that recognizes same-sex marriage, we believe the VA should provide benefits to his or her spouse or surviving spouse the same way it does for every other legally married veteran.

The G.I. Bill Fairness Act: The VFW supports this legislation, which would require VA to consider time spent by members of the Reserve component receiving medical care for service-connected injuries for the purposes of determining eligibility for the Post-9/11 G.I. Bill. We believe the time it takes to recuperate from service-connected injuries is still time in service to the country and that Reservists and Guardsmen should be recognized for that sacrifice.

Furthermore, we urge Congress to address another inequity that we have identified in Post-9/11 G.I. Bill eligibility determination. The VFW believes that any member of the Armed Forces who was wounded in action should be deemed 100 percent eligible, regardless of how long they served on active duty.

S. 627: The VFW strongly supports the intent of this legislation, which would require the Secretary to retroactively rescind bonuses paid to VA employees who were later found to have manipulated wait time data by purposefully omitting any veteran's name from the electronic wait list as identified by an investigation by the Inspector General. The VFW strongly believes that employee accountability is critical to correcting past problems at VA and restoring trust of the veterans that they serve. Employees must realize that deliberately delaying or withholding care from a veteran is unacceptable and will not be tolerated under any circumstances, much less rewarded.

With that said, the VFW also recognizes that many front-line employees may have been coerced into these dishonest practices by their superiors. For far too long, whistleblower protections were not properly enforced at VA, and lower-level employees were often subjected to intimidation and threats of reprisal by their superiors if

they did not comply with business practices that may have been dishonest. For this reason, we ask that the IG report also be required to determine which, if any, employees were coerced into their actions by their superiors and allow the Secretary to make a decision on whether or not those employees should be spared punishment on that basis.

**The Blue Water Navy Vietnam Veterans Act:** The VFW strongly supports this legislation, which would extend presumptive service connection in health care for Agent Orange-related illnesses to Blue Water Navy veterans. We have long maintained that it is arbitrary and unjust that veterans who serve aboard ships in the coastal waters of veteran are denied presumptive benefits associated with Agent Orange exposure.

**The 21st Century Veterans Benefits Delivery Act:** The VFW supports this important legislation, but has two suggestions which we believe would strengthen it further. First, we would ask that the bill be amended to indicate that VA shall notify the veteran of their right to an in-person hearing and shall grant such a request. Second, while the VFW supports the Comptroller General audit provision, we are not certain that the Comptroller can hire sufficient subject matter experts to conduct the review in the allotted time. For this reason, we would suggest that the Committee consider narrowing the scope of the study or extending the amount of time that the Comptroller has to conduct the review.

The VFW generally supports all MCRMC and DOD recommendations except Section 545, which would allow DOD to not offer TAP to certain Reserve component members who are not activated. Although we understand that there are certain operational limitations for Reserve units that make it difficult for them to offer the full TAP course, we believe a better alternative, in our opinion, would be offering a condensed TAP course to these servicemembers.

Finally, the draft legislation, the VFW supports all sections of this bill except Section 205, for which we have no position. Also, we support Section 206, which would require VA to submit reports on its disability medical exams process and the extent to which it is able to prevent unnecessary medical examinations. We would suggest, however, that the reporting requirement also include how many specialty examinations were ordered in cases where the veteran had already submitted a disability benefits questionnaire completed by a non-Department physician. This will help us understand the extent to which the information submitted in those cases is accepted by VA as adequate for deciding claims.

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

[The prepared statement of Mr. Morosky follows:]

PREPARED STATEMENT OF ALEKS MOROSKY, 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. 270, CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015

The VFW supports this legislation, which amends title 38, United States Code, to align the definition of marriage with the Supreme Court's ruling of the Defense of Marriage Act. Simply put, if a veteran is legally married in a state that recognizes same-sex marriage, the Department of Veterans Affairs (VA) is obligated to provide survivor benefits to his or her spouse or surviving spouse the same way it does for every other legally married veteran. The VFW believes that a veteran is a veteran and their benefits should be provided fairly across the board.

## S. 602, G.I. BILL FAIRNESS ACT OF 2015

The VFW supports legislation requiring VA to consider time spent by members of the reserve components while receiving medical care for service-connected injuries for purposes of determining eligibility for the Post-9/11 GI Bill. In 2002, the Assistant Secretary of Defense for Reserve Affairs accurately stated, "the current reserve component status system is complex, aligns poorly to current training and operational support requirements, fosters inconsistencies in compensation and complicates rather than supports effective budgeting." There is no better illustration of this statement than the fact that recovering guardsmen and reservists are ineligible for the same GI Bill benefits as their active duty counterparts. We urge Congress to act swiftly to end this unequal treatment by passing S. 602.

Furthermore, we urge Congress to draft legislation that addresses additional GI Bill benefits inequities between war veterans from the reserve component, non-war-time veterans, and dependents. Currently, a Marine reservist could potentially deploy to a combat zone, receive a Purple Heart and still only receive 60 percent of his or her Post-9/11 GI Bill. Similarly, a Guardsman, who deploys twice to a combat zone, may only receive 80 percent of his or her Post-9/11 GI Bill benefit. Meanwhile, a dependent of an active duty veteran who may never have deployed to combat at all, could receive 100 percent of the Post-9/11 GI Bill benefit, regardless of the dependent's affiliation with the military in their adult life. The eligibility requirement for reserve component members is inherently unjust, and we ask Congress to increase Post-9/11 GI Bill benefits for reserve component members who serve in a combat zone, especially for those wounded in action.

## S. 627, TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO REVOKE BONUSES PAID TO EMPLOYEES INVOLVED IN ELECTRONIC WAIT LIST MANIPULATIONS, AND FOR OTHER PURPOSES.

The VFW supports the intent of this legislation which would require the Secretary to retroactively rescind bonuses paid to VA employees who are later found to have manipulated wait time data by purposefully omitting any veteran's name from the electronic wait list, as identified by an investigation by the Inspector General (IG).

The VFW strongly believes that employee accountability is critical to correcting past problems at VA and restoring the trust of the veterans they serve. Employees must realize that deliberately delaying or withholding care from a veteran is unacceptable and will not be tolerated under any circumstances, much less rewarded. In addition, supervisors who were aware of data manipulation practices by the employees below them must also be held equally accountable, as provided for in this legislation.

With that said, the VFW also recognizes that many front-line employees may have been coerced into these dishonest practices by their superiors. For far too long, whistleblower protections were not properly enforced at VA, and lower level employees were often subjected to intimidation and threats of reprisal by their superiors if they did not comply with business practices that may have been dishonest. The VFW believes that this culture is changing at VA. Still, we believe employees who may have acted out of fear of reprisal were not directly responsible for the data manipulation that took place at some facilities. For this reason, we ask that the IG report also be required to determine which if any employees were coerced into their actions by their superiors, and allow the Secretary to make a decision on whether or not those employees should be spared punishment on that basis.

## S. 681, BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015

The VFW strongly supports this legislation, which would require VA to include territorial seas as part of the Republic of Vietnam, extending presumptive service connection and health care for Agent Orange-related illnesses to Blue Water Navy veterans. We have long maintained that it is arbitrary and unjust that veterans who served aboard ships in the coastal waters of Vietnam are denied presumptive benefits associated with Agent Orange exposure. We believe that those veterans were po-

tentially exposed to significant levels of toxins, and should be granted the same presumption of service connection as their counterparts who served on the mainland of Vietnam.

#### S. 1203, 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

This legislation would revise or add many provisions regarding the way in which the Department of Veterans Affairs administers veterans' claims for benefits, and the VFW worked closely with Senators Heller and Casey during its drafting. While the VFW supports this bill, we need to ensure its language is perfectly clear. Therefore, we recommend the Committee amend two sections of the bill to ensure veterans are fully aware of their rights and that the proposed Comptroller General audit is effective:

Section 103 allows the Board of Veterans Appeals to use video teleconferencing (VTC) as the default method for hearings. While conducting hearings through VTC will expedite the adjudication of claims and eliminate substantial travel costs to veterans and the Administration, we feel that veterans should be made aware of the option to attend hearings in person. Therefore, we recommend the Committee amend the bill to indicate that the VA "shall" notify the veteran of their right to an in-person hearing and "shall" grant such a request.

Section 201 requires the U.S. Comptroller General to audit all Veterans Benefits Administration Regional Offices (VARO) to assess the consistency of rating decisions. A thorough study would require the collection of a representative sample of decisions by disability to review them for similarities and note different outcomes. The VFW does not oppose the provision, but we worry that the Comptroller cannot hire sufficient subject matter experts to conduct the review in the time allotted. The Committee should consider whether another option may be more feasible, such as narrowing the scope of the study or extending the amount of time the Comptroller has to conduct the review.

#### DRAFT BILL, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2015

The VFW strongly supports this legislation which will increase VA compensation for veterans and survivors, and adjust other benefits, by providing a cost-of-living adjustment (COLA) beginning December 1, 2015.

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 the veteran's disability. Each year, veterans wait anxiously to find out if they will receive a cost-of-living adjustment. 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 is pleased that this legislation does not contain the "rounding down" of the COLA increase. This is nothing more than a money-saving device that comes at the expense of veterans and their survivors.

#### MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION LEGISLATIVE PROPOSALS

##### *Recommendation 11*

The Commission recommended that the VA consolidate all education benefits into a single program, extend the time commitment required to obtain the transferability benefit and eliminate the Basic Housing Allowance for dependents. The VFW played an integral role in passing the Post-9/11 G.I. Bill and we have a vested interest in ensuring that the veterans who utilize this robust benefit receive quality educational and vocational training outcomes. Military and veterans' education benefits provide a critical tool to ensure that those who have defended our Nation can compete for the best jobs when they leave service. We believe the country has a vested interest in ensuring that Federal education dollars for our military men and women are not abused.

The Commission takes issue with a prioritization of veterans' needs and the Defense Department's incentive to allow servicemembers to transfer their GI Bill benefits to their dependents. The G.I. Bill's primary use should be to help veterans reintegrate into civilian life by providing the education and skills necessary to gain meaningful employment, but providing transferability of one's G.I. Bill benefit has been a critical tool in retaining mid-career servicemembers. The G.I. Bill must be a transition benefit first, and the transition aspect should never provide a greater benefit to dependents than it does to veterans.

The Commission recommended “duplicative education assistance programs should sunset to reduce administrative costs and to simplify the education benefits system.” To do so, Congress would have to choose between two options. First, extend full Post-9/11 G.I. Bill benefits to all servicemembers and veterans, including all reserve component members. The second option would be to create a scaled system in which certain categories of veterans will receive different percentages of the G.I. Bill depending on whether they served on active duty, reserve status or during a time of war, similar to how VA awards a certain percentage of the Post-9/11 G.I. Bill to reserve component servicemembers today. If these programs are set to expire, Congress needs to ensure that war veterans, including guardsmen and reservists, should not receive less of a benefit than dependents or other veterans.

#### *Recommendation 12*

The VFW supports the Commission’s recommendations for Congress to reevaluate the current Transition Goals, Plans, Success (GPS) curriculum, encourage state collaboration in coordinating the Jobs for Veterans State Grants (JMSG) program, encourage employees to attend Transition GPS classes and require a joint report from Department of Defense (DOD), VA, and Department of Labor (DOL) on the challenges employers face when seeking to hire veterans. Over the past few years, this Committee’s work has produced a significant evolution in the way the military prepares transitioning servicemembers for civilian life. Positive changes include mandatory Transition Assistance Program (TAP) for all servicemembers, the creation of the Off-Base Transition Training (OBTT) pilot program, and a complete redesign of a TAP curriculum. The Commission’s recommendations will build on the good work the Committee and agencies have already accomplished.

The VFW supports ensuring that transitioning servicemembers have access to the full suite of transitional training, should they so choose, because transitioning servicemembers have no reasonable way to anticipate the specific challenges they will face after leaving the military. However, the VFW understands the operational limitations in mandating such participation across the military. That is why the VFW supports supplementing the mandatory portion of TAP with access to all the track curricula through online resources. DOD recently took a major step by allowing transitioning servicemembers to audit the modules through the secure Joint Knowledge Online (JKO) portal. The VFW stands firm on the idea that online resources must be seen as a supplement to in-person TAP, not a replacement.

The VFW believes that DOD must fully implement its information sharing agreement with DOL to ensure that state workforce development agencies would have consistent access to the names of veterans leaving the military and relocating to their areas. When armed with this information, employment counselors could reach out directly to recently transitioned veterans and speak to them face to face to ensure that they fully understand what is available to them locally. Unfortunately, the proposed information sharing agreement was delayed, and only started as a pilot in January of this year. DOL first informed the VFW that it was working to codify the agreement in 2012. It is now 2015. At this point, the VFW believes it is unacceptable that DOD and DOL have yet to implement this concept fully.

Another solution is to continue to bolster the post-service availability of TAP. By facilitating large-scale, community-based TAP classes, OBTT serves veterans who would not have had access to the material, or who could only receive comparable information by meeting one on one with employment counselors at an American Jobs Center. Moreover, the program was very cost effective, costing only \$52,052 to administer the entire pilot. Unfortunately, the OBTT pilot expired in January 2015, and DOL will not have information on employment outcomes for participants for another year. The VFW believes that OBTT should be a permanent program, but until we have final data on the OBTT pilot, Congress should pass an extension of the pilot.

DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS—REGARDING EDUCATION BENEFITS,  
TRANSITION ASSISTANCE PROGRAM AND ADVISORY BOARD ON DOSE RECONSTRUCTION

#### *Section 114*

As previously mentioned, the VFW supports amending Title 38 so that reserve component members who spend time on active duty for the purpose of receiving medical care accrue time for the GI Bill eligibility. We agree with DOD and Senator Wyden that reserve component members, who answer the call to active duty and served under similar conditions as their active counterparts, deserve to have their service equally honored.



*Section 522*

The VFW supports amending Chapter 1606 of title 10, so servicemembers who are unable to complete their studies due to mobilization do not lose valuable G.I. Bill benefits. Occasionally servicemembers receive mobilization orders in the middle of the semester and have no choice but to immediately drop their classes. Schools or the Federal Government should never penalize servicemembers for answering the call to service. Therefore, we recommend that the Committee adopt DOD's proposal to amend title 10, United States Code, 12304a and 12304b to ensure a servicemember's education benefits are not lost when called to active duty.

*Section 542*

We support amending section 4312 of title 38 to ensure that the time servicemembers spend on involuntary mobilization orders does not count toward the cumulative 5-year service limit under Uniformed Service Employment and Reemployment Rights Act (USERRA). In order to maintain your right for reemployment under USERRA, your cumulative periods of uniformed service, relating to the employer relationship for which you seek reemployment, must not exceed five years. This proposal will ensure that Congress's original intent to exempt all involuntary service from the 5-year limit is consistent with DOD practices under sections 12304a and 12304b of title 10.

*Section 545*

The VFW opposes any effort to limit any servicemember's access to the Transition Assistance Program. Reserve component servicemembers often face unique challenges when bouncing back and forth from active to reserve duty. Many reserve component members do not realize the rights, resources, and benefits that Congress has created for them. Unfortunately, reserve component members already have limited, if any, access to the services provided by the Transition Assistance Program. Before Congress grants DOD the authority to further exempt reserve component members from receiving TAP, we believe that Congress and DOD should collaborate to find new ways to extend TAP to reserve component members. One possible solution would be to create a pilot program where the military services offer a 1-day condensed TAP class that reserve units could provide their members on a drill weekend. A special TAP class would ensure that reserve component members understand the resources available to them for when they mobilize and transition back to reserve status successfully, without interrupting the unit's annual training schedule.

DRAFT BILL, TO AMEND TITLE 38, UNITED STATES CODE, TO MODIFY THE TREATMENT UNDER CONTRACTING GOALS AND PREFERENCES OF THE DEPARTMENT OF VETERANS AFFAIRS FOR SMALL BUSINESSES OWNED BY VETERANS, TO CARRY OUT A PILOT PROGRAM ON THE TREATMENT OF CERTAIN APPLICATIONS FOR DEPENDENCY AND INDEMNITY COMPENSATION AS FULLY DEVELOPED CLAIMS, AND FOR OTHER PURPOSES.

The VFW supports section 101, which would allow the surviving spouse of a deceased veteran business owner to continue operating the business as a service-disabled veteran-owned small business (SDVOSB) for a period of three years following the veteran's death. Current law only allows a surviving spouse to do so if the veteran was 100 percent disabled or died from a service-connected disability. This is a necessary protection that allows for a transition period for the bereaved spouse to restructure the business as necessary. The VFW believes that this protection should be extended to all surviving spouses under the SDVOSB program.

Section 102 would allow the surviving spouse or dependent child of a servicemember who owns a business and is killed in the line of duty to continue operating the business as though it were owned by a veteran with a service-connected disability. This status would last until the dependent relinquishes at least 51 percent ownership, the spouse remarries, or after a period of ten years. The VFW supports this section.

Section 201 would clarify that VA has a duty to assist by obtaining a medical opinion for veterans making service-connected disability claims related to military sexual trauma (MST), when the medical evidence does not contain a diagnosis or opinion by a mental health professional. The VFW supports this section. In addition, we strongly believe that the evidentiary burden placed on the veteran in MST claims remains unrealistically high for many. For this reason, we continue to support S. 685, the Ruth Moore Act.

Sections 202 and 203 would require VA to submit reports to Congress on disability claims related to MST. The VFW supports these sections.

The VFW supports section 204, which would require VA to carry out a pilot program to assess the feasibility and advisability of expediting certain claims for de-

pendency and indemnity compensation (DIC). We feel this is a common sense step toward more quickly adjudicating DIC claims where the veteran is already receiving disability compensation and the cause of death is clearly listed as having been due to one of his or her disabilities. In such cases, there is no reason to make the veteran's survivors wait any longer than necessary for their benefits.

Section 205 provides for a review of determination of certain service in the Philippines during World War II. The VFW holds no position on this section.

Section 206 would require VA to submit reports on its disability medical exams process and the extent to which it is able to prevent unnecessary medical examinations. The VFW supports this section, as these reports will help improve the disability examinations process, reducing the overall time necessary to decide claims. We would suggest, however, that the reporting requirement also include how many specialty examinations were ordered in cases where the veteran had already submitted a disability benefits questionnaire completed by a non-Department physician. This will help us understand the extent to which the information submitted in those cases is accepted by VA as adequate for deciding claims.

The VFW supports section 301, which would require the Secretary of Veterans Affairs to conduct a study on identifying, claiming and interring unclaimed remains of veterans. The private sector has worked very hard to ensure dignified burials for veterans whose remains have gone unclaimed. This bill will require VA to recommend legislation or administrative actions that could take place to make the process of claiming remains for burial more standardized and timely.

Finally, the VFW supports section 401, which would give the men and women who serve our Nation in the reserve component the recognition they deserve. Many who serve in the Guard and Reserve are in positions that support the deployments of their active duty comrades to make sure the unit is fully prepared when called upon. Unfortunately, some of these men and women who serve at least 20 years and are entitled to retirement pay, TRICARE, and other benefits, are not considered veterans according to the letter of the law. This provision would grant Guard and Reserve retirees the proper recognition as veterans.

Chairman Isakson, Ranking Member Blumenthal, this concludes my testimony and I am happy to answer any questions you or any other Members of the Committee may have.

Senator CASSIDY. Thank you.

Senator Murray, would you like to go?

Senator MURRAY. Whichever way you like.

Senator CASSIDY. If you are ready, please do.

#### **HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. I am ready. Mr. Chairman, thank you very much. I really appreciate the opportunity. Welcome to all of our panelists today.

Mr. Morosky, in your testimony about S. 627, you mentioned that VFW believes the culture at VA is changing. As you know, changing culture is incredibly hard, especially at an organization as large as the VA. If change is starting to happen, we certainly want to protect that progress and encourage more. What is VFW seeing that shows the culture at VA is finally changing, and what do you believe is causing that change?

Mr. MOROSKY. We believe that the changing of culture is a big priority for Secretary McDonald, that his "I.C.A.R.E." philosophy and the idea that he is approachable as the Secretary is helping employees feel as though they can approach their superiors. Again, it is a very long process. It does not happen overnight. We recognize that the effort is being made to really make the Department more veteran-centric as opposed to centered around the bureaucracy that is in place.

Senator MURRAY. And, you are beginning to see that. Well, we want to make sure we encourage that—

Mr. MOROSKY. Yes.

Senator MURRAY [continuing]. So, if you have any thoughts about encouraging that ongoing, let us know.

Mr. MOROSKY. Yes. Thank you.

Senator MURRAY. The Transition Assistance Program is really critical in helping our servicemembers leaving the military and entering the civilian world. Constantly reviewing and updating and expanding the TAP curriculum is really key to keeping it relevant and useful for our separating servicemembers, which I am sure you all agree with that.

Mr. Phillips, I wanted to ask you, in your testimony, you talk about the importance of specifically reviewing whether the program is meeting the needs of Guard and Reserve, because, as you know, Reserve members face a lot of challenges. They are far from a VA or a military base. They return to communities very different than when they left, and they frequently have a lot of interruption between their education and their job. So, there are a lot of challenges there and I wanted to ask you, is the structure of the program working for Reservists so they can complete TAP before demobilizing?

Mr. PHILLIPS. Senator, thank you for the question and thank you for most of the answers. [Laughter.]

You went through some of the chief challenges.

Senator MURRAY. Yes.

Mr. PHILLIPS. We think the TAP has gotten better as it has aged and is evolving in the right direction. One of our chief concerns is that we ensure that the language portrays the differentiation of active and Reserve—

Senator MURRAY. So, it is actually named—

Mr. PHILLIPS. It is actually named to put it in front of people that there is a differentiation here.

Senator MURRAY. Mm-hmm.

Mr. PHILLIPS. Do I have an organic complaint, as it were, against TAP? No. I think since I had seen it initiated years and years ago, it has come a long way.

One of the aspects of receiving TAP as you leave service is you may well be in a facility better equipped to provide the requisite TAP than when you go home.

Senator MURRAY. Mm-hmm. OK.

Mr. PHILLIPS. Does that answer your question?

Senator MURRAY. Yes, it does. Thank you very much.

Mr. Maldon, first of all, I want to commend you and the rest of the Commission for the very thoughtful and important report that you submitted. I think we all appreciate the overwhelming amount of work that everybody put into this, so thank you.

Retaining good servicemembers is a major challenge for our military, as many of them, we know, leave after their first enlistment. To help with this, you recommend increasing the length of service requirement to transfer the G.I. Bill benefits to dependents. How many additional servicemembers do you expect would stay in the military, who would not have stayed otherwise, who would stay on as the result of that change?

Mr. MALDON. Senator Murray, it is hard to say how many would stay on, quite candidly. We believe that by making that change, it certainly does not hurt retention. We believe that it gives the serv-

ices an added flexibility that they had asked us for—asked the Commission for, if we give them the—

Senator MURRAY. So, that is one of the things they requested?

Mr. MALDON. That is one of the things that the services requested, is they wanted more flexibility so that they can manage the force profile. We believe that it would certainly help with that mid-career group of servicemembers that we wanted to retain, is by changing it from six-plus-four to ten-plus-two.

Senator MURRAY. OK. Thank you. Thank you very much, and thank you all for your testimony today.

Mr. MALDON. Thank you, Senator.

Senator MURRAY. Mr. Chairman, thank you for accommodating me. I appreciate it.

Senator CASSIDY. Mr. Morosky, you mentioned culture changes in the VA. Are there other issues besides a culture change? What comes to mind, I was reading about Matthew Ridgway who in a hundred days took a broken Army in Korea and formed it back into a fighting unit with high morale that was incredibly effective. Now, granted, the VA is—we do not have people walking around the VA corridors with hand grenades hanging around their neck. I get that. But, still, sometimes there are systemic problems that thwart even the best leadership. Do you see any of those?

Mr. MOROSKY. Mr. Chairman, sometimes we refer to it as the frozen middle. We feel as though the people at VA's central office are certainly making a concerted effort and the Secretary has made it a priority to change culture, and we feel that a lot of the front-line people who work at VA can see this and want the culture to change, but there is—the middle management seems to be the biggest challenge, in our opinion, in terms of having that filter from the Secretary's level down to the point of service.

Senator CASSIDY. So, it comes to mind, Ridgway, apparently, when asked what the counterattack plans were, was told there were none. He then replaced the officer who had not developed such plans.

So, I guess there is a sense in which you have to have the ability to replace those middle management who are not doing their job. I think with even all the scandals, only three people have been let go. So, I take it you would probably favor those bills which would increase accountability for that middle management?

Mr. MOROSKY. Absolutely, sir, and that includes the bill today that deals with the bonus rescission.

Senator CASSIDY. Got you. Thank you.

Mr. Maldon, I really appreciate your work. Now, I am skimming over this, trying to understand—I forget if it was Mr. Phillips or Mr. Morosky's comments upon Mr. Maldon. Are both of you OK with the Commission's recommendation of transferability of G.I. benefits? You mentioned, I think, Mr. Maldon, that this has been an important tool in mid-career retention, correct?

Mr. MALDON. Yes, Mr. Chairman, that is correct. The transferability is, in fact, important to retention.

Senator CASSIDY. And I think it was you, Mr. Morosky—I was not quite sure you all were completely in line with their recommendation. Did I misunderstand your testimony?

Mr. MOROSKY. When it comes to G.I. Bill benefits, Mr. Chairman, we just want to make sure that if there are ways that cost is being looked at, that veterans are always the first priority. We are not opposed to dependents having benefits transferred, but we just want to make sure that the benefit remains there for the veteran as the first priority.

Senator CASSIDY. OK. Mr. Maldon, is there anything in your kind of recommendations that would make that not the case?

Mr. MALDON. That is a negative, Mr. Chairman. We believe that the transferability recommendations that we made do just that. They do not do anything to harm the veterans at all. It will not affect or have an impact on retention.

Senator CASSIDY. Now, let me ask you gentlemen—and anyone can answer because I just do not know this—I was struck that all of you are advocating that when somebody goes on health leave, they would continue to have eligibility for their educational benefits. It makes total sense to me, but is there not a provision now where if somebody is injured, say, for example, they lose a leg, and formerly they did something which required their ability to ambulate, so now they would have some rehab that would kick in to help them adjust to life without a leg, but also to have a career that would not require them to ambulate. Is everybody with me so far?

Now, that seems kind of part and parcel of post-service educational programs. Now, I think you, Mr. Maldon, spoke of the need to reduce duplication. So, is there any duplication there would be in the rehab of somebody from a medical event along with the G.I. Bill? I do not know this. I am asking for my own information. Can anybody address that, or did I not make my question clear enough?

Mr. MOROSKY. VA also has another program, sir, called vocational rehabilitation, which allows for disabled servicemembers to learn vocational skills that can accommodate their disabilities.

Senator CASSIDY. Now, vocational rehab, I usually think in terms of, OK, I used to do things with two hands, and now I am going to learn how to do them with one hand. It is a little bit different than, OK, I used to carry pipes but now I am going to go back and get a history degree. Do you follow what I am saying?

Mr. MOROSKY. Yes, sir.

Senator CASSIDY. So, is there an education—I do not know—is there an educational program for those in rehab beyond vocational rehab, or, rather, that would be duplicative of any other G.I. Bill? I am gathering not from the stares I am getting.

Mr. MALDON. To my knowledge, Mr. Chairman, there is not.

Senator CASSIDY. That would be the only reason I could imagine that anyone would not take your suggestions in terms of extending the G.I. benefits after a health event.

Mr. Phillips.

Mr. PHILLIPS. Senator, if I were to characterize vocational rehab, it is not just the body, but the spirit, and it is also a retuning of the soldier, sailor, airman, Marine's mind to be able to take account of the new physical situation this person finds him or herself in and adjust to that, not just physically, but in the way of going about their life and moving on to the next stage.

What we perhaps could do better at is melding both education of the mind, G.I. Bill, and vocational rehabilitation, when it is appropriate, with the soldier or the servicemember who is going through that kind of transition.

Senator CASSIDY. I totally get that. Yes. That just makes total sense to me.

Well, folks, Senator Isakson is not back yet, so I am going to call a recess until he returns, because I know he has questions that he would like to ask.

But, again, thank you for all your service and for all you do representing our veterans. Thank you.

Oh, I am told by somebody behind the chair whom you cannot see—

[Laughter.]

Senator CASSIDY [continuing]. That we can go ahead and adjourn. So, thank you all very much.

[Whereupon, at 4:02 p.m., the Committee was adjourned.]

# A P P E N D I X

## PREPARED STATEMENT OF HON. STEVE DAINES, U.S. SENATOR FROM MONTANA

STEVE DAINES  
MONTANA

Senate Staff  
Rm 1212, Senate Office Building  
Washington, DC 20510  
(202) 226-2651

United States Senate

COMMITTEES  
APPROPRIATIONS  
COMMERCE, SCIENCE AND  
TRANSPORTATION  
ENERGY AND NATURAL  
RESOURCES  
INDIAN AFFAIRS

May 13, 2015

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

I want to thank the Veteran's Affairs Committee for holding this important hearing today on the Blue Water Navy Vietnam Veterans Act of 2015, and I want to thank Senator Kirsten Gillibrand for her hard work on this issue. As the son of a Marine, I know firsthand the importance of keeping the promises made to our servicemen and women. The legislation discussed today is timely and important in holding ourselves accountable to the members of our military while they are active duty and long after they have retired from active duty.

Approximately 20 million gallons of Agent Orange were sprayed in Vietnam to remove jungle foliage during the Vietnam War. The toxic chemical had devastating effects for millions of those who served in Vietnam. Twenty-four years ago, back in 1991, Congress passed a law requiring Veterans Affairs (VA) to provide presumptive coverage to Vietnam veterans with illnesses that the Institute of Medicine had linked directly to Agent Orange exposure. Then in 2002, the VA changed that policy to only cover veterans that had orders for "boots on the ground" during the Vietnam War. This has led to the exclusion of thousands of sailors who were exposed to Agent Orange offshore but are not receiving VA benefits.

Our veterans don't deserve sub-par care. It is unacceptable that a technicality in the law and dysfunctional federal bureaucracy has resulted in the prolonged suffering of thousands of our nation's heroes. This legislation will ensure that victims of Agent Orange-related disease receive the care and compensation they have long deserved. I will fight every day for our veterans, just as they have fought for us.

I hope that shining a light on this issue will renew the efforts by veteran advocates to make sure that these brave veterans receive the benefits they deserve.

Sincerely,  


Steve Daines  
US Senator

PREPARED STATEMENT OF HON. CHRIS GIBSON, U.S. REPRESENTATIVE  
FROM NEW YORK

**CHRIS GIBSON**  
19th District, New York

1708 Longworth Building  
Washington, DC 20515  
(202) 225-5614

<http://gibson.house.gov>



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

May 13, 2015

**HOUSE ARMED SERVICES COMMITTEE**

Subcommittee on Tactical Air and  
Land Forces

Subcommittee on Readiness

**HOUSE AGRICULTURE COMMITTEE**

Subcommittee on Conservation  
and Forestry

Subcommittee on Biotechnology,  
Horticulture, and Research

**HOUSE SMALL BUSINESS COMMITTEE**

Subcommittee on Agriculture, Energy  
and Trade

Subcommittee on Contracting and  
Workforce

Chairman Isakson, Ranking Member Blumenthal, distinguished Members of the Committee, and  
Witnesses,

Thank you all very much for taking an important step forward in addressing a grave  
injustice that has affected members of the United States military who were exposed to the known  
carcinogen and harmful chemical, Agent Orange.

Members of the military, especially thousands in the Navy and Marine Corps,  
distinguished themselves and their country in combat and support operations off of the coast of  
Vietnam during the Vietnam War. While the U.S. was spraying the defoliant Agent Orange,  
these men and women were exposed to it through water purification processes, air currents, and  
other potential avenues for exposure. Fortunately, the Congress rightfully acted to grant them  
presumptive coverage for this exposure in 1991. Unfortunately, in 2002, while attempting to  
clarify who should be covered, the Department of Veterans Affairs unjustly made a  
determination to restrict such presumptive coverage to those who served on land and inland  
waterways. This was contrary to scientific findings, congressional intent, and the recognized  
definition of a country as including its territorial seas.

I am proud to have worked with hundreds of veterans, veterans families, Veterans  
Service Organizations, and Members of Congress to seek to right this wrong with a simple  
modification to the law to ensure that those who served in the territorial seas and harbors would  
be covered. I would especially like to thank Blue Water Navy Veteran widow Carol Olszanecki  
and Susie Belanger, two tireless constituent advocates. Senators Gillibrand, Daines, and the  
other cosponsors have been dedicated advocates, and I am proud to say we have over half of the  
United States House of Representatives on my identical companion bill, H.R. 969.

I thank you all again and look forward to reviewing what this Committee discusses on  
this important legislation. I also look forward to getting this bill signed into law and bringing  
justice to thousands of our Vietnam Veterans who, for over 10 years, have been forgotten. I  
stand ready to assist in anyway.

Thank you

Chris Gibson  
Member of Congress



## PREPARED STATEMENT OF AIR FORCE ASSOCIATION

Chairman Isakson and Ranking Member Blumenthal, The Air Force Association thanks you for your support of the Veterans of the Air Force, their families and survivors.

We are grateful for your unwavering commitment to the men and women who have defended our Nation, and appreciate the priority Congress has given Veterans issues in the past decade. We acknowledge the increasingly difficult budget choices before you in these times. We also appreciate this opportunity to give the Air Force Association's views on the following matters.

## RESERVE COMPONENT ON MEDICAL HOLD

Members of the National Guard or Reserve who are disabled on active duty orders and receiving medical care (this is called "medical hold" status), should not lose eligibility for Post-9/11 GI Bill benefits.

Currently, when a Guard or Reserve servicemember is injured or wounded in a combat theatre, the member transitions on orders to a medical hold status. This stops accrual of active duty time that would count toward Post-9/11 GI Bill benefits, and even if the member returns to service, none of the time spent in medical hold qualifies.

AFA believes fixing this oversight in current statute would allow all servicemembers to continue to accrue the educational benefits earned in service while receiving medical care from the Department of Defense (DOD).

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION (MCRMC)  
RECOMMENDATIONS

The MCRMC recommends a number of steps toward reducing redundancy in GI Bill programs. AFA generally supports these recommendations, as long as those already pursuing an education plan are allowed to finish their courses, and servicemembers who are using Montgomery GI Bill and other education benefits are grandfathered with those benefits.

AFA also supports the MCRMC recommendation to increase the eligibility requirements for transferring Post-9/11 GI Bill benefits to 10 years of service, and the sunset on housing stipend for dependents as long as those already under contract are grandfathered into those contracts.

The MCRMC recommended DOD track the education levels of servicemembers leaving the service, as well as the education levels of servicemembers who transfer their Post-9/11GI Bill to their dependents. It also recommended the VA collect information related to: course completion rates, course dropout rates, course failure rates, certificates and degrees being pursued, and employment rates after graduation, including that information in an annual report to the Congress. AFA agrees to this tracking as well as the recommendation to better prepare servicemembers for transition to civilian life by expanding education and granting states more flexibility to administer state grants programs.

## DOD LEGISLATIVE PROPOSALS

AFA supports DOD's proposals giving Service Secretaries greater flexibility to test and evaluate alternative career retention options under the Career Intermission Pilot Programs, to bolster reemployment rights of those in the Reserve Component and confidential reporting in sexual assault cases.

Thank you again for your support of our force, and for the opportunity to offer this testimony from the Air Force Association.

SCOTT VAN CLEEF,  
*Chairman of the Board.*

PREPARED STATEMENT OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,  
AFL-CIO AND THE AFGE NATIONAL VA COUNCIL



# **AFGE**

## Congressional Testimony

STATEMENT BY

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO  
AND THE AFGE NATIONAL VA COUNCIL

BEFORE

SENATE COMMITTEE ON VETERANS AFFAIRS

ON

PENDING BENEFITS LEGISLATION

MAY 13, 2015

American Federation of Government Employees, AFL-CIO  
80 F Street, NW, Washington, D.C. 20001 \* (202) 737-8700 \* [www.afge.org](http://www.afge.org)



### **Overview**

The American Federation of Government Employees and the AFGE National Veterans' Affairs Council (hereinafter "AFGE"), representing over 220,000 employees working for the Department of Veterans Affairs at medical centers, regional offices (ROs), and veterans' cemeteries, appreciates the opportunity to share our concerns and recommendations regarding pending benefits legislation. Veterans' issues are personal for AFGE members; over 40% of our overall membership are veterans themselves, and countless others are directly related to veterans.

### **S. 627**

S. 627 would require the VA Secretary to name employees and supervisors who contributed to the purposeful omission of one or more veterans waiting for health care based on findings from Inspector General (IG) reports in 2014 that focused on scheduling practice failures in VA medical facilities. The Secretary would then be required to recoup bonuses from these employees, pending a hearing and appeal to the Merit Systems Protection Board. AFGE remains committed to helping VA provide the best possible care to veterans and exposing any and all issues involving illegal and malicious scheduling practices that harm veterans.

AFGE has significant concerns regarding the targets of the performance bonus repayments in S. 627. S. 627 unfairly targets all Medical Support Assistants (MSAs), the scheduling clerks who are responsible for setting appointments for veterans. AFGE is particularly concerned with Section 1(a)(1)(A) in S. 627, which requires the VA Secretary to identify employees (including MSAs) who contributed to purposefully omitting the names of veterans from the electronic wait list. Before blaming MSAs for the mishandling of VA patient schedules by managers, it is critical to understand MSAs' particular job duties and their status within VA. A current position description for MSAs includes the following duties:

- Perform receptionist duties, customer service and other duties assigned for the proper and timely treatment of patients and maintains appointments schedules
- Interpret and communicate requirements of VHA Scheduling Directives and complete accurate scheduling responsibilities
- Schedule appointments and utilize the Electronic Waiting List (EWL)
- Complete personnel reports, rosters, and maintain supplies and forms
- Coordinate administrative services for Veterans, family members, caregivers, and general public

MSAs make no decisions regarding scheduling policies and practices in their facilities as demonstrated by their position descriptions. MSAs work at the direction and within the complete control of their immediate and higher level supervisors. Furthermore, MSAs regularly fear for their jobs. Over the past year, Congress has heard extensive testimony regarding VA's culture of fear and retaliation against rank and file employees at the VA. Many of the critical whistleblowers in Phoenix and elsewhere around the country from last summer's VA scandal were MSAs themselves. They are a critical component of the work done at the VA. However, since MSAs have no strategic decision making power and fear for their jobs, they should not be blamed for abhorrent scheduling practices.

Furthermore, as front line employees at the VA, MSAs rarely receive performance bonuses. The few performance bonuses paid to them are very modest. In 2014, out of 15,778 MSAs nationwide, only 2,501 received a performance bonus (16%). 470 of these performance bonuses were \$100 or less and 1,998 of these bonuses were \$500 or less. Just 115 MSAs received a performance bonus over \$1,000 (.7% of total MSAs). In Phoenix, where the waitlist scandal burst onto the scene, just 5 MSAs received a performance bonus out of 230 employed there, or 2% of MSAs.

As front line employees, MSAs earn modest salaries. In fact, the salary of a first year MSA GS-4 Step 1 employee working as the sole earner in a family of four could actually approach the federal poverty line. MSAs range from GS-4 to GS-6 employees, who earn between \$25,011 and \$32,517 as GS-4 employees and \$31,192 and \$40,552 as GS-6 employees. For the mere 16% of these employees receiving performance bonuses, they can typically hope for a bonus between 1-2% of their base salary at best.

As this data makes clear, the average MSA either receives no performance bonus or very small bonuses to their modest salary. Instead of recouping performance bonuses from low wage employees, Congress should focus on improving care for veterans at the VA, including oversight of the \$5 billion in funding for hiring additional staff provided last year. AFGE fully supports accountability in performance bonuses for both managers and employees. The VA needs more vehicles to reward good behavior and attract talented employees. However, accountability comes from building a culture of transparency and collaboration at the VA, rather than punishing low wage employees for following the directions of their supervisors.

As an alternative, AFGE would support legislation that provides additional transparency for the taxpayer and lawmakers for performance bonuses, including a study of the variety of hidden bonuses management receives. AFGE would also support a study of ways to improve performance bonuses to recruit, retain, and reward innovation at the VA.

#### **S. 1203, 21<sup>st</sup> Century Veterans Benefits Delivery Act**

AFGE, as the exclusive representative of VA employees working to process claims in ROs, would also like to weigh in on S. 1203 from Senators Casey and Heller. AFGE applauds Senators Casey and Heller for their leadership in acting to end the backlog through legislation, oversight, and bipartisan cooperation.

AFGE supports many of the provisions in S. 1203, including but not limited to:

- **Section 205**, which mandates a time-motion study from the VA Secretary and a subsequent analysis in the President's budget to determine the proper amount of Full Time Employees required to process claims to end the backlog. VBA has relied on mandatory overtime from employees for their record breaking level of production of the past two years. AFGE argues that VBA is understaffed because utilizing mandatory overtime leads to burnout amongst employees and is a high cost short term solution to a long term problem.
- **Section 206**, which requires VBA to complete its resource allocation model, a long broken system that reduces resources from struggling ROs.

- **Section 210**, which provides public access for appeals information. Appeals continue to be neglected, with employees on appeals teams regularly placed on initial claims production. Veterans with appeals deserve to have their responses in a timely manner.

AFGE has concerns with Section 211, regarding licensure portability for non-VA providers conducting compensation and pension (comp and pen) exams. AFGE has received reports from a number of front line employees working in VA medical facilities regarding quality and timeliness issues with exams performed by non-VA providers. Allowing for portability of licensure removes an additional level of accountability. Physicians are accountable to their local licensing boards and removing this provision could create issues. Overall, AFGE believes that more of the contracted comp and pen exams should be brought back into the VA and performed by VA clinicians specializing in these evaluations, who are better able to identify disabilities and refer veterans for treatment to other VA clinicians when needed, and are also able maximize coordination between VHA and VBA.

PREPARED STATEMENT OF BLUE WATER NAVY VIETNAM VETERANS ASSOCIATION

*Blue Water Navy Vietnam Veterans Association*



**Written Testimony**

**submitted by the**

**Blue Water Navy Vietnam Veterans Association  
to the**

**United States Senate  
Veterans Affairs Committee**

**For a May 13, 2015 Hearing**

**Regarding Senate Bill 681**



BlueWaterNavy.org  
navy@BlueWaterNavy.org  
PO Box 1035, Littleton, CO 80160-1035  
303-762-9540

## INTRODUCTION

Despite previous attempts by Congress to provide medical and economic benefits for the “toxic wounded”<sup>1</sup> veterans of the Vietnam War, there are still thousands of these veterans being denied basic medical care and disability compensation by the Department of Veterans Affairs (DVA or VA). These include veterans who served both on land and at sea during that conflict. The largest group by far of Vietnam veterans currently being denied service-connected benefits for toxic wounds includes those who served on the waters in and around Vietnam. These men are suffering the effects of dioxin poisoning through their exposure to the herbicide Agent Orange. For these veterans, the results of ‘Chemical Warfare gone awry’ have been showing up in their lives as one or more of the acknowledged diseases<sup>2</sup> caused by the components of the herbicide Agent Orange. These maladies have been rearing their ugly heads for decades as the poison works its destruction on a time-released basis.<sup>3</sup> These veterans have also watched as their children and grandchildren present with birth defects and later-life health problems that have afflicted their innocent progenies and further burdened their already-suffering consciences. Their experience is not unique; it is also being felt by those who served with boots on ground. These sea-based veterans are not asking for anything new. They are asking for a reinstatement of benefits previously afforded them by the Agent Orange Act of 1991. We are now entering the 40<sup>th</sup> year since the end of that thirteen year conflict. For these veterans, the Vietnam War has never ended. It is now time to stop this miscarriage of justice by acknowledging that there was only one causal agent responsible for multiple identical diseases in men who were on the ground and those who were at sea, only separated by a couple dozen

---

<sup>1</sup> Passage of the Agent Orange Act of 1991 provided VA Benefits to all veterans of the Vietnam War who showed symptoms of an Agent Orange-related disease. In 2002, the VA removed all veterans whose feet did not touch the solid ground of mainland Vietnam. Those veterans are now asking to be reinstated under the provisions of the AOAct of 1991. (Origin of the identifier “Toxic Wounded” is acknowledged as Mr. Rick Weidman of the Vietnam Veterans of America.)

<sup>2</sup> The VA has enumerated several types of cancers, heart diseases, diabetes and its secondary effects, and other diseases which can be found on the VA’s Website and in VA literature.

<sup>3</sup> Studies have shown that dioxin can cause delayed onset with aggressive types of many of the acknowledged diseases that can be charted out on a consistent timeline. “Agent Orange exposure, Vietnam War veterans, and the risk of prostate cancer,” by Karim Chamie MD, et. al, addresses the appearance of prostate cancer in Vietnam veterans in a 13,000+ veteran study thus: “The mean time from exposure to diagnosis was 407 months.”

miles or less. No other toxin than Agent Orange-dioxin can cause such a wide range of maladies. The mere fact of them having one of those specific diseases should automatically provide them with the presumption of exposure to herbicides in Vietnam. The passage of S-681 / HR-969 can bring an end to the Blue Water Navy Vietnam veterans' suffering.

#### TESTIMONIAL BODY

Following the unanimous passage of PL-102-4, The Agent Orange Act of 1991 was set in stone as Law of the Land; or so we thought. The VA wrote up the initial rules of eligibility in their M21 Adjudications Manual identifying anyone who served within the Theater of Combat<sup>4</sup> as eligible for a presumption of exposure<sup>5</sup> to the herbicide Agent Orange, which contained TCDD, the deadliest form of dioxin known to man.<sup>6</sup> In case anyone thinks that a large quantity of this dioxin is required to wreak havoc on living organisms, it must be noted that the EPA's over-generous "safe drinking water" level is a dilution of one part in 30 quadrillion<sup>7</sup> and that a controlled dioxin study done in 1996 using lab rats found that those animals exposed to dioxin at 10 parts per trillion (ppt) experienced severe suppression of their immune system resulting in

---

<sup>4</sup> The "Theater of Combat", the "Combat Zone," the "War Zone" and the area for award of the Vietnam Service Medal were the same area. As declared by President L.B. Johnson on July 8, 1965 as Executive Order 11231, the Vietnam Service Medal was awarded to veterans who served within the precisely outlined areas which the Department of Defense specified as the War Zone for Vietnam. Please see the image at <http://www.bluewaternavy.org/yournavy.htm>

<sup>5</sup> The 10/06/93 instruction in the VA's M21 Manual states: "(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims for service connection for non-Hodgkins lymphoma, soft-tissue sarcoma and chloracne. See paragraph 5.03c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records show that the veteran received the Vietnam Service Medal." (Compare this to Footnote 10)

<sup>6</sup> The World Health Organization states, "Dioxins are highly toxic and can cause reproductive and developmental problems, damage the immune system, interfere with hormones and also cause cancer.....Some 419 types of dioxin-related compounds have been identified but only about 30 of these are considered to have significant toxicity, with TCDD being the most toxic."  
<<http://www.who.int/mediacentre/factsheets/fs225/en/>>

<sup>7</sup> This information is located on the EPA Website titled "Basic Information about Dioxin (2,3,7,8-TCDD) in Drinking Water" A quadrillion is 10 raised to the minus 15<sup>th</sup> power.  
<http://water.epa.gov/drink/contaminants/basicinformation/dioxin-2-3-7-8-tcdd.cfm>



fatal inability to resist common strands of influenza. Ten parts per trillion is the equivalent of one drop of dioxin in a water solution equally distributed in a volume of train cars 10 miles long. But no one knows what the lowest threshold of TCDD exposure is. Therefore, any statement by the VA indicating that dioxin did not occur in "sufficient amounts to cause health problems" is as medically and scientifically inaccurate as one can get. "Safe levels" of TCDD reach beyond our current scientific ability to measure units that small!

In order to make up for the absolute lack of documentation<sup>8</sup> regarding the whereabouts and the measurements of Agent Orange usage during all of the Vietnam War, Congress adopted the rule of "presumption of exposure" and made the determination that the proof of exposure for any individual was based on that veteran's diagnosis of one of the diseases presumed to be caused by the TCDD dioxin. This was purposefully set up as "presumptive" because there was no documentation of military or other origin that contained quantifiable evidence for proof of exposure, whether on land or at sea. Presumption of exposure to herbicide in Vietnam can most accurately be defined as "the definite existence of a potential for TCDD exposure."<sup>9</sup> That descriptive applies to every ship of the Seventh Fleet that sailed within the Vietnam Combat Zone.

The M-21 Manual's original instructions afforded the presumptive status to any veteran in receipt of the Vietnam Service Medal (VSM) as the determining factor.<sup>10</sup> The instructions in the Manual were changed in 2002 to state that eligibility for the presumption of exposure extended

<sup>8</sup> "Because of the IMPOSSIBILITY that most Vietnam veterans could prove that they had been exposed to Agent Orange or other herbicides in Vietnam during the war, the 1991 Agent Orange Act created a presumption of service connection.", (emphasis added here), Committee on Blue Water Navy Vietnam Veterans and Agent Orange Exposure, 2011.

<sup>9</sup> Personal correspondence with Dr. Wayne Dwernychuk, world renowned Environmental Scientist and acknowledged Vietnam dioxin contamination specialist, 2014.

<sup>10</sup> The M-21 Manual as of February 27, 2002 states: "Service in Vietnam" for the purpose of presumption of exposure to herbicides cannot be conceded based on receipt of the Vietnam Service Medal, because the presumption of exposure applies to land exposure only. The awarding of this medal was not limited to armed forces members whose service involved duty or visitation on land in Vietnam." ..... "A veteran must have actually served on land within the Republic of Vietnam (RVN) to qualify for the presumption of exposure to herbicides.. 38 CFR Sec. 3.307(a)(6). The fact that a veteran has been awarded the Vietnam Service Medal does not prove that he or she was "in country."

only to veterans who served with their boots-on-ground “in Vietnam.” However, even that definition is being used inconsistently because those who set foot on any of the many islands off the coast of Vietnam (such as Con Son Island and Phu Quac Island) are also afforded the presumption of exposure by DVA for having set foot on ground in those distant offshore places. That change created the division in an otherwise unified world of the Vietnam War veteran. There was now, for the first time, an offshore Blue Water Navy veteran and an “in country, boots-on-ground” veteran. In the real world, this distinction does not exist.

Over the years since 2002, the DVA has ignored valid scientific and medical studies as well as the Congressionally-mandated counsel of the Institute of Medicine (IOM) in the recognition of evidence that ships of the Seventh Fleet were likely to have been contaminated by the dioxin-laden Agent Orange through a wide range of possible routes of exposure.<sup>11</sup> Under the rule of presumptive exposure that has been applied to every veteran who served with boots on ground, in the absence of contradicting evidence, nothing beyond the potential for exposure is needed to proclaim Agent Orange-dioxin as the cause of the numerous diseases a veteran could be diagnosed with as long as the diagnosis for at least one of those diseases is made. The Blue Water Navy veterans have had diagnoses of all these diseases, and their potential for exposure has never been contradicted by any evidence. To the contrary, the IOM as well as the Australian University of Queensland’s National Research Centre for Environmental Toxicology and numerous other studies have proclaimed valid evidence for that exposure.<sup>12</sup> Additionally, the DVA has been guilty of outright misrepresentation of scientific and medical data that provides strong evidence in favor of assigning the presumption of exposure to the men who served offshore Vietnam.

---

<sup>11</sup> Please refer to the online study, “A Re-Analysis of Blue Water Navy Veterans and Agent Orange Exposure,” [www.bluewaternavy.org/ReIOM.htm](http://www.bluewaternavy.org/ReIOM.htm)

<sup>12</sup> The Military-Veterans Advocacy, Inc. submission of written testimony for this hearing, which is included in its entirety into this testimony by reference, contains detailed information on this specific subject. John Wells, Esq., author of that testimony is a subject matter expert on the work of the University of Queensland and addresses the topic of this specific valid evidence in detail.

The VA lied about the conclusions of the IOM's 2011 study<sup>13</sup> on Vietnam Navy veterans and their exposure to Agent Orange. The conclusions of the IOM in that study actually constituted the second of four times that Agency strongly suggested there were potential routes of exposure for the Navy ships or stated outright that Blue Water Navy sailors should be included in the presumption. Looking at the chronological evidence of the Institute of Medicine's documents that address this issue, we find this chain of thought<sup>14</sup>:

*The First Report*

The IOM's "Veterans and Agent Orange: Update: 2008" (released July 24, 2009) clearly states: "...members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure." The Update: 2008 is also the IOM's first serious examination of an Australian report on ship-board water distillation from a 2002 Queensland, Australia Study titled "Examination of the Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans via Drinking Water." This concept of contaminated water aboard both American and Australian naval vessels now plays an important part in the assumptions regarding plausible pathways for Agent Orange/Dioxin (AO/D) contamination of the offshore Blue Water Navy personnel of both countries.

*The Second Report*

In October, 2009, the DVA tasked the IOM with an 18-month study to determine whether the Vietnam veterans in the Blue Water Navy experienced exposures to herbicides and their contaminants comparable with those of the Brown Water Navy Vietnam veterans and those on the ground in Vietnam. By its very wording, this started off as a "comparative" study, a concept that fundamentally violates the concept of presumptive exposure. However, as it turned out, the conclusions of the IOM Report "Blue Water Navy Vietnam Veterans and Agent Orange Exposure," released in May, 2011 was a further set-back to the DVA's position. That report concluded:

---

<sup>13</sup> The VA's fabrication of a conclusion to the IOM's 2011 study prompted this Association's call for the Public Censure of the DVA. Please refer to this on-line information:  
<http://bluewaternavy.org/publiccensure.htm>

<sup>14</sup> From a December 21, 2013 Release by this Association entitled "Beyond Arbitrary and Capricious."

- There isn't enough data to make any statement regarding 'quantitative' exposure amounts for not only the offshore Blue Water Navy, but for the troops with 'boots-on-ground' and those who patrolled the rivers and inland waterways (the 'brown water') of Vietnam; and
- There can be no statement of certainty that any group of Vietnam veterans had even experienced 'qualitatively' different exposures to herbicides.

Of course, this information was already known and was the basis for using 'presumptive exposure' when the 1991 Agent Orange Act was written. Because no measurement data existed from the time of the Vietnam War, all statements attempting to address such measurements will always be only pure speculation. We know that the entire environment of South Vietnam was contaminated with AO/D, but we don't know how much AO/D was released in any specific area and we don't know how much AO/D contaminated any specific individual or group.

*The Third Report*

The IOM's "Veterans and Agent Orange: Update 2010" (released in 2011, shortly after the release of the 2011 IOM Blue Water Navy and Agent Orange Report) reiterated that "the NAS [National Academy of Science] convened the Blue Water Navy Vietnam Veterans and Agent Orange Exposure Committee to address that specific issue; its recently released report (IOM, 2011) found that information to determine the extent of exposure experienced by Blue Water Navy personnel was inadequate, but that there were possible routes of exposure." This report reprinted statistical tables from the results of the 1990 CDC Selected Cancers Study which indicate that Blue Water Navy personnel had the highest risk level for certain Agent Orange-related cancers. It goes on to say that "US Navy riverine units are known to have used herbicides while patrolling inland waterways (IOM, 1994; Zumwalt, 1993), and it is generally acknowledged that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land. Thus, military personnel who did not serve on land were among those exposed to the chemicals during the Vietnam conflict."

*The Fourth Report*

In their bi-annual report "Veterans and Agent Orange: Update: 2012," released December 3, 2013, the IOM repeats and refers back to the findings of the three previous key reports that indicate:

- The individuals who served offshore Vietnam should not be exempted from receipt of VA benefits for Agent Orange-related disabilities, as there is no medical or scientific

evidence to deny those veterans the benefits that other service members from the Vietnam War receive on a regular basis;

- There were several viable pathways for exposure of the crews on the ships of the Seventh Fleet who served offshore Vietnam;
- There is no evidence that Agent Orange/Dioxin did not poison the veterans in question and there is overwhelming evidence indicating a high probability that it did;
- No single group of veterans that served anywhere in Southeast Asia should be removed from the benefits for presumptive exposure to the deadly herbicides used in the broader geographical area throughout the Vietnam War. In the December 2013 release of "Veterans and Agent Orange: Update: 2012," the IOM once again reminded the DVA that no evidence exists for reliably segmenting Vietnam veterans by location if intending to address exposure to the carcinogenic element (TCDD) found in the herbicides used throughout Southeast Asia. They also stated that even though reliable scientific measurements do not exist to quantify the exact amounts of any TCDD exposure for any Vietnam veteran, there were possible and plausible routes for exposure of Blue Water Navy personnel.

The Blue Water Navy Vietnam Veterans Association spotted the DVA's dishonesty the day DVA published its conclusions in the Federal Register (Notice Citation 77 FR 76170) on December 26, 2012, when VA declared the results of the IOM's study indicated "Presumption of Exposure to Herbicides for Blue Water Navy Vietnam Veterans Not Supported." We immediately called for the Public Censure of DVA for that distortion of fact. The Court of Appeals for Veterans Claims ruling of April 23, 2015, fully vindicated us, saying the IOM report "falls short of the Secretary's assertion that the report specifically "confirmed" that there was no likelihood of exposure to herbicides in Da Nang Harbor."<sup>15</sup>

---

<sup>15</sup> United States Court of Appeals for Veterans Claims, No. 13-3339, Robert H. Gray v. Robert A. McDonald, decided April 23, 2015.

**COST**

At the time of this writing, the Congressional Budget Office (CBO) has not yet released a score for S-681/HR-969. However, our deep and measured analysis reveals several key points which can be used to make a cost determination. Our documentation shows that approximately 174,000 individuals<sup>16</sup> served offshore Vietnam in the Territorial Waters as defined as 12 miles from Baseline.<sup>17</sup> Of those, we estimate that less than 35,000 will be eligible to file for service-connected disability under this new legislation. Actual claims received should not exceed about 20,000. Of those, about 15,000 could pass the stringent requirement of a current diagnosis of an existing disability warranting a scheduler assignment of a disability percentage. Translating this into dollars, the 10-year period of this legislation should cost less than \$1 Billion with the actual figure perhaps closer to \$800 Million. These estimates await verification by the CBO, but have passed the tight scrutiny of the Blue Water Navy Vietnam Veterans Association.

**CONCLUSION**

It serves no purpose to lambast the DVA for its history of moral and humanitarian sins. It only needs to once again be pointed out that the pool of American military blood is creating a growing stain on the soul of this Country, more so every day that this legislation awaits enactment. Support for this legislation is medically and scientifically well grounded; it has been shown to be hugely popular in a wide expanse of grassroots American institutions<sup>18</sup>; and it is a logical and morally sound decision to support this legislation regarding disability benefits for the Blue Water Navy Vietnam veterans who currently suffer from one of the VA-recognized

---

<sup>16</sup> The origin of these numbers is from documentation of the DoD Manpower Data Center Reports vetted by the Congressional Research Service.

<sup>17</sup> Vietnam uses the Straight Baseline method of defining their Territorial Sea Boundary. The Baseline typically stands out further to sea than the shoreline and is drawn to encompass offshore islands to which it claims ownership. The Military-Veterans Advocacy, Inc. submission of written testimony, which is included in its entirety into this testimony by reference, includes a map showing the Theater of Combat and the 12-mile extension beyond the Baseline as defined by Vietnam.

<sup>18</sup> The BWNVVA has amassed Resolutions passed by 5 cities, 7 counties, 2 tribal councils, 13 states, with one state pending. These Resolutions represent support for the Blue Water Navy cause dating back so legislation from 2009 and show a wide range of popular support from the heartlands of America. A list identifying these governmental entities is included as the Appendix to this Testimony.

diseases caused by Agent Orange. We are asking for the application of reason and consistency in the actions of the DVA. This legislation provides a way for this Committee to do just that. Your support of this legislation will be deeply appreciated.

Submitted as written testimony to Committee Chairman Johnny Isakson, Ranking Member Richard Blumenthal and the other distinguished members of the Senate Committee on Veterans Affairs this 13<sup>th</sup> day of May, 2015

A handwritten signature in black ink, appearing to read "John Paul Rossie". The signature is fluid and cursive, with the first name "John" and last name "Rossie" clearly distinguishable.

John Paul Rossie, MA, MS, MBA,  
Executive Director  
Blue Water Navy Vietnam veteran, RVN 1969

## **APPENDIX ONE**

**LIST OF GRASSROOT AMERICAN  
GOVERNMENTAL ENTITIES WHO HAVE  
PASSED RESOLUTIONS IN FAVOR OF  
THE BLUE WATER NAVY LEGISLATION**



**LIST OF CURRENT RESOLUTIONS**

Resolutions from State, County and Municipal entities in support of The Blue Water Navy Agent Orange legislation as it has appeared in the House of Representatives since the Session of 2009, with their date of adoption shown. Actual documents can be seen on-line at <http://www.bluewaternavy.org/forum/index.php>:

City of Wawarsing, NY	3/20/2014
City of Bellingham, WA	3/10/2014
City of Littleton, CO	1/21/2014
City of Beacon Falls, CT	5/13/2013
City of Seymour, CT	11/6/2013

Inter-Tribal Council of Nevada	4/25/2014
Wharton County, TX	4/14/2014
Delaware County, NY	3/12/2014
Fallon Paiute-Shoshone Tribal Council, NV	3/11/2014
Saratoga County, NY	2/25/2014
Ulster County, NY	1/22/2014
Sullivan County, NY	12/19/2013
Riverside County, CA	3/6/2013
St. Tammany Parish, LA	2010

State of Oregon	in process
State of Vermont	5/31/14
State of Rhode Island	5/14/2014
State of Alaska	4/4/2014
State of Hawaii	4/4/2014
State of Pennsylvania	4/2/2014
State of Arizona	2/24/2014
State of Texas	5/17/2013
State of Kansas	2/16/2013
State of New York	6/18/2012
State of Maryland	5/8/2011
State of Tennessee	5/24/2010
State of Louisiana	4/28/2010
State of Alabama	1/12/2010
State of Texas	5/30/2009

**TOTALS:**

5 Cities  
7 Counties  
2 Tribal Councils  
13 States  
1 State Pending

---

PREPARED STATEMENT OF CONCERNED VETERANS FOR AMERICA

S. 270: CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015

*To amend title 38, United States Code, to revise the definition of spouse for purposes of veterans benefits in recognition of new State definitions of spouse, and for other purposes.*

CVA has NO POSITION on this legislation.

S. 602: GI BILL FAIRNESS ACT OF 2015

*To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes.*

CVA has NO POSITION on this legislation.

S. 627: A BILL TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO REVOKE BONUSES PAID TO EMPLOYEES INVOLVED IN ELECTRONIC WAIT LIST MANIPULATIONS, AND FOR OTHER PURPOSES.

*To require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, and for other purposes.*

Last year it was revealed that wait list manipulations on the part of high-ranking VA employees had resulted in deaths as veterans waited for the care they needed. This was done in order to make it appear as if arbitrarily imposed wait time-reduction goals were being met, given that the annual bonuses paid to those officials depended in part on that reduction. It seems absurd, then, that these officials could still be eligible to a bonus despite their poor behavior, particularly as it has been revealed that the bonuses were paid out on the basis of an untruth.

By requiring the VA Secretary to identify individuals who were involved in wait list manipulation and also received a bonus in part because of the omission, this bill ensures that such behavior is not rewarded. The bill would allow for proper investigation into all cases, and balances employee protections with proper accountability. Those individuals identified and found to be guilty after an investigation will be required to repay that bonus.

CVA SUPPORTS this legislation.

S. 681: THE BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015

*To amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes.*

CVA has NO POSITION on this legislation.

DRAFT LEGISLATION: THE 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

*To amend title 38, United States Code, to improve the processing by the Department of Veterans Affairs of claims for benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.*

The VA claims backlog has long been an issue. Veterans are often forced to wait for months—and sometimes years—to have their claims adjudicated and receive benefits that they deserve. Over the past few years, VA has paid lip service to the issue, but little real progress has been made. VA continues to play a shell game, shifting numbers around, but doing little to ensure that veterans are cared for.

This legislation would make needed and sensible improvements to the claims system, and could potentially speed up claims processing, thereby allowing veterans to receive a decision on their claims and get on with their lives. The reporting requirements that are embedded in this bill are especially important to re-build the trust in VA that has been eroded due to the recent scandals. These reporting requirements will help shed light on the issues in VBA, and the systemic changes that this bill would implement will make strides toward rectifying problems in order to help ensure that the backlog is eliminated, and remains so.

CVA SUPPORTS this legislation.

DRAFT LEGISLATION: VETERANS COMPENSATION COST-OF-LIVING-ADJUSTMENT ACT  
OF 2015

*To provide for an increase, effective December 1, 2015, 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.*

CVA has NO POSITION on this legislation.

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION LEGISLATIVE  
PROPOSALS—REGARDING COMMISSION RECOMMENDATIONS 11 AND 12 (SECTIONS 1101–  
1204)

The recommendations offered by the Military Compensation and Retirement Modernization Commission (MCRMC) are, by and large, common-sense proposals which would streamline servicemember benefits while continuing to provide a robust benefits package, ensuring the continuing viability of an all-volunteer force. Recommendations 11 and 12 are no exception. The rationalization of education benefits makes them more user friendly, by eliminating programs that offer less benefit to servicemembers. They make better use of taxpayer dollars as well, by eliminating redundant BAH payments to dependents of servicemembers after 2017. Furthermore, by increasing the time in service needed to transfer the Post-9/11 GI Bill to dependents, servicemembers are encouraged to remain in the military, reducing turnover and keeping experienced NCOs and officers in service.

In terms of transition, the Transition Assistance Program (TAP) provides important information to servicemembers as they separate from active duty. CVA does, however, have some reservations about making the educational portion of TAP mandatory. While we understand that the reason for this is to require commanders and line leaders to allow transitioning servicemembers to attend, “check-the-box” training often has the counter effect of causing servicemembers to resent the training, rather than glean the information they need.

CVA SUPPORTS this legislation, with some reservations.

DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS—REGARDING EDUCATION BENEFITS,  
TRANSITION ASSISTANCE PROGRAM, AND ADVISORY BOARD ON DOSE RECONSTRUCTION  
(SECTIONS 514, 522, 542, 545, AND 1041)

CVA has NO POSITION on this legislation.

DISCUSSION DRAFT INCLUDING PROVISIONS DERIVED FROM S. 151, S. 241,  
S. 296, S. 666, S. 695, S. 743, S. 865

To amend title 38, United States Code, to modify the treatment under contracting goals and preferences of the Department of Veterans Affairs for small businesses owned by veterans, to carry out a pilot program on the treatment of certain applications for dependency and indemnity compensation as fully developed claims, and for other purposes.

CVA has NO POSITION on this legislation.

PREPARED STATEMENT OF PAUL R. VARELA, ASSISTANT NATIONAL LEGISLATIVE  
DIRECTOR, DISABLED AMERICAN VETERANS

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee: Thank you for inviting the DAV (Disabled American Veterans) to testify at 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 1.2 million wartime service-disabled veterans. DAV is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 151, THE FILIPINO VETERANS PROMISE ACT

This bill would require the Secretary of Defense to establish a process to determine whether individuals claiming certain service in the Philippines during World War II are eligible for certain benefits despite not being on the so-called “Missouri List.” The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and such military historians as the Secretary of Defense would consider appropriate, would establish a process to determine whether a covered individual served as described in subsection (a) or (b) of section 107 of title 38, United States Code, for purposes of determining whether these individuals would be eligible for benefits described within relevant subsections.

DAV has received no resolution from our membership on this topic; thus, DAV takes no position on this bill.

S. 241, THE MILITARY FAMILY RELIEF ACT OF 2015

This bill would authorize the Secretary of Veterans Affairs to pay temporary DIC to the surviving spouse of a veteran if, at the time of death, the veteran was in receipt of or entitled to receive compensation for a service-connected disability rated as total for at least one year preceding the veteran's death. Payments made on this temporary basis would not be made in excess of six months.

Delays in the adjudication of benefits, particularly those to survivors can have serious adverse consequences. Providing temporary payments could provide welcome relief to survivors while their claims are being processed.

DAV supports this bill, because it is alignment with our mission to support the needs of survivors of veterans who died as a result of service-connected disabilities.

S. 270, THE CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015

S. 270 would amend title 38, United States Code, to revise the definition of spouse for purposes of veterans' benefits in recognition of new State definitions of spouse.

Section 101 of title 38, United States Code would be amended to reflect that an individual would be considered a 'spouse' if a marriage of the individual is considered valid under the laws of any State, thus making same-sex spouses eligible for benefits under title 38.

DAV has received no approved resolution from our membership on this topic; thus, DAV takes no position on this bill.

S. 296, THE VETERANS SMALL BUSINESS OPPORTUNITY AND PROTECTION ACT OF 2015

This bill would amend title 38, United States Code, section 8127, to enhance Department of Veterans Affairs business-related protections in instances of death of service-connected disabled veteran business owners. The bill would also extend these business-related protections to survivors of active duty servicemembers who are killed in the line of duty.

These amendments would make changes to the eligibility period for the Department of Veterans Affairs' (VA's) service-disabled small business contracting goals and preferences program. The surviving spouse of a service-disabled veteran who acquires the ownership interest in a small business of the deceased veteran would retain the ability to operate as a veteran-owned small business for a period of ten years following the veteran's death, if such veteran was either 100% disabled or died from a service-connected disability; or for three years after such death, if the veteran was less than 100% disabled and did not die from a service-connected disability.

In instances when a servicemember is killed in the line of duty, VA small business contracting goals and preferences would also extend to the surviving spouse or dependent. The survivor would be recognized as a small business by VA beginning on the date of the servicemember's death and end on the earlier of either the date on which the surviving spouse remarries or relinquishes, or the date on which the surviving dependent relinquishes, an ownership interest in the small business concern, and no longer owns at least 51 percent of such small business concern; or ten years after the servicemember's death.

DAV supports this bill in accordance with resolution No. 150, as adopted at our most recent national convention held in Las Vegas, Nevada, August 9–12, 2014. This resolution calls on Congress to support legislation to provide for a reasonable transition period for all service-disabled veteran-owned small businesses following the death of disabled veteran owners.

S. 602, THE GI BILL FAIRNESS ACT OF 2015

This bill would amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 educational assistance.

The bill would amend subsection 3301(1)(B) of title 38, United States Code, by inserting the content of subparagraph 12301(h) of title 10, United States Code to the existing language in this subsection. Adding this language in the subsection would validate as active duty time for the purposes of Post-9/11 educational assistance any period(s) spent by servicemembers (including Guard and Air National Guard members in certain circumstances) receiving authorized medical care, undergoing medical evaluations for disability, or completing a required Department of Defense

health care study, which may include an associated medical evaluation of the member.

The bill would provide for a retroactive application of this amendment as if the amendment were enacted immediately after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008, Public Law 110-252.

DAV has received no approved resolution from our membership on this particular topic, but would not oppose passage of such legislation.

S. 627, to require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, and for other purposes

S. 627 would require the Secretary of Veterans Affairs to revoke bonuses paid to employees who were involved in direct or indirect manipulation of patient care waiting lists during a specified period.

DAV has received no resolution from our membership on this topic; thus, DAV takes no position on this bill.

#### S. 666, THE QUICKER VETERANS BENEFITS DELIVERY ACT

This bill would amend title 38, United States Code, section 5125, to improve the treatment of medical evidence provided by non-Department of Veterans Affairs medical professionals in support of veterans' claims for disability compensation.

The bill would eliminate the VA practice of ordering unnecessary compensation and pension examinations. Unnecessary examinations lead to delays in delivery of benefits, tie up VA resources and add to the frustration of veterans who in many cases have provided sufficient medical evidence to support the claim. Requesting a VA examination when acceptable medical evidence already has been supplied creates the impression that private evidence is less valuable than evidence produced internally by VA.

DAV continues to press for changes that improve and streamline the claims processing system. This legislation would give due deference to private medical evidence that is competent, credible, probative, and otherwise adequate for rating purposes.

DAV is pleased to provide our support for this bill, consistent with Resolution No. 192, which calls on Congress to support meaningful reform in the Veterans Benefits Administration's (VBA) disability claims process. On April 14, 2015, DAV testified before the House Subcommittee on Disability and Memorial Affairs in support of a similar bill, H.R. 1331.

#### S. 681, THE BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015

This bill would amend title 38, United States Code, to expand the accepted presumptions to justify service connection from exposure to herbicides containing dioxin, including Agent Orange deployed by American forces during the Vietnam War.

This legislation would extend existing health care and compensation benefits to certain veterans who served "in the territorial seas of such Republic." S. 681 would extend eligibility for VA benefits retroactively to September 25, 1985.

DAV supports this legislation as it is consistent with DAV Resolution No. 072, passed at our most recent National Convention, held August 9-12, 2014, in Las Vegas, Nevada.

#### S. 695, THE DIGNIFIED INTERMENT OF OUR VETERANS ACT OF 2015

This bill would require the VA Secretary to study and report to Congress on matters relating to the interment of veterans' unclaimed remains in national cemeteries under the control of the National Cemetery Administration.

The study would assess the scope of the issues relating to veterans' unclaimed remains, including the estimated number of such remains; the effectiveness of VA procedures for working with persons or entities having custody of unclaimed remains to facilitate the interment of such remains in national cemeteries; and the state and local laws that affect the Secretary's ability to inter unclaimed remains in such cemeteries.

The report would provide recommendations for appropriate legislative or administrative action to improve areas where deficiencies are identified.

DAV has no resolution pertaining to this recommendation, but would not oppose passage of this bill.

#### S. 743, THE HONOR AMERICA'S GUARD-RESERVE RETIREES ACT OF 2015

This bill would bestow the designation of "veteran" to any person who is entitled to retired pay for non-regular (reserve) service or who would be so entitled, but for age.

The bill stipulates that such person would not be entitled to any benefit by reason of such recognition.

DAV has no resolution pertaining to this matter.

S. 865, TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE DISABILITY COMPENSATION EVALUATION PROCEDURE OF THE SECRETARY OF VETERANS AFFAIRS FOR VETERANS WITH MENTAL HEALTH CONDITIONS RELATED TO MILITARY SEXUAL TRAUMA, AND FOR OTHER PURPOSES.

This bill would improve VA disability compensation evaluation procedures in the case of veterans with mental health conditions related to military sexual trauma (MST).

For decades, VA treated claims for service connection for mental health problems resulting from MST in the same way it treated all claimed conditions—the burden was on the claimant to prove the condition was related to service. Without validation from medical, investigative or police records, claims were routinely denied. More than a decade ago, VA relaxed its policy of requiring medical or police reports to show that MST occurred. Nevertheless, thousands of claims for mental health conditions resulting from MST have been denied since 2002 because claimants were unable to produce evidence that assaults occurred. Between 2008 and 2012, grant rates for Post Traumatic Stress Disorder (PTSD) resulting from MST were 17 to 30 percent below grant rates for PTSD resulting from other causes.

Unfortunately, victims of MST often do not report such trauma to medical or police authorities. Lack of reporting results in a disproportionate burden placed on veterans to produce evidence of MST. Full disclosure of incidents occurring during service tend to be reported years after the fact, making service connection for PTSD and other mental health challenges exceedingly difficult.

Establishing a causal relationship between certain injuries and later disability can be daunting due to lack of records or human factors that obscure or prevent documentation or even basic investigation of such incidents after they occur. Military sexual trauma is ever more recognized as a hazard of service for one percent of men serving and 20 percent of women, and later represents a heavy burden of psychological and mental health care for the VA.

An absence of documentation of military sexual trauma in the personnel or military unit records of injured individuals prevents or obstructs adjudication of claims for disabilities of this deserving group suffering the after effects associated with military service, and may interrupt or prevent their care by VA once they become veterans. The VA has issued a regulation that provides for a liberalization of requirements for establishment of service connection due to personal assault, including MST, even when documentation of an “actual stressor” cannot be found, but when evidence in other records exists of a “marker” indicating that a stressor may have occurred. DAV fully supports this relaxed evidentiary practice, consistent with DAV Resolution No. 086.

S. 865 would seek to further relax the evidentiary standard for “stressor” requirements. It would provide that any veteran who claims that a covered mental health condition was incurred in or aggravated by MST during active military, naval, or air service would require the Secretary to accept as sufficient proof of service connection, a diagnosis of such mental health condition by a mental health professional, together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such covered mental health condition is related to such MST.

The circumstances of MST would need to be consistent with the conditions or hardships of such service, notwithstanding the fact that no official record exists of such incurrence or aggravation in such service. Every reasonable doubt would be resolved in favor of the veteran. In the absence of clear and convincing evidence to the contrary, and provided that the claimed MST was consistent with the circumstances, conditions, or hardships of the veteran’s service, the veteran’s lay testimony alone would establish the occurrence of the claimed MST.

Service connection of a covered mental health condition could be rebutted by clear and convincing evidence to the contrary. The Secretary would also be required to record, in full, the reasons for granting or denying service connection in each case.

Under this bill, a covered mental health condition would be defined as PTSD, anxiety, depression, or other mental health diagnosis described in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, that the Secretary determines to be related to MST.

MST would be defined as a psychological trauma, which in the judgment of a mental health professional, resulted from a physical assault of a sexual nature, bat-

tery of a sexual nature, or sexual harassment which occurred during active military, naval, or air service.

This bill would require the Secretary to provide a report on implementation of this measure and its impact on claims filed that deal with MST, beginning on December 1, 2016, through 2020.

Enacting this legislation would ease some of the evidentiary requirements for those veterans filing claims for service-connection suffering the aftereffects of a MST. It would bolster the weight afforded to lay evidence. When the lay evidence is corroborated by a mental health professional and a diagnosis is made of one of the covered mental health conditions, the Secretary would be authorized to grant service-connection for the claim.

Enactment of this legislation would result in two separate adjudication procedures for veterans filing claims related to MST versus veterans filing claims related to combat, or exposure to hostile military or terrorist activity. Those currently filing claims for PTSD unrelated to MST are required to have their diagnosis confirmed by VA psychiatrists or psychologists, or through psychiatrists or psychologists with whom VA has contracted.

DAV Resolution No. 086, approved by our membership at our most recent national convention, supports the purposes of this bill.

We believe VA should address a disparity in current regulation by making similar the adjudication of all stressor-related mental health disabilities. Accordingly, we recommend the following changes:

To ensure parity among veterans claiming mental health-related disabilities as a result of MST, combat, and exposure to hostile military or terrorist activity, title 38, Code of Federal Regulations should be amended to read as follows:

3.304 Direct service connection; wartime and peacetime.

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a certified mental health professional, including a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of Post Traumatic Stress Disorder.

VA should accept and rate claims using private medical evidence for qualifying disabilities related to MST, combat, or exposure to hostile military or terrorist activity when received by a certified mental health professional, that is competent, credible, probative, and otherwise adequate for rating purposes.

A similar bill, H.R. 1607, was introduced in the House. DAV was pleased to provide our testimony to the Subcommittee on Disability and Memorial Affairs on April 14, 2015, concerning this bill, which we supported.

#### DRAFT BILL, THE 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

This bill would increase efficiencies within the Transition Assistance Program Global Positioning System (TAP GPS) program and other functions of VBA's benefit claims process.

Section 101 of the bill would mandate that TAP be made available through the e-Benefits Web site to provide servicemembers and families with the option to participate online.

This enhancement to the TAP program does not appear to compromise the requirements set forth under title 10, United States Code, section 1144. DAV would recommend the online option be offered when a transitioning servicemember is unable to attend the formal class, but not be substituted for the requirement to attend in person.

The bill would also require the Secretary of Defense to provide a report on the participation in TAP of veterans' service organizations (VSOs). The report would evaluate Department of Defense (DOD) compliance with directives contained within the "Installation Access and Support Services for Nonprofit Non-Federal Entities," memorandum dated December 23, 2014, including the number of military bases that have complied with the directives, and the number of VSOs that have been present during portions of the TAP GPS presentations.

DAV supports this provision consistent with national resolution NO. 053, as adopted at our most recent national convention held in Las Vegas, Nevada, August 9–12, 2014. This resolution urges Congress to monitor the review of Transition GPS program, its workshops, training methodology, and delivery of services; the collection and analysis of course critiques; and to ensure the inclusion of DAV and other veterans service organizations in workshops, in order to confirm the program is meeting its objective and to enable follow-up with participants to determine if they have found gainful employment.

Section 102 would require the Secretary to explain to claimants, upon receipt of decisions regarding their claims, the benefits of filing an appeal within 180 days. This provision would amend title 38, United States Code, section 5104, to require explanation of the procedures for obtaining appellate review.

DAV has received no approved resolution from our membership on this topic, but would not oppose passage of this section.

Section 107 would authorize the Board of Veterans' Appeals (BVA) to schedule video conference hearings. This language would give the BVA the authority to schedule such hearings in the first instance, but would preserve the appellant's right to an in-person hearing. We strongly support an appellant's right to request the type of hearing best suited to their needs.

DAV supports this provision of the bill.

Section 201 would require the Comptroller General of the United States to complete an audit of the regional offices of the Veterans Benefits Administration. The audit would include examination of consistency of claims decisions; and identify ways to improve consistency and best practices, including management practices that distinguish higher performing regional offices from others.

DAV has received no approved resolution from our membership covering this issue, but would not oppose passage of such legislation.

Section 202 of the bill would require VA to establish a training program for veterans service center managers, and would include employees in successor positions within regional offices of the Veterans Benefits Administration. This training program would place emphasis on matters pertaining to managerial and other skills for those in leadership.

DAV has received no approved resolution pertaining to this issue, but would not oppose passage of this section.

Section 203 would require the Secretary of Veterans Affairs, for each systemic analysis of operations that is completed by a Veterans Service Center Manager (VSCM) in a regional office (RO), also include an analysis of the communication between the regional office and veterans service organizations and case workers employed by Members of Congress.

This section of the bill seeks to analyze the communication between those referenced above. Within VA ROs, the Secretary requires VSCMs to collect various forms of data and information to assess and report on overall performance and trends. This provision seeks to require that VA report on the effectiveness of communications amongst stakeholders.

DAV has received no resolution from our membership pertaining to this issue, but would not oppose passage of this section.

Section 204 would require the VA Inspector General (IG) to conduct a review of the practices of regional offices regarding the use of suspense dates during the disability claim assessment process. The intent of this legislation is unclear, but we presume that IG would be expected to report on whether VBA is following its own protocol for specific controls established for claims processing.

DAV has received no approved resolution from our membership pertaining to this issue, but would not oppose its passage.

Section 205 would require Secretary to submit to Congress a report on the capacity of the Veterans Benefits Administration to process claims for benefits during the next one-year period.

This report would contain the number of claims Secretary expects VBA to process, the number of full-time equivalent employees who are dedicated to processing such claims, an estimate of the number of such claims a single full-time equivalent employee of the Administration can process in a year, and an assessment of whether the Administration requires additional or fewer full-time equivalent employees to process such claims during the next 1-year, 5-year, and 10-year periods.

DAV recommends that any such report also include, in addition to the number of claims, the number of issues the Secretary expects to process, the number of issues granted or denied and the error rate per issue.

DAV has received no approved resolution from our membership pertaining to this issue, but would not oppose passage of such legislation.

Section 206 would require the Secretary to complete the revision to VBA's resource allocation model within 180 days after enactment of this legislation. Congress would also require the Secretary to provide a report on the newly revised resource allocation model.

Although we welcome and look forward to changes of VBA's resource allocation model, mandating its completion within a specified period may lead VA to implement hasty and less comprehensive changes.

DAV has received no approved resolution from our membership pertaining to this issue, would not oppose passage of this section, but would encourage the Committee



to consider the potential effect of mandating the completion of the resource allocation model within 180 days after enactment of governing legislation.

Section 207 would require the Secretary to submit a report to Congress on the current functionality of the Veterans Benefits Management System (VBMS). It would also solicit recommendations to improve VBMS from VBA employees and VSO's that use the system. We would recommend that any report not only contain the functionality and progress of VBMS, but also review the anticipated enhancements to this platform and its interoperability with other systems within the VA.

DAV has voiced concerns that there are functions within the VA, specifically those performed by the Board of Veterans Appeals (Board), that are essential to the processing of appeals that must become more seamless and interoperable with VBMS. We have recommended additional funding for VBMS to support the full range of benefits and claims process improvements.

DAV has received no resolution pertaining to this issue, but would not oppose passage of this section.

Section 208 would require the Secretary of Veterans Affairs to produce a report to Congress no later than 90 days after the enactment of this legislation detailing a plan to reduce the inventory of claims pending for Dependency and Indemnity Compensation and Pension benefits.

Delays in the adjudication of benefits, particularly those for survivors, can mean serious adverse financial consequences. The death of a spouse means a significant loss in household income. Losing one's spouse already creates an emotional hardship which should not be compounded by an unnecessary delay in the approval of survivor benefits.

Although DAV has received no resolution from our membership on this particular topic, we would welcome the findings of this report and the Secretary's plan to process these claims more expeditiously.

Section 209 would require the Secretary to include in each Monday Morning Workload Report of VBA the number of claims for benefits that have been received by all regional offices and that are pending decisions, disaggregated by various categories. We recommend the language be amended to include information for the number of issues as well as the number of claims pending adjudication.

DAV has received no resolution pertaining to this issue, but would not oppose passage of this section.

Section 210 would require the Secretary, on an Internet Web site of the Department, to make available to the public internal reports entitled "Appeals Pending" and "Appeals Workload by Station." We recommend the language be amended to include information for the number of issues as well as the number of appeals pending appellate review.

DAV has no resolution pertaining to this issue, but would not oppose passage of this section.

Section 211 would modify an existing pilot program that concerns the use of contract physicians to perform disability examinations. It would permit licensed and duly recognized physicians to perform examinations at any location in any state, the District of Columbia, or a Commonwealth, territory or possession of the United States so long as the examination is within the scope of the authorized duties stipulated under the contract. It would alleviate the jurisdictional obstacles in areas where physicians are not licensed within a particular jurisdiction.

DAV supports this provision of the bill. We do not have a specific resolution on this issue, but in general it improves VA's ability to provide contract examinations for disability compensation purposes.

Section 301 would require the appointment of liaisons by the Secretary of Defense, Commissioner of Social Security and the Administrator, National Archives and Records Administration, to work in coordination with the VA for the purpose of improving records transfers and claims processing efficiencies.

DAV has no resolution pertaining to this issue, but would not oppose passage of this section.

Section 302 would require the Secretaries of the VA and DOD to submit a report to Congress that outlines their plans for interoperability of electronic health records of each Department. This report would require specific timelines and milestones to achieve the goal of interoperability.

We believe it is important that the transfer of health records from DOD to VA be accomplished seamlessly so that the transition of military members to civilian life can be improved. The movement of information is critical in the case of wounded and injured military personnel transitioning to veteran status, as well as for Guard and reserve component members who are in rotational assignments and combat deployments.

DAV supports this provision of the bill.

## DRAFT BILL, VETERANS' COMPENSATION COST-OF-LIVING-ADJUSTMENT ACT OF 2015

If introduced, this draft bill would provide for an increase, with no "round down" requirement, effective December 1, 2015, in 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.

Mr. Chairman, DAV strongly supports this legislation, especially since it does not mandate that the cost-of-living adjustment (COLA) be rounded down to the next lowest whole dollar amount. DAV recognized this same accomplishment by this Committee last year when the COLA for 2014 was enacted and excluded the round-down provision.

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 these difficult times. While the economy has faltered, their personal economic circumstances have been negatively affected by rising costs of many essential items, including food, medicines and gasoline.

As inflation becomes a greater factor, it is imperative that veterans and their dependents receive a full COLA. On the strength of DAV Resolution No. 071, DAV supports enactment of this legislation.

RECOMMENDATIONS OF THE MILITARY COMPENSATION AND RETIREMENT  
MODERNIZATION COMMISSION

Recommendation 11 seeks to safeguard education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs. In an effort to accomplish these objectives, more stringent restrictions would be placed on availability of the active duty Tuition Assistance program to active duty servicemembers.

The recommendation also proposes increases in active duty service commitments from six years with a four year re-up, to ten years with a two year re-up as a prerequisite to transfer Post-9/11 GI Bill benefits to eligible dependents. It would eliminate the housing stipend for dependents and prohibit the receipt of unemployment benefits when a housing stipend is received under Post-9/11.

It would require reports on those using educational benefits, with reports to be supplied by schools. Montgomery GI Bill Active Duty (MGIB-AD) and Reserve Educational Assistance Program (REAP) would be sunset as all current and future educational programs would fall under the Post-9/11 GI Bill.

DAV takes no position on this recommendation.

Recommendation 12 seeks to better prepare servicemembers for transition to civilian life by expanding education and granting states more flexibility to administer the Jobs for Veterans State Grants (JVSG) program.

If enacted into law, it would require active duty servicemembers to attend the educational track, which is now optional within TAP GPS, if servicemembers plan to use their educational benefits, or if they have transferred their benefits to a qualified dependent. The TAP GPS program would also be reviewed by DOD, VA, DOL and SBA to determine if the current curriculum most accurately addresses the needs of transitioning servicemembers.

The recommendation also calls for relevant statutes to be amended to permit state departments of labor, or their equivalent agencies, to work directly with state Veterans Affairs directors or offices to coordinate implementation of the JVSG program.

DAV does not oppose this recommendation. Requiring active duty servicemembers to attend a class within TAP focused on the use of their educational benefits seems beneficial overall. Additionally, continuous review of the TAP GPS program to ensure its relevance and effectiveness seems like a necessary function to keep pace with change.

Finally, enacting legislation that improves coordination between state departments of labor of veterans affairs to enhance facilitation of the JVSG program could streamline processes resulting in better employment opportunities for veterans.

## DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

Section 514 of the DOD legislative proposal parallels the language of S. 602, the GI Bill Fairness Act of 2015, discussed above.

Section 522 of the DOD legislative proposal seeks to amend chapter 1606 of title 10, United States Code. The amendment would add language to preclude the loss of entitlement to and payment for the Montgomery GI Bill Selected Reserve (MGIB-SR). This amendment would preserve MGIB-SR benefits for servicemembers in instances when they are called to active duty in support of a major disasters or emer-

gencies, or when they are ordered to active duty for pre-planned missions in support of combat commands.

DAV has received no approved resolution from our membership on this topic; thus, DAV takes no position on this bill.

Section 542 of the DOD legislative proposal would amend section 4312, title 38, United States Code, governing reemployment rights of persons who serve in the uniformed services.

DOD proposes to add the language of sections 12304(a) and 12304(b) of title 10, United States Code, noting that this additional language would complete the list of current involuntary mobilization authorities that are exempt from the five-year limit imposed by the Uniformed Services Employment and Reemployment Act (USERRA). We believe this amendment would further reemployment safeguards afforded to servicemembers who are involuntarily called to active duty with limited notice provided to an employer.

DAV has received no resolution from our membership pertaining to this particular topic, but would not oppose passage of such legislation.

Section 545 of the DOD legislative proposal would amend section 1142 of title 10, United States Code, relative to pre-separation counseling to servicemembers being released from service prior to the completion of 180 days of active duty. DOD proposes to clarify that pre-separation counseling services would not be provided to a member who is being discharged or released before the completion of that member's first 180 "continuous" days of active duty.

DAV has no resolution from our membership pertaining to this topic, but would not oppose passage of such legislation.

Section 1041 of the DOD legislative proposal seeks eliminate the requirements set forth by the Radiation Dose Reconstruction Program . DOD recommends the repeal of the statutory requirement for an advisory board of the Radiation Dose Reconstruction Program. DOD contends the advisory board has achieved its objectives and that its functions can still be accomplished through interagency collaboration, rather than through the advisory board.

DAV has no resolution pertaining to this issue and takes no position. However, DAV Resolution No. 187, speaks directly to the issue of atomic veterans' radiation exposure. Our resolution calls on Congress to support legislation authorizing presumptive service connection for all radiogenic diseases.

Military servicemembers have participated in test detonations of nuclear devices and served in Hiroshima or Nagasaki, Japan, following the detonation of nuclear bombs, including clean-up operations at test sites. The government knew or should have known of the potential hazards to the health and well-being of these servicemembers.

VA cites that approximately 50 claimants have obtained disability compensation or dependency and indemnity compensation pursuant to Public Law 98-542.

Considerable resources have been expended by our government to provide dose reconstruction estimates which do not accurately reflect actual radiation dose exposure. DAV encourages Congress to enact legislation that provides presumptive service connection to atomic veterans for all recognized radiogenic diseases. Furthermore, all veterans involved in clean-up operations following the detonation of nuclear devices should be considered atomic veterans for all benefits and services provided by VA.

Mr. Chairman, this concludes DAV's testimony. Thank you for inviting DAV to submit this statement for the record of today's hearing.

PREPARED STATEMENT OF ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE  
UNITED STATES (EANGUS)



**ENLISTED ASSOCIATION OF THE NATIONAL GUARD  
OF THE UNITED STATES (EANGUS)**

**STATEMENT FOR THE RECORD**

**THE UNITED STATES SENATE COMMITTEE ON VETERANS AFFAIRS**

on

**Pending Benefits Legislation**

May 13, 2015

*Enlisted Association of the National Guard of the United States*  
**3133 Mount Vernon Avenue**  
**Alexandria, Virginia 22305**

800-234-EANG – [www.eangus.org](http://www.eangus.org)

**CHIEF MASTER SERGEANT JOHN HARRIS, USAF (RETIRED)**

Chief Master Sergeant John Harris, USAF (Retired), is the President of the Enlisted Association of the National Guard of the United States (EANGUS). He was overwhelmingly elected by membership of the association in August 2014. He served as a Joint Terminal Attack Controller, supporting the 256th Infantry BDE, 20th Special Forces Group, OEF Coalition Forces, and multiple Enhanced Separate Brigades of the Army National Guard. He mobilized in support of OPERATION DESERT STORM and deployed in support of OPERATION ENDURING FREEDOM. While serving as the State Command Chief Master Sergeant, the highest enlisted level of leadership in the Louisiana Air National Guard, Chief Harris represented the interests of the enlisted corps to The Adjutant General and served as an advisor to The Assistant Adjutant General for Air. During this time, he also served in the Louisiana National Guard Enlisted Association, the Counterdrug Task Force, the Louisiana Senior Executive Steering Committee, and was involved in fundraising efforts for the Louisiana National Guard Heroes Monument. Chief Harris holds a Master of Business Administration degree in Project Management from Grantham University. His numerous military decorations, including a Bronze Star, Meritorious Service Medal, Air Force Commendation Medal, Air Force Achievement Medal (with 3 Oak Leaf Clusters), Army Achievement Medal and the Louisiana Cross of Merit. He is a life member of the Enlisted Association of the National Guard of the United States and the Louisiana National Guard Enlisted Association.

**DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS**

The Enlisted Association of the National Guard of the United States (EANGUS) does not currently receive, nor has the association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

**S. 602, the GI Bill Fairness Act of 2015**

Association Response: EANGUS supports

**Legislative Proposals to Implement Recommendations 11 and 12 of the Military Compensation and Retirement Modernization Commission**

**Recommendation 11. Educational Benefits**

The Military Services have repeatedly emphasized the importance of using education benefits as recruiting and retention tools. Ensuring the robustness of these programs is one of the best ways to guarantee the future of the All-Volunteer Force. There are duplicative and inefficient education benefits that should be eliminated or streamlined to improve the sustainability of the overall education benefits program. The Montgomery GI Bill Active Duty Assistance Program should be sunset in favor of the Post-9/11 GI Bill. Servicemembers who reach 10 years of service and commit to another 2 years should be allowed to transfer their Post-9/11 GI Bill benefits to dependents. The housing stipend of the Post-9/11 GI Bill should be sunset for dependents, as should unemployment compensation for anyone receiving a housing stipend.

**Association Stance on Recommendation 11**

The Montgomery GI Bill Selected Reserve is an important benefit to the National Guard and the association is happy that the Commissioners sustained it since there are no other education benefits that cover our constituency. Reducing housing stipends for dependents could burden those using GI Bill benefits because the average cost of typical room at a major university is quite high. The association understands that original cost estimates did not take into account University room and board because the benefit was intended for the servicemember to use at a later date, and typically the individual would not utilize expensive on campus housing because of their age.

**Recommendation 12. Transition Services**

Transitioning from the Military Services to civilian life is more challenging than it needs to be. Unemployment is still a challenge facing far too many veterans, especially for veterans aged 18 to 24, who had higher unemployment rates in 2013 than nonveterans of the same age group (21.4 percent and 14.3 percent, respectively). To better support transition and veteran employment, DOD should require mandatory participation in the Transition GPS education track. The Department of Labor should permit state departments of labor to work directly with 10 state VA offices to coordinate administration of the Jobs for Veterans State Grant program. Congress should require One-Stop Career Center employees to attend Transition GPS classes to develop personal connections between transitioning veterans and One-Stop Career Centers.

**Association Stance on Recommendation 12**

The association agrees that the Transition GPS curriculum is vital to transitioning servicemembers and that the entire Transition GPS program should be made available to National Guard members as well. As an aside, the increased emphasis towards transition programs will hopefully result in a subsequent decrease in unemployment compensation.

**Legislative Proposals from the Department of Defense**

Topic: §12301. Reserve components generally

Proposed Change: Strike, “When authorized by the Secretary of Defense, the Secretary of a military department” and insert “The Secretary of a military department (when authorized by the Secretary of Defense), and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy”

Association Response: EANGUS supports

Topic: §3301(1)(C)(ii) regarding POTUS call to active duty under section 688

Proposed Change: insert “12301(h)”

Association Response: EANGUS supports

Topic: Subtitle C—Member Education and Training, Section 521

Proposed Change: strike “(b) Definition. In this section, the term *principal course of instruction* means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.”

Association Response: EANGUS takes no position

Topic: Sec. 16131 (3)(B)(i) regarding Educational Assistance Program: Establishment; Amount

Proposed Change: Insert “12304a, or 12304b”

Association Response: EANGUS supports

Topic: Sec. 16133 (b)(4) regarding Time Limitation for Use of Entitlement

Proposed Change: Insert “12304a, or 12304b”

Association Response: EANGUS supports

Topic: Subtitle D—Defense Dependents’ Education and Military Family Readiness Matters, Subtitle E—Other Matters

Proposed Change to Duration of Program Authority: Strike “December 31, 2015” and insert “December 31, 2018”

Association Response: EANGUS supports

Topic: §4312 (c)(4)(A) regarding reemployment rights of persons who serve the uniformed services

Proposed Change: Insert “12304a, or 12304b”

Association Response: EANGUS supports

Topic: Section 542(c)

Proposed Change: Insert “Such relocation assistance programs shall ensure that members of the armed forces and their families are provide relocation assistance regardless of geographic location.” And strike: The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation, A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the technique and delivery of professional relocation assistance.”

Association Response: EANGUS takes no position

Topic: §1142(4) regarding Presentation counseling; transmittal of medical records to Department of Veterans Affairs

Proposed Change: Add Section “(C) For purposes of subparagraph (a), the term *active duty* does not include full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.”

Association Response: EANGUS supports

Topic: Veterans Benefits Act of 2003 (Public Law 108-183 – Dec. 16, 2003)

Proposed Change: Strike Sec. 601.

Association Response: EANGUS takes no position



## Section-by-Section Analysis

TITLE I—PROCUREMENT .....	4
Sections 101 through 106.....	4
Section 107.....	4
Section 108.....	7
Section 201.....	9
Section 301.....	11
Section 302.....	11
Subtitle A—Active Forces.....	16
Section 401.....	16
Section 411.....	16
Section 412.....	16
Section 413.....	16
Section 414.....	16
Section 415.....	16
Subtitle C—Authorization of Appropriations.....	16
Section 421.....	16
TITLE V—MILITARY PERSONNEL POLICY .....	16
Subtitle A—Office Personnel Policy Generally .....	16
Section 501.....	17
Subtitle B—Reserve Component Management .....	20
Section 511.....	21
Section 512.....	22
Section 513.....	23
Section 514.....	24
Subtitle C—Member Education and Training .....	26
Section 521.....	26
Section 522.....	29
Subtitle D—Defense Dependents' Education and Military Family Readiness Matters .....	31
Subtitle E—Other Matters .....	31
Section 541.....	31
Section 542.....	40
Section 543.....	43

Section 544.....	45
Section 545.....	47
TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS .....	50
Subtitle A—Pay and Allowances.....	50
Subtitle B—Bonuses and Special Incentive Pays .....	50
TITLE VII—HEALTHCARE PROVISIONS.....	64
Subtitle A—TRICARE and Other Health Care Benefits.....	64
Subtitle B—Health Care Administration .....	64
Section 711 .....	64
TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS.....	67
Subtitle A—Acquisition Policy and Management.....	67
Section 801.....	67
Section 802.....	85
Subtitle B—Amendments to General Contract Authorities, Procedures, and Limitations.....	90
Section 811.....	90
Section 812.....	92
Section 813.....	94
Subtitle C—Acquisition Reform Proposals .....	101
Section 821.....	101
Section 822.....	102
Section 823.....	104
Section 824.....	119
Section 825.....	127
Section 826.....	136
Section 827.....	141
Subtitle D—Other Matters.....	142
Section 831.....	142
Section 832.....	145
TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT.....	146
Section 901.....	146
Section 902.....	149
Section 903.....	151
TITLE X—GENERAL PROVISIONS .....	152

Subtitle A—Financial Matters .....	152
Section 1001.....	152
Subtitle B—Counter-Drug Activities .....	153
Subtitle C—Naval Vessels and Shipyards .....	153
Section 1021.....	153
Subtitle D—Other Matters .....	154
Section 1041.....	155
TITLE XI—CIVILIAN PERSONNEL MATTERS.....	157
Section 1101.....	157
Section 1102.....	159
TITLE XII—MATTERS RELATING TO FOREIGN NATIONS .....	164
Section 1201.....	164
Section 1202.....	166
Section 1203.....	168
Section 1204.....	172
Section 1205.....	174
Section 1206.....	176
Section 1207.....	177
Section 1208.....	179
TITLE XIII—[RESERVED] .....	181
TITLE XIV—OTHER AUTHORIZATIONS .....	181
Subtitle A—Military Programs.....	181
Section 1401.....	181
Section 1402.....	181
Section 1403.....	181
Section 1404.....	182
Section 1405.....	182
Section 1406.....	182
Subtitle B—Other Matters .....	182
Section 1411.....	182
Section 1412.....	182
TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS.....	182
[RESERVED] .....	182

section 12301. The term “Secretary concerned” as defined in section 101 of title 10 includes the Secretary of Homeland Security.

**Budgetary Implications:** No additional costs are associated with the enactment of this proposal. This is a technical change to the statute, and is intended to clarify the authority of the Secretary of Homeland Security to retain or recall Coast Guard Reserve members on active duty for health care as a result of injury, illness, or disability experienced in the line of duty.

**Changes to Existing Law:** This proposal would make the following change to section 12301(h) of title 10, United States Code:

**§ 12301. Reserve components generally**

(a) \*\*\*

\* \* \* \* \*

(h)(1) ~~When authorized by the Secretary of Defense, the Secretary of a military department—~~ The Secretary of a military department (when authorized by the Secretary of Defense), and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may, with the consent of the member, order a member of a reserve component to active duty—

- (A) to receive authorized medical care;
- (B) to be medically evaluated for disability or other purposes; or
- (C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

\* \* \* \* \*

**Section 514.** Under the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill), enacted as part of the Supplemental Appropriations Act, 2008 (Public Law 110-252, 122 Stat. 2358), a member of a reserve component of the Armed Forces presently accrues active-duty service time credit for the calculation of educational assistance benefits for service on active duty under a call or order to active duty only under sections 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10 or section 712 of title 14, United States Code. This proposal would expand these categories to include time served on active duty under 10 U.S.C. 12301(h). Under 12301(h), the Secretary of a military department may, with the with the consent of the member, order a member of a reserve component to active duty in order to: receive authorized medical care; be medically evaluated for disability or other purposes; or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

Currently, when a reserve component (RC) service member is serving in a mobilized status and is injured, wounded, suffers a sexual assault, or requires other medical treatment, that service member is transitioned on orders to serve under 10 U.S.C. 12301(h) for evaluation and

treatment. This section is not included within the definition of 'active duty' for the purposes of Post-9/11 GI Bill entitlement. When an active component (AC) service member suffers the same types of injury, service continues in the regular component and that member continues to accrue qualifying time while undergoing the same evaluation and treatment. As detailed in the finding of Congress contained in section 5002 of the Supplemental Appropriations Act, 2008, particularly paragraphs (2), (5), and (6), these reserve component members answered a call to active duty and served under similar conditions to their active component counterparts; their service must similarly be honored.

Current law scenario:

1. A RC service member who is called to service under one of the applicable sections and has served at least 30 days, is wounded or injured, and then is discharged due to a service-connected disability, will qualify for the 100% tier for Post-9/11 entitlements per 38 U.S.C. 3313(c)(1). In this case, time served under 10 U.S.C. 12301(h) is irrelevant, as the RC service member qualifies based on the service during the initial 30 days and subsequent discharge.

2. A RC service member who is serving under one of the applicable qualifying Title 10 sections and becomes wounded or injured will be placed on orders under 10 U.S.C. 12301(h). The RC service member could spend significant time in evaluation, treatment, and recovery, none of which qualifies for Post-9/11 GI Bill entitlements. If an injured RC service member does not discharge (as in scenario 1) and instead returns to service none of the time spent in recovery is qualifying time, regardless of whether they are continuing a deployment or returning to the Selected Reserve. In this case, the SM would leave active status with less qualifying time than one who completed the entire period without an injury, and would not receive the same benefit tier as either their RC or AC counterparts. In effect, they are penalized for requiring medical evaluation or treatment during their service.

**Budget Implications:** The Department of Defense (DoD) has no responsibility for funding of the basic benefits of the Post-9/11 GI Bill. Costs for the Post-9/11 GI Bill are borne by the Department of Veterans Affairs, under the provisions of section 3324(b) of title 38, which states, "Payments for entitlement to educational assistance earned under this chapter shall be made from funds appropriated to, or otherwise made available to, the Department for the payment of readjustment benefits." While DoD has estimates regarding the number of personnel affected and cost to carry out this proposal, there is no budget implication to DoD.

**Changes to Existing Law:** This proposal would make the following changes to section 3301 of title 38 United States Code:

#### **§3301. Definitions**

In this chapter:

(1) The term "active duty" has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21)(A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section

688, 12301(a), 12301(d), 12301(g), 12301(h), 12302, or 12304 of title 10 or section 712 of title 14.

(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, in addition to service described in subparagraph (B), full-time service—

(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) in the National Guard under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds. (B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12301(h), 12302, or 12304 of title 10.

(2) \* \* \* \*

### Subtitle C—Member Education and Training

**Section 521** would remove the statutory minimum residency requirements for Joint Professional Military Education (JPME) II courses taught at the Joint Forces Staff College (JFSC) and thereby allow the Secretary of Defense (SECDEF) and/or the Chairman of the Joint Chiefs of Staff (CJCS), consistent with authorities and responsibilities described in 10 U.S.C. 153, to determine the length for in-residence courses. The proposal also removes the “in residence at” requirement for all other JPME II-credit awarding schools and thereby allows the SECDEF or the CJCS to designate and certify various curricula and delivery methods, provided they adhere to joint curricula content, student acculturation, and faculty provisions established in 10 U.S.C. 2155 and CJCS Policy. These changes are designed to provide the Department of Defense (DoD) flexibility to leverage education technology and be better empowered to balance joint, interagency, intergovernmental, and multinational knowledge and acculturation requirements with additional and potentially more cost-effective methods of delivery for JPME phase II. DoD does not plan to create a fully non-resident JPME II course nor reduce the course’s educational requirements or objectives.

JPME is a three-phase approach to learning requirements associated with joint matters specified in 10 U.S.C. 2154. Learning requirements to achieve Joint Qualification Level III are available to Active and Reserve Component (AC, RC, respectively) members. Service Members receive JPME II credit by completing accredited instruction “in residence” at National Defense University (NDU) or Senior Level Service School (SLSS) programs. 10 U.S.C. 2154 and 2156 specify that JPME II courses must be “in-residence”; the “principal course” at the JFSC “may not be less than 10 weeks of resident instruction.

JPME II capacity by all sources amounts to nearly 1800 graduates annually, 1020 from the 10-week (“principal course”) Joint and Combined Warfighting School (JCWS) in Norfolk, VA; all others are graduates from 10 month master’s degree-level programs of the National Defense University (National War College, Eisenhower School, Joint Advanced Warfighting School) and four SLSSs. Although this throughput capacity is deemed sufficient to sustain Joint

~~(b) DEFINITION. In this section, the term "principal course of instruction" means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.~~

**Section 522** would amend chapter 1606 of title 10, United States Code (U.S.C.), to designate active duty under two additional authorities (10 U.S.C. 12304a and 12304b) during which a service member's period of entitlement to, and payments for, the Montgomery GI Bill-Selected Reserve (MGIB-SR) education benefits are not lost. Specifically, this proposal would add 10 U.S.C. 12304a and 12304b to the existing list of authorities in 10 U.S.C. 16131 under which a service member may regain lost payments and both 10 U.S.C. 12304a and 12304b would be added to 10 U.S.C. 16133 under which a service member may regain lost entitlement time for MGIB-SR benefits.

The current lists of authorities cited in 10 U.S.C. 16131 and 16133 include authorities that may be used to order a service member to active duty without their consent. Sections 12304a and 12304b are additional authorities that may be used to order a service member to active duty without their consent. Therefore, sections 12304a and 12304b should be added to those authorities under section 16131 where service under these authorities would not count against a member's MGIB-SR benefit because he or she could not complete his or her studies due to activation. In addition, sections 12304a and 12304b are consistent with the current list of cited involuntary activation authorities and should be added to section 16133 so that service under these authorities is not counted against the time limit a member has to use his or her MGIB-SR benefit.

**Budgetary Implications:** No additional costs are associated with the enactment of this proposal. This proposal is a technical correction.

**Section 12304a:** When a Governor requests Federal assistance in responding to a major disaster or emergency, the Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty for a continuous period of not more than 120 days to respond to the Governor's request using the authority in 10 U.S.C. 12304a. The anticipated average time for Reserve members serving under section 12304a to respond to major disasters or emergencies is one week or less. A service member's VA-approved course of study should not be affected by one week of activation so as to require the service member to cancel and repeat the course of study. Outliers like Hurricane Katrina (longer calls to active duty) may occur in the future and service members may need to be activated for a period of time that will force them to repeat a course of study. Natural disasters like Katrina are impossible to model and are not expected to occur from fiscal year (FY) 2016 – FY 2020.

**Section 12304b:** 10 U.S.C. 12304b authorizes military Secretaries to order up to 60,000 Selected Reserve members to active duty to augment the active forces for a preplanned mission in support of a combatant command for up to 365 days without consent of the member. According to statute, these missions must be included in the appropriate fiscal year budget submission. OSD policy requires Services to notify their members a minimum of 180 days before mobilization.

Courses of study are scheduled by semesters that average a maximum of 5 months long. Six months (180 days) is adequate time for a Service member to complete their current class and/or change their future course of study at no cost to the member. However, Selected Reserve members may be activated in less than 180 days if an exception to policy is approved by the Secretary of Defense. When this happens, the Service member may be at risk to incur a cost. Exceptions to policy are rare and may occur from FY 2016 – FY 2020 in very small numbers. Therefore, due to the small numbers of personnel activated in less than 180 days under 12304b authority, DOD does not expect that the accrual funding rates will change by adding 12304b to section 16131.

**Changes to Existing Law:** This proposal would make the following changes to section 16131 and section 16133 of title 10, United States Code, as follows:

**SEC. 16131. EDUCATIONAL ASSISTANCE PROGRAM: ESTABLISHMENT;  
AMOUNT**

(a) \*\*\*

\* \* \*

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not-

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38

limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual-

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301 (a), 12301 (d), 12301 (g), 12302, ~~or~~ 12304, 12304a, or 12304b of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

\* \* \* \* \*

**SEC. 16133. TIME LIMITATION FOR USE OF ENTITLEMENT**



(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires on the date the person is separated from the Selected Reserve.

(b)(1) In the case of a person-

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, or the period beginning on October 1, 2007, and ending on September 30, 2014, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title, the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, ~~or~~ 12304, 12304a, or 12304b of this title-

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

\* \* \* \* \*

#### **Subtitle D—Defense Dependents' Education and Military Family Readiness Matters**

#### **Subtitle E—Other Matters**

**Section 541** would extend and enhance authority to conduct programs authorized under section 533 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. prec. 701 note), informed by lessons learned to-date from Navy and Air Force implementation of the Career Intermission Pilot Program (CIP). Extension and enhancement of this authority would afford the Secretaries of the military departments greater flexibility to test and evaluate alternative career retention options in

- (i) the authorities of the pilot programs provided an effective means to enhance the retention of members of the Armed Forces possessing critical skills, talents, and leadership abilities;
- (ii) the career progression in the Armed Forces of individuals who participate in the pilot program has been or will be adversely affected; and
- (iii) the usefulness of the pilot program in responding to the personal and professional needs of individual members of the Armed Forces.

(C) Such recommendations for legislative or administrative action as the Secretary concerned considers appropriate for the modification or continuation of the pilot programs.

(I) DEFINITION.—In this section, the term “active Guard and Reserve duty” has the meaning given that term in section 101(d)(6) of title 10, United States Code.

(m) DURATION OF PROGRAM AUTHORITY.—No member of the Armed Forces may be released from active duty under a pilot program conducted under this section after ~~December 31, 2015~~ **December 31, 2018**.

Section 542 would amend section 4312 of title 38, United States Code, to update the involuntary mobilization authorities exempted from the USERRA five-year limit under chapter 43 of that title (referred to as the Uniformed Services Employment and and Reemployment Rights Act or USERRA). Adding references to sections 12304a and 12304b of title 10 will complete the list of current involuntary mobilization authorities exempted from that limit.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects individuals performing, or who have performed, uniformed service in accordance with 38 U.S.C. 4301-4335 from employment discrimination on the basis of their uniformed service, and provides for their prompt restoration to civilian employment when they return to civilian life. USERRA is intended to ensure that these uniformed service members are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not discriminated against in employment because of their military status or uniformed service obligations.

The purposes of USERRA are clearly stated in section 4301 of title 38, United States Code. Section 4301 states in part:

(a) the purposes of this chapter [USERRA] are—

- (1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;
- (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their

communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed service.

USERRA was first designed in a time when Reserve and National Guard forces were intended to function as a strategic reserve. However, national defense strategy has changed and now regards the Reserves and National Guard as operational forces. As such, those forces are now called upon to perform not only the traditional duties in time of national emergency under extended active duty under title 10, United States Code, and certain duty under title 32. In accordance with the purposes above, section 4312(c) of title 38, United States Code, places a limit of five-years of active duty that may be performed without losing the protections of USERRA. Since September 11, 2001, the Department of Defense has relied heavily on activating various members of the Reserves and National Guard for multiple periods of active duty. However, in recognition of the change in national strategy several types of active duty, such as involuntary mobilizations, weekend drills, annual active duty, and exercises are exempted from the five-year limit. 38 U.S.C. 4312(c)(4)(A) already excludes 10 U.S.C. 688, 12301(a), 12301(g), 12302, 12304, and 12305, and 14 U.S.C. 331, 332, 359, 360, and 367, from the five year limit.

The National Defense Authorization Act for Fiscal Year (FY) 2012 added two new involuntary mobilization duty authorities to title 10. Section 12304a provides that when a Governor requests Federal assistance in responding to a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), the Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty for a continuous period of not more than 120 days to respond to the Governor's request. Section 12304b provides that when the Secretary of a military department determines that it is necessary to augment the active forces for a preplanned mission in support of a combatant command, the Secretary may, subject to subsection (b), order any unit of the Selected Reserve (as defined in section 10143 (a) of title 10), without the consent of the members, to active duty for not more than 365 consecutive days.

Such duty under sections 12304a and 12304b is not included among the exemptions listed under 4312(c) of title 38, United States Code. While the basic tenets of USERRA remain, the addition of active duty performed under sections 12304a and 12304b is appropriate and within the spirit of the purposes of USERRA.

**Budget Implications:** There is no cost to the service to implement the provisions of this proposal. The only action required is to include this provision in service USERRA policies and procedures. There will be an insignificant administrative burden placed on the services to include USERRA exemption statements on members' orders.

<p align="center"><b>RESOURCE REQUIREMENTS (\$MILLIONS)</b></p>
---

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash- 1 Line Item	Program Element
AIR FORCE	00.0	00.0	00.0	00.0	00.0		N/A	N/A	N/A
Total	00.0	00.0	00.0	00.0	00.0	--	--	--	--

**Changes to Existing Law:** This proposal would make the following changes to section 4312(c) of title 38, United States Code:

**§ 4312. Reemployment rights of persons who serve in the uniformed services**

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if-

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service-

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, **12304a**, **12304b**, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

(d) \*\*\*

\* \* \* \* \*

**Section 543** would provide the Restricted Reporting option (Confidential Reporting) in cases of sexual assault to service members and adult military dependents, preempting any State laws for mandatory reporting. An adult military dependent is a service member's dependent who is 18 years of age and older.

The reporting requirements regarding a sexual assault vary by State. Although most States do not require medical personnel to make a report to law enforcement when they have treated an adult who is a rape or sexual assault victim, State statutes may require that a report be made or that an abbreviated report is made. These laws may be broken down into the following categories in which medical personnel are required to report to law enforcement authorities:

- a. treatment specifically for rape or sexual assault;
- b. treatment for serious injuries, which may include rape (for example, gunshot wounds may require reporting – if a person was raped and shot, the rape would be reported along with the gunshot wound, even if the law does not specifically require reporting rape alone);
- c. treatment for other crimes or injuries that occur along with a sexual assault; and
- d. the completion of a sexual assault forensic examination.

These types of State laws have the effect of eliminating the Restricted Reporting option for service members and their adult military dependents who are victims of sexual assault. This prevents service members and their adult military dependents from receiving consistent healthcare, victim advocacy, and reporting options wherever they may be serving throughout the country. Mandatory reporting laws would still apply to military dependents who are 17 years of age and younger.

(c) ~~MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). Such relocation assistance programs shall ensure that members of the armed forces and their families are provided relocation assistance regardless of geographic location. The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.~~

(2) The Secretary shall ensure that information available through ~~each military~~ a relocation assistance program shall be managed through a computerized information system that can interact with ~~all other~~ the military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) ~~Duties of each military relocation assistance program shall include assisting~~ Assistance shall be provided to personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) ~~Director Program Manager.—~~The Secretary of Defense shall establish the position of ~~Program Manager of Director of Military Relocation Assistance Programs~~ in the office of the Assistant Secretary of Defense (Readiness and Force Management ~~and Personnel~~). The ~~Program Manager Director~~ shall oversee development and implementation of the military relocation assistance programs under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

**Section 545.** Section 1142 of title 10 U.S.C., states “the Secretary concerned shall not provide pre-separation counseling to a member who is being discharged or released before the completion of that member’s first 180 days of active duty.” The “first 180 days” on active duty can be misinterpreted to mean the first 180 cumulative days on active duty, as in the case of National Guard and Reserve Service members. This amendment would expressly exclude Service members serving on active duty for training (ADT) from receiving TAP; thus, the reason for the amendment.

This proposal would authorize Pre-separation, Employment Assistance and all other transition services prescribed in the Department of Defense (DoD) policy by the Secretary of Defense for ALL Active Component Service members of the Armed Forces and for ALL National Guard and Reserve Service members called or ordered to active duty or full-time operational support after

completion of their first 180 continuous days or more under Title 10, U.S.C., (other than for training) whose discharge or release from active duty is anticipated as of a specific date.

**Budgetary Implications:** This is a non-budgetary proposal, as no additional costs are associated with its enactment. This proposal is a clarification of language; therefore, there are no costs associated with this proposal.

**Changes to Existing Law:** This proposal would make the following changes to section 1142 and 1144 of Title 10, U.S.C., as amended:

**§1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs**

(a) REQUIREMENT.—(1) Within the time periods specified in paragraph (3), the Secretary concerned shall (except as provided in paragraph (4)) provide for individual preseparation counseling of each member of the armed forces whose discharge or release from active duty is anticipated as of a specific date. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned shall use the services available under section 1144 of this title.

(3)(A) In the case of an anticipated retirement, preseparation counseling shall commence as soon as possible during the 24-month period preceding the anticipated retirement date. In the case of a separation other than a retirement, preseparation counseling shall commence as soon as possible during the 12-month period preceding the anticipated date. Except as provided in subparagraph (B), in no event shall preseparation counseling commence later than 90 days before the date of discharge or release.

(B) In the event that a retirement or other separation is unanticipated until there are 90 or fewer days before the anticipated retirement or separation date, or in the event a member of a reserve component is being demobilized under circumstances in which (as determined by the Secretary concerned) operational requirements make the 90-day requirement under subparagraph (A) unfeasible, preseparation counseling shall begin as soon as possible within the remaining period of service.

(4)(A) Subject to subparagraph (B), the Secretary concerned shall not provide preseparation counseling to a member who is being discharged or released before the completion of that member's first 180 continuous days of active duty.

(B) Subparagraph (A) shall not apply in the case of a member who is being retired or separated for disability.

(C) For purposes of subparagraph (A), the term "active duty" does not include full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) MATTERS TO BE COVERED BY COUNSELING.—Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Provision of information on civilian occupations and related assistance programs, including information concerning-

(A) certification and licensure requirements that are applicable to civilian occupations;

(B) civilian occupations that correspond to military occupational specialties; and

(C) Government and private-sector programs for job search and job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement programs established under sections 1152 and 1153 of this title and the Troops-to-Teachers Program.

(5) If the member has a spouse, inclusion of the spouse, at the discretion of the member and the spouse, when counseling regarding the matters covered by paragraphs (9), (10), and (16) is provided, job placement counseling for the spouse, and the provision of information on survivor benefits available under the laws administered by the Secretary of Defense or the Secretary of Veterans Affairs.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individuals and their families and the availability to the member and dependents of suicide prevention resources following separation from the armed forces.

(9) Financial planning assistance, including information on budgeting, saving, credit, loans, and taxes.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, employment, and financial objectives of the member and, if the member has a spouse, the spouse of the member.

(11) Information concerning the availability of mental health services and the treatment of post-traumatic stress disorder, anxiety disorders, depression, suicidal ideations, or other mental health conditions associated with service in the armed forces.

(12) Information concerning the priority of service for veterans in the receipt of employment, training, and placement services provided under qualified job training programs of the Department of Labor.



(13) Information concerning veterans small business ownership and entrepreneurship programs of the Small Business Administration.

(14) Information concerning employment and reemployment rights and obligations under chapter 43 of title 38.

(15) Information concerning veterans preference in Federal employment and Federal procurement opportunities.

(16) Information on home loan services and housing assistance benefits available under the laws administered by the Secretary of Veterans Affairs and counseling on responsible borrowing practices.

(17) A description, developed in consultation with the Secretary of Veterans Affairs, of health care and other benefits to which the member may be entitled under the laws administered by the Secretary of Veterans Affairs, and information regarding the means by which the member can receive additional counseling regarding the member's actual entitlement to such benefits and apply for such benefits.

(c) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.—In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the member's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

## **TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS**

### **Subtitle A—Pay and Allowances**

#### **Subtitle B—Bonuses and Special Incentive Pays**

**Section 611** would extend until December 31, 2016 accession and retention incentives for certain nurses, psychologists, and medical, dental and pharmacy officers. Experience shows that manning levels in these health care professional fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and development of replacements. The Department of Defense and Congress have long recognized the prudence of these incentives in supporting effective personnel levels within these specialized fields.

This proposal also would extend two critical recruitment and retention incentive programs for Reserve component health care professionals. The Reserve components historically have found it challenging to meet the required manning in the health care professions. The incentive that targets health care professionals who possess a critically short skill is essential to meet required manning levels. In addition, the health professions loan repayment program has proven to be one of our most powerful recruiting tools for attracting health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is critical to the continued success of recruiting skilled health professionals into the Selected Reserve. Finally, this section would extend the consolidated special and incentive pay authorities in section 335 of title 37, United States Code (Special

**Section 1041.** In support of the Secretary of Defense's March 14, 2011, efficiency initiatives "designed to reduce duplication, overhead, and excess, and instill a culture of savings and cost accountability across the Department of Defense [DoD]," DoD is recommending the repeal of the statutory requirement for a Federal Advisory Committee Act (FACA) advisory board for the Radiation Dose Reconstruction Program. DoD believes that this advisory board has achieved its objectives, and its functions can now be more effectively conducted through an interagency effort rather than through a FACA advisory board.

Beginning in 1978, radiation dose reconstructions have been performed for veterans with radiogenic diseases; in particular, atomic veterans. The term "atomic veteran" applies to United States (U.S.) military personnel who participated in the atmospheric testing of nuclear weapons from 1945 to 1962, or those who were either prisoners of war in Japan or stationed in Hiroshima or Nagasaki around the time the atomic bombs were detonated. Dose reconstruction is the scientific estimation of radiation dose levels received by a particular individual. These dose levels are used to determine the increased risk of cancer, illness, or other adverse health effects, as well as the compensation that will be provided to those individuals. The Veterans' Advisory Board on Dose Reconstruction (VBDR) is a Federal Advisory Committee composed of private sector experts and scientists, in addition to one representative each from the Defense Threat Reduction Agency and U.S. Strategic Command Center for Combating Weapons of Mass Destruction (DTRA/SCC-WMD), and the Department of Veterans Affairs (VA), who provide technical and academic advice on DoD's Radiation Dose Reconstruction Program and the VA's radiological disease claims processing procedures.

Due to the VBDR's recommendations, the Radiation Dose Reconstruction Program is a mature program with established scientific procedures for determining the overall radiation doses received by affected individuals. In addition, the board's recommendations have streamlined the VA's atomic veteran's claims processes, resulting in significant efficiencies and shortened processing times. To ensure sustained emphasis of this important program, DoD requests that the review and oversight functions of the VBDR be transferred to the Secretaries of Defense and Veterans Affairs.

**Budgetary Implications:** The board is jointly funded by DoD and VA, with DoD providing for the administration of the program. The fiscal year (FY) 2013 committee cost was \$427,233, and 0.9 man-years. The Board held no meetings in FY14. Of this total committee cost, the VA contributes approximately \$157,000. This total includes government salaries, member travel and per diem costs, the program support contract, and costs associated with holding an annual public meeting accessible to atomic veterans. The board's recommended termination schedule included a final public meeting in July 2013 with the finalization and archival of files required by July 2014. The VBDR public website will be supported by DTRA/SCC-WMD for two years after termination. Savings to DoD after shutdown will be \$270,233 per year. This plan is dependent on DoD obtaining required Congressional relief.

Resource Requirements			

Savings	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	BA	Dash-1 Line Item
DoD	\$270,233	\$270,233	\$270,233	\$270,233	\$270,233	Operation and Maintenance, Defense-Wide	04	4GTN
VA	\$157,000	\$157,000	\$157,000	\$157,000	\$157,000			
<b>Total</b>	<b>\$427,233</b>	<b>\$427,233</b>	<b>\$427,233</b>	<b>\$427,233</b>	<b>\$427,233</b>	--	--	--

**Changes to Existing Law:** This proposal would amend section 601 of the Veterans Benefits Act of 2003 (Public Law 108-183, 117 Stat. 2667; prec. 38 U.S.C. 1154 note). The amendment to section 601 is a complete restatement of that section. The current text is set forth below. The proposed replacement text is in the legislative language at the beginning of this proposal.

**Veterans Benefits Act of 2003**  
(PUBLIC LAW 108-183 – DEC. 16, 2003)

**SEC. 601. [38 USC 1154 note] RADIATION DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE.**

~~—(a) REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION. —(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Radiation Dose Reconstruction Program of the Department of Defense.~~

~~—(2) In conducting the review under paragraph (1), the Secretaries shall~~

~~—(A) determine whether any additional actions are required to ensure that the quality assurance and quality control mechanisms of the Radiation Dose Reconstruction Program are adequate and sufficient for purposes of the program; and~~

~~—(B) determine the actions that are required to ensure that the mechanisms of the Radiation Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit Veterans to review the assumptions utilized in their dose reconstructions.~~

~~—(3) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth~~

~~—(A) the results of the review;~~

~~—(B) a plan for any actions determined to be required under paragraph (2); and~~

~~—(C) such other recommendations for the improvement of the mission, procedures, and administration of the Radiation Dose Reconstruction Program as the Secretaries jointly consider appropriate.~~

~~—(b) ON GOING REVIEW AND OVERSIGHT. The Secretaries shall jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose~~

Reconstruction Program, including the establishment of the advisory board required by subsection (e).

~~———— (e) ADVISORY BOARD. — (1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Radiation Dose Reconstruction Program.~~

~~———— (2) The advisory board under paragraph (1) shall be composed of the following:~~

~~———— (A) At least one expert in historical dose reconstruction of the type conducted under the Radiation Dose Reconstruction Program.~~

~~———— (B) At least one expert in radiation health matters.~~

~~———— (C) At least one expert in risk communications matters.~~

~~———— (D) A representative of the Department of Veterans Affairs.~~

~~———— (E) A representative of the Defense Threat Reduction Agency.~~

~~———— (F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.~~

~~———— (3) The advisory board under paragraph (1) shall~~

~~———— (A) conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of decisions by the Department of Veterans Affairs on Claims for service connection of radiogenic diseases;~~

~~———— (B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program; and~~

~~———— (C) carry out such other activities with respect to the review and oversight of the Radiation Dose Reconstruction Program as the Secretaries shall jointly specify.~~

~~(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Radiation Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).~~

## TITLE XI—CIVILIAN PERSONNEL MATTERS

**Section 1101** would extend through fiscal year (FY) 2017 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

This authority has been granted since 2006 to provide certain allowances, benefits, and gratuities to individuals on official duty in Pakistan or a combat zone. The extension of the authority would ensure employees receive benefits promptly and for the periods of time when the conditions warrant the designation of a combat zone. This is a provision that applies to all Federal agencies, not just the Department of Defense (DoD), and is necessary to incentivize and support all Federal civilian employees taking assignments in Pakistan or a conflict zone.

**Budgetary Implications:** The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost

PREPARED STATEMENT OF THOMAS J. SNEE, M.ED, NCCM (SW), USN, (RET),  
NATIONAL EXECUTIVE DIRECTOR, THE FLEET RESERVE ASSOCIATION

THE FRA

The Fleet Reserve Association (FRA) is the oldest and largest organization serving enlisted men and women in the active, Reserve, and retired communities plus veterans of the Navy, Marine Corps, and Coast Guard. The Association is Congressionally Chartered, recognized by the Department of Veterans Affairs (VA) and entrusted to serve all veterans who seek its help.

FRA was started in 1924 and its name is derived from the Navy's program for personnel transferring to the Fleet Reserve or Fleet Marine Corps Reserve after 20 or more years of active duty, but less than 30 years for retirement purposes. During the required period of service in the Fleet Reserve, assigned personnel earn retainer pay and are subject to recall by the Secretary of the Navy.

The Association testifies regularly before the House and Senate Veterans' Affairs Committees, and the Association is actively involved in the Veterans Affairs Voluntary Services (VAVS) program. A member of the National Headquarters' staff serves as FRA's National Veterans Service Officer (NVSO) and as a representative on the VAVS National Advisory Committee (NAC). FRA's NVSO also oversees the Association's Veterans Service Officer Program and represents veterans throughout the claims process and before the Board of Veteran's Appeals. For 2014, 144 FRA Shipmates and members of the Auxiliary provide 13,470 volunteer hours of support at 59 VA facilities throughout the country, enabling FRA to achieve VA's "Associate Servicemember" status.

FRA became a member of the Veterans Day National Committee in August 2007, joining 24 other nationally recognized Veterans Service Organizations (VSO) on this important committee that coordinates National Veterans' Day ceremonies at Arlington National Cemetery. The Association is a leading organization in The Military Coalition (TMC), a group of 33 nationally recognized military and veteran's organizations collectively representing the concerns of over five million members. FRA senior staff members also serve in a number of TMC leadership positions.

The Association's motto is "Loyalty, Protection, and Service."

INTRODUCTION

Distinguished Committee Chairman Johnny Isakson, Ranking Member Richard Blumenthal and other Members of the Committee; thank you for the opportunity to present the Association's views on specific pending and draft legislation, and recommendations 11 and 12 of the Military Compensation and Retirement Modernization Commission (MCRMC). Before addressing specific issues, it's important to note that veteran's benefits are earned through service and sacrifice in the defense of this great Nation and are not "entitlements" or "social welfare" programs. FRA will oppose any across-the-board budget driven cuts that lumps veteran's programs with unrelated civilian programs and completely rejects any efforts that would ask veterans to do their "fair share" in deficit reduction.

AGENT ORANGE BLUE WATER NAVY REFORM (S. 681)

The Association wishes to thank Senator Kristin Gillibrand (N.Y.) for introducing the "Blue Water Navy Vietnam Veterans Act" (S. 681). Representative Chris Gibson (NY) is sponsoring identical legislation in the House (H.R. 969) that was introduced with 131 original co-sponsors and currently has 218 co-sponsors. This legislation clarifies a presumption for filing disability claims at the VA for ailments associated with exposure to the Agent Orange herbicide during the Vietnam War. This legislation would reverse current policy so Blue Water veterans who only served on ships off the coast and have health problems commonly associated with herbicide exposure will be eligible for service-related VA medical and disability benefits. Many of these veterans are now senior citizens and the time to help them is now!

From 1964–1975 more than 500,000 servicemembers were deployed off the coast of Vietnam, and many may have been exposed to Agent Orange, a herbicide used in Vietnam. Past VA policy (1991–2001) allowed servicemembers to file claims if they received the Vietnam Service Medal or Vietnam Campaign Medal. But VA implemented a "boots on the ground" limitation on obtaining an Agent Orange presumption connection.

FRA is concerned about the December 2013 report from the National Academy of Sciences on the health effects from exposure to herbicides used during military operations in Vietnam. The study is mandated by the Agent Orange Act of 1991 (P.L. 102–4) and the Veterans Education and Benefits Expansion Act of 2001 (P.L. 107–

103). This provision in the public law sunsets September 30, 2015 and should be extended.

The study provides limited or suggestive evidence that some Vietnam veterans exposed to Agent Orange herbicide have a higher incidence of stroke after age 70. The study also notes that the possibility of adverse health effects in offspring of Vietnam veterans is a high priority with veterans, but notes that this is a very elusive outcome to establish or refute.

The Association appreciates the establishment of a presumptive service-connection for Vietnam veterans who have B cell leukemia, Parkinson's disease or ischemic heart disease. These diseases are related to exposure to Agent Orange. Former VA Secretary Eric Shinseki's decision is a major step in the right direction, but FRA is advocating for a broader Agent Orange service-connection.

However, a January 2013 VA statement referencing a careful review of another IOM report in 2011, entitled, "Blue Water Navy Vietnam Veterans and Agent Orange Exposure," indicates that there is insufficient evidence to establish a presumption of exposure to herbicides for Vietnam veterans who served off the Vietnam coast during the conflict.

FRA believes that decision maintains the status quo regarding disability claims of these so-called "Blue Water" veterans and that the IOM report validated the 2002 Royal Australian Navy study that confirmed the desalinization process used on Australian and U.S. Navy ships actually magnified the dioxin exposure. The Association continues to seek a legislative remedy to reverse current policy so Blue Water veterans and military retirees who have health problems commonly associated with herbicide exposure will be eligible for service-related VA medical and disability benefits.

The Association notes the VA's efforts to expand presumption to ships exposed to Agent Orange during the Vietnam era. In January 2012, the VA added 47 ships to its list of Navy and Coast Guard vessels that may have been exposed to the Agent Orange herbicide. The list expanded as VA staff determined that a ship anchored, operated close to shore or traveled on the inland waterways and was exposed to the toxic herbicide. While the expanded VA policy to include veterans who sailed on "inland waterway" ships is significant, FRA believes it does not go far enough. The Association has received hundreds of calls from "blue water sailors" and their surviving spouses, stating that due to service on "their ships" in Vietnam waters (Tonkin Gulf), they too suffer or have died from many of the illnesses associated to presumed exposure to herbicides as their "brown water" and "boots on the ground" counterparts. Many want to forget about the Vietnam War. But we should never forget those who served during the Vietnam War.

#### GI BILL FAIRNESS (S. 602)

FRA wants to thank Senators Ron Wyden, (Ore.), and John Boozman, (Ark.), for introducing the "GI Bill Fairness Act" (S. 602) that would ensure wounded Guardsmen and Reservists receive the GI Bill benefits they've earned.

Members of the Guard or Reserve who are wounded in combat are often given orders under 10 U.S.C. 12301(h) for their recovery, treatment and rehabilitation. Unfortunately, Federal law does not recognize such orders as eligible for Post-9/11 GI Bill education assistance, meaning that unlike other members of the military, these Reserve Component members actually lose benefits for being injured in the line of duty. The GI Bill Fairness Act would end that unequal treatment and ensure these servicemembers are eligible for the same GI Bill benefits as active duty members of the military. FRA believes this is common sense legislation to fix a problem and ensure these servicemembers get the benefits they deserve.

FRA has signed onto a Military Coalition (TMC) letter of support for the "Military Spouses Equal Treatment Act" (S. 270) and the Association has not taken a position on S. 627.

#### MCRMC BACKGROUND

The FY 2013 National Defense Authorization Act (H.R. 4310—P.L. 112-239) establishes the Military Compensation and Retirement Modernization Commission (MCRMC), but limits its recommendations from being a BRAC-like endorsement, as originally proposed, in its review of the current compensation and military retirement system. FRA believes it's important that this distinguished Committee and its House counterpart maintain oversight over commission recommendations that fall under its jurisdiction. While FRA supports many of the Commission's recommendations it was noted that no enlisted personnel were appointed to serve on the Commission. Nearly 75 percent of the current active force is enlisted and therefore should have representation on this Commission.

FRA wants to thank the members of the Commission and their staff for allowing FRA to have input while the report was being written. The Commission met with 97 other advocacy groups as well. The MCRMC visited 55 military installations, received more than 150,000 survey responses from active duty and retirees, and held eight Town Hall meetings in their efforts to understand the complexity of the military compensation and retirement systems.

#### MCRMC FINAL REPORT

The report makes 15 major recommendations intended to improve the cost-effectiveness of quality benefits for those who currently serve, have served and will serve in the future. This Distinguished Committee has asked for FRA's position on recommendation 11 and 12.

MCRMC Recommendation 11 proposes that Congress "Safeguard education benefits for Servicemembers by reducing redundancy and ensuring fiscal sustainability of education programs." FRA supports consolidating multiple educational benefit programs into a single package with benefits eligibility and scope based on the length and type of duty performed.

The Commission recommends a number of steps toward reducing redundancy in GI Bill programs. FRA supports many of the specific proposals and offers these comments for the Committees' consideration.

Montgomery GI Bill (MGIB) and the Reserve Educational Assistance Program (REAP) should stop any further enrollment and permit those currently using these programs to complete their studies. Those only using the Post-9/11 GI Bill should receive a full or partial refund of the \$1,200 they paid to become eligible for MGIB benefits.

MCRMC also recommends eligibility requirements for transferring Post-9/11 GI Bill benefits should be increased to 10 years plus an additional commitment of two years. FRA opposes this change in that it devalues the program. Currently, servicemembers must serve 6 years and agree to serve 4 more to make dependents eligible for transfer of benefits.

MCRMC further recommends that housing stipends for dependents be eliminated. FRA again opposes budget-driven cuts to benefit programs. The Association also supports restoring the Reserve Montgomery GI Bill benefits to at least 47 percent of active duty MGIB benefits. The Reserve MGIB program paid 47 percent of the Active Duty MGIB for the first 14 years of its existence (1985–1999). Thereafter, the National Guard and Reserve components reduced funding down to 21 percent of the Active Duty MGIB. The reason for the steep decline in these benefits is that the program competes directly for funding against annual discretionary reserve pay and benefit accounts. The Active Duty MGIB and the Post-9/11 GI Bill, are mandatory funding programs.

Consistent with the MCRMC's basic recommendation about educational benefit programs redundancy, FRA could support a Reserve MGIB program as an initial entry benefit for reservists that was part of an overarching military education program that would include benefits adequate enough to maintain and support the All-Volunteer Force.

FRA supports MCRMC Recommendation 12 and suggests that mandatory GPS should also include spouses and that the program should be adjusted to include programs that benefit the entire family. Further local branches of military/veterans organizations should also be involved in the transition from military to civilian life. Affiliating with one or more of organizations can provide critical transition assistance such as contacts in the local community, and camaraderie with fellow veterans.

#### DRAFT LEGISLATION

FRA wants to express its appreciation for having the opportunity to comment on draft legislation that includes provisions from other bills. The draft bill includes provisions from the "Veterans Small Business Opportunity and Protection Act" (S. 296), sponsored by Sen. Dean Heller (NV), that recognizes the surviving spouse of a service-connected disabled veteran, who acquires the ownership interest in a small business of the deceased veteran as such veteran.

When a Veteran small business owner with a service-connected disability of less than 100 percent dies from causes unrelated to service, the spouse immediately loses those benefits. FRA supports this legislation, sponsored by Sen. Dean Heller (NV) that will help veteran owned family businesses remain eligible for small business benefits.

The Association supports the "Honor America's Guard-Reserve Retirees Act" (S. 743), which recognizes servicemembers in the reserve components the status as a veteran. Under current law, a reserve component servicemember who has served

honorably for twenty or more years, earning the right to retire, is not considered a veteran. FRA believes that for those who serve honorably in the Guard or Reserve components for 20 or more years and who have met the requirements as a retiree should be granted the title as veteran.

FRA supports the “Quicker Veterans Benefits Delivery Act” (S. 666), sponsored by Sen. Al Franken (Minn.) that intends to improve the disability claims backlog by removing bureaucratic red tape that allows Veterans to see local doctors for their initial diagnosis and avoid long wait times at VA hospitals.

The Association supports the “Dignified Interment of Our Veterans Act” (S. 695), sponsored by Sen. Patrick Toomey (Penn.) that requires the VA to report to Congress on issues relating to the interring of veterans’ unclaimed remains in national cemeteries under the auspices of the National Cemetery Administration. The Missing in America Project conducted research that suggests there are remains of about 47,000 veterans stored throughout the United States that have yet to be identified and/or claimed.

FRA supports the “Ruth Moore Act” (S. 865), sponsored by Sen. Jon Tester (Mt.) that makes it easier for veterans to qualify for disability benefits by reducing their burden of proof for incidents of military sexual trauma. The legislation is named after Navy Veteran, Ruth Moore, who is a survivor of military sexual assault. This legislation will also require the VA to report military sexual trauma claim statistics annually to Congress.

#### CONCLUSION

In closing, allow me again to express the sincere appreciation of the Association’s membership for all that you and the Members of the Senate Veterans’ Affairs Committees and your outstanding staff do for our Nation’s veterans.

Our leadership and Legislative Team stand ready to work with the Committees and their staffs to improve benefits for all veterans who’ve served this great Nation.

---

#### TESTIMONY FOR THE RECORD OF JAMIE TOMEK, CHAIR, GOVERNMENT RELATIONS COMMITTEE, GOLD STAR WIVES OF AMERICA, INC.

Thank you for the opportunity to submit Testimony for the Record for the Joint Senate and House Veterans’ Affairs Committee hearing on Wednesday, May 13, 2015.

Gold Star Wives of America, Inc. (GSW) was founded in 1945 and is a Congressionally Chartered Veterans Service Organization which serves the surviving spouses of military servicemembers and veterans who died in service to this Great Nation.

#### S. 270, THE CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015

This bill changes the Title 38 requirement that a spouse must be of the opposite sex and amends current law so that the determination of whether or not a marriage is valid is determined by the laws administered by the Secretary of the Department of Veterans Affairs rather than a variety of state, territory and local laws. GSW concurs with this proposed legislation.

#### 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

*Sec 208. Report on Plans of Secretary of Veterans Affairs to Reduce Inventory of Claims for Dependency and Indemnity Compensation and Claims for Pension Congress is requesting that the Department of Veterans Affairs provide a plan to reduce the inventory of claims for Dependency and Indemnity Compensation and Pensions.*

Timely processing of Dependency and Indemnity Compensation (DIC) claims and timely receipt of DIC is critical to many surviving spouses. DIC is often the only income a surviving spouse receives and delay in processing and sending DIC causes a significant financial crisis.

GSW concurs with the need for this plan.

#### DISCUSSION DRAFT

*Sec 102. Treatment of Businesses after Deaths of Servicemember-owners for Purposes of Department of Veterans Affairs Contracting Goals and Preferences*

S. 296—Sec 102 of the Discussion Draft became S. 296. S. 296, Sec 3 (i) reads:



“(i) Treatment of businesses after death of servicemember-Owner.—(1) If a member of the Armed Forces owns at least 51 percent of a small business concern and such member is killed in line of duty \* \* \* ”

The wording “such member is killed in the line of duty” should be amended to read “and such member dies in the line of duty.” The word “killed” excludes all those who die on active duty. GSW has encountered this problem with killed vs. died in the past and the error is usually unintentional and due to not understanding the legal difference between the two words. Other than the issue stated above GSW concurs with this legislation.

*Sec 204. Pilot Program on Treatment of Certain Applications for Dependency and Indemnity Compensation as Fully Developed Claims*

“(b)(4) in the case that the claimant is the spouse of the deceased veteran, certifies that he or she has not remarried since the date of the veteran’s death.”

Surviving spouses who remarry at or after the age of 57 may receive Dependency and Indemnity Compensation. The above paragraph should be amended to add this information. Other than the issue stated above GSW concurs.

MCRM LEGISLATIVE PROPOSAL RECOMMENDATIONS 11 AND 12

*Sec 1104 and 1105. Post-9/11 GI Bill Transferability*

Servicemembers may transfer their post-9/11 education benefits to a family member but will incur an increase in their service obligation. GSW concurs with this proposal.

REPORTS

There are numerous provisions in these proposals requiring a variety of different reports. Reports such as those mentioned herein are expensive and after a period of time are no longer needed or used. Such reports should have a termination date stated initially and if the report is still needed after the termination date action may be taken to extend the termination date.

SURVIVING SPOUSE ISSUES

There are numerous issues in the above reports pertaining to education benefits. Since education issues are being addressed the following issue concerning the Gunnery Sergeant John David Fry Scholarship/Post-9/11 GI Bill could easily be addressed with those issues.

*Gunnery Sergeant John David Fry Scholarships/Post-9/11 GI Bill for Surviving Spouses*

We are very grateful for Congress’ recent approval of the Gunnery Sergeant John David Fry Scholarships or Post-9/11 GI Bill for the Post-9/11 surviving spouses of those who died on active duty. The Fry Scholarships became available to surviving spouses effective in January 2015 and are available to a surviving spouse for 15 years after the death of his or her military spouse. If a surviving spouse’s military spouse died early in the post-9/11 era, the surviving spouse does not have enough time to complete a 4 year college degree. Please extend the time limit for using the Fry Scholarship benefits from 15 years after the death of the military spouse to 20 years after the death of the military spouse.

---

PREPARED STATEMENT OF DAVID STACY, GOVERNMENT AFFAIRS DIRECTOR,  
HUMAN RIGHTS CAMPAIGN

Mr. Chairman and Members of the Committee: My name is David Stacy, and I am the Government Affairs Director for the Human Rights Campaign, America’s largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. On behalf of our 1.5 million members and supporters nationwide, I am honored to submit this statement into the record for this important hearing on pending benefits legislation that will impact our veterans. Today I will specifically speak in support of the Charlie Morgan Military Spouses Equal Treatment Act of 2015. Our veterans and their families have sacrificed deeply in service to our country. The Charlie Morgan Act promotes fundamental fairness and ensures that all veterans, regardless of who they love or where they live, receive the benefits that they have earned and deserve.

Following the U.S. Supreme Court decision in *U.S. v. Windsor*, which invalidated Section 3 of the Defense of Marriage Act (DOMA), the Federal Government—including the Department of Veterans' Affairs—began recognizing same-sex spouses for the purposes of Federal benefits and services. However, for LGBT veterans access to these benefits is far from universal. Current statutory language limits eligibility for veterans' benefits to those living in states that recognize their marriage. This means that despite sweeping advances in equality and marriage recognition over the past decade, thousands of same-sex married couples living in states that do not recognize their marriage are denied access to these benefits including burial rights and home loan guaranty benefits.

Veterans' benefits provide critical medical and financial support for veterans and their families. For veterans struggling with injury or disability as a result of service, these benefits can be a lifeline. For many active duty servicemembers, these benefits are a promise that their loved ones will be taken care of if they don't make it home. However, despite their service and sacrifice some veterans and servicemembers continue to be denied these most basic assurances.

This denial is not only fundamentally unfair, it also promotes an arbitrarily discriminatory system that harms veterans and their families solely based on geography.

Recognizing this, the Department of Defense has implemented a policy recognizing all same-sex marriages of enlisted servicemembers regardless of the state where the family lives. This policy promotes consistency and fairness and recognizes the mobility that we so often ask of our servicemembers. The failure of the Federal Government to provide uniform benefits to all veterans results in a frustrating and harmful scenario for many LGBT servicemembers. Due to these conflicting policies, upon retirement many veterans' families will lose benefits over night. This not only frustrates common sense, but disrespects the service and sacrifice of our veterans as well as their families.

The harm of these denials results in daily hardships for too many families. Despite the Supreme Court decision in *U.S. v. Windsor*, eight year Army veteran Earl Rector was denied a VA home loan in Texas with his husband Alan. The couple had legally married in Washington State and returned to Dallas to purchase a home. Despite meeting every other qualification, the Department of Veterans' Affairs denied the loan, leaving Earl with no recourse or assistance. Under the current discriminatory statute Earl and Alan were considered to be legal strangers by the Department simply because of their home state. Despite years of service, Earl was forced to secure a costly private mortgage to purchase the home.

Earl and Alan are not alone. These daily denials are disrespectful, costly, and too often heartbreaking. Chief Warrant Officer Charlie Morgan passed away believing that her wife and daughter would go unrecognized and receive none of the benefits that she had earned during her years of service. No servicemember should face this stark discrimination at a time when they need support the most. We have made a promise to all of our veterans who faithfully serve our country alongside their families. It is time to keep this promise.

I appreciate the opportunity to offer this testimony today and urge Congress put an end to this harmful discrimination against our brave service men and women.

---

#### PREPARED STATEMENT OF MILITARY OFFICERS ASSOCIATION OF AMERICA

Chairman Isakson, Ranking Member Blumenthal: The Military Officers Association of America (MOAA) is pleased to present its views on veterans' benefits legislation under consideration by the Committee today, May 13, 2015.

MOAA does not receive any grants or contracts from the Federal Government.

#### MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION (MCRMC)

MCRMC Recommendation 11 proposes that Congress "Safeguard education benefits for Servicemembers by reducing redundancy and ensuring fiscal sustainability of education programs."

MOAA has long supported consolidating multiple educational benefit programs in a single platform under Title 38 with benefits eligibility and scope based on the length and type of duty performed.

Specifically, the MCRMC recommends a number of steps toward reducing redundancy in GI Bill programs. MOAA endorses most of the specific proposals and offers these comments for the Committee's consideration.

*Montgomery GI Bill and REAP.* MCRMC recommendation: Montgomery GI Bill—Active Duty (Chap. 30, 38 U.S.C.) should be sunset on 1 October 2015. The Reserve Educational Assistance Program (REAP) (Chap. 1607, 10 U.S.C.) should be sunset

restricting any further enrollment and allowing those currently pursuing an education program with REAP to complete their studies. Servicemembers who switch to the Post-9/11 GI Bill should receive a full or partial refund of the \$1,200 they paid to become eligible for MGIB benefits. The refund should be proportional to the amount of the Post-9/11 GI Bill benefit used.

MOAA concurs. The Post-9/11 GI Bill should be the sole educational platform for supporting recruitment, retention and re-adjustment outcomes for the All-Volunteer Force. Servicemembers with MGIB-AD or REAP entitlement should be grandfathered with those benefits; under current policy they may elect to convert to the new GI Bill, if eligible. \$1200 refunds are already authorized for MGIB-AD holders who make an irrevocable election to the new GI Bill and consume all 36 months of their entitlement. MOAA recommends making \$1200 refund rules clearer and simpler.

*Transfer Eligibility of Educational Benefits.* MCRMC recommends eligibility requirements for transferring Post-9/11 GI Bill benefits should be increased to 10 YOS plus an additional commitment of 2 YOS. This change strengthens transferability as a true retention tool and aligns transferability eligibility to the Commission's Recommendation on retirement.

MOAA does not support the transferability recommendation. Congress provided statutory authority for the Dept. of Defense (DOD) to determine the optimal service obligation for eligible servicemembers to transfer new GI Bill benefits to dependents. MOAA recommends DOD review its policy/procedures and adjust transferability service commitments to support career force retention as necessary.

*Housing Stipend.* MCRMC recommends the housing stipend for dependents should be sunset on July 1, 2017.

MOAA has no position on sunsetting the housing stipend for future Post-9/11 GI Bill transfer contracts entered into on/after 1 July 2017. However, MOAA strongly objects to any cancellation of the housing stipend under transferability contracts in place before 1 July 2017. DOD should not break faith on existing transfer agreements including the housing stipend (BAH) after 1 July 2017. In cases where service extension agreements have already been signed and/or fulfilled for transferability, BAH for dependents must be honored, and servicemembers with such contracts should not have to meet a new threshold of service.

*Unemployment Compensation.* MCRMC recommends eligibility for unemployment compensation should be eliminated for anyone receiving housing stipend benefits under the Post-9/11 GI Bill.

MOAA objects to the proposal. Housing stipends start and stop in synch with academic and training calendars. Unemployment compensation is needed for veterans, including veterans with dependents, to meet financial obligations during breaks in full-time study or training.

*Tracking Education Levels.* DOD should track the education levels of Servicemembers leaving the Service, as well as the education levels of Servicemembers who transfer their Post-9/11 GI Bill to their dependents. MOAA supports.

*Report to Congress.* The VA should collect information related to, but not limited to, graduation rates, course competition rates, course dropout rates, course failure rates, certificates and degrees being pursued, and employment rates after graduation, and include that information in an annual report to the Congress.

MOAA supports. The Departments of Defense, Veterans' Affairs and Education must build on their ongoing efforts to track outcomes from military tuition assistance (TA) and GI Bill programs.

*Non-Personally Identifiable Information.* Educational institutions should be required to provide non-personally identifiable information on students who receive Post-9/11 GI Bill and TA benefits, when requested by DOD or VA.

MOAA supports. Allow the collection of non-personally-identifiable veteran data by the Department of Education.

MONTGOMERY GI BILL—SELECTED RESERVE (MGIB-SR) (CHAPTER 1606, 10 U.S.C.). THE MCRMC DID NOT MAKE A RECOMMENDATION RE THE MGIB-SR.

MOAA position. The MGIB-SR program paid nearly 50 cents to the dollar compared to the MGIB-AD for the first 14 years of its existence (1985–1999). Thereafter, the Services and their National Guard and Reserve components allowed the program to dwindle to a current ratio of 22 cents to the dollar compared to the MGIB-AD. The reason for the steep decline in these benefits over time is the program competes directly for funding against annual discretionary reserve pay and benefit accounts. The MGIB-AD and the Post-9/11 GI Bill, on the other hand, are mandatory funding programs under Title 38. As a Title 10 discretionary program DOD has declined to sustain the MGIB-SelRes as a recruitment tool.

Consistent with the MCRMC's basic recommendation to eliminate educational benefit programs redundancy, MOAA has long maintained that the MGIB-SR should be re-codified as a sub-chapter in Chapter 33, 38 U.S.C. as an initial entry benefit for reservists. A single GI Bill platform with benefits scaled to the length and type of duty performed is needed to support All Volunteer Force manpower in the 21st century.

DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS—REGARDING EDUCATION BENEFITS, TRANSITION ASSISTANCE PROGRAM, AND ADVISORY BOARD ON DOSE RECONSTRUCTION (SECTIONS 514, 522, 542, 545, AND 1041)

*DOD Legislative Proposal Section 514. Expansion of Service Qualifying for Post-9/11 GI Bill Entitlement.* DOD proposes to add Section 12301(h), 10 U.S.C. as qualifying active duty service for reservists who are receiving authorized medical care—medical hold status—for Post-9/11 GI Bill entitlement purposes.

Members of the National Guard or Reserve who are disabled on active duty orders and receiving medical care should not lose eligibility for Post-9/11 GI Bill benefits.

The DOD's Reserve Forces Policy Board recommended to the Secretary of Defense a change in law on the basis of equity. MOAA agrees. Currently, when a Guard or Reserve servicemember is injured or wounded in a combat theatre, the member is transitioned on orders to a medical hold status under 10 U.S.C. 12301(h). This stops accrual of active duty time that would count toward Post-9/11 GI Bill entitlement. If the member is not discharged but returns to service, none of the time spent in medical hold counts as qualifying service. In effect, the reserve member is penalized for a line-of-duty wound, injury or illness. Coincidentally, if the same member were discharged from service because of the disability, the member would earn 100% of the benefit—assuming 30 days continuous active duty service.

Reservists continue to honorably serve wherever and whenever they are needed. Closing this oversight in current statute would allow all servicemembers to continue to accrue the educational benefits earned in service while receiving medical care from the DOD under Section 12301(h) of Title 10.

MOAA strongly supports S. 602, the GI Bill Fairness Act of 2015, which would implement DOD's recommendation for reservists in medical hold status.

*Section 522. Recovery of MGIB-Selected Reserve (MGIB-SR) Benefits for Service on Active Duty under Recently Added Authorities.* DOD proposes that Sections 12304a and 12304b of 10 U.S.C. would be added to existing authorities in Chapter 1606, 10 U.S.C. so that reservists called to active duty under these sections may regain lost MGIB-SR after release from active duty.

Section 12304a authorizes the involuntary activation of a National Guard or Reserve member by the Secretary of Defense when a state Governor requests Federal assistance in responding to a major disaster or emergency. Reservists may serve a continuous period of active duty of not more than 120 days under the authority. Under a catastrophic event like Hurricane Katrina reservists may need to be activated for a period of time that would compel them to repeat a course of study or training.

Section 12304b authorizes Secretaries of the Military Departments to order as many as 60,000 members of the Selected Reserve to active duty to augment the active forces for missions in support of a combatant command for up to 365 days without the consent of the member. By law, such missions must be preplanned and budgeted in Service budget submissions and members must be notified 180 days prior to their activation. Reservists may be activated if an exception to policy is approved by the Secretary of Defense. When this happens, servicemembers may be forced to lose academic credit for withdrawal from a course. DOD anticipates that few reservists would be affected over the next few years but wants to protect their earned benefits.

MOAA supports the DOD proposal. Reservists called to operational duty under Sections 12304a and 12304b should not lost entitlement to MGIB-SR benefits during their active duty service.

The "operational reserve" policy was promulgated by former Secretary of Defense Bob Gates on January 17, 2007. It specifies that members and units of the National Guard and Reserve can expect to serve up to one year on active duty to perform operational missions for every six years of service in the Selected Reserve—"one year mobilized to every five years demobilized ratio." DOD's recommendation springs from acknowledgement that additional call-up authorities provided by Congress should not be a cause for them to lose earned MGIB-SR benefits.

That said, MOAA believes that the DOD recommendation on Sections 12304a and 12304b is too narrowly drawn. MOAA recommends that Sections 12304a and 12304b be added to the Post-9/11 GI Bill under Section 3301, 38 U.S.C. By any reasonable

interpretation of Congress' intent for Sections 12304a and 12304b, missions that would be performed under such orders are operational missions for the purpose of defending or protecting the homeland or augmenting active force missions that are pre-planned and budgeted.

In MOAA's view, reservists who serve aggregates of 90 days of active duty under Sections 12304a and 12304b should be entitled to Post-9/11 GI Bill benefits. Our recommendation is consistent with the MCRMC's view on education benefits, discussed earlier, to eliminate GI Bill programs redundancy and rely on Chapter 33, 38 U.S.C. as the GI Bill educational platform for the All Volunteer Force.

*Section 542. Update Involuntary Mobilization Authorities Exempted from the USERRA Five-year Limit.* DOD proposes to add references to Sections 12304a and 12304b of 10 U.S.C. to complete the list of current statutory authorities exempt from the Uniformed Services Employment and Reemployment Rights Act (USERRA) five-year limitation under Chapter 43, 38 U.S.C.

Congress enacted the USERRA to protect members of individuals who perform or have performed service on active duty from employment discrimination on the basis of their uniformed service in accordance with Sections 4301–4335, 38 U.S.C. As DOD notes, the USERRA is “intended to ensure that these uniformed servicemembers are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not disadvantaged against in employment because of their military status or uniformed service obligations.”

Adding Sections 12304a and 12304b is consistent with Congress' intent for protecting uniformed servicemembers when called to active duty. MOAA strongly supports amending the USERRA to include Sections 12304a and 12304b, 10 U.S.C.

*Section 545. Pre-Separation Counseling for Members of the National Guard and Reserves on Continuous Active Duty.* DOD proposes to “expressly exclude” any period of active duty for training (ADT) from receiving transition assistance program (TAP) services. TAP is provided to members who are being discharged or released before the completion of that member's first 180 days active duty.

According to DOD, the “first 180 days” can be misinterpreted to mean the first 180 cumulative days on active duty as in the case of National Guard and Reserve members.

MOAA accepts the proposal to clarify the intent to exclude an initial period of active duty training (ADT) in the calculation of service to qualify for TAP services.

We point out that the DOD and Services could use the proposed change to “game” the system by putting reservists on ADT and active duty orders in connection with an operational call-up.

There are numerous examples of call-ups executed during OIF-OEF in the last decade that involved blended ADT and active duty orders. These appear to have been used to align the call-ups with available funding sources and to manage the numbers of National Guard and Reserves who were to be counted on “active duty” for operational purposes.

MOAA is concerned that the proposed change could be used against reservists during extended call-ups to deny their access to TAP re-adjustment services. MOAA, therefore, opposes the proposal as written. MOAA recommends the Committee review this matter with the Armed Services Committee to ensure Guard and Reserve members who are on active duty to perform operational missions are not denied TAP upon the completion of 180 days of continuous active duty.

*Section 1041. Repeal the Authority for the Federal Advisory Committee Act Board on Radiation Dose Reconstruction Program.* DOD proposes to repeal the FACA advisory board for the Radiation Dose Reconstruction Program. DOD asserts the board has achieved its objectives and its functions can now be more effectively conducted through an interagency effort rather than through a FACA advisory board.

DOD notes that the Veterans' Advisory Board on Dose Reconstruction (VBDR), a Federal Advisory Committee, provides technical assistance on DOD's Radiation Dose Reconstruction Program and the Dept. of VA's radiological disease claims processing procedures. DOD is requesting that that review and oversight functions of the VBDR be transferred to the Secretaries of Defense and Veterans Affairs.

MOAA is not opposed to sunsetting the Federal Advisory Board on Radiation Dose Reconstruction. MOAA, however, would recommend the Committee consider the potential value in re-casting the VBDR charter with a broader mission of advising the Secretaries of Defense and Veterans Affairs on toxic exposures. The experience of our Nation's warriors over the past 25 years with exposures to burn pits, chemical weapons, hazardous military materials, spent uranium rounds, biologicals, and other toxic materials suggests that a Federal Advisory Board would be of value to the respective departments, servicemembers, veterans and their families.

*S. 681, Blue Water Navy Vietnam Veterans Act of 2015 (Senators Gillibrand, D-NY, Tester, D-MT and Moran, R-KS).* S. 681 would authorize Agent Orange-related benefits to Navy veterans who served in the territorial waters of Vietnam during that conflict. Despite scientific studies confirming their likely onboard exposure to dioxin and other chemicals that make up Agent Orange, these veterans have been denied access to service-related disability and other benefits arising from illnesses presumed caused by the exposure.

MOAA has long maintained that these veterans deserve equal treatment with other veterans who set “boots on the ground” during the Vietnam War. That limitation was arbitrary, unfair and not based on science.

MOAA strongly supports S. 681 and urges the Committee favorably report the bill as soon as possible.

*S. 1203, The 21st Century Veterans Benefits Delivery Act (Senators Heller, R-NV and Casey, D-PA).* S. 1203 builds upon Senator Heller and Casey’s legislation passed in the last session of Congress to advance practical, low-cost solutions to resolve the backlog of veterans’ claims in the Department of Veterans Affairs (VA). The bill also sets out supporting initiatives that can improve the efficiency and effectiveness of procedures and practices to sustain the claims system for the future.

The 21st Century Veterans Benefits Delivery Act includes provisions beneficial to our Nation’s veterans that will enable easier access to information on their claims through the eBenefits portal and speed access to hearings when they appeal a claim. The legislation also brings needed reforms to VA regional offices’ practices that are designed to increase the accuracy and efficiency of their work on behalf of veterans and improve transparency. Additionally, S. 1203 requires government agencies to cooperate in the collection and transmission of information needed by the VA to decide veterans’ claims, and for other purposes.

MOAA is very grateful that Senators Heller and Casey’s offices actively consulted with us and our partner veteran service organizations to improve the draft legislation and make it responsive to the needs of our veterans.

MOAA strongly supports the 21st Century Veterans Benefits Delivery Act, S. 1203, and urges the Committee to favorably report the bill at the earliest opportunity.

#### DISCUSSION DRAFT LEGISLATION INCLUDING PROVISIONS DERIVED FROM VARIOUS SENATE BILLS.

*S. 241, the Military Family Relief Act of 2015 (Senators Tester, D-MT and Moran, R-KS),* would provide for the payment of temporary Dependency and Indemnity Compensation (DIC) to a surviving spouse of a veteran upon the death of the veteran, and for other purposes. MOAA strongly supports S. 241.

*S. 296, the Veterans Small Business Opportunity and Protection Act of 2015 (Senator Heller, R-NV and Manchin, D-WV)* would assist surviving spouses and dependents of service-disabled veteran-owned businesses after the veteran dies from the disability or in the line of duty, and for other purposes. MOAA supports S. 296.

*S. 666, the Quicker Benefits Delivery Act of 2015 (Senator Franken, D-MN)* would require (instead of permit) the consideration of non-Dept. of VA medical professionals evidence in support of claims for disability compensation submitted by veterans, and for other purposes. MOAA strongly supports S. 666.

*S. 695, the Dignified Interment of Our Veterans Act of 2015 (Sen. Toomey, R-PA)* would require the Secretary of Veterans Affairs to conduct a study on matters relating to the burial of unclaimed remains of veterans in national cemeteries, and for other purposes. MOAA supports S. 695.

*S. 743, Honor America’s Guard-Reserve Retirees Act of 2015 (Senator Boozman, R-AR)* would honor as a veteran members of the National Guard or Reserves who are entitled to or in receipt of retired pay for non-regular (reserve) service but who had not served on active duty.

National Guard and Reserve members who complete a full career in reserve status and are receiving or entitled to a military pension, government health care and specific earned veterans’ benefits under Title 38 are not “veterans of the Armed Forces of the United States,” in the absence of a qualifying period of active duty.

Due to military accounting and funding protocols, many reservists actually have performed operational missions during their careers but orders often were issued under other than a Title 10 active duty authority. S. 743 would honor these retired servicemembers as veterans but preclude award of any veterans’ benefits they are not already entitled to as a result of their service. MOAA strongly supports passage of S. 243.

PREPARED STATEMENT OF BRYAN POLISUK, GENERAL COUNSEL,  
UNITED STATES MERIT SYSTEMS PROTECTION BOARD



**U.S. MERIT SYSTEMS PROTECTION BOARD**

Office of General Counsel  
1615 M Street, NW  
Washington, DC 20419-0002

May 13, 2015

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

Dear Mr. Chairman:

You have asked the United States Merit Systems Protection Board ("MSPB") to provide written testimony in connection with a hearing the Senate Committee on Veterans' Affairs ("Committee") is holding on May 13, 2015, addressing pending benefits legislation. Specifically, you have asked MSPB to provide input on S. 627, which was introduced by Senator Ayotte and cosponsored by Senators McCaskill, Moran, Flake, Klobuchar, Shaheen, Thune, and Crapo.

MSPB appreciates the opportunity to provide input on S. 627, which generally would require the Secretary of the Department of Veterans Affairs ("Secretary") to revoke bonuses paid to employees and supervisors of the Department of Veterans Affairs who "contributed to the purposeful omission of the name of one or more veterans waiting for health care from an electronic wait list for a medical facility of the Department ...". MSPB notes that it currently does not have jurisdiction over appeals filed by federal employees solely in connection with the revocation of a performance bonus. Thus, this legislation, if enacted into law, would provide MSPB with jurisdiction over a personnel action which neither the three-member Board at MSPB Headquarters in Washington, D.C. ("Board"), nor an MSPB administrative judge, has previously reviewed and adjudicated.

MSPB is an independent quasi-judicial agency and part of the executive branch. It serves as the guardian of merit principles in the federal government and, under statute, is responsible for adjudicating appeals filed by federal employees in connection with certain adverse personnel actions. The Board issues decisions in accordance with statutory law, MSPB precedent, and precedent from United States federal courts, including the United States Court of Appeals for the Federal Circuit, which is MSPB's primary reviewing

court. MSPB is not involved in the taking of any adverse personnel action by any federal agency official. It becomes involved only after an agency takes an adverse personnel action against an employee and the affected employee chooses to appeal to MSPB, per his or her statutory right to do so.

I would like to emphasize that MSPB is prohibited by statute from providing advisory opinions in any matter. 5 U.S.C. § 1204(h) (“The Board shall not issue advisory opinions.”) As such, in response to your request, we are providing only technical views, some of which are reflected in MSPB decisions or statute. This response should not be construed as an indication of how the Board or any MSPB administrative judge would rule in any future case brought under this legislation, once enacted into law.

#### **Technical Views on S. 627**

##### **1. Liability Under Section 1(a)(1) of the Bill**

Section 1(a) of the bill establishes the liability requirements for covered employees at the Department of Veterans Affairs. It provides that the following employees are covered:

- (1) Those who, during any of fiscal years 2011 through 2014 –
  - (A) Contributed to the purposeful omission of the name of one or more veterans waiting for health care from an electronic wait list for a medical facility of the Department identified by the Inspector General [in a report identified in Section 1(a) of the bill]; or
  - (B) [Were] the supervisor of an employee of the Department, or the supervisor of that supervisor, at any level, who contributed to a purposeful omission [as described above] and knew, or reasonably should have known, that the employee contributed to such purposeful omission; and
- (2) Received a bonus in part because of such omission.

As a technical matter, it would appear Section 1(a)(1) of the bill covers four sets of Department of Veterans Affairs employees: 1) employees who purposefully omitted the names of one or more veterans waiting for health care from an electronic wait list<sup>1</sup>; 2)

---

<sup>1</sup> Although Section 1(a)(1)(A) of the bill refers only to employees who “contributed to the purposeful omission of one or more veterans waiting for health care from an electronic wait list,” it is logical to conclude that this language would similarly cover employees of



employees who contributed to the purposeful omission of one or more veterans waiting for health care from an electronic wait list; 3) supervisors of employees who purposefully omitted, or who contributed to the purposeful omission of, one or more veterans waiting for health care from an electronic wait list; and 4) supervisors of the supervisors of the employees who purposefully omitted, or who contributed to the purposeful omission of, one or more veterans waiting for health care from an electronic wait list.

The United States Court of Appeals for the Federal Circuit has mandated that, when charging an employee with misconduct, an agency must prove all of the elements of the substantive offense with which an individual is charged. *King v. Nazlerod*, 43 F.3d 663, 667 (Fed. Cir. 1994). See also *Phillips v. General Servs. Admin.*, 878 F.2d 370, 372 (Fed.Cir.1989); *Naekel v. Department of Transp.*, 782 F.2d 975, 977 (Fed.Cir.1986); *Downes v. Federal Aviation Admin.*, 775 F.2d 288, 292 (Fed.Cir.1985). See also *Green v. Department of Army*, 25 M.S.P.R. 342, 345 (1984), *aff'd mem.*, 785 F.2d 326). Traditionally, it is the burden of the agency to prove the requisite intent if intent is an element of the offense charged. *King*, 43 F.3d at 667.

With respect to supervisors and managers, the Board has held that, generally, to the extent an agency wishes to hold such employees responsible for any failures of their subordinates, *i.e.*, those that occur on his or her watch, it may do so. See *Miller v. Department of Navy*, 11 M.S.P.R. 518, 521 (1982) (“A supervisor, by his very position, may be held accountable for improprieties stemming from the actions of his subordinates”). However, according to the Board, in order to do so, an agency must identify the subordinates, show what the subordinates’ failures were, show why the manager should have known about them and show that he or she failed to take action to correct the identified failures. *Id.* at 519-21. See also *Mauro v. Department of Navy*, 35 M.S.P.R. 86, 91-93 (1987) (same). To phrase it more colloquially, “an agency must connect the dots of fault from the identified failure by the subordinates back up the line to the manager.” *Helman v. Department of Veterans Affairs*, MSPB Docket No. DE-0707-15-0091-J-1 (Dec. 22, 2014).

Also, it would appear that Section 1(a)(1) of the bill requires knowledge of the conduct at issue for only two sets of covered employees at the Department of Veterans Affairs: 1) supervisors of employees who purposefully omitted or contributed to the purposeful omission of one or more veterans waiting for health care from an electronic wait list; and 2) supervisors of the supervisors of the employees who purposefully omitted or contributed to the purposeful omission of one or more veterans waiting for health care from an electronic wait list. Consequently, in order to revoke a bonus received by these employees, the Department of Veterans Affairs would likely need to

---

the Department of Veterans Affairs who actually purposefully omitted one or more veterans from an electronic wait list, along with those who contributed to such omissions.

show that these supervisors knew or reasonably should have known of their subordinates' improper conduct, or in other words, "connect the dots of fault ... back up the line to the manager. *Helman v. Department of Veterans Affairs*, MSPB Docket No. DE-0707-15-0091-J-1 (Dec. 22, 2014).

MSPB notes that, as drafted, S. 627 does not appear to provide a similar knowledge requirement for: 1) employees who purposefully omitted the names of one or more veterans waiting for health care from an electronic wait list; or 2) employees who contributed to the purposeful omission of one or more veterans waiting for health care from an electronic wait list.<sup>2</sup> MSPB takes no position on this issue, but notes that if the Committee wishes to make the knowledge requirement uniform for all covered employees, it should consider amending section 1(a)(1)(A) of the bill to reflect such a requirement.

## **2. Internal Hearing Within The Department of Veterans Affairs**

Section 1(d)(1) of the bill establishes that employees who have been identified by the Secretary as having received a bonus "in part" because of omissions described above, shall be entitled to notice and an opportunity for a hearing, after which the Secretary "shall issue an order directing the employee to repay the amount of such bonus." Section 1(d)(2) of the bill provides that:

A hearing [as provided for in subsection 1(d)(1) of the bill] shall be conducted in accordance with regulations relating to hearings promulgated by the Secretary under chapter 75 of title 5, United States code.

MSPB presumes that Section 1(d)(2) is referring to the authority of the Department of Veterans Affairs under 5 U.S.C. § 7513(c), which states that:

An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under [5 U.S.C. § 7513(b)(2)].

MSPB notes that, under the current language contained in Section 1(d)(1), the Secretary's order "directing the employee to repay" the bonus could be construed to be automatic, once notice and an opportunity for a hearing is

---

<sup>2</sup> This is reflected in Section 1(c) of the bill, which requires the Secretary of the Department of Veterans Affairs to identify employees contributing to an omission described in subsection (a)(1) "without regard to whether the employee knowingly contributed to such omission or contributed to such omission for the purpose of receiving a bonus."

provided to the affected employee. There is no language in the Section that would indicate the Secretary's order will be issued only after consideration of the information contained in the Inspector General's report *and* the information provided by the employee during the hearing referenced in Section 1(d)(1), should the employee choose to participate in such a hearing.

The United States Supreme Court has consistently held that some form of hearing is required *before* an individual is finally deprived of a property interest. *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974) (emphasis added). *See, e. g. Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, 596-597 (1931). *See also Dent v. West Virginia*, 129 U.S. 114, 124-125 (1889). Moreover, the fundamental requirement of due process is the opportunity to be heard "at a meaningful time *and in a meaningful manner*." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965) (emphasis added). *See also Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

### **3. Appeals to the Merit Systems Protection Board**

#### **a. Employee Appeals "Under section 7701 of title 5, United States Code."**

Section (d)(3)(A) of the bill establishes that an employee subject to an order of the Secretary may appeal the Secretary's determination to the Merit Systems Protection Board "under section 7701 of title 5, United States Code."

Section 7701 of title 5 establishes MSPB's appellate procedures. Specifically, 5 U.S.C. § 7701 provides rights to appellants who file appeals with MSPB and articulates the obligations of federal agencies in those appeals. Among the pertinent provisions of 5 U.S.C. § 7701 are:

- **The Right to a Hearing at MSPB:** An employee who files an appeal with MSPB based on any action which is appealable under any law, rule, or regulation shall have the right "to a hearing for which a transcript will be kept" and the ability to conduct discovery. 5 U.S.C. §§ 7701(a)(1) and (k), 5 C.F.R. § 1201.71-75.
- **An Agency's Burden of Proof:** The decision of an agency shall be sustained in an appeal filed at MSPB under 5 U.S.C. § 7701 "if the agency's decision is supported by a preponderance of the evidence." 5 U.S.C. § 7701(c)(1)(B).
- **Affirmative Defenses Available to Appellants:** Section 7701 of title 5 provides that "an agency's decision may not be sustained ... if the employee ... shows that the [agency's] decision was based on any prohibited personnel practice described in section 2302(b) [of title 5, United States Code]." 5 U.S.C. § 7701(c)(2)(B).

Among the “prohibited personnel practices” described in section 2302(b) are illegal discrimination, 5 U.S.C. § 2302(b)(1)(A)-(E), coercion of political activity or reprisal for refusal to engage in political activity, 5 U.S.C. § 2302(b)(3), and reprisal for lawful “whistleblowing,” 5 U.S.C. § 2302(b)(8).

#### **b. Scope of MSPB Review**

Section 1(d)(3)(B) of the bill states that review of an appeal by MSPB “shall be based on the record established through the appellant’s hearing ...” The plain language of this section would require MSPB to review the Secretary’s determination solely on the record of the above-referenced internal hearing established in Sections 1(d)(1) and (2) of the bill.

MSPB believes that the language of Section 1(d)(3)(B) of the bill could conflict with the language of Section 1(d)(3)(A) of the bill because “under 5 U.S.C. § 7701,” an appellant is entitled to a hearing at MSPB and the right to conduct discovery. In other words, it could be argued that 5 U.S.C. § 7701 provides for the right to more than purely appellate review by the Board. Additionally, as noted above, 5 U.S.C. § 7701(c)(2)(B) allows appellants at MSPB to raise certain affirmative defenses in their appeals, including illegal discrimination and reprisal for unlawful whistleblowing. Thus, it could be argued that appellants have the right to raise certain defenses at MSPB that were not raised during their internal hearing, and be entitled to discovery regarding those defenses.

#### **c. Standard of MSPB Review**

Section 1(d)(3)(C) of the bill states that MSPB “shall set aside an order[of the Secretary] if the issuing of the order was clearly erroneous or the result of a denial of procedural due process.”

As noted above, in appeals filed “under 5 U.S.C. § 7701,” an agency’s decision must be supported by a “preponderance of the evidence.” 5 U.S.C. § 7701(c)(1)(B). “Preponderance of the evidence” is defined as “the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.” 5 C.F.R. § 1201.4(q). Under this bill, it is unclear what standard the Department of Veterans Affairs will apply during internal hearings to review a decision of the Secretary to revoke a bonus. Regardless, the Board’s review of the record from that hearing would be based on the “clearly erroneous” standard. A finding is “clearly erroneous” when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Massachusetts Mut. Life Ins. Co. v. U.S.*, 782 F.3d 1354 (Fed. Cir. 2015) (citing *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

MSPB is grateful for the opportunity to provide input on this bill. We understand that federal personnel law can be complicated. Should you or your staff have any questions, please do not hesitate to contact me at your convenience.

Sincerely,



Bryan Polisuk  
General Counsel  
United States Merit Systems Protection Board

C.C.:

The Honorable Richard Blumenthal  
Ranking Member  
Committee on Veterans' Affairs  
United States Senate  
Washington, D.C. 20510

PREPARED STATEMENT OF JOHN B. WELLS, USN (RET), EXECUTIVE DIRECTOR,  
MILITARY-VETERANS ADVOCACY

**Military-Veterans Advocacy Written Testimony in Support of S 681**

**Submitted to the United States Senate  
Veterans Affairs Committee**



**Commander John B. Wells, USN (Retired),  
Executive Director  
May 13, 2015**

### **Introduction**

Distinguished Committee Chairman Johnny Isakson, Ranking Member Richard Blumenthal and other members of the Committee; thank you for the opportunity to present the Association's views on the Blue Water Navy Vietnam Veterans Act (S. 681).

### **About Military-Veterans Advocacy**

Military-Veterans Advocacy Inc. (MVA) is a tax exempt IRC 501[c][3] organization based in Slidell Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation and education, MVA works to advance benefits for those who are serving or have served in the military. In support of this, MVA provides support for various legislation on the State and Federal levels as well as engaging in targeted litigation to assist those who have served.

Along with the Blue Water Navy Vietnam Veterans Association, Inc (BWNVVA) MVA has been the driving force behind the Blue Water Navy Vietnam Veterans Act (S. 681). Working with Members of Congress and United States Senators from across the political spectrum, MVA and BWNVVA provided technical information and support to sponsors who have worked tirelessly to restore the benefits stripped from the Blue Water Navy veterans thirteen years ago. Senators Gillibrand, Peters, Sanders, Moran, Brown, Tester, Klobuchar and Daines, along with, Congressman Chris Gibson have been steadfast supporters of this important legislation. Currently the House companion bill, HR 969, has 218 co-sponsors.

### **Military-Veterans Advocacy's Executive Director Commander John B. Wells USN (Ret.)**

MVA's Executive Director, Commander John B. Wells, USN (Retired) has long been viewed as the technical expert on S. 681. A 22 year veteran of the Navy, Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He possessed a mechanical engineering subspecialty, was qualified as a Navigator and for command at sea, and served as the Chief Engineer on several Navy ships. As Chief Engineer, he was directly responsible for the water distillation and distribution system. He is well versed in the science surrounding this bill and is familiar with all aspects of surface ship operations.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veterans law. He is counsel on several pending cases concerning the Blue Water Navy and has filed amicus curiae briefs in other cases. Since 2010 he has visited over 400 Congressional and Senatorial offices to discuss the importance of enacting this bill. He is recognized in the veterans community as the subject matter expert on this matter.

### **Historical Background**

In the 1960's and the first part of the 1970's the United States sprayed over 12,000,000

gallons of a chemical laced with 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) and nicknamed Agent Orange over southern Vietnam. This program, code named Operation Ranch Hand, was designed to defoliate areas providing cover to enemy forces. Spraying included coastal areas and the areas around rivers and streams that emptied into the South China Sea. By 1967, studies initiated by the United States government proved that Agent Orange caused cancer and birth defects. Similar incidence of cancer development and birth defects have been documented in members of the United States and Allied armed forces who served in and near Vietnam.

Throughout the war, the United States Navy provided support for combat operations ashore. This included air strikes and close air support, naval gunfire support, electronic intelligence, interdiction of enemy vessels and the insertion of supplies and troops ashore. Almost every such operation was conducted within the territorial seas.

The South China Sea is a fairly shallow body of water and the thirty fathom curve (a fathom is six feet) extends through much of the territorial seas. The gun ships would operate as close to shore as possible. The maximum effective range of the guns required most operations to occur within the territorial seas as documented in the attachment.<sup>1</sup> Often ships would operate in harbors or within the ten fathom curve to maximize their field of fire. The maximum range on shipboard guns (except the Battleship 16 inch turrets) required the ship to operate within the territorial seas in order to support forces ashore.

It was common practice for the ships to anchor while providing gunfire support. Digital computers were not yet in use and the fire control systems used analog computers. By anchoring, the ship's crew was able to achieve a more stable fire control solution, since there was no need to factor in their own ship's course and speed. It was also common for ships to steam up and down the coast at high speeds to respond to call for fire missions, interdict enemy sampans and other operational requirements.

Small boat transfers were conducted quite close to land. Many replenishments via helicopter took place within the territorial seas. Small boat or assault craft landings of Marine forces always took place within the territorial seas. Many of these Marines re-embarked, bringing Agent Orange back aboard on themselves and their equipment. Additionally mail, equipment and supplies staged in harbor areas were often sprayed before being transferred to the outlying ships. Embarking personnel would take boats or helicopters to ships operating in the territorial seas. The Agent Orange would adhere to their shoes and clothing as well as to mail bags and other containers. It would then be tracked throughout the ship on the shoes of

---

<sup>1</sup> The red line on the chart is known as the base line. Vietnam uses the straight baseline method which intersects the outermost coastal islands. The dashed line is twelve nautical miles from the baseline and represents the territorial seas. The bold line marks the demarcation line for eligibility for the Vietnam Service Medal. Prior to 2002, the VA granted the presumption of exposure to any ship that crossed the bold line. S-681 will restore the presumption only to a ship that crosses the dashed line.



embarking personnel and the clothing of those handling mail and other supplies brought aboard. Their clothing was washed in a common laundry, contaminating the laundry equipment and the clothing of other sailors.

Flight operations from aircraft carriers often occurred outside of the territorial seas. As an example, Yankee station was outside of the territorial seas of the Republic of Vietnam. Dixie Station, however, was on the border of the territorial seas. Some carriers, especially in the South entered the territorial seas while launching or recovering aircraft, conducting search and rescue operations and racing to meet disabled planes returning from combat. Aircraft carriers also entered the territorial seas for other operational reasons. Many times these planes flew through clouds of Agent Orange while conducting close air support missions. These planes were then washed down on the flight deck, exposing the flight deck crew to Agent Orange.

#### **Agent Orange Act of 1991.**

In 1991, the Congress passed and President George H. W. Bush signed, the Agent Orange Act of 1991, Pub.L. 102-4, Feb. 6, 1991, 105 Stat. 11. This federal law required VA to award benefits to a veteran who manifests a specified disease and who "during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975."

The Agent Orange Act of 1991 further required the Secretary to "take into account report received by the Secretary from the National Academy of Sciences and all other sound medical and scientific information and analyses available to the Secretary." The Secretary is further required to consider whether the results are statistically significant, are capable of replication, and withstand peer review. The responsibility to prepare a biennial report concerning the health effects of herbicide exposure in Vietnam veterans was delegated to the Institute of Medicine (IOM), a non-profit organization which is chartered by the National Academy of Sciences.

The Department of Veterans Affairs (hereinafter VA) drafted regulations to implement the Agent Orange Act of 1991 and defined "service in the Republic of Vietnam" as "service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam." 38 C.F.R. § 3.307(a)(6)(iii) (1994). This was in contrast to a previous definition which defined "service in Vietnam" as "service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam." 38 C.F.R. § 3.313 (1991). These regulations allowed the presumption of exposure throughout the Vietnam Service Medal area, the dark solid line marked on the Exhibit. Under this definition, a ballistic missile submarine was covered as were the aircraft carriers on Yankee Station and submarines conducting operations in the Gulf of Tonkin in an area of the coast where no Agent Orange was sprayed. These ships would not be covered under S 681.

In 1997 the VA General Counsel issued a precedential opinion excluding service members who served offshore but not within the land borders of Vietnam. The opinion

construed the phrase “served in the Republic of Vietnam” as defined in 38 U.S.C. § 101(29)(A) not to apply to service members whose service was on ships and who did not serve within the borders of the Republic of Vietnam during a portion of the “Vietnam era.” The opinion stated that the definition of the phrase “service in the Republic of Vietnam” in the Agent Orange regulation, 38 C.F.R. § 3.307(a)(6)(iii), “requires that an individual actually have been present within the boundaries of the Republic to be considered to have served there,” and that for purposes of both the Agent Orange regulation and section 101(29)(A), service “in the Republic of Vietnam” does not include service on ships that traversed the waters offshore of Vietnam absent the service member's presence at some point on the landmass of Vietnam.”<sup>2</sup>

After lying dormant for a few years, this General Counsel opinion was incorporated into a policy change that was published in the Federal Register during the last days of the Clinton Administration.<sup>3</sup> The final rule was adopted in Federal Register in May of that year.<sup>4</sup> Comments by the VA concerning the exposure presumption recognized it for the “inland” waterways but not for offshore waters or other locations only if the conditions of service involved duty or visitation within the Republic of Vietnam.

Historically the VA’s Adjudication Manual, the M21-1 Manual, allowed the presumption to be extended to all veterans who had received the Vietnam service medal, in the absence of “contradictory evidence.” In a February 2002 revision to the M21-1 Manual, the VA incorporated the VA General Counsel Opinion and the May 2001 final rule and required a showing that the veteran has set foot on the land or entered an internal river or stream. This “boots on the ground” requirement is in effect today.

#### Hydrological Effect

The Agent Orange that was sprayed over South Vietnam was mixed with petroleum. The mixture washed into the rivers and streams and discharged into the South China Sea. In addition, the riverbanks were sprayed continuously resulting in direct contamination of the rivers. The dirt and silt that washed into the river can be clearly seen exiting the rivers and entering the sea. This is called a discharge “plume” and in the Mekong River it is considerable. Although the Mekong has a smaller drainage area than other large rivers, it has approximately 85% of the sediment load of the Mississippi. In two weeks, the fresh water of the Mekong will travel several hundred kilometers.<sup>5</sup> Notably, the Agent Orange dioxin dumped off the east coast of the United

---

<sup>2</sup> VA Op. Gen. Counsel Prec. 27-97 (1997).

<sup>3</sup> 66 Fed.Reg. 2376 (January 11, 2001).

<sup>4</sup> 66 Fed. Reg. 23166.

<sup>5</sup> Chen, Liu et. al, *Signature of the Mekong River plume in the western South China Sea revealed by radium isotopes*, JOURNAL OF GEOPHYSICAL RESEARCH, Vol. 115, (Dec. 2010).

States was found in fish over one hundred nautical miles from shore.<sup>6</sup>

By coincidence, the baseline and territorial seas extend further from the mainland off the Mekong River. At its widest point off the Mekong, the territorial seas extend to 90 nautical miles from the mainland. This was due to the location of the barrier islands owned by Vietnam. Given the more pronounced effect of the Mekong plume, however, the broader area off the Mekong Delta is appropriate. The force of the water in this area is greater than the river discharge in other parts of the country.

Eventually, the Agent Orange/petroleum mixture would emulsify and fall to the seabed. Evidence of Agent Orange impingement was found in the sea bed and coral of Nha Trang Harbor.<sup>7</sup> During the Vietnam War, the coastline, especially in the harbors and within the thirty fathom curve was a busy place with military and civilian shipping constantly entering and leaving the area in support of the war effort. Whenever ships anchored, the anchoring evolution would disturb the shallow seabed and churn up the bottom. Weighing anchor actually pulled up a small portion of the bottom. The propeller cavitation from military ships traveling at high speeds, especially within the ten fathom curve, impinged on the sea bottom. This caused the Agent Orange to constantly rise to the surface. The contaminated water was ingested into the ship's evaporation distillation system which was used to produce water for the boilers and potable drinking water. Navy ships within the South China Sea were constantly steaming through a sea of Agent Orange molecules.

#### **The Australian Factor and the Distillation Process**

In August of 1998 Dr. Keith Horsley of the Australian Department of Veterans Affairs met Dr. Jochen Mueller of the University of Queensland's National Research Centre for Environmental Toxicology (hereinafter NRCET) in Stockholm at the "Dioxin 1998" conference. Horsley shared a disturbing trend with Mueller. Australian VA studies showed a significant increase in Agent Orange related cancer incidence for sailors serving offshore over those who fought ashore. Based on that meeting, the Australian Department of Veterans Affairs commissioned NRCET to determine the cause of the elevated cancer incidence in Navy veterans.

In 2002, as the American Department of Veterans Affairs (VA) was beginning to deny the presumption of exposure to the United States Navy veterans, NRCET published the result of

---

<sup>6</sup> Belton, et. al, 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and 2,3,7,8-Tetrachlorodibenzo-p-Furan (TCDF), In Blue Crabs and American Lobsters from the New York Bight, New Jersey Department of Environmental Protection (November 12, 1988).

<sup>7</sup> Pavlov, et, al, *Present-Day State of Coral Reefs of Nha Trang Bay (Southern Vietnam) and Possible Reasons for the Disturbance of Habitats of Scleractinian Corals*, RUSSIAN JOURNAL OF MARINE BIOLOGY, Vol. 30, No. 1 (2004).

their study.<sup>8</sup> Their report noted that ships in the near shore marine waters collected water that was contaminated with the runoff from areas sprayed with Agent Orange. The evaporation distillation plants aboard the ships co-distilled the dioxin and actually enriched its effects. As a result of this study, the Australian government began granting benefits to those who had served in an area within 185.2 kilometers (roughly 100 nautical miles) from the mainland of Vietnam.

#### **Institute of Medicine (IOM) Reports**

In June of 2008, Blue Water Navy representatives presented to the IOM's Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update) in San Antonio, Texas. That Committee report<sup>9</sup> accepted the proposition that veterans who served on ships off the coast of the Republic of Vietnam were exposed to Agent Orange and recommended that they **not be excluded** from the presumption of exposure. The Committee reviewed the Australian distillation report and confirmed its findings based on Henry's Law. The VA did not accept these recommendations. Instead then Secretary Shinseki ordered another IOM study. On May 3, 2010, Blue Water Navy representatives testified before the Institute of Medicine's Board on the Health of Special Populations in relation to the project "Blue Water Navy Vietnam Veterans and Agent Orange Exposure."<sup>10</sup> They concluded: (1) There was a plausible pathway for some amount of Agent Orange to have reached the South China Sea through drainage from the rivers and streams of South Vietnam as well as wind drift, (2) The distillation plants aboard ships at the time which converted salt water to potable water did not remove the Agent Orange dioxin in the distillation process and enriched it by a factor of ten, (3) Based on the lack of firm scientific data and the four decade passage of time, they could not specifically state that Agent Orange was present in the South China sea in the 1960's and 1970's, (4) There was no more or less evidence to support its presence off the coast than there was to support its presence on land or in the internal waterways and (5) Regarding the decision to extend the presumption of exposure "given the lack of measurements taken during the war and the almost 40 years since the war, this will never be a matter of science but instead a matter of policy." Notably this report did not contradict the findings of the Seventh Biennial report that the Blue Water Navy personnel should not be excluded from the presumption of exposure.

The IOM's Eighth Biennial Update recognized that "it is generally acknowledged

---

<sup>8</sup> Mueller, J; Gaus, C, et. al. *Examination of The Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins And Polychlorinated Dibenzofurans Via Drinking Water* (2002).

<sup>9</sup> IOM (Institute of Medicine). 2009. *Veterans and Agent Orange: Update 2008*. Washington, DC: The National Academies Press.

<sup>10</sup> IOM (Institute of Medicine). 2011. *Blue Water Navy Vietnam Veterans and Agent Orange Exposure*. Washington, DC: The National Academies Press.

that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land.”<sup>11</sup> The Ninth Biennial Update stated that “ it is generally acknowledged that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land, particularly in heavily sprayed areas that experienced frequent flooding.”<sup>12</sup>

#### Law of the Sea

The Agent Orange Act of 1991 provides that:

... [A] veteran who, *during active military, naval, or air service in the Republic of Vietnam* during the period beginning on January 9, 1962, and ending on May 7, 1975, and has ...[Diabetes Mellitus (Type 2)] shall be presumed to have been exposed during such service to an herbicide agent containing dioxin ... unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during service.

38 U.S.C. § 1116(a)(3). (Emphasis added).

Vietnam claims a 12 mile territorial sea. The United States has consistently recognized Vietnamese sovereignty over the territorial seas of Vietnam. This recognition was expressly incorporated into the 1954 Geneva Accords Art. 4 which established the Republic of Vietnam. <https://www.mtholyoke.edu/acad/intrel/genevacc.htm> (last visited June 6, 2014). It was confirmed again in Art. 1 of the 1973 Paris Peace Treaty which ended the Vietnam War. [http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Paris\\_Peace\\_Accord\\_1973.pdf](http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Paris_Peace_Accord_1973.pdf) (last visited June 6, 2014). During the war, the United States recognized a 12 rather than a 3 mile limit. See, *The Joint Chiefs of Staff and the War in Vietnam 1960-1968*, Part II which can be found at [dtic.mil/doctrine/.../jesvietnam\\_pt2.pdf](http://dtic.mil/doctrine/.../jesvietnam_pt2.pdf) at 358.

Vietnam claims as internal or inland waters the landward side of the baseline.<sup>13</sup> Additionally, bays such as Da Nang Harbor are considered part of inland waters and under international law are the sovereign territory of the nation.<sup>14</sup>

---

<sup>11</sup> IOM (Institute of Medicine). 2012. *Veterans and Agent Orange: Update 2010*. Washington, DC: The National Academies Press.

<sup>12</sup> IOM (Institute of Medicine). 2014. *Veterans and Agent Orange: Update 2012*. Washington, DC: The National Academies Press.

<sup>13</sup> United States Department of State Bureau of Intelligence and Research, *Limits in the Seas No. 99 Straight Baselines: Vietnam*, (1983).

<sup>14</sup> Convention on the Territorial Sea and Contiguous Zone, [1958] 15 U.S.T. 1607, T.I.A.S. No. 5639.

The Secretary has recognized the presumption of exposure for those who served onboard ships who were in “inland” waters. The VA definition only includes inland rivers and does not cover the bays and harbors. Recently the Court of Appeals for Veterans Claims has rejected the VA’s exclusion of Da Nang Harbor from the definition of inland waters as irrational and not entitled to deference.<sup>15</sup> In this case, the Court reviewed the case of a veteran whose ship was anchored in Da Nang Harbor but who did not set foot on land. Da Nang Harbor is surrounded on three sides by land and is considered inland waters under international law. The VA is now required to rationally specify what they consider to be inland waters.

#### **Cost of S 681**

In October of 2012, the Congressional Budget Office provided a preliminary estimate that the Blue Water Navy Vietnam Veterans Act would cost \$2.74 billion over ten years. The estimate is currently being recomputed based on information provided in a meeting between CBO and MVA. CBO originally used a gross exposure population of 229,000 people. This estimate was based on the number of veterans serving within the Vietnam Service Medal area. The Navy Historical and Heritage Command and the Congressional Research Service estimated that the number of sea service veterans serving inside the territorial seas was 174,000. Of the 713 ships deployed to Vietnam, however, there is documentation that 330 have entered the inland rivers. An MVA analysis, provided to CBO, estimates 81,000 sea service veterans are already covered under the existing inland waters provision. Of the remaining 93,000 veterans, MVA estimates another 10% of the crews actually set foot in Vietnam. This includes crew members who went ashore for conferences, to pick up supplies, equipment or mail and those who piloted and crewed the boats and/or the helicopters that operated between the ships and shore. Additionally, some personnel went ashore to see the doctor, the dentist, the chaplain or the lawyer. They called home. Shopped at the PX and departed on emergency leave or permanent change of station orders. Additionally, men reporting to the ship would often transit through Vietnam. Finally, a number of ships that were at anchorage would send a portion of the crew ashore for beach parties or liberty.

Some Blue Water Navy veterans, especially those who served 20-30 years, manifested symptoms while on active duty. They are automatically service-connected for those diseases and should not be considered in computing the cost of the bill.

There will be a dollar for dollar offset for Navy veterans currently receiving a non-service connected pension as well as those receiving non-service connected medical treatment at Veterans Health Administration (VHA) facilities. Additionally, under concurrent receipt laws, some veterans who are also military retirees will have a dollar for dollar offset due to waiver of their Title 10 pension (less federal tax liability).

---

<sup>15</sup> *Gray v. McDonald*, No. 13 3339, 2015 WL 1843053, (Vet. App. Apr. 23, 2015).

As most Blue Water Navy veterans are in their 60's they are Medicare eligible or will become Medicare eligible during the ten year cost cycle. In a previous report, the CBO has compared the cost of Medicare treatment with treatment at a VHA facility.<sup>16</sup> One of the key findings of this report was that private sector Medicare services would have cost about 21 percent more than services at a VHA facility. When dealing with retirees, the cost would be greater since Medicare only provides coverage for 80% of the cost. Tricare for Life provides an additional 20% coverage for military retirees.

While S. 681 will require an expenditure of funds, many of the costs will be recoverable. CBO is revising their score. MVA estimate that the 10 year cost will be \$1 billion or less.

#### **Common VA Misrepresentations**

The VA has consistently opposed the expansion of the presumption of exposure. Whether it is a reluctance to admit an error or other bureaucratic arrogance is unknown, but they have invariably misrepresented the facts surrounding this issue. As a result, tens of thousands of veterans have died without the compensation and care that they have earned. Additionally, the spouses of veterans were forced to leave the work force early to nurse sick husbands suffering from the ravages of Agent Orange. Many of these survivors have been left destitute.

Some common misrepresentations are as follows:

**Misrepresentation:** The Australian distillation study was never peer reviewed.

**MVA Comment:** The report was presented for review at the 21st International Symposium on Halogenated Environmental Organic Pollutants and POPs and is published in the associated peer reviewed conference proceedings: Müller, J.F., Gaus, C., Bundred, K., Alberts, V., Moore, M.R., Horsley, K., 2001. It was also reviewed and confirmed by two separate committees of the IOM.

**Misrepresentation:** There is no evidence that the evaporation distillation process used by the Australians was the same as used on United States ships.

**MVA Comment:** All steam ships used a similar system which remained in place until the 1990's. In addition many of the Australian gun ships were the United States *Charles F. Adams* class and were built in the United States. Both the MVA Executive Director and another experienced Navy Chief Engineer have reviewed the Australian report. They concluded the distillation systems therein were the same as used by U. S. ships.

**Misrepresentation:** There is no evidence that Navy ships distilled potable water.

---

<sup>16</sup> Congressional Budget Office, *Comparing the Costs of the Veterans' Health Care System With Private-Sector Costs* (December 2014)

**MVA Comment:** Ships carried a reserve of potable water but it was normally replenished by distillation daily or every other day. A Destroyer sized ship carried less than 20,000 gallons for a crew size between 275 and 300 men. The water was used for cooking, cleaning, laundry, showering and drinking. As Vietnam is in the tropics, significant hydration was necessary. In addition, the warmer sea injection temperature below the 17<sup>th</sup> parallel resulted in less efficient water production. Water hours, where showers were limited or banned, was common during tropical deployments. Water was constantly being distilled to meet the requirements for boiler feed water and potable water.

**Misrepresentation:** The Australian study monitored the reverse osmosis system rather than the evaporation distillation system used on U. S. ships.

**MVA Comment:** The only time that the reverse osmosis system was used in the Australian study was to purify the baseline sample prior to adding the solids and sediments consistent with the estuarine waters of Vietnam. The actual distillation process, as confirmed above, was the same distillation system used by U. S. Ships.

**Misrepresentation:** The IOM found more pathways of Agent Orange exposure for land based veterans than those at sea.

**MVA Comment:** Technically this is true but irrelevant. The IOM noted that discharges from rivers and streams was a pathway unique to the Blue Water Navy and that it was one of the plausible pathways of exposure. The number of possible pathways is not determinative. What is conclusive is that pathways of exposure existed.

**Misrepresentation:** The IOM could not quantify any Agent Orange in the water.

**MVA Comment:** This again is a red herring. Any amount of exposure can do damage to the human body. The IOM also found that the evaporation distillation process enriched the dioxin by a factor of ten. This is consistent with Australian studies showing a higher cancer incidence among Navy veterans and a Center for Disease Control study showing a higher incidence of Non-Hodgkins Lymphoma among Navy veterans.

**Misrepresentation:** Ships operating hundreds of miles off shore who were not exposed will be given the presumption of exposure.

**MVA Comment:** Not true. This bill applies only to the territorial seas which at their widest point off the Mekong extends out to 90 nautical miles from the mainland. In the central and northern part of the Republic of Vietnam, the territorial seas would only extend 20-30 nautical miles from the mainland.

**Misrepresentation:** Submarines would come into the area to obtain the Vietnam Service Medal for their crews and would be eligible for the presumption.

**MVA Comment:** One ballistic missile submarine the *USS Tecumseh*, SSBN 628 did enter the VSM area for that purpose but there is no indication that they entered the territorial seas. Submarines operating off of Haiphong or near Hainan Island would not have been within the territorial seas and are not covered by S-681.



**Misrepresentation:** No Agent Orange was sprayed over water.

**MVA Comment:** Not true. MVA is in possession of statements from witnesses that ships anchored in Da Nang Harbor were inadvertently sprayed as the "Ranch Hand" planes made their approach to the airfield. Additionally, there are anecdotal reports of defective spray nozzles resulting in spray over the ships at anchor or operating in the South China Sea. Finally, the IOM recognized that the offsetting winds would blow some spray intended for the landmass over water.

**Misrepresentation:** Navy regulations prevented ships from distilling water within ten miles of land.

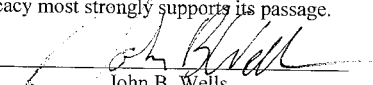
**MVA Comment:** This statement was taken out of context from a preventive medicine manual and was not a firm requirement. Ships were encouraged to not distill potable water near land because of the possibility of bacteriological contamination. Commanding Officers could allow potable water to be distilled close to land and often delegated that authority to the Chief Engineer. The IOM noted that the recommendation contained in the manual was widely ignored. More importantly, the recommendations in the manual did not apply to the distillation of feed water for use in the boilers. Since the same equipment was used for potable water, distillation to feed water would contaminate the entire system down to the final discharge manifold. Additionally, feed water used in auxiliary systems was discharged to the bilges via low pressure drains. Crew members would also be exposed to Agent Orange residue while cleaning and inspecting the watersides of boilers and the steam sides of condensers as well as other equipment.

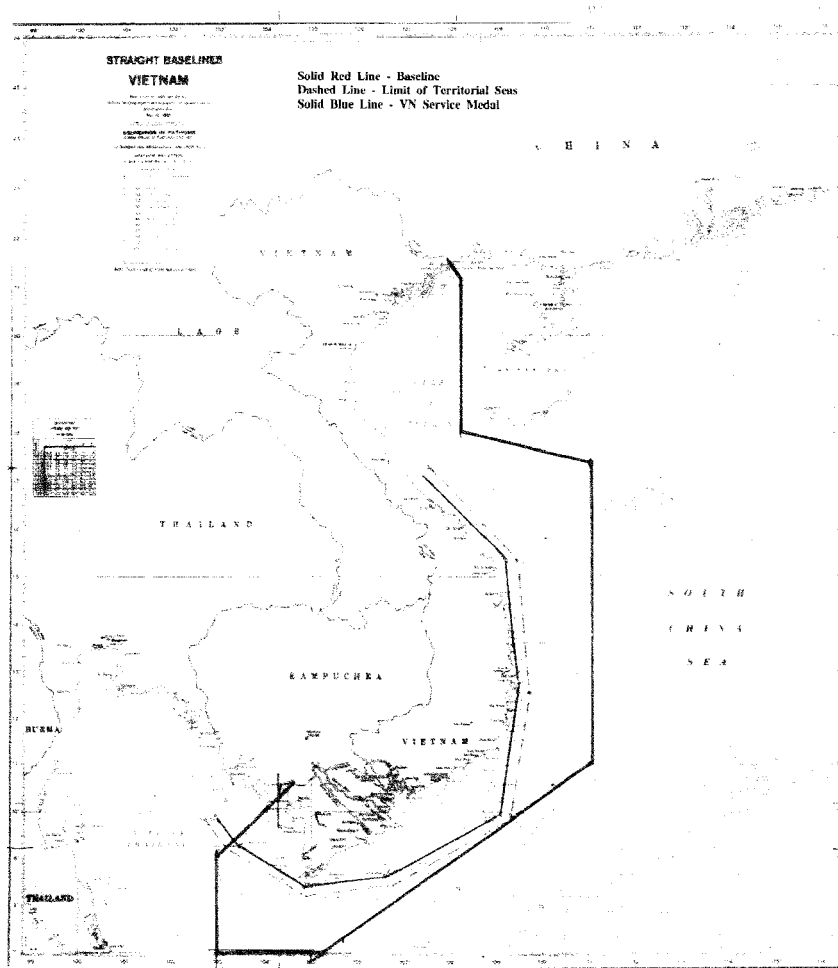
**Misrepresentation:** The IOM confirmed that there was no likelihood of exposure to herbicides in Da Nang Harbor.

**MVA Comment:** The court in *Gray v. McDonald*, took the VA to task for this statement noting that this was not the conclusion of the IOM.

#### Conclusion.

MVA urges the adoption of S. 681. It will restore the earned benefits to tens of thousands of Navy veterans that were taken from them over a decade ago. This bill is supported by virtually all veterans organizations including the American Legion, Veterans of Foreign Wars, Vietnam Veterans of America, Reserve Officers Association, Fleet Reserve Association, Military Officers Association of America, Association of the U. S. Navy and other groups. We have always enjoyed the support of the Military Coalition. Enactment of this legislation is overdue and Military-Veterans Advocacy most strongly supports its passage.

  
John B. Wells  
Commander, USN (Retired)  
Executive Director



PREPARED STATEMENT OF SCOTT LEVINS, DIRECTOR, NATIONAL PERSONNEL RECORDS  
CENTER, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**STATEMENT OF SCOTT LEVINS**  
**DIRECTOR, NATIONAL PERSONNEL RECORDS CENTER**  
**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**  
**TO THE SENATE COMMITTEE ON VETERANS' AFFAIRS**  
**ON THE**  
**21<sup>st</sup> CENTURY VETERANS BENEFITS DELIVERY ACT**

**May 13, 2015**

Thank you, Chairman Isakson, for giving me the opportunity to discuss the 21<sup>st</sup> Century Veterans Benefits Delivery Act. The National Archives and Records Administration (NARA) is deeply committed to serving our nation's veterans and supporting the needs of the Department of Veterans Affairs (VA).

NARA's National Personnel Records Center (NPRC) provides storage and reference services on the military personnel and medical records of nearly 60 million veterans. The center responds to approximately 5,000 requests each day. Most requests come directly from veterans and their next of kin; however, NPRC also receives approximately 1,500 requests per day from the VA for the temporary loan of original records needed to adjudicate claims.

The VA has a liaison office co-located at the NPRC facility and the two agencies work closely to ensure VA's prompt access to essential records. During the first six months of fiscal year 2015 NPRC responded to over 221,000 requests from the VA. The average response time for these requests was 2.4 workdays.

Recognizing the importance of providing timely access to records, NPRC has worked with the VA to develop a process that enables the electronic transmission of requests, prompt delivery of responsive records, bar code tracking of records, and electronic status updates. Our systems are designed to accommodate the receipt and processing of bulk electronic files created by the VA, which include hundreds (sometimes thousands) of new requests each day. The VA is also able to submit individual requests electronically. Automatic email notifications are sent to acknowledge the receipt of new requests. If our systems determine that a responsive record is temporarily unavailable, the request is placed on backorder for thirty days or until the record is returned to file, whichever is sooner. In instances where a responsive record is not immediately available (approximately 5% of requests), electronic notifications are made to the VA.

In addition to providing status updates through an electronic portal available to VA users, we also have given the VA direct access to our Case Management and Reporting System. This access enables VA staff to delve deeper into order fulfillment details concerning specific requests and to run ad hoc queries and reports concerning work volumes and response times.

The 21<sup>st</sup> Century Veterans Benefits Delivery Act directs NARA to appoint a liaison to the VA and to develop joint procedures to ensure that records requests from the VA are fulfilled or completed within 30 days of receipt. We are not opposed to the provisions relating to NARA in the Act; however, NARA already has a designated liaison with the VA and the NPRC is consistently exceeding the response time and notification standards outlined in the 21<sup>st</sup> Century Veterans Benefits Delivery Act. Since March 31, 1999, NPRC has designated a staff member to serve as a liaison with the VA to maintain continuous, effective communication concerning fluctuations in workload, troubleshooting system issues, or any other issues involving service delivery to the VA.

NPRC is committed to serving America's veterans and proud of its efforts to effectively support the VA's mission. We hope this information is helpful and appreciate your interest in this important subject.

---

PREPARED STATEMENT OF PETER J. DUFFY, COLONEL, USARMY (RETIRED),  
LEGISLATIVE DIRECTOR, NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

As Legislative Director of the National Guard Association of the United States, I thank you for the honor of submitting testimony with Senate Committee on Veterans' Affairs on pending benefits legislation. This testimony will respond to Chairman's request to address S. 602; the G.I. Bill Fairness Act of 2015; the legislative proposals to implement Recommendations 11 and 12 of the Military Compensation and Retirement Modernization Commission (MCRMC); and the legislative proposals from the Department of Defense (DOD) regarding Education Benefits, Transition Assistance Program and Advisory Board on Dose Reconstruction (sections 514, 522, 542, 545 and 1041). This statement will also comment on S. 865—the Ruth Moore Act of 2015. Thank you for this opportunity.

NGAUS STRONGLY SUPPORTS S. 602

NGAUS strongly supports S. 602 which would amend the Post-9/11 Veterans Educational Assistance Act of 2008 (Public Law 110–252) to recognize time National Guard and Reserve members serve on active duty receiving medical care as “active duty” for the purposes of eligibility for education assistance and to retroactively apply the amendment to the enactment date of Public Law 110–252 (hereinafter referred to as the Post-9/11 G.I. Bill).

In order for members of the reserve components to qualify for educational benefit purposes under the Post-9/11 G.I. Bill as currently written, they must serve on active duty served under section 608, 12301 (a), 12301 (d), 12301 (g), 12302, or 12304 or section 712 of title 14. See 38 U.S.C. Section 3301(1) (B). Active duty service for medical 10 U.S.C. Section 12301(h) is not included because that authority did not exist when Post-9/11 G.I. Bill was enacted.

10 U.S.C. 12301(h) was enacted to authorize National Guard and Reserve members to remain on active duty for full pay and allowances for treatment and evaluation of their service-connected injuries and for other medical purposes. This addressed an ongoing problem during the wars of our members returning to their civilian lives unable to earn a living because of their debilitating but treatable injuries.

When Congress enacted 10 U.S.C. 12301(h) during the ongoing OIF/OEF wars, it did not contemporaneously amend the existing Post-9/11 GI Bill in title 38 to qualify reserve component active duty served under 10 U.S.C. 12301(h) for educational benefits. This appears to have been an oversight during a very busy time.

NGAUS strongly supports this bill because the length of time reserve-component members serve on qualifying active duty determines their level of eligibility for education assistance. All active duty days need to be counted.

Active-duty members receive full credit for education assistance for their time spent receiving medical care for service-connected injuries. In fairness, National Guard and Reserve members deserve the same.

Not allowing educational benefits to apply to active duty served by the reserve components on for medical treatment discriminates harshly against our Guard and

Reserve wounded warriors who have bravely served the Nation. This needs immediate correction that S. 602 would do with full retroactivity to the enactment of the Post-9/11 G.I. Bill.

Please support this legislation and urge your colleagues to do the same.

RECOMMENDATION 11 OF THE MILITARY COMPENSATION AND RETIREMENT  
MODERNIZATION COMMISSION

NGAUS concurs with recommendation 11 and the legislative proposal to implement it with a few exceptions.

When enacting the consolidation recommendation, Congress needs to grandfather all in place service agreements relative to the transfer of Post-9/11 G.I. Bill benefits to dependents to include grandfathering any BAH currently being received by dependents.

The Post-9/11 G.I. Bill benefit must also be amended to cover all National Guard Title 32 active duty period of 90 consecutive days or longer responding to a national emergency pursuant to orders issued under the authority of Title 32 section 502 (f). This will compensate for benefits National Guard members would lose with the recommended elimination of REAP.

With respect to Army's Federal Tuition Assistance referenced in the MCRMCV report, the current program needs to restore the full benefit for the Army National Guard before being allowed to go forward as it is currently administered.

On Jan. 1, 2014 the Army imposed restrictions on utilization of the FTA for all Army components which prohibits use of FTA until one year after completion of Advanced Individual Training (AIT) or Basic Officer Leadership Course (BOLC). This has been particularly harmful to the ARNG participation in FTA which has declined by 18 percent and reduced total course enrollment by 31 percent. Consequently, the ARNG distributed only \$59.98 million of the \$73.8 million appropriated in 2014 for that purpose.

The Army's Federal Tuition Assistance (FTA) program has provided valuable financial assistance to citizen soldiers of the Army National Guard (ARNG) to advance their professional development as a soldier with benefits of up to \$250 per semester credit hour or \$167 per quarter credit hour not to exceed \$4,500 a year; and 100 percent of high school equivalency tuition and fees up to \$4,000 annually.

The optimal time for ARNG soldiers to enroll in full time education programs is immediately after completion of their initial entry training. Immediate utilization of the FTA following initial training has not only been a valuable recruiting tool for the citizen soldier but it has effectively placed soldiers on a fast career development track. ARNG soldiers are in a better position than their active duty counterpart to enroll as full-time students while serving in the military.

Soldiers receiving FTA within two years of accession have a higher retention rate than those not using FTA; soldiers using FTA within three years of enlistment have higher commission rates and are more likely to be higher quality accessions based on AFQT scores.

Congress must assure restoration of FTA for the ARNG by rescinding the one year wait restriction imposed by the Army and return authority to the Army National Guard to implement a Federal tuition assistance policy that addresses the unique needs of the Guard soldier.

RECOMMENDATION 12 OF THE MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION—MAKING TRANSITION ASSISTANCE PROGRAMS MANDATORY BUT WITH IMPROVEMENTS

NGAUS concurs with this recommendation in theory but the practice needs amending to provide transition assistance services to separating members of the military closer to their homes which in truth may be as far as a continent away from the active installation hosting the Transition Assistance Program (TAP) they attended.

Mental health providers in Florida reported last year that they treat veterans returning home to Florida after separating from the military who were totally unaware of the community mental health services available in that state.

Mental health is only one of the services that a veteran may seek once home. They would also profit from awareness of what, where and from whom local employment and veteran assistance services are available. Receiving briefings from local personnel who will be administering these programs in their communities would allow our veterans to associate a face with a service. This would only enhance accession of those services as transition may require.

Each state likely has the existing force structure through its National Guard Joint Force Headquarters to provide a facility and personnel for administering portions

of TAP better delivered at the state level that could connect to local state and Federal agency staff who likely have been delivering similar transition briefs to demobilizing Guard members throughout the war years.

This would provide a proven alternative or adjunct to existing TAP operations. One with the potential to save money for the government and likely anxiety on the part of the returning veteran with the better connectivity to in state resources that it would provide.

#### DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

NGAUS applauds and thanks DOD for this proactive effort in behalf of the reserve components that addresses problems that have emerged during the wars or are likely to emerge with future deployments.

#### *Section 514*

PLEASE REFER TO THE DISCUSSION ABOVE RELATIVE TO S. 602.

NGAUS certainly supports the DOD proposal to amend 38 U.S.C. 3301(1) (B) to include reserve component active duty for medical care served under 10 U.S.C. 12301(h) as active duty for Post-9/11 G.I. Bill education eligibility purposes but it needs to go further.

The proposed DOD amendment needs to incorporate the language of S. 602 so that it would be retroactively applied to the enactment of the Post-9/11 G.I. Bill. This would correct an apparent error in the legislative process that would provide equality in education benefit eligibility for all active duty and reserve component wounded warriors for their active duty time receiving medical care.

#### *Section 522*

NGAUS supports this DOD proposal that similar to section 514 discussed above that equitably recognizes and protects reserve component active duty deployments under authorities that did not exist when chapter 1606 of title 10, U.S. Code was enacted.

Montgomery G.I. Bill educational benefits lost because of reserve component active duty deployments under 10 U.S.C. 12304a and 12304b cannot currently be regained under the protections afforded by 10 U.S.C. 16133 which apply only to deployments under other older authorities.

Section 522 would correct this by amending 10 U.S.C. 16133 to allow the member to regain those benefits when a reserve component member could not complete studies because of an activation order under 10 U.S.C. 12304a or 12304b.

Section 522 would update protections in a fair and sensible manner. However, just as with section 514, there needs to be retroactive application to allow members of the reserve component to regain benefits lost because of past deployments under 10 U.S.C. 12304a or 12304b.

#### *Section 542*

NGAUS strongly supports amend this additional updating effort that would expand involuntary mobilization authorities exempt from the Uniform Services Employment Reemployment Rights Act (USERRA).

Extended mobilizations beyond five years were harshly handled during the wars by some of our Nation's airlines in disallowing Air National Guard pilots to return to work who served more than five years protecting our Nation's airspace under Operation Noble Eagle /Air Sovereignty Alert orders. Legislation was passed late in the wars to address this.

Section 542 is a forward looking effort that would protect reserve components members from an adverse employer's denial of reemployment based on a technical interpretation of existing USERRA law that does not apply to evolving deployment authorities.

#### *Section 545*

NGAUS supports section 545 recognizing that TAP is not needed for reserve component deployments less than 180 days or for longer periods of active duty for training. This would save the members' time and the government time and money. Moreover, any transition assistance required by National Guard members is more effectively and economically available through their assistance programs delivered within their states and managed by their Joint Force HQ.

#### *Section 1041*

NGAUS has scant experience with the programs covered by this proposal. Nevertheless, the proposal makes good economic and sustainment sense and avoids unnecessary duplication of effort by transferring to DOD and the Veterans Administration

the duties still assigned to an aging Federal Advisory Committee that are actively and expertly being worked at DOD and VA.

S. 865

These comments are somewhat gratuitous but in review of the disability compensation protections that would be afforded sexual assault victims under S. 865—Ruth Moore, it is an opportunity to remind Congress of an alternative but underfunded authority to embed mental health providers in armories and Reserve Centers.

Embedded licensed mental health care professionals embedded in armories and Reserve centers provide an onsite confidential touch point for sexual assault victims to report a sexual assault incident outside of the victim's chain of command.

The embedded provider based the victim's civilian community will be well versed in what local support and prosecution services are available and can guide and advise the victim through that ticket.

Moreover, sexual assault is the trigger and a precursor to a host of behavioral issues that can be immediately and confidentially addressed by an embedded mental health professional. This would not only help to protect and document a future disability claim but might well be a first step in preventing a suicide arising from the assault.

The bill also grasps the need for victims to be able to support a disability claim from community based treatment outside of the Veterans Administration which may be perceived as male dominated and unfriendly to victims.

There is a profound and ongoing need for Congress to fund confidential community based counseling services for veterans and their families similar to the successful Connecticut model that is administered cost effectively and efficiently with 24/7 access for veterans and families in crisis mode.

PREPARED STATEMENT OF NATIONAL MILITARY AND VETERANS ALLIANCE



**National Military and Veterans Alliance**

*5535 Hempstead Way, Springfield, VA 22151*

*Phone: (703) 750-1342 ext. 1008*

*Email: [naus@naus.org](mailto:naus@naus.org)*

April 29<sup>th</sup>, 2015

The Honorable John Boozman  
United States Senate  
320 Hart Senate Office Building  
Washington, DC 20510

Re: S. 743: Honor America's Guard-Reserve Retirees Act of 2015

Dear Senator Boozman,

The National Military and Veterans Alliance, a non-partisan policy and advocacy organization composed of military and veteran service organizations, writes to thank you for your leadership regarding National Guard and Reserve veterans' status and for introducing legislation that would honor members of the National Guard and/or Reserve components who meet the qualifications for retirement to be designated as "veterans" under Title 38, United States Code.

We understand that members of the Reserves or National Guard may serve their entire careers and, through no fault of their own, never be activated under Title 10 for other than training purposes. These service men and women stand ready to perform any duty required of them yet, due to the needs of their units or the branches they serve in, are never mobilized to serve on active duty. These Reserve and National Guardsmen and women serve honorably and fulfill the duties and responsibilities required of them over the course of 20 or more years of service. However, under current law, they are not considered to be veterans of the Armed Forces of the United States.

The National Military and Veterans Alliance fully supports your effort to honor these servicemen and women. The distinction of being considered veterans under the law is an honor that these service members have earned and we believe that this action will boost the morale of both the service member and the families that support them.

We salute your efforts and leadership in addressing this important issue and we would like you to know that you have our continued thanks. Please feel free to contact us regarding this and any issue affecting military veterans, retirees and their families.

Sincerely,



**National Military and Veterans Alliance**

Page 2

## Member Organizations, National Military and Veterans Alliance (NMVA)

American Logistics Association	National Defense Committee
American Military Retirees Association	National Gulf War Resource Center
American Military Society	Reserve Officers Association
American Retirees Association	The Flag and General Officers Network
Army Navy Union	The Naval Enlisted Reserve Association
Association of the United States Navy	The Retired Enlisted Association
Gold Star Wives of America	Tragedy Assistance Program for Survivors
Military Order of Foreign Wars	Veterans of Foreign Wars
Military Order of the Purple Heart	Veterans of Modern Warfare
Military Order of the World Wars	

PREPARED STATEMENT OF KENNETH M. CARPENTER, FOUNDING MEMBER, NATIONAL  
ORGANIZATION OF VETERANS' ADVOCATES, INC.

**NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.**



**Prepared Statement**

**Kenneth M. Carpenter, Founding Member of NOVA**

**Before the**

**Committee on Veterans' Affairs**

**United States Senate**

**21<sup>st</sup> Century Veterans Benefits Delivery Act; Senate Bill 270; Senate Bill 681;  
and Discussion Draft of Legislation Calling for a  
Pilot Program on Treatment of Certain Applications for Dependency and  
Indemnity Compensation as Fully Developed Claims**

**May 13, 2015**

Contact Information:  
National Organization of Veterans' Advocates, Inc.  
1425 K Street, NW, Suite 350  
Washington, DC 20005  
(202) 587-5708  
[www.VetAdvocates.org](http://www.VetAdvocates.org)

On behalf of the National Organization of Veterans' Advocates, Inc. (NOVA), I would like to thank Chairman Isakson and Ranking Member Blumenthal for the opportunity to provide written testimony for the record during a legislative hearing of the Senate Veterans' Affairs Committee on May 13, 2015.

The National Organization of Veterans' Advocates, Inc. (NOVA) is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents more than 500 attorneys and agents assisting tens of thousands of our nation's military veterans, their widows, and their families to obtain benefits from the Department of Veterans Affairs (VA). NOVA members represent Veterans before all levels of the VA's disability claims process. In 2000, the United States Court of Appeals for Veterans Claims recognized NOVA's work on behalf of Veterans with the Hart T. Mankin Distinguished Service Award. NOVA currently operates a full-time office in Washington, D.C.

Our written testimony will address the "21st Century Veterans Benefits Delivery Act"; Senate Bill 270; Senate Bill 681; and the discussion draft of a bill calling for a pilot program on the treatment of certain applications for dependency and indemnity compensation as fully developed claims.

#### **THE "21ST CENTURY VETERANS BENEFITS DELIVERY ACT"**

NOVA fully supports the intent of this bill to improve the processing of claims for benefits by the Department of Veterans Affairs (VA). In its present form, NOVA does not believe that this intent will be realized. The bill's focus on the continued study of VA, while both necessary and laudable, does not provide the clear direction needed from Congress to make the structural change in the processing of claims and appeals. It is NOVA's position that the current claims and appeals procedures result in unacceptable delays for veterans and their families. NOVA believes that it is in the interests of all of the stakeholders in VA to reform the VA's claims and appeals process. To that end, NOVA would offer the following recommendations for statutory reform of the VA claims and appeal process.

An underdeveloped claim obviously results in the denial of a claim. It is also apparent that it is the development of evidence which allows VA to award benefits to claimants. Congress has made clear its unambiguous expectation that VA shall fully and sympathetically develop evidence to support a claim before making a decision on the merits. This expectation is not being accomplished by VA for a variety of reasons. However, regardless of the reasons, it is the lack of development of evidence which make appeals necessary. Claims are awarded after years of appeal because the evidence necessary to award benefits was not submitted or identified until after the VA's initial decision.

In NOVA's view, the challenge under the present statutory scheme for VA is the continuing need to make decisions based on evidence submitted after the appeal has been initiated and before the Board of Veterans' Appeals (the Board) makes its decision on the pending appeal. NOVA believes the notion of "closing of the record" to the submission of evidence on appeal is antithetical to a non-adversarial appeal process. NOVA acknowledges that there is a legitimate need for certain statutory adjustments to manage the evidence

consideration on appeal. With considered change, this can be accomplished without altering the pro-veteran nature of the claims and appeal process. The “21st Century Veterans Benefits Delivery Act” needs to incorporate these ideas in order to realize the goal to bring about meaningful change in the 21<sup>st</sup> Century delivery of benefits to veterans.

Therefore, NOVA would suggest that the “21st Century Veterans Benefits Delivery Act” be amended to require by statute that there be three discrete periods for the submission and consideration of evidence in support of a claim and during an appeal.

Period One would be in the initial stage of the claim where VA is responsible to fully and sympathetically develop evidence to support a claim before making a decision on the merits.

Period Two would be in the one year following the VA’s first decision. In this period, the veteran or claimant, after receiving the VA’s first decision on a claim, would be given one year during which additional evidence may be submitted for a *de novo* decision by a decision review officer (DRO) or to file a notice of disagreement and request a hearing before a DRO. If a notice of disagreement is filed, the DRO will decide whether the evidence submitted is sufficient to allow an award or whether further development is required.

Period Three would permit the veteran to submit evidence to the Agency of Original Jurisdiction (AOJ) for consideration by the Board. In addition, the Board would be authorized to develop evidence deemed necessary to award the benefit sought.

NOVA believes that these statutory changes will eliminate the need for multiple decisions by the AOJ when VA receives evidence after the AOJ’s first decision on a claim or claims. These statutory changes would create discrete periods for the receipt and consideration of evidence. VA could change its decision in whole or in part after its initial decision. However, an appellant who remains dissatisfied would be entitled to submit additional evidence to the Board. But only for consideration by the Board where the final administrative appellate decision would be made based on evidence submitted by the claimant or developed by the Board.

NOVA offers the following statutory reforms:

1. Amend the provisions of 38 U.S.C. § 7105 to eliminate the statement of the case and the VA-9.
  - A. This would make the filing of a notice of disagreement the only requirement for appealing an adverse VA decision.
  - B. This would significantly reduce the time for the certification of an appeal to the Board.

2. Additional amendments to 38 U.S.C. § 7105.
  - A. Require that when VA denies a claim, the VA's notice of denial shall include the following:
    - (1) A summary of the evidence in the case pertinent to each claim denied.
    - (2) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision.
    - (3) A summary of the reasons for each denial.
    - (4) A binding concession of the facts found by VA to have been established by the evidence.
  - B. Allow for the submission of evidence in support of the claim for one year following the VA's decision to deny with or without the filing of a notice of disagreement.
  - C. Codify the VA's current regulatory provisions for *de novo* review by a decision review officer with express authority for the DRO to direct additional evidentiary development as deemed appropriate and necessary.
  - D. To provide for a second decision by VA based on evidence provided by the claimant in the one year following the VA's initial decision or as a result of evidence developed at the direction of the DRO.
  - E. To provide that after one year from the VA's initial decision or following the DRO *de novo* review, the AOJ will not be required to make any further decisions based on additional evidence submitted by the veteran or claimant. Any later evidence submitted will be subject to review and consideration by the Board.
  - F. Direct the AOJ to certify the appeal to the Board within 60 days after their second and final administrative decision based on the VA's receipt of a timely notice of disagreement.
  - G. To provide that the appellant will be permitted to submit additional evidence for consideration by the Board as part of its *de novo* review of the decision of the Secretary under 38 U.S.C. § 7104(a). All evidence submitted to the AOJ after the VA's second decision or evidence developed by the Board must be considered by Board in its decision.
  - H. Direct that the Board provide notice to the appellant and the appellant's representative that the appeal has been docketed by the Board and inform the

appellant of the deadline for the submission of additional evidence and argument.

- I. The Board will be given the authority to order the development of additional evidence deemed necessary for the award of a benefit sought on appeal. Before the Board develops any evidence, the Board shall inform the appellant and the appellant's representative what evidence the Board intends to develop and why.
  - J. No remands by the Board will be permitted to the AOJ for further development of evidence.
  - K. The Board would be given the authority to order the development of evidence by employees of the Veterans Benefits Administration as well as the Veterans Health Administration.
- 3. These reforms will not be effective without appropriate staffing and funding to the Board to properly implement these newly imposed duties.
  - 4. Congress shall mandate that all accredited representatives are entitled to electronic access to all records of the veteran or claimant.

#### **Summary**

The above recommendations for statutory change to the claims and appeal process will permit VA to eliminate the backlog and develop an effective 21st Century benefits delivery system. The current statutory scheme does not provide an effective delivery of the benefits to which veterans and their families are entitled under law. Claimants need an appeal process which ensures a faster resolution of their appeals while ensuring that the right to submit evidence is not forfeited for the sake of efficiency.

#### **SENATE BILL 270 - THE "CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015"**

NOVA fully supports this bill and urges in the strongest terms its enactment into law.

#### **SENATE BILL 681 - THE "BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015"**

NOVA also fully supports this bill and urges in the strongest terms its enactment into law. This bill represents an acknowledgment that all veterans involved in the conflict in Vietnam are entitled to the benefit of the presumption of exposure to Agent Orange for compensation purposes.

**DISCUSSION DRAFT OF LEGISLATION - Calling for a pilot program on the treatment of certain applications for dependency and indemnity compensation as fully developed claims**

NOVA will offer its views on Title Two Compensation Matters, involving SEC. 201 dealing with medical examination and opinion for disability compensation claims based on military sexual trauma; SEC. 202 dealing with a report on standard of proof for service connection of mental health conditions related to military sexual trauma; SEC. 203 dealing with reports on claims for disabilities incurred or aggravated by military sexual trauma; SEC. 204 dealing with a proposed pilot program on treatment of certain applications for dependency and indemnity compensation as fully developed claims; SEC. 205 dealing with the review of determination of certain service in the Philippines during World War II; and SEC. 206 dealing with reports on department disability medical examinations and prevention of unnecessary medical examinations.

**Sec. 201: Medical examination and opinion for disability compensation claims based on military sexual trauma.**

NOVA fully supports this portion of the bill as proposed. The proposed statutory changes will enhance and improve the adjudication of claims made based on military sexual trauma.

**Sec. 202: Report on standard of proof for service connection of mental health conditions related to military sexual trauma.**

NOVA endorses the need for such a proposed report. In particular, NOVA believes that the current standard of proof provided under the provisions of 38 C.F.R. § 3.304(f) is too high. NOVA is especially supportive of this proposed bill's recognition that the mental health conditions related to military sexual trauma are not limited to post traumatic stress disorder. Additionally, NOVA appreciates that this bill recognizes the need to include sexual harassment as a military sexual trauma which warrants service connected compensation for a resulting disability from such psychological injury. The VA's adjudication of claims for compensation based on military sexual trauma will be improved by a statutory burden of proof for establishing entitlement for claims based on military sexual trauma.

**Sec. 203: Reports on claims for disabilities incurred or aggravated by military sexual trauma.**

NOVA cannot express in strongest enough terms how important this proposed bill is to the victims of military sexual trauma. Mandating that VA report on the numbers of victims is long overdue. Victims need to know that they are not alone and that they are not the only ones. NOVA commends and recommends the creation of this bill and its ultimate passage.

**Sec. 204: A proposed pilot program on treatment of certain applications for dependency and indemnity compensation as fully developed claims.**

NOVA has some concerns about a proposed pilot program on treatment of certain applications for dependency and indemnity compensation as fully developed claims. NOVA

believes that the notion of fully developed claims is inconsistent with the VA's duty to assist. More importantly, NOVA is concerned that all applicants and their representatives for compensation, whether under chapter 11 or chapter 13, believe that they have presented a fully developed claim. Claims for dependency and indemnity compensation for a service connected death can be complex when dealing with questions of whether there was a material contribution by a service connected disability to the veteran's cause of death. It is NOVA's view that expediting the treatment of a covered dependency and indemnity compensation claim will more often than not lead to a denial of benefits. However, if the claim were truly fully developed it would lead to an award of benefits. The problem with expediting these claims is the reality that claimants and too often their representatives do not understand the evidentiary requirements for such awards.

**Sec. 205: Review of determination of certain service in the Philippines during World War II.**

NOVA fully endorses these reviews. Too often, claimants entitled to benefits for their disabilities resulting from service in the Philippines during World War II are denied because of poor record keeping. NOVA believes that this proposed review is needed and should be approved by the Congress.

**Sec. 206: Reports on department disability medical examinations and prevention of unnecessary medical examinations.**

NOVA wholeheartedly supports this inquiry. It is NOVA's view that medical examinations are misused when competent medical evidence from treating medical professionals exists and is devalued based on VA medical examinations. NOVA would urge the Senate to consider the codification of the treating physician rule. NOVA is concerned that VA has become disproportionately dependent on VA examinations and uses VA examinations when the veteran's file already contains competent medical evidence from VA as well as non-VA medical professionals. Reliance on existing medical evidence is being circumvented because of the VA's dependency on its own examinations when the record includes existing competent evidence from VA as well as non-VA medical professionals. This would result in significant savings by obtaining information from the medical professionals who are actually providing treatment to the veteran.

Presently, Social Security claimants under the provisions of 42 C.F.R. § 404.1527 receive the benefit from what is known as the treating physician rule. Under this rule, medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of impairment(s), including symptoms, diagnosis and prognosis, what one can still do despite impairment(s), and physical or mental restrictions. *See* 42 C.F.R. § 404.1527(a)(2). Also, under this rule, a treating source's opinion is given controlling weight based upon certain specified factors. *See* 42 C.F.R. § 404.1527(c).

NOVA believes that there should not be two different standards for disability claimants. VA has not adopted this rule. NOVA submits that this rule should be codified by Congress for the benefit of veterans. Because this rule is not currently available to veterans, it is NOVA's



view that too often VA gives greater probative weight to the opinions of VA compensation and pension examiners over the evidence from treating professionals. NOVA believes that the treating physician's rule as used by Social Security will result in fewer denials and fewer appeals and represents a consistent public policy in this uniquely pro-veteran scheme.

We hope these suggestions will be of assistance to this Committee and to Congress.

For more information:

NOVA staff would be happy to assist you with any further inquiries you may have regarding our views on this important legislation. For questions regarding this testimony or if you would like to request additional information, please feel free to contact NOVA Executive Director David Hobson by calling our D.C. office at (202) 587-5708 or by emailing David directly at [dhobson@vetadvocates.org](mailto:dhobson@vetadvocates.org).

## PREPARED STATEMENT OF NATIONAL VETERANS LEGAL SERVICES PROGRAM

**NVLSP**

NATIONAL VETERANS LEGAL SERVICES PROGRAM

**STATEMENT OF NVLSP  
BEFORE THE  
SENATE VETERANS AFFAIRS' COMMITTEE  
LEGISLATIVE HEARING – REQUESTED VIEWS ON  
S. 681, THE 21<sup>ST</sup> CENTURY VETERANS DELIVERY ACT, AND DISCUSSION DRAFT**

Thank you for the opportunity to present the views of the National Veterans Legal Services Program (NVLSP) on the bills S. 681, the Blue Water Navy Vietnam Veterans Act of 2015; the 21st Century Veterans Benefits Delivery Act; and the Discussion Draft of various introduced legislation.

NVLSP is a nonprofit veterans service organization founded in 1980 that assists veterans and their advocates by publishing educational materials on veterans benefits law, recruiting and training volunteer attorneys, training service officers for various veterans service organization, and conducting local outreach and quality reviews of VA regional offices on behalf of The American Legion. NVLSP has also represented veterans and their families in benefits claims before the VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts, and this representation has thus far resulted in VA payment of more than \$4.6 billion in retroactive disability and death compensation to hundreds of thousands of veterans and their survivors.

**S. 681 – Blue Water Navy Vietnam Veterans Act of 2015:** this bill would amend Title 38, U.S. Code, section 1116(f), to include the territorial seas of Vietnam as part of the definition of service in the “Republic of Vietnam.” By expanding this definition to expressly include veterans who served in the territorial seas of Vietnam, or “blue water veterans,” thousands of veterans would be eligible to receive presumptive service-connected benefits relating to the exposure of herbicides. NVLSP strongly supports this bill.

By way of background, when 38 U.S.C. § 1116(f) was enacted in 1991, there were two separate VA regulations that defined “service in the Republic of Vietnam,” which, although very similar, contained slight differences resulting in ambiguity in interpreting the regulations.<sup>1</sup> Despite this fact, the legislative history of the 1991 Agent Orange Act is silent concerning what Congress intended “service in the Republic of Vietnam” to mean.

<sup>1</sup> *Cf.* 38 C.F.R. § 3.311a(a)(1) (1985) (defining “service in the Republic of Vietnam” as “include[ing] service in the waters offshore and service in other locations, if the conditions of service involved duty or visitation in the Republic of Vietnam”), *with* 38 C.F.R. § 3.313 (1990) (entitled “Claims based on service in Vietnam” and defining such service as “service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam”). Based on the different syntax and punctuation used in these regulations supposedly using the same definition for Vietnam-era service, it easy to see how confusion arose.

Initially, VA conceded “service in Vietnam” when the record showed receipt of the Vietnam Service Medal, without any additional proof that the veteran ever actually set foot on land in the Republic of Vietnam.<sup>2</sup> However, in February 2002, VA changed its interpretation of “service in the Republic of Vietnam” to require that a veteran actually step foot in Vietnam to be eligible for the presumption of exposure to herbicides. As a result, NVLSP assisted a number of veterans whose claims were denied due to the February 2002 rule change by appealing their cases to the CAVC. Although the CAVC unanimously invalidated the set-foot-on-land requirement, the VA appealed that decision to the U.S. Court of Appeals for the Federal Circuit, which overturned the CAVC’s decision and upheld VA’s interpretation of “service in the Republic of Vietnam” to require “boots on the ground.”

S. 681 would therefore clarify that all Vietnam era veterans who served in the territorial waters of Vietnam would be eligible for presumptive-benefits based on herbicide exposure, regardless of whether they actually set foot in Vietnam. NVLSP strongly supports expanding the definition of “service in the Republic of Vietnam.”

- First, a clear inclusive legislative definition puts to rest various legal battles between veterans and the VA over Congress’s intent over the definition of such service.
- Second, the facts regarding what types of service resulted in herbicide exposure is not conclusive and therefore not a valid excuse to deny some Vietnam veterans presumptive benefits.
  - Specifically, in a May 2011 report, the Institute of Medicine found several ways in which blue water veterans may have been exposed to herbicides, including through drinking water distilled from runoff from offshore waters where herbicides were dumped or sprayed, and wind drift that may have resulted in direct exposure.
  - Further, VA has consistently failed to cite to any explicit scientific evidence that supports a “foot-on-land” requirement – a point recently confirmed by the Court of Appeals for Veterans Claims in *Gray v. McDonald*, U.S. Vet. App. No. 13-3339 (April 23, 2015).
- Finally, as was expressed in support of the Veterans’ Dioxin and Radiation Exposure Compensation Standards Act (the predecessor to the Agent Orange Act of 1991), Congress’s intent in creating presumptive benefits was to make it easier, not more difficult, for Vietnam veterans to assert claims arising from herbicide exposure.

---

<sup>2</sup> See VA Adjudication Procedures Manual M21-1, Part III, ¶ 4.08(k) (Nov. 8, 1991).

Accordingly, NVLSP strongly supports the passage of S. 681.

For similar reasons, NVLSP also supports extending the September 30, 2015 sunset date contained in 38 U.S.C. § 1116(e). If this sunset date is not extended, the National Academy of Sciences and the VA will no longer be required to periodically analyze recent scientific studies on dioxin to determine whether there are additional diseases associated with herbicide exposure. Because scientific studies continue to emerge on the long-term effects of herbicide exposure, Congress should extend the sunset date for several additional years.

**21st Century Veterans Delivery Act** – this bill would amend Title 38, U.S. Code, to improve the processing by the Department of Veterans Affairs of claims for benefits. NVLSP supports most of the content of this bill, with several suggestions that are outlined below.

First, it is important to establish that NVLSP's views are influenced by the widespread frustration and disappointment in the VA claims adjudication system experienced by many of the disabled veterans we assist. Therefore, NVLSP applauds the comprehensive and bipartisan study of the claims process undertaken by Senators Heller and Casey. However, NVLSP also notes that a majority of the provisions outlined in the Act are reporting requirements. NVLSP wishes to emphasize the importance of Congressional action, follow up, and implementation of more substantive reforms based on the results of the reports contained herein.

*Title I – Benefits Claims Submission*

- **Section 101 – Improvements to Transition Assistance Program:** NVLSP supports the enabling of online access of the eBenefits system to members of the armed forces and their families. Given the complex nature of many VA benefits, NVLSP supports increased access to information about such benefits to the future-generation of veterans and their families. Further, NVLSP strongly supports the participation of veterans service organizations (VSOs) during any portion of the program relating to the submittal of VA disability compensation claims. It is well established that VSOs can streamline the claims process for veterans by explaining benefits eligibility, assisting in the collection of evidence, and monitoring the progress of the claim. In addition, studies show that veterans represented by a VSO have a greater chance of being awarded benefits than those who are unrepresented. Finally, NVLSP supports the reporting requirements that will assist Congress in understanding the progress of this initiative. Given the large numbers of service members who will transition to civilian life over the next few years, the importance of successful programs to assist the transition process cannot be underestimated. Therefore, NVLSP supports this section in its entirety.
- **Section 102 – Requirement that Decision on Claims Explain Advantages of Filing Appeals within 180 Days:** Although NVLSP generally supports providing veterans with more detailed notice regarding a denial of benefits, NVLSP does

not support the requirement that decisions on claims explain the advantages of filing appeals within 180 days. There are practical disadvantages to filing an appeal within 180 days. That is because to prevail on a claim, VA claimants often need to gather and submit additional evidence that will substantiate their claims – a process that often takes more than 180 days. Thus, by encouraging claimants to file an appeal earlier than they otherwise would, this provision may have the unintended consequence of discouraging claimants from spending the time necessary to develop additional supporting evidence.

NVLSP does not support this requirement for a second reason. NVLSP helps The American Legion perform quality reviews of the decision-making of various VA regional offices. These reviews are called Regional Office Action Review (ROAR) visits. As a result of the Legion ROAR visits we have observed that VA employees seldom process an appeal within 18-24 months of a Notice of Disagreement (NOD) being filed. Accordingly, even if the veteran were to file their NOD within 180 days, it is unclear what, if any, discernible benefit there would be for the veteran, because it is highly unlikely that a VA employee would process the claim any faster. Further, Congress has designed a uniquely pro-claimant, veteran-friendly adjudication process. Encouraging veterans to file an appeal more quickly misses the mark because it in effect penalizes veterans for VA's inefficiencies in claims processing. Rather than encouraging veterans to file appeals within 180 days, Congress should compel VA to dedicate more resources to the processing of appeals.

- Section 103 – Determination of Manner of Appearance for Hearings Before the Board of Veterans' Appeals: NVLSP supports this section, which, although not a complete cure, assists with speeding up the appellate process. Specifically, this section permits the Board to schedule the earliest possible hearing, which may often times be a video-conferencing hearing. However, this section also preserves the right of an appellant to request a different type of hearing, to include an in-person travel board hearing or a hearing in Washington, D.C. Because this section works to both speed up the appellate process while preserving the appellant's ability to choose the type of hearing which may work best for them, NVLSP supports this section.

#### *Title II – Practices of Regional Offices*

Before discussing the specific provisions outlined in this title, NVLSP would like to highlight that the regional offices (RO) must first produce accurate statistics before any determinations can be made as to what constitutes a high performing RO or any related best practices. As it currently stands, NVLSP does not believe that many RO's are producing accurate statistics. At a July 14, 2014, hearing before the House Committee on Veterans' Affairs, Linda Halliday, the VA OIG Assistant Inspector General for Audits and Evaluations, testified that she did not trust VBA's numbers. Similarly, Halliday's concerns were substantiated in an April 2015 report regarding the Philadelphia RO, where the OIG found mismanagement, data manipulation and poor record-keeping.

Accordingly, NVLSP stresses the importance of those within VBA to report accurate information before the sections outlined below can be implemented successfully.

- Section 201 – Required Comptroller General Audit of Regional Offices of Veterans Benefits Administration: this section would require the VA OIG to assess the consistency of VBA decisions, as well as to identify ways in which consistency of decisions can be improved, to include management practices and other practices that distinguish higher performing VBA regional offices from lower performing regional offices. NVLSP is generally supportive of this section, but wishes to emphasize that additional language is needed to require VBA to implement the VA OIG’s recommendations once the report is completed. As previously mentioned, NVLSP, in conjunction with The American Legion, conducts Regional Office Action Review visits, including quality review checks of regional offices across the country. Our experience conducting such visits confirms that there is a need for greater consistency in decision-making amongst VA’s 57 regional offices. Although VBA maintains that it conducts consistency reviews on its own accord, according to a March 12, 2009, report, the OIG found that VBA’s Systematic Technical Accuracy Review (STAR) process did not effectively identify and report errors in compensation claim rating decisions, and that VBA did not fully implement an adequate rating consistency review plan designed to ensure that compensation claims for similar conditions received the same evaluations and benefits. At that time, VA OIG recommended that VBA develop an annual rating consistency review schedule. Since it has been six years since the most recent comprehensive VA OIG report on this topic, and, because the problem of inconsistency in VBA decisions has not improved despite the implementation of VBMS and associated rules-based claims processing tools, NVLSP supports an additional VA OIG report on ways to improve consistency of claims processing.
- Section 202 - Requirement for Management Training Program for Veterans Service Center Managers of Veterans Benefits Administration: NVLSP supports this section. NVLSP speaks from experience, as training advocates to help veterans has been one of our primary missions and one of the primary keys to our success in representing veterans. Therefore, we understand firsthand how important thorough training programs can be. In the past year, VA has been plagued with allegations of mismanagement and data manipulation throughout the Department. With regards to VBA, the recent VA OIG report on the Philadelphia regional office highlighted the litany of problems that stem from mismanagement and poor training. Although VBA often speaks highly of its Challenge training program for new employees and its Station Enhancement Training (SET) for underperforming offices, there is no equivalent training program tailored specifically for Veterans Service Center managers. Providing management level training will assist VA in improving claims processing consistency and ensure that managers learn how to “lead” as opposed to just shuffle various metrics handed down from Central Office. However, NVLSP cautions that any such training program at the management level must include controls for meaningful

and consistent implementation, rather than just requiring a set number of mandatory hours of power point and presentation review.

- Section 203 – Analysis of Communication Between Regional Offices of Department of Veterans Affairs and Veterans Service Organizations and Congressional Caseworkers: this section requires that each VBA regional office analyze the communication between the regional office staff, VSOs, and caseworkers employed by members of Congress. NVLSP supports this provision. With regard to VSOs, this provision is particularly important because of VBA's recent emphasis on brokering claims. Whereas VSOs working at a particular regional office previously had the ability to speak to VBA employees at that regional office, such communications have been frustrated recently by the number of claims being brokered to outside regional offices. Therefore, the ability of VSOs to communicate with other regional offices besides the specific one they work at is of increased importance. With regard to Congressional caseworkers, such communication is also important because such caseworkers frequently experience frustration getting in touch with VBA employees. In both scenarios, VBA's work credit system is often to blame, as employees fail to get work credit for communicating case status to a VSO or Congressional caseworker, despite the fact that such communications may result in the obtaining of evidence required to adjudicate and resolve a claim. Accordingly, NVLSP supports this provision and emphasizes the importance and positive results that quality communication between the VA, VSOs, and caseworkers can have for the veterans they all work to serve.
- Section 204 – Review of Practices of Regional Offices Regarding Use of Suspense Dates: this section requires that the VA OIG conduct a report on the use of suspense dates during the disability claims assessment process. NVLSP supports this provision. Throughout the past year, many allegations of data manipulation, including the use of improper suspense dates to improve the appearance of VA's claims processing numbers, have not only surfaced but been substantiated by VA OIG. VBA has asserted that such issues are not systemic; however, VBA has not cited to any comprehensive analyses to support this assertion. As such, a comprehensive study by the VA OIG to determine whether suspense dates are being used appropriately throughout the disability claims process would be welcomed.
- Section 205 – Annual Report on Capacity of Veterans Benefits Administration to Process Benefits Claims: NVLSP supports this provision, which requires the VBA to annually provide more details on its capacity to process claims. However, VBA has a reputation for manipulating data and changing benchmarks in order to meet the appearance of superficial goals, rather than achieve actual progress. In its all-out push to eliminate the backlog by the end of this year, VBA has tried to redefine its workload and what constitutes the backlog, to include diverting employees from other areas such as appeals. Therefore, NVLSP emphasizes that the reporting language must be as specific as possible, to include how VA is

measuring its performance goals and to document any changes it has made to its performance metrics to ensure consistency in reporting from year to year. However, NVLSP strongly supports the provisions regarding VBA staffing needs and production per employee. At a recent Congressional roundtable, VA estimated that without any additional inventory, it would take approximately five years to eliminate the number of pending appeals. Although this was just a rough estimate, such approximations indicate that VBA has not properly calculated its staffing needs. Further, VA has publicly stated that it has enough people to process the number of pending claims, choosing to focus on initiatives such as mandatory overtime rather than the training of new employees. However, VBA employees have reported that continued use of mandatory overtime results in employee burnout, thus necessitating the hiring and training of new employees. Accordingly, the report outlined in this section will give Congress the information it needs to make decisions regarding any necessary increases to VBA staffing.

- Section 206 – Requirement to Complete Efforts to Revise Resource Allocation Model of the Department of Veterans Affairs: NVLSP supports this provision. Although VA, and VBA's, overall budget has increased substantially over the past five years, VA is still ultimately constrained by its resources. Therefore, NVLSP supports any reporting to ensure that VBA's limited resources are allocated in the most efficient way possible.
- Section 207 – Semiannual Report on Progress Implementing the Veterans Benefits Management System: although NVLSP is generally supportive of reporting requirements aimed at improving the efficiency of VBA claims processing, we are unsure whether a semi-annual report on the implementation of VBMS is necessary. VBMS has been in use in all of VBA's regional offices since June 2013, so the system is no longer being "implemented." However, despite being fully implemented, VBMS continues to have issues, particularly in the areas of system updates, access for non-VA users, and the indexing/clarity of scanned documents (particularly in appealed claims). Specifically, in NVLSP's experience, issues arise when a claims file is scanned into VBMS but there are documents that are either missing or unclear. VA does not appear to have any established procedures for re-scanning missing or illegible documents when necessary. Therefore, NVLSP would be more supportive of such a reporting requirement if it were amended to include all VBA technology initiatives, including clarity for procedures of missing and illegible documents after claims files have been scanned into VBMS, rather than just periodic updates on the implementation of VBMS.
- Section 208 – Report on Plans of the Secretary of Veterans Affairs to Reduce Inventory of Claims for Dependency and Indemnity Compensation and Claims for Pension: NVLSP supports this section. As we highlighted earlier in our testimony, due to the nature of VBA's work credit system, dependency and indemnity compensation and claims for pension are often passed over in favor of claims that result in higher production points. Further, given VBA's recent emphasis on



eliminating the backlog of disability claims, other types of claims, such as dependency and indemnity compensation and pension claims, have been placed on the back burner. Therefore, NVLSP supports these reporting requirements that will result in necessary information as to how the Secretary plans to re-prioritize these additional types of claims.

- Section 209 – Increased Transparency in Monday Morning Workload Report: NVLSP supports this provision, which promotes additional transparency in VA's Monday Morning Workload Reports, but asserts that additional information besides what is enumerated in this section is also necessary. As highlighted earlier in our testimony, VBA has recently changed the manner in which it calculates its metrics several times, making the Monday Morning Workload Reports difficult to track over time. Further, including additional information on partial ratings and fully developed claims is an important step in better understanding the true nature of VBA's pending workload. However, NVLSP argues that additional metrics regarding appealed claims and the number of brokered claims are also necessary. In this regard, the metrics pertaining to appealed claims on the Monday Morning Workload Report are completely different from those reported on the Board of Veterans' Appeals Annual Chairman's Report, therefore making it difficult to determine how long appealed claims have actually been pending. Further, VBA often asserts that certain regional offices have reduced their backlog by a certain number of claims without mentioning that a large percentage of those claims were brokered to other offices, thereby presenting inherently misleading numbers. Although the Monday Morning Workload Reports now include numbers from the station of origin as well as the station of jurisdiction, additional transparency in the reporting of these statistics will help Congress make more informed decisions about the claims process.
- Section 210 – Reports on Appeals of Decisions on Benefits Claims: NVLSP strongly supports this provision. However, we also assert that additional details beyond those enumerated in this section are necessary for a comprehensive report on the appeal of benefits claims. The backlog of appealed claims has continually grown as VBA has been singularly focused on eliminating the backlog of initial claims. The time it takes from the filing of a NOD to the issuance of a Board of Veterans' Appeals decision is exceedingly long – 1,255 days in FY 2013 (that is, more than three years and five months). In addition to the number of appeals granted by station and the number of claims previously adjudicated by the appeals management center, NVLSP asserts that additional reporting criteria on the reason an appeal was granted or denied should also be included in this report. For example, VA often argues that claims are granted on appeal due to the submission of additional evidence; however, it is unclear whether such additional evidence should have been obtained by VA in the first instance or became necessary due to the long duration in which the VA failed to adjudicate the veteran's appeal. In either circumstance, the precise reason for the additional evidence will be beneficial to VBA as it continues to focus on potential reforms of the appellate process. Similarly, VA often asserts that changes in the law resulted in the grant

of an appealed claim, rather than a mistake by a VA adjudicator; however, our experience advocating for veterans on appeal demonstrates that mistakes by VA adjudicators are in fact often the reason that a claim is granted on appeal. Therefore, NVLSP asserts that in order to improve the appeals process, information tracking the reason for the grant or denial of an appealed claim is also necessary.

- Section 211 – Modification of Pilot Program for Use of Contract Physicians for Disability Examinations: NVLSP supports this provision. In fact, expansion of VBA's ability to use contract examinations for C&P exams is one of the few areas that VBA, VSOs, and veterans universally agree on. Currently, VBA has the authority to use contract examinations at 18 of its regional offices and in support of its special missions such as the Integrated Disability Evaluation System and the Benefits Delivery at Discharge Program, through the use of both mandatory and discretionary funds. However, VBA's authority to use mandatory funds for contract exams is limited to 10 regional offices. Expanding this authority will allow physicians at VHA facilities to focus on delivering care, rather than providing unnecessary C&P examinations. Further, including the licensure portability provision facilitates the C&P examination process by allowing contract physicians the ability to travel and assist in areas that are experiencing lengthy delays in scheduling examinations. Although both VA and DoD already provide license portability for physicians working directly for them, this authority is currently not extended to contract examination providers. Because C&P exams are a key component of the disability claims process, expanding the scope and authority of the contract examination process will assist veterans in obtaining the evidence needed to adjudicate a claim more quickly. In addition, by outsourcing more C&P exams, VA medical providers would be able to increase the amount of time devoted to providing much needed patient care to veterans. However, we would also caution that, any expansion of the contract disability exam authority should not be used to order unnecessary C&P exams when there is already sufficient private medical evidence available to grant a disability benefits claim in the file. Accordingly, NVLSP supports this provision, but advises that it must be used appropriately.

### *Title III – Government Response*

- Section 301 – Increased Cooperation Across Government: this section would require additional government entities, mainly the Department of Defense, and the National Archives and Records Administration, to appoint liaisons to assist VA with the time it takes to obtain required documents from the respective entity. Although NVLSP generally supports these government entities working together to facilitate the exchange of information, such relationships between these entities already exist; therefore, creating another program may result in more bureaucracy and less actual assistance to veterans. First, VA's existing Office of Interagency Collaboration (OIC) already serves this function. Second, the VA/DoD Joint Strategic Plan and the Joint Executive Counsel already present annual reports to

Congress. Thus, although inter-agency communications are an important topic, NVLSP does not believe that this provision contributes any new substance to what the OIC is already doing.

- Section 302 – Report on Interoperability Between Electronic Health Records Systems of Department of Defense and the Department of Veterans Affairs: this section would require a joint report to Congress setting forth a timeline with milestones for achieving interoperability in the respective electronic health records systems of VA and DoD. Over the past several years, coordination of such efforts have proven difficult, and negotiations have even broken down at times. Although VA and DoD have made progress, what currently exists is two separate systems that communicate to one another rather than function with interoperability. Although VA and DoD currently have an Memorandum of Understanding in place regarding the sharing of information, additional efforts to achieve true interoperability are still required. Therefore, NVLSP supports this section.

**Discussion Draft** – the Discussion Draft includes a number of provisions related to various matters within the Committee’s jurisdiction. For purposes of our testimony, NVLSP is specifically focused on Title II – Compensation Matters, of the discussion Draft.

*Title II – Compensation Matters*

- Section 201 – Medical Examination and Opinion for Disability Claims Based on Military Sexual Trauma: According to VA, approximately one in four women and one in 100 men report experiencing sexual trauma while in the military. In adjudicating claims for MST experienced during service, a lack of documentation is a frequent obstacle that must be overcome to grant the claim. As a result, NVLSP recently started a new program providing free legal representation to veterans who need assistance obtaining VA benefits for MST or whose disability claims for MST have been denied. Given our work assisting MST survivors in trying to overcome the high hurdles associated with obtaining VA benefits for MST, NVLSP strongly supports this statutory changes that will make it easier for MST claimants to receive a medical examination and opinion in their claim. Although in 2010, VA voluntarily changed its regulations making it easier for veterans who served in combat zones to obtain service connection for PTSD, the same relaxed evidentiary requirements were not extended to MST victims.
- Section 202 – Report on Standards of Proof for Service-Connection of Mental Health conditions Related to Military Sexual Trauma: NVLSP strongly supports this provision. As noted in NVLSP’s comments to the above-section, VA applies differing standards of proof in adjudicating PTSD claims, depending on whether the veteran is claiming PTSD due to (1) combat zone trauma, (2) MST, or (3) any other in-service trauma. In practice, this means that if VA evaluates a veteran’s claimed stressor under 38 C.F.R. § 3.304(f)(3), the veteran’s lay testimony alone

may be sufficient to establish the occurrence of the claimed stressor; however, if VA evaluates a veteran's claimed stressor under 38 C.F.R. § 3.304(f)(5), the veteran's lay testimony must be corroborated by other evidence to establish its occurrence. Despite VA's assertions that 38 C.F.R. § 3.304(f)(5) provides a generous standard of proof already, when compared with 38 C.F.R. § 3.304(f)(3), inequitable results can, and sometimes do, occur. In promulgating its 2010 rule change, VA acknowledged that it received comments that the new relaxed evidentiary standards should also apply to MST. However, VA concluded that such comments were "outside the scope of this rule" and therefore did not make any changes, nor provide any substantive rationale for its decision. Accordingly, a report requiring VA to justify its application of the differing standards of proof applied to PTSD claims, as well as recommended improvements, would be useful in improving the claims process for MST victims.

- Section 203 – Reports on Claims for Disabilities Incurred or Aggravated by Military Sexual Trauma: NVLSP also supports this section. As outlined in our testimony for Sections 201 and Sections 202, additional information and insights into the Department's adjudication of such claims will provide important data to stakeholders and Congress. Ultimately, the analysis of such information should lead to a change in the evidentiary standards applied in the adjudication of MST claims, and thus more equitable treatment for MST survivors.
- Section 204 – Pilot Program on Treatment of Certain Applications for Dependency and Indemnity Compensation as Fully Developed Claims: NVLSP supports this section. In NVLSP's experience, the Fully Developed Claims Program (FDC) has been very successful in improving the initial disability compensation claims process and is one of the VBA's most successful initiatives in many years. Accordingly, NVLSP supports expanding the use of this program to other types of claims such as DIC claims, which are very similar to disability compensation claims in their development and adjudication.
- Section 205 – Review of Determination of Certain Service in the Philippines During World War II: NVLSP supports the full recognition and benefits of all veterans, American of Filipino, who served during World War II. Although the current process for awarding benefits to Filipino veterans was recently studied by the White House's interagency working group, no changes to the benefits process for Filipino veterans resulted from the working group's report. The current policy has created confusion for Filipino veterans and their survivors applying for benefits, and therefore, additional information may provide much needed clarification to the benefits process for Filipino veterans. NVLSP supports, in particular, the section on prohibition of benefits for disqualifying service (characterized as collaboration with the enemy or criminal conduct) as this ensures a thorough evaluation and is on par with the disqualification standards for all American veterans.

- Section 206 – Reports on Department Disability Medical Examinations and Prevention of Unnecessary Medical Examinations: NVLSP strongly supports this section, but also encourages the legislation to do more beyond just a reporting requirement to prevent the VA from relying on unnecessary medical examinations. Based on NVLSP’s experience in appealing thousands of BVA decisions to the CAVC, and in reviewing thousands of VA claims files at various VA regional offices that are part of our quality review work with The American Legion, we have found that, in many cases, VA regional offices and the BVA prolong a claim by seeking additional medical evidence from a VA physician, even though there is sufficient medical evidence from private physicians to decide the claim. This practice of developing more evidence in an effort to deny claims is contrary to the pro-claimant VA adjudicatory process that Congress intended. Thus, although the reporting requirements outlined in this section are a positive first step towards eliminating this practice, it is NVLSP’s position that more needs to be done. Accordingly, NVLSP recommends amending this section to require the ROs and BVA, when they seek to develop additional medical evidence after private medical evidence is submitted, to first explain to the veteran in writing why the existing private medical evidence is not sufficient to adjudicate the claim.

In conclusion, NVLSP would like to thank the Committee for the opportunity to present our views on the above-pieces of legislation. NVLSP is happy to answer any additional questions that the Committee may have.

## PREPARED STATEMENT OF PARALYZED VETERANS OF AMERICA

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on pending legislation before the Committee. We appreciate the Committee focusing on these critical issues that will affect veterans and their families. We will also limit our comments on the Department of Defense (DOD) proposals to those issues that are governed by title 38 U.S.C.

## S. 270, THE "CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015"

PVA does not have an official position on this legislation. However, we believe that VA regulations should be consistent with current Federal law and how the larger Federal Government handles this issue.

## S. 602, THE "GI BILL FAIRNESS ACT OF 2015"

PVA supports S. 602, the "GI Bill Fairness Act of 2015." This legislation would include time spent receiving medical care from the Department of Defense as active duty time for the purpose of eligibility for Post-9/11 GI Bill. We have no doubt that this time should be considered active duty for purposes of eligibility for the Post-9/11 GI Bill. We also appreciate the fact that this legislation would be retroactive to the date of the enactment of the Post-9/11 GI Bill.

## S. 627

PVA supports S. 627 to revoke bonuses paid to employees involved in electronic wait list manipulations. Our only caution is to ensure that due process is afforded to any employees identified in the Inspector General (IG) report. These employees violated the public trust and deserve appropriate discipline which may include the loss bonuses; however, they must be afforded the protections that Federal service has provided.

## S. 681, THE "BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015"

PVA supports S. 681, the "Blue Water Navy Vietnam Veterans Act of 2015," which would amend title 38 and expand the presumption for service connection related to the exposure of herbicides containing dioxin, including Agent Orange. As more information becomes available about these types of exposures, it will be imperative for Congress to take appropriate steps to ensure that these men receive just consideration for health care and benefits eligibility.

## MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION PROPOSALS

PVA generally supports the proposals identified by the Military Compensation and Retirement Commission as they apply to title 38 U.S.C. However, we have strong objections to Section 1108. The Post-9/11 educational benefit is earned by a servicemember after serving the prescribed length of service. In an effort to retain high quality mid-grade servicemembers, the program included the ability to transfer the benefits to family members. The only change this section offers is to reduce the earned benefit by denying the Basic Housing Allowance (BHA) to family members to whom GI Bill benefits have been transferred. PVA believes the only reason for this change is to save money. We are seriously disappointed that by this effort to force our military members and veterans to pay for the cost savings through the reduction of their "earned" benefits. This section is wholly unacceptable and should not be part of any Congressional action.

## DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

As previously stated, PVA does not generally involve itself in matters governed by DOD. However, PVA generally supports the Department of Defense legislative proposals as they apply to title 38 U.S.C. The bulk of these proposals correct provisions of public law to more appropriately treat Reserve and National Guard members when they are called to active duty, either involuntarily or for medical purposes.

PVA concurs with Section 545. While there are those Reserve and National Guard members who could possibly benefit from the TAP program, this was not the purpose of TAP and should not be applied to active duty for training status.

Regarding Section 1041 that eliminates the Federal Advisory Board for Radiation Dose Reconstruction Program, DOD indicates the Board has achieved its objectives. Too often we find Federal Agencies will claim something is no longer needed simply to save money. If in fact the Board's work has been accomplished, then PVA sees

no issue with the elimination of the Board. However, we would encourage the Committee scrutinize this issue carefully and not simply take DOD's word for it.

THE "21ST CENTURY VETERANS BENEFITS DELIVERY ACT"

PVA generally supports the provisions of the draft bill, the "21st Century Veterans Benefits Delivery Act." Under Title I, PVA supports Section 101 that will prevent DOD from allowing TAP to be conducted entirely on-line. While improvements to the eBenefits Internet Web site will be valuable, we see too many instances of organizations moving more and more content and actions to the impersonal internet. The lack of face-to-face interaction that we find with the internet can significantly reduce the efficacy of services provided during a TAP program by eliminating the ability of the TAP instructor to identify body language that may indicate a lack of understanding or comprehension on the part of a soon to be discharged service-member. In addition, individuals may be less likely to engage or ask questions when all content or training are on-line. Ensuring some level of personal interaction will benefit the veteran and make the transition to civilian life easier.

PVA welcomes the provisions of Section 102 which will better explain the advantages for filing an appeal and see it as valid. However, we believe this issue is already being addressed in the revision of the Simplified Notification Letters (SNL) and we are heavily involved in this ongoing project. PVA supports Section 103 that will provide the opportunity for a veteran to request and be granted an in-person hearing before the Board of Veterans Appeals. While PVA strongly supports the use of video hearings and encourages those veterans served by our service officers to seek a video hearing, veterans that may feel uncomfortable with the technology should be allowed to seek an in-person hearing. We are glad to see that this legislation would require the Board to comply with this request.

Under Title II, PVA supports the intent of Section 201 that will assess the consistency of decisions at a Regional Office (RO). Too often we see wide disparities between different RO's and how they treat a disability claim. The identification of Best Practices, if implemented by the Secretary and the Regional Offices, may better provide for veterans and remove the "luck of the draw" that is found today. But we caution that trying to have the Comptroller General audit what is an individual human assessment is unlikely to produce a valid outcome. While there may be the ability to determine some trends, only in the area of gross differences in opinions will there be any significant basis for evaluation.

In addition, the training identified in Section 202 and the analysis of communication required by Section 203, may also improve the processes within VA as well as between its stakeholders in the veterans community and with Congress. Service center managers are the key to efficient claims processing. They are responsible for the training and development of the employees who are the heart and soul of claims processing. In the same way that Veterans Health Administration (VHA) employees were put under pressure to report timely service, Veterans Benefits Administration (VBA) managers have felt the need to demonstrate increased productivity. However, it seems late in the game to realize that key management personnel now need management training. PVA's fear is that the response by VA to such legislation will be enrollment in management courses that will enable VA to check off the block for training requirements without actually improving performance. If VA was truly interested in such improvement, this management training would already be occurring.

While tasking the IG to review the practices of RO's regarding use of suspense dates, we believe Section 204 needs to better identify what this review is meant to achieve. It would be unfortunate if after almost a year of review, the IG provides information that is either of no value, or does not address the issues Congress sought by the legislation. Similarly, with Section 205, PVA believes the requirement to report on the capacity of the VBA to process benefits claims should be expanded to include the capacity of VA to process appeals and not just claims. PVA and other veterans' service organizations (VSO) predict a coming wave of appeals in the near future and information on VA's ability to process appeals may prove equally valuable. Regarding Section 206, PVA looks forward to seeing VA's plan for revising the resource allocation model for VBA.

PVA will be interested in the findings of the semiannual report on implementation of the Veterans Benefits Management System (VBMS) under Section 207. PVA has been very supportive of VBMS as a tool that can speed the completion of simpler and more straight-forward claims. Automation and rules based processing has an important place in VBA claims processing. However, as PVA has always cautioned, VBMS is not an end-all and be-all for claims. While VBMS works for simple claims, those that are more complicated or have a significant number of issues can-

not be easily processed with a rules-based system. These are the claims that need the “human touch” of an experienced claims adjudicator who fully understand the impact of wide ranging disabilities and their impact on each other. It has always been a fear of PVA that as VBMS became the standard for claims processing, VA would look to reduce costs or transfer personnel to other areas of VA thereby reducing the numbers of adjudicators needed for the more complex claims. As part of Section 207, PVA would like to see a report on how VA is handling those more complex claims and how VA has been able to improve the accuracy and reduce processing time of these more complex claims. Additionally, the legislation seems to only seek input from VBA employees and VSOs. We recommend that input also be received from employees of the Board of Veterans Appeals to ensure that the downstream impact of VBMS is also assessed.

Section 208 requires a report on the Secretary’s plans to reduce the inventory of claims for Dependency and Indemnity Compensation (DIC) and claims for Pension. PVA is as interested as Congress to see this plan. Additionally, it is absolutely critical that the increased transparency in Monday Morning Workload reports required by Section 209 be enacted. It is impossible to improve processes without metrics to track success or failure. PVA is pleased to see the inclusion of partial ratings assigned and the information on Fully Developed Claims (FDC) as well as indentifying the Regional Office processing the FDC.

Finally, including public access to reports on appeals decisions outlined in Section 210 will also increase transparency. This is perhaps one of the most opaque aspects of the claims process. While great attention is paid to processing times of initial claims, appeals seem to sit hidden away from view. We encourage the reporting of detailed information from previously adjudicated claims by the Appeals Management Center to identify problematic trends. As stated earlier, PVA sees a coming wave of appeals that may dwarf the current claims backlog in time, if not in number. Greater information for veterans and their representatives may help in better understanding the appeals process and shine some sunlight on this interminable process.

PVA supports the provisions of Section 211 that will modify the pilot program for use of contract physicians for disability examinations. Hopefully this provision may allow VA to ensure that an appropriate physician is available to conduct a proper examination. Too often PVA sees exams performed by physicians not familiar with the disability in question.

#### DISCUSSION DRAFT FOR OTHER VETERANS LEGISLATION

PVA supports Title I, Sections 101 and 102, of the draft legislation that would modify the law governing the treatment of veterans’ small businesses after the death of the disabled veteran business owner. Businesses are not built in a day. Moreover, they are built as an enterprise, and often as a family enterprise. The veteran may not expect to die while still owning his or her business and PVA believes it is only fair that the surviving spouse be able to have adequate time to maintain and then sell the business. This is particularly true in the case of the disabled veteran who dies as a result of their service-connected disability or who dies in the line of duty.

Currently if the veteran business owner passes away from a non-service-connected illness or injury, and is rated less than 100 percent service-connected, the surviving spouse only has one year to transition the business out of SDVOSB status with VA. If the SDVOSB has contracts with any other Federal agency, the business immediately loses its SDVOSB status upon the passing of the veteran and all business must stop. This legislation will allow the business to retain the SDVOSB status for three years upon the passing of the veteran to allow for a transition of the business. This three year period would apply to SDVOSB contracts with the VA and all Federal agencies.

PVA supports Sections 201–203 of the draft legislation that address Military Sexual Trauma. Our position is consistent with a previous stated position on H.R. 1607, the “Ruth Moore Act,” which addresses similar issues. According to reports, sexual assault in the military continues to be a serious problem, despite several actions by DOD to combat the issue, including required soldier and leader training. As the military works to reduce the threat and incident of military sexual trauma (MST), it is important that victims of MST, both women and men, have the ability to receive care from the VA and receive timely, fair consideration of their claims for benefits. This is particularly important given the number of MST occurrences that go unreported. While current policies allowing restricted reporting of sexual assaults should reduce the number of incidents which have “no official record,” it can still be anticipated that there are those who will not report the incident out of shame,



fear of reprisals or stigma, or actual threats from their attacker. To then place a high burden of proof on the veteran, who has experienced MST to prove service-connection, particularly in the absence of an official record, would add further trauma to an already tragic event.

One particular recommendation that PVA would like to make about the proposed language is a clarification of what constitutes a “mental health professional.” We would hope that the intent of this legislation is not to limit “mental health professionals” to only VA health care professionals.

PVA supports the provisions of Section 204. This section establishes a pilot program on treatment of certain applications for dependency and indemnity compensation (DIC) as fully developed claims. Additionally, we support Section 205 that requires a review of determination of certain service in Philippines during World War II. This has been an ongoing effort for multiple years. PVA supports the proper identification of service for the purposes of compensation and supports efforts to achieve that goal.

PVA supports the provisions of Section 206. PVA has consistently testified on what we see as unnecessary medical examinations scheduled by VHA when sufficient non-VA medical information is present. But we would like to see more detail in the report as it applies to specialized care, in particular, care and treatment in Spinal Cord Injury (SCI) Centers. Because of the extensive use of SCI centers and specialists by PVA members, we need to be sure that the report includes not only “private physician” but “VA treating physician” information. There is a tremendous distinction between a C & P examiner doing the one time exam of a patient and the SCI physician who sees the patient on a regular basis. This distinction is critical to PVA and the proper care and evaluation of SCI patients as well as other disabled veterans who receive specialized care from VA.

PVA supports the provisions included in Title III and IV of the draft legislation. However, in the case of Title IV, we would caution the Committee about anticipated confusion on the part of those members of the Reserves who gain recognition as “veterans.” We expect that these former members of the Reserves will eventually wonder that if they are in fact “veterans,” why they do not get the benefits of being veterans.

Once again, we thank you for the opportunity to submit for the record. We look forward to working with the Committee to see these proposals through to final passage. We would be happy to take any questions you have for the record.

PREPARED STATEMENT OF CAROL A. BONOSARO, PRESIDENT, SENIOR EXECUTIVES  
ASSOCIATION



the voice of career federal executives since 1980

77 K Street N.E., Suite 2600 • Washington, D.C. 20002 • (202) 971-3300 • Fax (202) 971-3317 • www.seniorexecs.org

May 13, 2015

The Honorable Johnny Isakson  
Chairman  
Senate Committee on Veterans Affairs  
412 Russell Senate Office Building  
Washington, DC 20510

The Honorable Richard Blumenthal  
Ranking Member  
Senate Committee on Veterans Affairs  
825A Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

As you know, the Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. On behalf of the Association, and of the SEA members who serve at the Department of Veterans Affairs (VA), I write to share the Association's perspective on S. 627. The bill would require the VA Secretary to revoke bonuses to employees involved in electronic wait list (EWL) manipulations.

Congress' focus on revoking bonuses after they have been granted fails to address the issue this legislation appears to be attempting to address – that being the process by which performance is assessed and award determinations for VA employees are made, as well as whether employees are being held accountable for unacceptable or inflated performance to begin with.

With regard to Senior Executives, the VA has already taken the extraordinary step of voluntarily banning performance awards for Senior Executives. The government-wide SES system was set up as a pay-for-performance system by the Bush Administration wherein performance awards are based on annual performance plans that take into account an Executive's specific duties and line of sight, all pay adjustments are based on performance, and executives are not eligible for locality pay or for cost of living/comparability adjustments. Performance reviews are also conducted annually and subject to a higher level of review, including an ultimate sign-off by the Secretary. Giving the Secretary the further authority to revoke a performance award without far more stringent requirements for doing so would break this system.

The bureaucratic processes that this bill would create would far outweigh the cost of the bonuses recouped from employees. The VA would be required to establish a new bureaucracy to handle implementation of this legislation, and the agency would have to dedicate its scarce resources to promulgating regulations for which their authority to do so is unclear, hiring administrative judges, conducting legal discovery, and diverting the attention of agency lawyers to supporting each and every action to recoup a bonus. In creating such a process, this legislation neglects already existing authorities and mechanisms in place to allow an agency to recoup a bonus paid in error or earned as a result of fraudulent-performance information.

The vague standard set by the legislation regarding supervisors or supervisors of supervisors, at any level, who "reasonably should have known" about a purposeful omission of the name on a EWL is deeply concerning and fails to recognize appropriate expectations for line of sight in a large complex organization. It also fails to recognize the reality that some VA hospitals did not have EWLs established –

a well-documented issue Congress should have been aware of via IG and Government Accountability Office (GAO) reports – and that supposed “purposeful omissions” from EWLs may have been legitimate attempts by employees to get veterans into the service pipeline for a system that was not provided adequate resources in terms of numbers of medical professionals available to see patients and that Congress set up for failure through its inaction over time.

Furthermore, it is unclear why the VA would expend such effort recouping bonuses earned between 2011-2014 by employees who have been identified by Inspector General investigations to have manipulated waitlists. If the IG has made such determinations, the Secretary should direct the department to take action to discipline or remove those employees, and ample evidence would supposedly exist to sustain such an action. Taking such actions against employees requires the support of the management chain of command at the VA, and efforts must be taken to ensure supervisors have the tools and training necessary to ensure the accountability of the workforce, including not allowing employees to receive performance awards who have earned them fraudulently.

Finally, this legislation does nothing to address the real question about how bonus allocations are determined in the first place at the VA nor does it amend that process if Congress feels there are problems with that process.

If the committee is concerned that employees responsible for purported EWL manipulation are not being punished, the committee should work to determine why rather than adding another form of punishment to a system which is perceived as not working to begin with.

SEA does believe that any awards that can clearly be shown through an investigation and impartial hearing to have been awarded on the basis of fraudulent accomplishments or actions which constitute firing offenses should be rescinded. However, SEA questions the constitutionality of legislation that allows an agency to take back an award that has already been paid.

If Congress is serious about addressing the issues at the VA – a chronic shortage of doctors and nurses, outdated IT systems, and an influx of patients, to name but a few – it should focus on those real issues instead of yet another avenue of punishment.

Sincerely,



CAROL A. BONOSARO  
President

---

#### PREPARED STATEMENT OF THE AMERICAN LEGION

Chairman Isakson, Ranking Member Blumenthal and distinguished Members of the Committee, on behalf of National Commander Michael D. Helm and the 2.3 million members of The American Legion, we thank you and your colleagues for the work you do in support of servicemembers, veterans and their families.

##### S. 270: CHARLIE MORGAN MILITARY SPOUSES EQUAL TREATMENT ACT OF 2015

To amend title 38, United States Code, to revise the definition of spouse for purposes of veterans benefits in recognition of new State definitions of spouse, and for other purposes

The American Legion has no position on this legislation.

##### S. 602: GI BILL FAIRNESS ACT OF 2015

To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 educational Assistance, and for other purposes.

Members of the Guard or Reserve who are wounded in combat are often given orders under 10 U.S.C. 12301(h) for their recovery, treatment and rehabilitation. Unfortunately, Federal law does not recognize such orders as eligible for Post-9/11

GI Bill education assistance, meaning that unlike other members of the military, these members of the Guard and Reserve actually lose benefits for being injured in the line of duty.

The GI Bill Fairness Act would end that unequal treatment and ensure these servicemembers are eligible for the same GI Bill benefits as active duty members of the military. It is truly unjust to deny wounded and injured servicemembers the ability to accrue educational benefits for the time they spend receiving medical care. No veteran should lose their benefits simply because they were in the National Guard or Reserves.<sup>1</sup>

The American Legion supports S. 602.

S. 627

A bill to require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, and for other purposes

The American Legion has no position

#### S. 681: BLUE WATER NAVY VIETNAM VETERANS ACT OF 2015

To amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes

Veterans who served on open sea ships off the shore of Vietnam during the Vietnam War are called "Blue Water Veterans." Currently, Blue Water Veterans must have actually stepped foot on the land of Vietnam or served on its inland waterways anytime between January 9, 1962 and May 7, 1975 to be presumed to have been exposed to herbicides when claiming service-connection for diseases related to Agent Orange exposure.

Blue Water Veterans who did not set foot in Vietnam or serve aboard ships that operated on the inland waterways of Vietnam must show on a factual basis that they were exposed to herbicides during military service in order to receive disability compensation for diseases related to Agent Orange exposure. These claims are decided on a case-by-case basis.

We are cognizant that VA previously asked the National Academy of Sciences' Institute of Medicine (IOM) to review the medical and scientific evidence regarding Blue Water Veterans' possible exposure to Agent Orange and other herbicides. IOM's report Blue Water Navy Vietnam Veterans and Agent Orange Exposure was released in May 2011. The report concluded that "there was not enough information for the IOM to determine whether Blue Water Navy personnel were or were not exposed to Agent Orange."

However, Vietnam veterans who served on land and sea now have health problems commonly associated with herbicide exposure. Just as those who served on land were afforded the presumption because it would have placed an impossible burden on them to prove exposure, Congress should understand the injustice of placing the same burden on those who served offshore. Clearly, all the toxic wind-blown and waterborne Agent Orange-dioxin just didn't somehow stop at the coast line.<sup>2</sup>

The American Legion strongly supports this legislation to expand the presumption of exposure to herbicides for veterans who served within the territorial seas of Vietnam, to ensure that proper benefits are awarded to those with conditions associated with exposure.

The American Legion supports S. 681

#### DRAFT LEGISLATION: 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

To amend title 38, United States Code, to improve the processing by the Department of Veterans Affairs of claims for benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

The American Legion was honored to work with Senators Heller and Casey in attempting to improve accountability within the Department of Veterans Affairs (VA); more importantly, through this accountability, it is The American Legion's pure objective to ensure that our Nation's veterans are receiving their entitled benefits due to their honorable service to this Nation. The American Legion especially applauds the efforts from the Backlog Working Group to reach out directly to the Veterans Service Organizations (VSOs) in an effort to understand the problems inherent in the VA disability claims system. The American Legion alone accredits over 3,000 service officers nationally to assist veterans with their claims for benefits. This first hand,

<sup>1</sup> Resolution No. 14: Review of Federal Mobilization Personnel Statuses and Benefits

<sup>2</sup> Resolution No. 250: Blue Water Navy Vietnam Veterans

front line experience is critical to understand how the system actually operates “in the trenches.” The willingness and eagerness of Senators Heller and Casey to go directly to the veterans who wage these battles for benefits daily has informed the policies they have proposed and underlined the absolutely critical need to include all stakeholders in the process of reforming any VA system.

The bill is extensive in scope, so analysis of critical sections is provided:

*Sec. 101—Improvement to Transition Assistance Program*

The American Legion supports making TAP classroom material available online and has long advocated for the inclusion of veterans service organizations (VSOs) to servicemembers as they transition from service. The American Legion believes The Department of Veterans Affairs (VA), the Department of Defense (DOD) and Department of Labor (DOL) need to work together to establish a nationwide policy to permit American Legion accredited representatives (service officers) as well as other major veterans service organizations (VSOs), that choose to participate in the Transition Goals, Plans and Success Program.<sup>3</sup>

*Sec. 103—Determination of Manner of Appearance for Hearings before Board of Veterans’ Appeals*

For veterans opting to appeal their claims to the Board of Veterans’ Appeals (BVA), it can often be an arduous process. In January 2015, The American Legion testified before the House Committee on Veterans’ Affairs Subcommittee Disability Assistance and Memorial Affairs regarding the amount of time that veterans wait prior to having their claims adjudicated. During that testimony, we indicated that a veteran’s standard four year enlistment is shorter than the period of time that a veteran must wait before a claim is adjudicated; sadly, approximately half of those claims reviewed by BVA must be remanded for further development to comply with VA’s duty to assist veterans seeking disability benefits.

Veterans have various avenues to have their claims adjudicated. They may choose to have the following:

- An informal hearing presentation
- A hearing at BVA in Washington, D.C
- A travel BVA hearing
- A video conference hearing

The American Legion believes that veterans own their claims. As such, the manner they choose to prosecute their claims should remain theirs; however, if VA can provide the manner that would be the most expeditious while not reducing the veteran’s due process rights to ensure they receive the benefits in a timely manner, it would be ultimately beneficial to the veteran community. Section 103 of this bill will allow veterans to have their claims to be adjudicated in a timelier manner and allow the veteran to “opt-out” of VA’s suggested manner to have a hearing conducted. This is consistent with The American Legion’s policy of encouraging VA to address all claims in an expeditious and accurate manner, provided VA creates no program that diminishes a veteran’s due process rights.<sup>4</sup>

*Sec. 201—Required Comptroller General Audit of Regional Offices of Veterans Benefits Administration*

It is an unfortunate reality that veterans’ claims are not adjudicated in a similar manner. A claim adjudicated in one office may be granted while denied in another; additionally, a claim in one office may be granted a higher disability rating than in a separate office. We recognize that adjudicating claims is inherently open to interpretation; however, during The American Legion’s Regional Office Action Review visits in recent years, we have noted that certain VA regional offices are more adept than others at adjudicating claims.

Over the past year, VA has been moving toward establishing its National Work Queue (NWQ) program designed to have claims adjudicated not by region, as has been VA’s historical practice, but by available rater. To ensure that NWQ is successful, the veterans need assurance that a claim adjudicated by one regional office employee would have the same results in a different regional office. If not, VA runs the risk of NWQ ultimately becoming a chaotic world of VA appeals due to an uncertainty in the quality of adjudications. Through passage of Resolution 128 at our National Convention in Charlotte in August 2014, The American Legion called for transparency within VA. We assert through a third-party review of the manner that

<sup>3</sup>Resolution No. 210: Service Officers Participation in the Transition Goals, Plans and Success Program

<sup>4</sup>Resolution No. 28: Department of Veterans Affairs Appeals Process

the claims are adjudicated; a fuller understanding of VA's manner of adjudication at each of its regional offices can finally be accomplished.

*Sec. 203—Analysis of Communication between Regional Offices of Department of Veterans Affairs and Veterans Service Organizations and Congressional Caseworkers*

Section 203 is designed to increase the efficiency in the level of communication between VSOs and Congressional caseworkers. The American Legion has over 3,000 accredited representatives, to include service officers in each of VA's regional offices. Like the accuracy and nature in adjudicating claims, the level of communication between our accredited representatives and VA regional office employees differs by regional office.

During the wake of last summer's VA health care scandal, The American Legion established Veterans Crisis Command Centers to allow veterans to gain access to their benefits. During an event in St. Louis, an elderly veteran stated for 20 years he had been pursuing his benefits, and in 20 minutes with The American Legion and VA personnel, he was able to finally gain the access he sought. He stated, "This is a business built on communication, and VA has failed."

Similar to the necessity of communication between VA and veterans, VA needs to provide the necessary communication to VSOs; VSOs often provide the front line of advocacy for veterans. If we are unable to communicate, then a breakdown in the pursuit of benefits can occur. In our recent National Executive Committee meeting, The American Legion adopted Resolution 28 that calls for VA to pursue an efficient manner to adjudicate claims and appeals. While this section may not completely address the whole issue, improving communication between the advocate and VA will only strengthen the program.

The American Legion supports efforts to improve the effectiveness in VA's adjudication of claims and appeals, provided these efforts don't impact or remove any due process rights afforded to veterans.<sup>5</sup>

*Sec. 205—Annual Report on Capacity of Benefits Administration to Process Benefits Claims*

According to the May 2, 2015, VA's Monday Morning Workload Report (MMWR), 439,928 claims are awaiting adjudication; 161,519 have been awaiting adjudication for over 125 days. 299,983 claims are languishing in appeals status. Compare this data with the MMWR released on May 3, 2010, where 523,976 claims were awaiting adjudication; 189,048 claims were waiting a decision greater than 125 days with 189,269 claims in appeal status awaiting a claim. Though VA has made significant strides in improving its adjudication rates, it is evident that while the focus has been on original decisions, the appeals inventory has exploded by 58.5 percent.

In recent years, The American Legion has testified that VA is overwhelmed. Our Regional Office Action Review (ROAR) visitations have witnessed the level of stress within the VA regional offices. Not only are they understaffed, many employees simply do not have the level of experience necessary to adjudicate the claims. In speaking with VA management at the regional offices, they often referred to the level of inexperience and understaffing. Meanwhile, when asked by Congress regarding if they needed additional employees, VA senior leadership repeatedly stated that they have adequate levels of staffing.

As we move closer to the December 2015 deadline to meet former VA Secretary Eric Shinseki's goal of having claims adjudicated within 125 days and 98 percent accuracy, The American Legion fears that the focus upon achieving the arbitrary objective will come at a cost to veterans. Through Section 205, VA will be compelled to reveal the stress within the regional offices and can meet the needs of the veterans throughout the Nation. The American Legion believes strongly in an increased level of transparency within the Veterans Benefits Administration;<sup>6</sup> through passage of this bill, VA will be required to release its needs to Congress and increase its transparency.

The American Legion supports the 21st Century Veterans Benefits Act.

DRAFT LEGISLATION: VETERANS COMPENSATION COST-OF-LIVING ADJUSTMENT  
ACT OF 2015

To provide for an increase, effective December 1, 2015, in the rates of compensation for veterans with service-connected disabilities and the rates of dependency and

<sup>5</sup> Ibid

<sup>6</sup> Resolution No. 128: Increase the Transparency of the Veterans benefits Administration's Claims Processing

indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

This draft bill would provide a Cost of Living Allowance (COLA) effective December 1, 2015. 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.<sup>7</sup>

The American Legion supports this draft bill.

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION LEGISLATIVE  
PROPOSALS REGARDING COMMISSION RECOMMENDATIONS 11 AND 12

*Sec. 1101: Montgomery GI Bill Sunset*

The American Legion supports this provision, but Congress should ensure that any inconsistency between MGIB-AD and the Post-9/11 GI Bill are identified and rectified prior to merging the two education programs. Servicemembers should not lose any portion of these educational programs due to the merger. Where the Post-9/11 GI Bill does not provide the same services as other educational programs, it should be amended to do so. Also, full or partial refund of the \$1,200 servicemembers paid to become eligible for MGIB should be made.

Two examples of inconsistency between the MGIB-AD and Post-9/11 are as follows:

(1) Currently Title 38 U.S. Code Chapter 33, subchapter II—Educational Assistance (§§ 3311–3319), section § 3315(c) states the following:

“The charge against an individual’s entitlement under this chapter for payment for a licensing or certification test shall be determined at the rate of one month (rounded to the nearest whole month) for each amount paid that equals”

The change to chapter 33 should mirror previous Public Law 106–419: Veteran Benefits and Health Care Improvement Act of 2000, section 122 that outlined licensing and certification, and reads as follows:

“The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test 8 by the full time monthly institutional rate of educational assistance which, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1),(d), or (e)(1) of section 3015 of this title, as the case may be.”

(2) There are schools that do not charge tuition for their student veterans. Some states offer a tuition waiver to their veterans as part of their State Military Benefits. Because a large part of the Post-9/11 GI Bill pays tuition and eligible fees, if you do not have tuition charges, then all you get out of your GI Bill is the housing allowance and book stipend.

If your tuition-free school happens to be in a low cost-of-living area, you may actually make more or at least the same by using the Montgomery GI Bill (MGIB). If you had at least three years of service and go to school full-time taking 12 credits, you would earn \$1,426 per month.

Taking that same credit load under the Post-9/11 GI Bill, you would get the book stipend that breaks down to \$125.01 per month and your housing allowance. With the housing allowance averaging \$1,200 across the United States, there are many places choosing the MGIB would be more beneficial to the veteran. The American Legion wants to ensure student-veterans have access to all of the resources available to them.

*Sec. 1102: Reserve Education Assistance Program Continuing Eligibility and Sunset*

The American Legion supports this section, but Congress should ensure that any inconsistencies between Chapter 1607 (REAP) and Chapter 33 (Post-9/11) are identified and rectified prior to the merger of the two programs to prevent any confusion by all stakeholders impacted by this merger, especially, the users of the program.

*Sec. 1103: Tuition Assistance*

The American Legion does not support this section. Tuition Assistance (TA) currently may be used by servicemembers to take courses in any area of study.

<sup>7</sup> Resolution No. 291: Oppose Lowering of Cost-of-Living-Adjustments

MCRMC recommends restricting TA to professional development courses only, under the rationalization that other areas of study can now be pursued via the Post-9/11 GI Bill. However, The American Legion sees the Post-9/11 GI Bill primarily as a transition tool. DOD should not be encouraging servicemembers to use this valuable transition benefit during service just to cut costs.

*Sec. 1104: Post-9/11 GI Bill Transferability*

The American Legion supports extending the time commitment required to obtain the transferability benefit. Again, we see the Post-9/11 GI Bill primarily as a transition tool, but are cognizant of its use as a retention tool. It is well known that the ten year mark is an important decision point in a military career, the halfway mark so to speak. Too many are now dropping out at this point and if transferability would be more advantageous as a retention tool at the ten year mark rather than the six year mark, we see the reason in that.

*Sec. 1105: Sense of Congress Regarding Transferability of Unused Education Benefits to Family Members*

We support this section.

*Sec. 1106: Report on Education Attainment*

We support this section.

*Sec. 1107: Report on Education Levels of Servicemembers at Separation*

There appears to be an error in this legislative proposal language. Section 1106 already proposes obtaining information on the highest level of education obtained by individuals transferring an education benefit. On our reading, Section 1107 should be proposing obtaining information at separation on the highest level of education attained by a servicemember prior to separation regardless of whether they transferred the education benefit. In other words, all servicemembers, not just those who transferred. MCRMC Report page 171 says in relevant part:

- Require report on educational attainment of Servicemembers who transfer their education benefit: 38 U.S.C. §3325 should be amended to require reporting of information of the highest level of education obtained by individuals transferring their Post-9/11 GI Bill benefits.
- Require report on education levels of Servicemembers at separation: 10 U.S.C. §1142 should be amended to require that information be obtained at time of separation, on the highest level of education attained by a Servicemember prior to separating from military service, and that the education levels of separating Servicemembers be reported annually to the Congress.

The second report requirement says nothing about transferability. The American Legion would support a revised Section 1107 which corrected this.

*Sec. 1108: Termination of BAH Payments for Dependents Using Transferred Education Benefits*

The American Legion supports terminating BAH payments for child dependents, but has concerns about denying the benefit to spouses, especially those who are caregivers to severely disabled veterans. Serious consideration should be given to whether the different life circumstances of spouses warrants retention of the BAH benefit for them.

*Sec. 1109: Unemployment Insurance*

In general, The American Legion supports the idea of prohibiting individuals from receiving Post-9/11 GI Bill benefits simultaneously with unemployment benefits. However, The American Legion does not support having this section applied to all individuals with a board brush. This section should apply only to individuals who are eligible for full Post-9/11 GI Bill benefits. Many National Guard (NG) and Reservists however do not have the full benefit and get only a partial BAH allowance. You may have NG or reservists who were unemployed at activation, their jobs may have been eliminated, or may have been denied reemployment. The recommendation in its current form would penalize those individuals who through no fault of their own need access to UCX while using their Post-9/11 GI Bill benefits. Furthermore, because only their activated deployment time “counts” toward accruing GI Bill benefits under the Post-9/11 GI Bill, many NG and reservists do not merit the full 100% of GI Bill benefits and in addition to their more difficult employment situation also face a greater financial burden when pursuing their GI Bill education. The American Legion recommends an exception for NG and Reservists in this recommendation.



*Sec. 1110: Reporting on Student Progress*

This recommendation is already being conducted pursuant to Pub. L. 112—249, the Improving Transparency of Education Opportunities for Veterans Act of 2012, and Executive Order 13677, Establishing Principles of Excellence for Education Institutions Serving Servicemembers, Veterans, Spouses, and Other Family Members. The American Legion believes another reporting requirement to be conducted by the Departments of Defense and VA would only hamper ongoing collection of data, and harm current gains in the collection of the information stated above.

*Sec. 1201–1204: Recommendation 12*

The American Legion believes that these recommendations are good, common sense ideas, and would further the goal of ensuring that servicemembers are able to transition smoothly and successfully into civilian lives and careers, and that veterans are well cared for should they require employment assistance. We would, however, recommend that Congress consider adding the Department of Education (DOE) and the Small Business Administration (SBA) to those who review the TAP curriculum, given that they contribute important content to the curriculum, and they maintain expertise in those areas covered by that content.

Furthermore, while The American Legion wholly agrees with the recommendation that Congress amend the relevant statutes to permit state departments of labor to work directly with state veterans affairs, we would add that those departments should work together to meet or exceed the federally mandated priority of service for eligible veterans. This would entail ensuring that current practices incentivize DVOPs and LVERs to increase the level of service they provide, rather than getting bogged down in processes or manipulating numbers.

Concurrent with MCRMC recommendations, we find that the model employed by Texas—consolidating veterans’ employment services within a state veterans’ commission—is effective in addressing the needs of veterans. Texas currently enjoys the lowest unemployment rate for veterans of any state in the union. We feel that this is demonstrative of what is possible when there is a single point of entry for veterans’ benefits and services administered by a state agency, and we encourage Congress to examine that model and consider touting it as an example to other states that are looking to effectively serve their veteran population.

Recently Wisconsin petitioned DOL-VETS for the permission to follow Texas in consolidation services and taking a holistic approach to providing services for veterans. DOL-VETS denied Wisconsin’s request two years after the request was submitted citing a May 2010 DOL OIG report that looked at the Texas Veterans Commission’s (TVC) performance in 2008 when veterans employment programs was just undergoing consolidation. However, these six months in 2008 were not indicative of TVC’s record overall. Performance of TVCs employment programs and services have been on an upward trajectory since 2008.

A more recent study was completed by DOL’s Chief Evaluation Office dated January 30, 2015. The study “Veterans and Non-Veterans Job Seekers: Exploratory analysis of services and outcomes for customers of federally-funded employment services.” The data used in the study encompassed nine months from January 2011–March 2013, prior to the JVSG reconstruction.<sup>8</sup>

The report cites Texas’s veterans are entering employment at much higher rates than the national average (62%). However, non-veterans entered employment rates are similar to the national average. Texas veterans also retained employment at higher rates than the national average (81%).

TVC holds them self to a higher standard in ensuring that veterans are triaged by trained professionals (not a receptionist, survey or online tool) for employment services. Further, before the JVSG reconstruction, TVC provided their own resources to ensure that all veterans were assigned a veteran caseworker.

The American Legion believes that a holistic approach to providing services to veterans is worthy of replicating at the state level; States should have the ability to run the JVSG program through an agency the Governor believes will best support the veteran. Further, we believe that a veteran has earned the right to be seen by a veteran, regardless of whether it is an issue involving claims, education, health care or employment. If a veteran walks into an American Jobs Center and wants to speak to a DVOP, then he or she should be allowed to do that.

<sup>8</sup>U.S. Department of Labor Training and Employment Guidance Letter (TEGL) 19–13, April 10, 2014.

## DISCUSSION DRAFT

To amend title 38, United States Code, to modify the treatment under contracting goals and preferences of the Department of Veterans affairs for small businesses owned by veterans, to carry out a pilot program on the treatment of certain applications for dependency and indemnity compensation as fully developed claims for other purposes.

*Sec. 101: Modification of treatment under contracting goals and preferences of Department of Veterans Affairs for small businesses owned by veterans of small businesses after death of disabled veteran owners*

The American Legion supports Section 101.

*Sec. 102: Treatment of businesses after deaths of servicemember-owners for purposes of Department of Veterans Affairs contracting goals and preferences*

The American Legion supports Section 102.

*Sec. 201: Medical Examination and opinion for disability compensation claims based on military sexual trauma*

Section 201 calls for VA to provide a report regarding the number of examinations and opinions provided VA medical providers pertaining to military sexual trauma (MST). Quite simply, MST can cause long-lasting, devastating effects upon victims of sexual assault. Questions pertaining to the frequency of MST exist within Department of Defense; however, The American Legion asserts a frequency of one is one too many.

The American Legion believes there is a need for an examination of “the under-reporting of MST and to permanently maintain records of reported MST allegations, thereby expanding victims’ access to documented evidence which is necessary for future VA claims.”<sup>9</sup>

The American Legion supports section 201.

*Sec. 202: Report on Standard of Proof for Service-Connection of Mental Health Conditions Related to Military Sexual Trauma*

For many veterans suffering with medical conditions associated with military sexual trauma (MST), the unfortunate reality is that no documentation exists regarding the incident. Fear and embarrassment are just some of the myriad reasons why servicemembers do not report the incident either to their chain of command or local law enforcement.

Due to this fact, little if any documentation exists within the veteran’s service treatment records. Upon discharge the veteran is left with little proof of the incident. VA has relaxed regulations pertaining to MST; however, the implementation and usage of the relaxed regulations is varied based upon VA regional office.

The American Legion supports a full understanding of how MST claims are adjudicated and urges “VA to conduct an analysis of MST claims volume, assess the consistency of how these claims are adjudicated, and determine the need, if any, for additional training and testing on processing of these claims.”<sup>10</sup>

The American Legion supports section 202.

*Sec. 203: Reports on claims for disabilities incurred or aggravated by military sexual trauma*

The long-term effects of MST can be devastating. Beyond any physical conditions that may manifest due to MST, the psychological effects can continue through the veteran’s life. VA’s PILOTS database provides numerous studies indicating the relationship between Post Traumatic Stress Disorder (PTSD) and physical conditions.

Stating MST may cause PTSD or other mental health conditions is an oversimplification of the issue. Studies have related PTSD to many physical medical conditions, to include cardio-vascular conditions. The American Legion supports identifying conditions associated with MST to ensure veterans receive the benefits they have earned.<sup>11</sup>

The American Legion supports section 203.

*Sec. 204: Pilot program on treatment of certain applications for dependency and indemnity compensation as fully developed claims*

The American Legion has invested significant time and funding to ensure that VA’s Fully Developed Claims (FDC) program is successful. As the Nation’s largest VSO, we recognized that to ensure veterans receive benefits in a more expeditious

<sup>9</sup> Resolution No. 67 “Military Sexual Trauma”

<sup>10</sup> Resolution No. 67 “Military Sexual Trauma”

<sup>11</sup> Ibid

manner; we would inherit some of the responsibilities previously held by VA to further assist the veteran. We had a team of subject matter experts travel the Nation, speak with VA regional office employees, veterans, and service officers to ensure that FDC was viable. We are proud to report that over 40 percent of our claims are submitted via FDC.

We welcome the idea of having benefits reach veterans in a more expeditious and accurate manner. Additionally, as we assist VA with the implementation of FDC, we offer our services to assist in implementing FDC for DIC claimants. The American Legion calls for VA to create an efficient method to adjudicate claims; having FDC available for DIC claimants would move toward meeting that objective.<sup>12</sup>

The American Legion supports section 204.

*Sec. 205: Review of determination of certain service in Philippines during World War II*

The American Legion has no position on section 205.

*Sec. 206: Reports on Department Disability medical examinations and prevention of unnecessary medical examinations*

Many veterans will submit private medical evidence to support their claims for disability benefits. For veterans that require additional medical review or do not provide a statement from a medical professional linking a medical condition to military service, VA provides compensation and pension (C&P) examinations to determine the linkage or severity of medical conditions.

The American Legion has conducted Regional Office Action Review (ROAR) visits for approximately 20 years. Through these visits The American Legion determined and reported to Congress that VA has had instances of scheduling unnecessary and duplicative examinations despite the necessary evidence existing to grant the benefit. This adds further complication to an already complicated process.

The American Legion understands that there are occasions where a veteran would need a second examination after submitting a medical nexus statement. If a private medical provider did not use a VA disability medical questionnaire, then it stands to reason that the provider may not have conducted the necessary tests to accurately rate the veteran.

Unfortunately, these instances did not get noticed solely during ROAR visits. They are noticed far too frequently by American Legion representatives at the Board of Veterans' Appeals. There have been occasions where veterans have been seeking total disability based on individual unemployability (TDIU) benefits. Meanwhile, the veteran had previously been granted Social Security disability benefits for a condition incurred in service and service-connected by VA. Despite enduring medical examinations for Social Security purposes and having the benefit granted by the agency, VA would conduct their own examinations to determine the veteran's employability. Some in the veteran community refer to this needless development of disability claims as "developing to deny."

Through the reporting required by this section, VA would be compelled to release data regarding acceptable clinical evidence and increase transparency regarding the manner claims are developed and ultimately adjudicated. Having Congressional and VA focus upon the manner that private medical evidence is treated, The American Legion believes that the treatment of the evidence received from private medical providers would receive higher consideration. Moreover, this could expedite the adjudication process and increase the overall transparency of the claims process.<sup>13</sup>

The American Legion supports section 206.

*Sec. 301: Department of Veterans Affairs study on matters relating to burial of unclaimed remains of veterans in national cemeteries*

This section aims to help dignify veterans who have passed away but whose remains are still unclaimed. Up until now, the sole means for dignified burial for these forgotten heroes has been private groups, such as the Missing in America Project (MIAP), a non-profit organization launched nationwide in 2007 that has been supported by The American Legion in their efforts to bring honor to all of America's fallen. This provision would enable VA support of this mission, directing VA to: Conduct a study on matters relating to the interring of unclaimed remains of veterans in national cemeteries under the control of the National Cemetery Administration by estimating the number of unclaimed remains; assessing the effectiveness of procedures of the VA for working with persons or entities having custody

<sup>12</sup> Resolution No. 28: Department of Veterans Affairs Appeals Process

<sup>13</sup> Resolution No. 128: Increase the Transparency of the Veterans benefits Administration's Claims Processing

of unclaimed remains to facilitate interment of unclaimed remains of veterans in national cemeteries; assessing state and local laws that affect the ability of VA to identify, claim and inter these remains; recommend appropriate legislative action. All of America's veterans deserve to be remembered for eternity with dignity and honor.<sup>14</sup>

The American Legion supports section 301.

*Sec. 401: Honoring as veterans certain persons who performed service in the reserve components of the Armed Forces*

This legislation would provide a purely honorific title of veteran for those individuals who completed appropriate service in the National Guard and Reserve components of the Armed Forces, but for whatever reason do not have active duty service sufficient to bestow a title of veteran subject to the conditions provided for under the normal titles of the United States Code which assign veteran status for the purposes of benefits. This bill would not provide any benefit beyond the title of 'veteran' and is stated to be intended purely as a point of honor.<sup>15</sup>

The American Legion supports section 401.

#### CONCLUSION

As always, The American Legion thanks this Committee for the opportunity to explain the position of the 2.3 million veteran members of this organization. Questions concerning this testimony can be directed to The American Legion Legislative Division (202) 861-2700, or [wgoldstein@legion.org](mailto:wgoldstein@legion.org).



<sup>14</sup> Resolution No. 24: Identify, Honor, and Inter Unclaimed Cremated Remains of Veterans

<sup>15</sup> Resolution No. 10: Support Veteran Status for National Guard and Reserve Servicemembers