

**H.R. 4360; H.R. 592; H.R. 1030; H.R. 4165; H.R.  
4183; H.R. 628; H.R. 1424; H.R. 1911, AND A  
DRAFT BILL TO EXTEND INCREASED DEPEND-  
ENCY AND INDEMNITY COMPENSATION PAID  
TO SURVIVING SPOUSES OF VETERANS WHO  
DIE FROM ALS, AND A DRAFT BILL TO PERMIT  
APPELLANTS TO APPEAR BEFORE THE BOARD  
OF VETERANS' APPEALS VIA PICTURE AND  
VOICE TRANSMISSION FROM LOCATIONS OUT-  
SIDE THE DEPARTMENT OF VETERANS AFFAIRS**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND  
MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

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**H.R. 4360; H.R. 592; H.R. 1030; H.R. 4165; H.R. 4183; H.R. 628; H.R. 1424; H.R. 1911, AND A DRAFT BILL TO EXTEND INCREASED DEPENDENCY AND INDEMNITY COMPENSATION PAID TO SURVIVING SPOUSES OF VETERANS WHO DIE FROM ALS, AND A DRAFT BILL TO PERMIT APPELLANTS TO APPEAR BEFORE THE BOARD OF VETERANS' APPEALS VIA PICTURE AND VOICE TRANSMISSION FROM LOCATIONS OUTSIDE THE DEPARTMENT OF VETERANS AFFAIRS**

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**Tuesday, October 22, 2019**

COMMITTEE ON VETERANS' AFFAIRS,  
U. S. HOUSE OF REPRESENTATIVES,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 10:31 a.m., in Room 210, House Visitors Center, Hon. Elaine Luria [Chairwoman of the Subcommittee] presiding.

Present: Representatives Luria, Cisneros, Sablan, Underwood, Bost, Bilirakis, and Steube.

Also Present: Representative Brownley.

**OPENING STATEMENT OF ELAINE LURIA, CHAIRWOMAN**

Ms. LURIA. Good morning. I call this legislative hearing to order. Without objection, the chair is authorized to declare a recess at any time.

I would like to welcome you all to the Subcommittee on Disability Assistance and Memorial Affairs legislative hearing, where we will hear testimony on ten pieces of legislation. The vast majority of these proposals are bipartisan in nature, something that is a hallmark of this Committee.

As chair of the Subcommittee on Disability Assistance and Memorial Affairs, I have heard from veterans and their families on the importance of getting timely and accurate decisions on their claims for VA benefits. I have heard how devastating it can be for a veteran and their family when they are victims of fraud. Without pause, I know that Congress and the VA must do more to serve our veterans and protect them from fraudulent practices. I am grateful to my colleagues for their bipartisan efforts to work towards this goal.

One example of this is Representative Brownley's bill, H.R. 592, the Protect Veterans from Financial Fraud Act, which would provide parity in protecting veterans who are victims of fraud. Each year, countless veterans have their benefits stolen by their fiduciary, but for some veterans they cannot recoup their benefits from the VA unless their fiduciary manages ten or more veterans due to a bureaucratic loophole; Ms. Brownley's bill puts an end to this disparity.

I am a proud original cosponsor of Representative Khanna's bill, H.R. 4183, Identifying Barriers and Best Practices Study Act. This bill helps identify barriers and benefit disparities between veterans who served in the Guard, Reserve, and active duty, and special programs such as those who served in the nuclear field.

For any barriers identified, this bill also requests recommendations for overcoming those barriers, so we can ease the pathway to benefits for those veterans.

I also want to thank all of our witnesses for being here today; we look forward to hearing your testimony.

With that, I would like to recognize Ranking Member Bost for his opening statement. Mr. Bost, you are recognized for 5 minutes.

#### **OPENING STATEMENT OF MIKE BOST, RANKING MEMBER**

Mr. BOST. Thank you, Madam Chair. And I want to thank everyone for joining us here today to discuss some of these important pieces of legislation that will be before the Subcommittee. The bills on today's agenda are intended to address issues that are very important to veterans and their families.

One of the bills is H.R. 628, it would allow Members to help constituents who simply want to understand the status of their claim for benefits. This bill would permit certain full-time congressional staffers to look up the status of veterans' claims on VA's claim system, but only, only if the veterans has given the staffer permission. This access will provide congressional employees with an insight needed to quickly verify that the VA is working on the veteran's case and to provide a status update to the constituents.

Moreover, the staffer would be able to confirm the VA has received important documents such as the veteran's claim form or private medical records.

Back in my district, I am approached constantly by veterans who would like to know where their claim is and where it is at in the process.

I employ a full-time caseworker—actually, I have two—whose sole responsibility is to work on constituents' assistance in their VA claims, and both of them are disabled veterans, so they understand how difficult this can be to deal with. You know, frequently this means that the caseworker is writing to VA on behalf of veterans just to find out what is going on with their case.

It can be very frustrating to wait weeks for the VA to get back to us when a VA employee can access this information within minutes.

Representative Yoho would cut through the red tape and allow Members from the offices to provide veterans with immediate feedback. I look forward to discussing H.R. 628 and how it will help our constituents and serve our veterans.

Another bill, H.R. 1424, would require VA National Cemeteries to allow the display of battlefield crosses, which is a monument that depicts a fallen servicemember by an inverted rifle with a helmet and dog tags on top and a pair of combat boots at the bottom. Many of us have seen this symbol. This is an image that every man and woman who has ever worn the uniform knows and, unfortunately, knows it too well.

In 2017, a VA employee misinterpreted the VA's policy and removed a battlefield cross from the Ohio Western Reserve National Cemetery because it was a weapon or the symbol of a weapon. In response to the veterans and congressional concerns over the incident, the Department reinstated the monument and clarified the cemetery can display this image. However, this bill is necessary to codify this clarification and ensure that VA does not ban this sacred image again.

I support this bill and appreciate Representative Gonzalez's leadership on this issue.

Additionally, we will be discussing H.R. 1911, which will be introduced by Representative Waltz. This bill will make numerous changes to the VA and DoD benefits for surviving spouses. Today, I would like to focus on the provisions that would allow surviving spouses to continue to receive dependency and indemnity compensation or DIC should they remarry, regardless of age.

We owe a solemn debt to the men and women who laid down their lives in defense of our country and, for those that have made the ultimate sacrifice, our Nation has a responsibility to take care of their families. For that reason, the VA provides DIC to survivors to make up for the loss of income that results from the veteran's death, but can never make up for the death itself.

Currently, only surviving spouses who are over the age of 57 are able to continue receiving DIC if they are remarried. This is similar to other Government surviving benefits such as Social Security, Civil Service programs, in which the survivor is able to retain their benefits even if they remarry after a certain age. I am interested in learning more about whether it would be appropriate for a DIC to be the first Government survivor program to remove this restriction.

I know many of my colleagues here today have worked hard on their proposals. I look forward to discussing how these bills will improve the lives of our veterans and their families.

And, with that, I yield back. Thank you, Madam Chair.

Ms. LURIA. Thank you, Mr. Bost.

For the first panel we will hear testimony from the Members who introduced some of the legislation before us today. First, we have Representative Cisneros from California, who sits on this Subcommittee; and, next, we have Representative Brownley, also from California, who chairs the Subcommittee on Health. Welcome to you both.

Without objection, several of our colleagues will join us for today's hearing: Representative Delgado from New York, Representative Gonzalez from Ohio, Representative Yoho from Florida, and Representative Waltz, also from Florida.

With that, I now recognize Representative Cisneros for 5 minutes.

**STATEMENT OF HONORABLE GIL CISNEROS**

Mr. CISNEROS. Thank you, Madam Chairwoman, for providing a hearing on my legislation, H.R. 4748, the Justice for ALS Veterans Act. I was proud to introduce this bill with my colleague Congressman Fitzpatrick, Chairman of the Congressional ALS Caucus, and want to sincerely thank him for his leadership on this devastating disease. Our legislation would help ease the financial stress surviving family members face when a veteran who is diagnosed with ALS dies.

ALS, also known as Lou Gehrig's disease, affects nerve cells in the brain and spinal cord. This disease progresses quickly, eventually preventing the victims from being able to walk, write, speak, or even breathe on their own. Members of the military are twice as likely to develop ALS, with one in six ALS patients having served. No cure exists, no definitive explanation for its cause, but what we do know is that the disease is always fatal and devastating for the entire family involved.

One such family is that of Marine Corps veteran George Vasiloff, who was diagnosed with ALS in September 2013. The VA rated him as 100 percent disabled as of November 2013. Less than 2 years later, he died, leaving behind his wife, Jan, and two children.

Under current law, Jan is not entitled to increased dependency and indemnity compensation, despite caring for her husband's service-connected disability until the day he died. Currently, an eligible survivor of a veteran affected with a service-connected disability only qualifies for increased DIC if the service-connected disability was rated a total disability for a continuous period of at least 8 years immediately prior to death. But with a 2-to-5-year life expectancy, veterans with ALS do not live long enough to meet the eligibility criteria.

The Justice for ALS Veterans Act of 2019 would correct this injustice by extending the increased DIC payment to surviving spouses of veterans who die from ALS regardless of how long the veteran had the disease prior to death.

Watching a loved one's life tragically cut short by ALS takes incredibly strength and courage. No one should have to take on the emotional and financial burden of this disease alone, especially not family of our veterans, who are twice as likely to develop ALS as those who had not served.

This is a commonsense, bipartisan legislation supported by the Paralyzed Veterans of America, the Wounded Warrior Project, and the ALS Association.

I thank the Committee for holding this hearing and urge that it be marked up with deliberate speed.

With that, I yield back my time.

Ms. LURIA. Thank you, Mr. Cisneros.

I apologize for the initial mistake. Each Member presenting their bill will be given 2 minutes due to the large amount of legislation that we will be considering today.

And I next recognize Ms. Brownley for 2 minutes.

**STATEMENT OF HONORABLE JULIA BROWNLEY**

Ms. BROWNLEY. Thank you, Madam Chairwoman, and the Subcommittee for considering my legislation, the Protect Veterans from



Financial Fraud Act, to ensure that every veteran who has served our country so bravely receive the benefits they have earned and deserved, and for Congress to fulfill America's promises.

As you know, the VA assigns fiduciaries to assist more than 177,000 veterans or their family members with managing their VA benefits. These are our most vulnerable veterans who are unable to manage their own financial decisions because of their age or their health conditions. A fiduciary helps to ensure that a veteran's benefits are used in the best interests of the veteran, and the fiduciary is a critically important role at a time when the veterans need their assistance the most.

Under Federal law, VA has the authority to remove a VA-appointed fiduciary who has misused or stolen a veteran's benefits. In fact, in fiscal year 2019, sadly, 975 fiduciaries were removed based upon a finding of misuse.

When a fiduciary steals a veteran's benefits, this directly takes away money from a veteran and can result in the inability to pay for basic necessities such as housing and food. But, perhaps even more importantly, a fiduciary has stolen a veteran's dignity. VA can only reissue these benefits to their veterans if their fiduciary manages VA benefits for at least nine other veterans. This ten-or-more rule prevents VA from making all veterans whole when they have been taken advantage of by those entrusted to care for their finances at a very vulnerable time in their lives.

My bill would ensure that all veterans in VA's fiduciary program can recover misused or stolen benefits. To not restore these benefits because someone else abused their responsibilities, in my opinion, is truly inexcusable and it must stop.

Both VA and our VSOs support extending these protections to all beneficiaries in the fiduciary program, and I urge my colleagues to support this bill to correct this cruel injustice and ensure that every veteran is fully protected from any fraud or abuse, and I am happy to answer any questions.

Thank you, Madam Chair, for the time, and I yield back.

Ms. LURIA. Thank you, Ms. Brownley.

And, Mr. Delgado, you are now recognized for 2 minutes.

#### **STATEMENT OF HONORABLE ANTHONY DELGADO**

Mr. DELGADO. Thank you, Chairwoman Luria and Ranking Member Bost, for the opportunity to testify today about my bill, the Improving Benefits for Under-Served Veterans Act, legislation to better understand the needs of our Nation's veterans.

Throughout the years, our armed forces have become increasingly diverse, with more women and minority groups serving our country. In fact, in my district alone there are more than 40,000 veterans, nearly 10 percent of which are women, a trend that will only increase in the coming years. Female veterans are also the fastest-growing segment of the homeless veteran population, and in 2016 the suicide rate of women veterans was nearly twice the suicide rate of non-veteran women.

This summer, I visited a number of veterans organizations and facilities in Upstate New York, including the Samaritan Day Top Village in Ellenville, the Catskill VA Clinic, and the Albany Stratton VA, to better understand the health care needs of women vet-

erans and learned that many female and minority group veterans are unaware of their entitled benefits, leaving critical benefits unused.

My legislation, the Improving Benefits for Under-Served Veterans Act, would direct the Secretary of Veterans Affairs to publish a report on veterans' benefits, disaggregating by sex and minority group status. This would help Congress and the VA better understand which benefits these groups are utilizing and, importantly, which benefits they are not utilizing.

This forward-looking report will also allow Congress and the VA to foresee trends and needs in veterans' benefits and better understand how to serve them in the future.

I am grateful to the House Veterans' Affairs Committee for all of its hard work and what will become the Deborah Sampson Act, which if enacted would be the most comprehensive legislation helping to serve women servicemembers, and I am so happy it includes the Improving Benefits for Under-Served Veterans Act.

I thank the Committee for the opportunity to speak on this important issue. I yield back my time.

Ms. LURIA. Thank you, Mr. Delgado.

Mr. Gonzalez, you are now recognized for 2 minutes.

#### **STATEMENT OF HONORABLE ANTHONY GONZALEZ**

Mr. GONZALEZ. Members of the Subcommittee, thank you for the opportunity to speak to you today about the first piece of legislation I introduced as a Member of Congress, H.R. 1424, the Fallen Warrior Battlefield Cross Memorial Act.

Battlefield cross memorials commemorate the service of fallen soldiers who have given their lives in service to our country. And, as Strongsville VFW Post Commander Tim Zvoncheck puts it, it is imperative that this custom continues to be displayed for as long as the sons and daughters of this Nation are willing to give their lives in its defense.

I am proud to carry on the work of my predecessor, Congressman Jim Renacci, who introduced a version of this bill last Congress. As combat veteran Michael Kuhn from Massillon explained to me, the battlefield cross encapsulates so many of the most important things to a combat vet: his rifle, his boots, his tags, and, most of all, his fallen comrade. It is extremely important for us to have those things wrapped up in one memorial for us to kneel to, grieve with, and talk to our brothers in arms that have died the ultimate death.

The presence of a battlefield cross memorial in a national cemetery has been a noncontroversial, time-honored tradition since at least the Civil War. However, in the fall of 2017, battlefield cross memorials in Ohio, Illinois, and Michigan were abruptly removed. A VA employee mistakenly said it was because they violated administration policy by depicting a replica of a rifle. This is a significant mischaracterization of the policy's intent.

After pressure from veterans and widespread local support, the VA returned these memorials to their sites, but the future of the battlefield cross memorials remains uncertain. The bill codifies protections for battlefield cross memorials, securing their placement in national cemeteries across the country.

One of the greatest champions for this cause was Elton Boyer, president of the 555th Honors Detachment in my district. He passed away this weekend, but it was Elton's mission to erect a battlefield cross at the Ohio Western Reserve National Cemetery in Seville, Ohio using the spent brass from military funerals. My bill protects his work, clarifying that no administrative policy change can allow the removal of this memorial.

Thank you to the Subcommittee for holding a hearing on H.R. 1424. I urge passage of this legislation by the Committee at the earliest possible opportunity.

Thank you.

Ms. LURIA. Thank you, Mr. Gonzalez.

Mr. Yoho, you are now recognized for 2 minutes.

#### **STATEMENT OF HONORABLE TED YOHO**

Mr. YOHO. Chairman Luria, Ranking Member Bost, and Committee Members, thank you for allowing me the opportunity to testify on the bill H.R. 628, the WINGMAN Act, which is an acronym for Working to Integrate Networks Guaranteeing Member Access Now. This bill is a simple, commonsense bill that allows the VA to focus on claims without having to act as the middleman when Congress needs to access a document in their database. This bill has had strong bipartisan support for the last three Congresses and has passed the House unanimously twice, and I look forward to it passing again.

We spend—as Congressman brought up, we spend probably 56 percent of our time in district and here in DC with veterans' cases, and we are honored to do that, and this bill, the genesis came out of the frustration of veterans and their caseworkers that there has got to be a better way or quicker way that we can facilitate the VA and the caseworkers. And I understand the VA has some concerns with this bill and that many people in the room have echoed them, so I would like to take a moment to address some of their biggest concerns.

First, privacy. I, like everyone else in this room, believe that privacy is utmost and that is the number one concern. We are on a secure server, the same kind of security that the VA has, and so those databases are protected. We only are asked to do this by a veteran that has come to us and says can you help us with our claim. They have filled the privacy form, we filled that out, we access the same VA system.

And it is not to interfere, it is read-only access, so that we can peek in and say this is the status of your claim and this what you—maybe you didn't fill out the form right, you didn't dot the I, you didn't cross the T, or you didn't sign it, and these are things that we can expedite it because, as we have heard, sometimes these cases take weeks, if not months, I have heard some up to 6 months to a year, and this is a way to expedite it and it is focused on the veteran's customer service.

We are not looking to create jobs or take jobs away from the VA or the VSOs or any veteran organizations, we are looking to facilitate and give customer service to our veterans. And we appreciate the bipartisan support that we have had, and we look forward to working with you. And I appreciate the opportunity to come here

and you looking at this and putting your eyes on it, because the bottom line is we have got to take care of our veterans, they have given us the liberties and freedoms we have, and I thank you for the time.

Ms. LURIA. Thank you, Mr. Yoho.

I now recognize Mr. Waltz for 2 minutes.

#### **STATEMENT OF HONORABLE MICHAEL WALTZ**

Mr. WALTZ. Thank you, Chairwoman Luria and Ranking Member Bost, for hosting today's legislative hearing.

Earlier this year, along with Representative Seth Moulton and Don Bacon, I introduced H.R. 1911, the Sergeant First Class Brian Woods Gold Star and Military Survivors Act. This legislation is named in memory of a Green Beret that I had the honor of serving with, who was killed in Afghanistan in 2009. I am thankful to Armed Services Committee Chairman Adam Smith and Ranking Member Mac Thornberry for including several provisions of this legislation in the House mark of this year's Defense authorization bill, and I am confident that they will be retained in conference. Therefore, the focus of my testimony will be on Sections 3 and 6 of this legislation.

And let me first state, I fully support eliminating the SBP/DIC offset; however, my legislation addresses a separate aspect of these two benefit programs for surviving spouses. You know, we all know that the families of our servicemembers wait for their loved one's safe return, often anxiously waiting to hear from them once more. Unfortunately, for some what they hear is the chilling knock on their door from a chaplain. It changes them forever and it makes them part of the Gold Star family.

Under current law, if a Gold Star spouse remarries, as Representative Bost mentioned, prior to turning 55, they lose their SBP; if they remarry after turning 55, the SBP continues uninterrupted. For the DIC, a Gold Star spouse loses those benefits if they remarry prior to turning 57. I don't know where these numbers come from, but that is the law. I would like to highlight under a quirk of the law, Section 1311(e) of U.S.C. 38, surviving spouses who remarry after age 57 receive both SBP and DIC in full. Colleagues, this makes no sense.

My legislation simply allows surviving spouses to continue to move forward with their lives, allow them to remarry free of fear for losing their benefits owed to them for their family's noble sacrifice. Instead, we now have spouses trying to move forward with the next phase of their lives and they should not be penalized.

As a combat veteran and a Green Beret, this is personal for me. This is also a strategic issue for our volunteer military. We are 18 years into the war on terror, I firmly believe we are only in the beginning stages of a multi-generational war. This is a team effort on these constant deployments, and they are constantly deciding whether to continue to deploy.

The bottom line is, if our family support starts cracking, the entire foundation of our modern military is in trouble. I ask this Committee to favorably report this important legislation.

Thank you.

Ms. LURIA. Thank you, Mr. Waltz.

I now recognize Mr. Khanna for 2 minutes.

**STATEMENT OF HONORABLE RO KHANNA**

Mr. KHANNA. Thank you, Chairwoman Luria, for your leadership on so many issues. It has really been a pleasure working with you on H.R. 4183. We need more veterans like you in Congress and this Subcommittee is fortunate to have you as its chair.

I would also like to thank Congresswoman Aumua Amata and Congressman Cisneros, who sit on this Subcommittee, for their co-sponsorship of this bill.

The Identifying Barriers and Best Practices Act will require the GAO to look at disability and pension data over the last decade to identify what, if any, barriers exist for these veterans and provide recommendations for overcoming those barriers.

Veterans who have served in groups such as pilots, air crew, drivers, and Special Forces report difficulty in establishing pensions, service-connection, and medical treatment for injuries occurred while serving. We have heard this happens because, for them to continue service, they avoid documenting their injuries.

The bill proves our democracy still works. A constituent of mine, Jerry Kromrey from Sunnyvale, California, who served in the U.S. Air Force Reserves, literally attended every monthly town hall of mine. Each time he raised this issue and as a result of his advocacy, we are now having this legislative hearing in the U.S. House Veterans' Affairs Committee and thanks to Chairwoman Luria's leadership.

I want to thank the many veterans service organizations who are supportive of this bill. I would also like to thank Sam Friano, who GAO has sat on the Subcommittee, has really been instrumental in making this bill happen in this hearing today. So, thank you, Sam.

I hope we can move this bill out of the Subcommittee and this bill becomes law, so that we can make sure that all our veterans get the treatment and care they deserve, and that their disabilities are addressed.

I yield back and welcome any questions.

Ms. LURIA. Thank you, Mr. Khanna.

We will now move to Panel 2. I will introduce the Members, but you are welcome to go ahead and come forward to the table.

For our second panel we have Mr. Ronald Burke, Executive Director of Pension and Fiduciary Service of the Veterans Benefits Administration. He is accompanied by Ms. Kimberly McLeod, Deputy Vice Chairman of the Board of Veterans' Appeals.

So, welcome to Mr. Burke and Ms. McLeod. And, Mr. Burke, you are first recognized for 5 minutes.

**STATEMENT OF RONALD BURKE**

Mr. BURKE. Thank you. Good morning, Chair Luria, Ranking Member Bost, and Subcommittee Members. Thank you for providing VA the opportunity to discuss several VA-related bills currently pending in Congress. In this testimony, I will be providing views from the Department of Veterans Affairs on pending legislation.

VA supports H.R. 1030, and also supports H.R. 592, if amended. We would like to provide technical assistance to clarify language in both bills.

VA has no objection to H.R. 1424, as the National Cemetery Administration allows for display of fallen soldier memorials.

VA does not oppose H.R. 4183, but notes concerns with data being available from DoD, and making comparisons between military components that have different statutory requirements for service.

VA cites concerns with Section 6(b) of H.R. 1911. This section resumes payment of DIC to surviving spouses remarried prior to age 57 even prior to enactment. This poses a significant administrative burden in identifying and locating potential beneficiaries whose names and whereabouts would need to be determined.

VA also cites concerns with the Justice for ALS Veterans Act of 2019, as it creates disparity of benefit entitlement surviving spouses of veterans who passed away from other progressive diseases, such as cancer, in less than the 8-year period.

VA does not support H.R. 4165. The data collection in this bill is not necessary for the administration of veterans' benefits and adds to the claimant's burden. Further, this bill would create a significant administrative hardship, as VA would be required to update all application forms to capture this data.

VA does not support H.R. 628. This bill improperly conflates the concept of access to claims records with the concept of recognizing individuals to act as agents and attorneys in the VA benefits claims process. This bill requires that VA provide each claimant an opportunity to permit a congressional employee access to their records, which are stored behind VA's firewall. This is unnecessary, as there are long-standing methods for Congress to obtain the consent of a VA claimant to disclose information. This bill would provide congressional staff with greater access to VA records than is provided to VA employees, whose access is limited to only records required to perform their duties. In effect, this bill exempts congressional staff from all FISMA requirements, which would be unprecedented.

Additionally, VA would need to redesign its systems to allow more than one Representative per veteran or claim, which would require extensive time, monetary expense, and manpower. VA would also have to track and adjust for changes in congressional seats to ensure that access is revoked timely and to inform veterans of such changes.

The bill also limits VA from obligating or spending more than \$10 million for the purposes of this bill. VA estimates \$145.8 million would be required for implementation. These funds and resources could instead be utilized to support other system improvements such as automation.

While VA appreciates the intent of H.R. 4360, VA does not support this bill. The provisions of this bill are duplicative of recently passed laws. VA concurs that expeditious resolution of erroneous reporting is essential; however, VA has already implemented robust procedures to do so, and partners with various credit agencies to repair credit when an error is discovered.

VA continues to work on standardizing notifications and tracking metrics.

VA has concerns as it relates to reviewing the information regarding dependents. In certain situations, it may not be appropriate for VA to provide a veteran with information about debts incurred by a dependent, such as when Federal tax information of dependents is utilized.

VA is also working on several initiatives designed to reduce or eliminate opportunities for overpayments to occur. For example, we are utilizing new or existing data-matching agreements with other Federal and state agencies.

Additional overpayment reduction could be achieved if Congress were to enact VA's fiscal year 2020 legislative proposal, which allows access to FTI for contractors who work in VA systems. This will allow VA to continue modernization and automation efforts by moving FTI into current systems.

Finally, VA supports the use of virtual technology to enable veterans to participate in their appeals hearings without the need for travel to a specific VA hearing location, and would also appreciate a minor clarification of existing law. However, VA does not support the language in this draft bill without amendments.

As written, the draft language would specifically exclude non-disability compensation appeals from the option to conduct virtual hearings. This exclusion would be arbitrary, complicated, and would not help to serve veterans who are in need of these emerging technologies. Ms. Kim McLeod is here from the Board to discuss this draft bill and will be happy to take your questions.

VA appreciates Congress' support for our veterans and their survivors, and looks forward to working with you and your staff to provide any technical support you may request. And I am sorry for going over the 5 minutes.

[THE PREPARED STATEMENT OF RONALD BURKE APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Burke, for your testimony, and we will now begin the question portion of the hearing. I recognize myself for 5 minutes. And that was a perfect sequitur, because I wanted to ask Ms. McLeod specifically about the draft legislation relative to the tele-hearings for VBA processes.

And, Ms. McLeod, can you speak to the challenges and successes you have had with the telehealth pilot, and do you think that this program can be easily expanded?

Ms. MCLEOD. Thank you for the question this morning.

So, yes, so far, we have started phase one of the testing of virtual hearings or tele-hearings at the Board. We started on July 26th and we went through September 30th. During that time, we held about 73 virtual hearings.

What we saw was that for the most part the veterans loved it; the veterans service organizations and other private bar attorneys also loved it. It allowed our most remote veterans to have access to hearings and not have to travel, sometimes hours and hours away, to get to a regional office to hold a hearing. We have also had several homebound veterans who could not travel without

going through some extensive hardship to get to an RO to have a hearing.

And so this just opens up the aperture for those veterans to have hearings and to really choose how they want to hold their hearings with the Board and our judges.

We believe that once we have the full integration of the IT system with our current new caseload system, we will be able to offer this as an option, and we believe it is really going to allow us to bring down our backlog with virtual hearings.

Ms. LURIA. Well, thank you. And it sounds like it has been quite successful as a pilot and we will look to reviewing the recommended changes for this legislation, and see what could or should be incorporated prior to its introduction.

I would also like to speak to Mr. Burke specifically about H.R. 592, the Protect Vets from Financial Fraud Act, introduced by Ms. Brownley.

Specifically with that legislation, I have a hard time understanding why we would protect veterans from fiduciary fraud only in the case where the fiduciary serviced ten or more veterans. Can you provide a breakdown between the number of veterans who have fiduciaries in each group, like how many fiduciaries are responsible for ten or more, is that a normal circumstance, and how many are responsible for fewer than that?

Mr. BURKE. Yes. Thank you for that question.

We have about 177,000 veterans that are in the fiduciary program with approximately 170,000 distinct fiduciaries. So the predominance of the representation is less than ten per fiduciary.

That said, VA does support this bill, with the exception of some wording that we would like to work with the Committee on. As written right now, we would recommend strongly that the language be changed from the date misuse was found to the date misuse occurred. If we stick with the wording that exists now, we will disadvantage some of those veterans that are served by fiduciaries in the very sense that there is a different process currently and, if we were to change the wording in the bill itself to the date the misuse occurred, it would allow us upon enactment of the bill to actually treat veterans the same way whether it was the ten count or less than ten.

Ms. LURIA. Thank you. And thank you for those recommendations, we will look at that for further incorporation and consideration in the bill.

I now recognize Mr. Bost for 5 minutes.

Mr. BOST. Thank you, Madam Chair.

Mr. Burke, just real quickly, in your testimony, though you are in agreement with it, you said the 1424 is unnecessary because VA has an existing policy that allows for displaying of the battlefield cross in VA cemeteries; however, isn't it true the VA can change that policy at any time to prohibit those monuments?

And in fact this legislation was prompted by VA's attempt in three different cemeteries to remove the memorial, and the only reason they went back is because there was a public outcry.

Mr. BURKE. Yes, sir. What I would say is you are correct that VA does currently have a policy; VA could change the policy, we have no intention to; therefore, we have no objection to this bill.



Mr. BOST. Right. Hopefully, for the future, that people understand exactly what that monument is and what symbol is.

So, Ms. McLeod, you touched on this a little bit, but can you please give details to what security measures are in place to protect veterans' sensitive information from being improperly accessed at a Board tele-hearing?

Ms. MCLEOD. Well, sure. The Board and the VA currently uses for the virtual hearings the same platform that VHA uses for the telehealth appointments, and so we follow all of the regular IT protocols, standards, and regulations for securing our platform. That is very important to us, it has been very important to VHA, as they have been using the telehealth platform for the last at least 2 years, and we believe their privacy on the health side and the medical appointment side is as important as the hearing side.

So that is very important that we maintain the level of security for veterans, and so we are following all of the IT standards and protocols for that.

Mr. BOST. Okay. At what point do you think that—let me clarify this on what I am asking. At what point do you think that we are going to be as comfortable with the teleconference as we are sitting face-to-face? Are we to that point already, or we have still got some bugs to work out, or not?

Ms. MCLEOD. So the only thing we are working out at this point is the integration between our new IT scheduling system for hearings and the telehealth platform. We were using a generation one platform during the testing phase, but our generation two is going to be integrated, and we believe at that point we will be fully ready, you know, for full implementation.

In fact, great stories of veterans who are either homebound or VSOs who, instead of pick up all their veterans and traveling 2 hours to the nearest RO, are now holding virtual hearings out of their office and they don't have to travel with the veterans who sit, you know, waiting patiently, of course, all day at the RO 2 hours away from their home.

So we believe it is a game changer, and veterans and veterans service organizations are really looking forward to opening virtual hearings at the Board.

Mr. BOST. Yes, I think everybody is. I hope that we move as fast as possible, but make sure that we are secure as possible.

Ms. MCLEOD. Absolutely, sir.

Mr. BOST. Mr. Burke, regarding H.R. 4165, the VA states it does not collect private citizens' information on veterans such as minority group member status, when VA has no business and no need to do so. However, your testimony also mentions the VA Minority Veterans Report, which provides a comparison of benefits usage among minority and non-minority veterans. Can you clarify the information that VBA collects on the minority status of veterans?

Mr. BURKE. Yes, sir. Thank you for that question.

Right now, the data referenced in the testimony is data that is collected on a voluntary basis. So the data itself is not representative of the aggregate of the veterans that we are serving. And so, in order to enact the bill as written, you know, our position is that we don't need that information to administer the delivery of benefits.

What we do publish, again, is information that is submitted to us or collected on a voluntary basis; there is no mandatory collection. And our concern would be that putting out information without the total picture, without it having full context, may misrepresent the intent of collecting the data to begin with.

Mr. BOST. Thank you.

With that, Madam Chair, I yield back.

Ms. LURIA. Thank you, Mr. Bost.

I now recognize Mr. Cisneros for 5 minutes.

Mr. CISNEROS. Thank you, Madam Chairwoman.

I want to ask you about the Justice for ALS Veterans Act of 2019, H.R. bill 4748. In the VA's testimony, it states that the VA understands the intent of the bill and recognizes the important step in caring for surviving spouses. Regarding the Justice for ALS Veterans Act, what has been the VA's experience in treatment of this aggressive disease?

Mr. BURKE. So, as you said, sir—thank you for the question—so, as you said, this is a terribly debilitating and progressive disease. This is one that VA takes seriously. But with respect to the bill itself, while we support the intent, our concern is merely about two points. It is we want to make sure that we are not creating disparity between this progressive disease and others such as cancer.

And the other thing, that the bill would need some clarification on would just be a clarification in the bill itself that talks to whether or not the surviving spouse would need to be married for 8 years continuously before. We think with the progressive nature of the condition it could be problematic if the bill was not clarified on that 8-year requirement.

Mr. CISNEROS. In regard to other aggressive diseases, would the VA support legislation that included other aggressive diseases such as cancer, as you mentioned?

Mr. BURKE. Again, on this specific one we are supportive of the ALS, except for the fact that it seems to draw a disparity between other conditions, and we would like to see all the progressive conditions treated in a similar manner.

Mr. CISNEROS. And so, if the disparity was removed, the VA would support that type of legislation?

Mr. BURKE. Yes, sir.

Mr. CISNEROS. All right. And in regard to the spouse, you know, being married, if that clarification was made more clear, would the VA also continue to support the legislation?

Mr. BURKE. Yes, sir. We think without clarifying the 8-year requirement it could be problematic and actually go against the intent of the proposed legislation.

Mr. CISNEROS. All right. With that, I yield back my time.

Ms. LURIA. Thank you, Mr. Cisneros.

Mr. Sablan, you are now recognized for 5 minutes.

Mr. SABLAN. Thank you. Thank you.

Mr. Burke, again, I will come back to you. Do you know how many veterans are under fiduciary care in the Northern Mariana Islands?

Mr. BURKE. I would like to take that one for the record. I have overarching aggregate numbers, but not specifically for the areas—

Mr. SABLAN. Okay. So—

Mr. BURKE [continued]. —you are referencing, but we can get that.

Mr. SABLAN [continued]. —when you do that, could you also please tell me what kind of systems are in place to protect veterans, both in the inonus [phonetic] as they call it or in the mainland and in the territories?

Mr. BURKE. Yes, sir. And I can speak to that briefly now. And we will certainly follow up with the specific information about your area so we can get you those numbers.

What I will tell you is that we have a very aggressive approach to treating allegations of misuse in our fiduciary program. We have steps in place to ensure that we are quick in removing a fiduciary and reappointing when misuse is determined and found. We have processes in place that would allow us to reimburse any money that was misused by a fiduciary.

In fact, when a fiduciary currently that has 10 or more individuals is alleged of misuse, not only will we look at the misuse for the individual that was, you know, that raised the alarm, but for all veterans under that fiduciary's care.

In fact, we do that whether the fiduciary has 1 under their care or none. So we do have a misuse process. We do internal investigative steps to ensure that we are reappointing a solid, dependable, reliable, trustworthy fiduciary and restoring benefits—

Mr. SABLAN. Okay. And that's—

Mr. BURKE [continued]. —with the—

Mr. SABLAN [continued]. —standard throughout the country?

Mr. BURKE. Yes, sir. That is correct.

Mr. SABLAN. Thank you.

Mr. BURKE. Yes, sir.

Mr. SABLAN. Madam Chair, I yield back.

Ms. LURIA. Thank you, Mr. Sablan.

I would like thank Mr. Burke and Ms. McLeod for your testimony today. And we will move onto the third panel.

[Pause]

Ms. LURIA. And while the third panel takes their seat, I will go ahead and make introductions.

Appearing before us today is Shane Liermann, Assistant National Legislative Director of the Disabled American Veterans. We also have Mr. Brian Dempsey, Government Affairs Director of the Wounded Warrior Project, as well as Patrick Murray, Deputy Director at the Veterans of Foreign Wars, and finally Ashlynn Haycock, Deputy Director of Policy and Legislation at the Tragedy Assistance Program for Survivors.

Thank you all for joining us today.

[Pause]

Ms. LURIA. Mr. Liermann, I will recognize you first for 5 minutes.

#### STATEMENT OF SHANE LIERMANN

Mr. LIERMANN. Thank you.

Chairwoman Luria, Ranking Member Bost and Members of the Subcommittee, on behalf of DAV's more than 1 million members, we thank you for the opportunity to present our views at today's legislative hearing.

Our written testimony addresses all of the bills and discussion drafts. However, my oral remarks will highlight just a few of these.

Madam Chair, dependency and indemnity compensation or DIC is paid to surviving spouses when a veteran's death is determined to be service-connected. An additional DIC monthly payment, currently \$280, is paid when a veteran was 100 percent disabled for 8 consecutive months prior to death. This is commonly referred to as the DIC kicker.

H.R. 4748, the Justice for ALS Veterans Act of 2019 would extend the DIC kicker to surviving spouses of veterans who died from ALS regardless of how long the veteran was service-connected for the condition prior to death.

VA regulations recognize ALS as a presumptive service-connected disease and due to its progressive nature is automatically rated at 100 percent disabling once service-connection is granted. ALS is a completely consuming disease process, eventually taking away the ability to walk, dress, write, speak, swallow and even breath. The average life expectancy for a person with ALS is 2 to 5 years.

DAV supports H.R. 4748 as it will extend the DIC kicker to survivors of veterans who cause of death is ALS. The aggressiveness of ALS leaves many veterans totally incapacitated and reliant on family members and care givers, and even in the best scenarios generally does not allow life expectancy past 8 years.

Madam Chair, currently there are approximately 60,000 pending hearings before the Board of Veterans' Appeals. We are concerned about this backlog of hearings and the time it adds to the overall appeals process. The Appeals Modernization Act changed statutory requirements for the appeals process which provides only 2 options for a hearing before the board: 1, a hearing in person at the Board of Veterans' Appeals; and, 2, a video conference hearing at a VA facility where the secretary has provided a suitable location and equipment to conduct such hearings.

Recently, the board established a pilot program that provides appellants the opportunity to attend a video conference hearing from any location rather than traveling to their local VA regional office or another VA location that has suitable facilities.

In September the board pilot program reported an attendance rate of over 65 percent, which is roughly an increase of 15 percent over the usual hearing attendance rate. The board noted that a video hearing was conducted for a paralyzed veteran from their own home, so the veteran did not have to travel 175 miles to attend a video hearing at the St. Petersburg VA Regional Office.

This legislation would amend the statute to allow appellants to have a video hearing at a location selected by the appellant via a secure internet platform established and maintained by the VA. DAV would support legislation that provides an additional option for video hearings as this would increase the efficiency and timeliness of the appeals process.

DAV, however, would recommend, as has been noted, an amendment to the draft to allow all appeals before the board to have this additional option.

In reference to H.R. 628, the Wingman Act, DAV does not have a resolution on this bill and does not support or oppose the legisla-

tion. We recommend that covered congressional employees be provided training, VA accreditation or similar certification and have safeguards in place to ensure that a veteran can be made whole in any instance of unintended harm. VSOs, agents, and attorneys are required to complete VA mandated training and become accredited in order to be recognized by VA as being capable of assisting claimants with their affairs before VA. Covered congressional employees should meet the same standards of required VA training and accreditation. This will provide an increased knowledge of VA processes and provide accountability.

If a covered congressional employee provides information, advice or their lack of timely action causes financial harm to a veteran or a claimant, a process should be in place to ensure the veteran will be made financially whole.

Madam Chair, this concludes my testimony. I would be pleased to answer any questions you or Members or the Subcommittee may have.

[THE PREPARED STATEMENT OF SHANE LIERMANN APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Liermann.

Mr. Dempsey, you are now recognized for 5 minutes.

#### **STATEMENT OF BRIAN DEMPSEY**

Mr. DEMPSEY. Thank you.

Good morning, Chair Luria, Ranking Member Bost, and distinguished Subcommittee Members. Thank you for the opportunity to testify at today's hearing and offer Wounded Warrior Project's views on legislation under your consideration.

My name is Brian Dempsey and I have the privilege of representing Wounded Warrior Project as a government affairs director here in our Washington, D.C. office, and my testimony is informed by thousands of engagements with warriors across the country and overseas who have used programs and services delivered by our team and partners.

The written testimony you have received reflects Wounded Warrior Project's views on each of the bills before you, but for today's hearing I will focus on 3 that we believe are most aligned with the way our organization is serving the community.

First, we are pleased to support H.R. 592, the Protect Veterans From Financial Fraud Act and what it proposes to do for veterans who need a heightened degree of support to manage their financial affairs.

Our organization's independence program helps warriors with high needs navigate public and private support programs to help them achieve meaningful levels of activity, purpose and independence in their daily lives. Many in this program can attest that the fiduciary program has been successful in helping them manage the money they receive from VA.

However, we know that some veterans enrolled in this VA program have been the victim of fiduciaries who have taken advantage of positions of trust to personally benefit at their veteran's expense. The Protect Veterans From Financial Fraud Act would remove an arbitrary barrier that currently limits some veterans from recoup-

ing lost benefits as a result of fraud and abuse, and we believe provides a necessary and overdue improvement to a system that must work as efficiently as possible for the most vulnerable warriors.

Wounded Warrior Project is also pleased to support H.R. 4183, the Identifying Barriers and Best Practices Study Act. Our benefits services officers would share that some of the largest barriers to supporting National Guardsmen, reservists and even some special operations personnel who suffered injuries and illnesses in combat are poor injury reporting procedures and challenges with retention and accountability of their service records. These shortcomings create a variety of obstacles for VSOs to help them file for their disability benefits.

As an example, a Missouri veteran struggling with homelessness recently reached out to Wounded Warrior Project for assistance, including help with securing VA disability benefits. In 2004, this veteran was assigned to an air guard unit out of Kansas, tasked with flying injured and killed in action soldiers out of the middle east to Germany and subsequently stateside. He discharged in 2005 and his unit reports that there are no records of the flights in which he participated nor can they find his records.

He was subsequently diagnosed with PTSD and major depressive disorder, but due to lost records he has been unsuccessful in establishing service-connection after multiple attempts. He has lost his house, his family, he is now divorced, and still resides in a homeless shelter in Kansas City, Missouri, where fortunately Wounded Warrior Project staff have been working diligently to help him secure compensation for his injuries.

While the Identifying Barriers and Best Practices Study Act may not provide immediate relief to veterans like this, we believe the bill would help validate many of the anecdotal stories we can share from the field, and we would be pleased to hear GAO recommendations for how to improve the care and benefit system for those who are struggling to achieve outcomes that match their sacrifices.

Finally, Wounded Warrior Project is pleased to support H.R. 4360, the VA Overpayment Accountability Act. One of the benefits of being a VSO is having the ability to work with VA systems such as the Veterans Benefits Management System and VA Share Platform that allow us to monitor our veterans' claims file for adverse actions that could negatively impact the warriors we serve.

One of those actions is debt recoupments that most veterans aren't even aware they are responsible for. There is not enough information or transparency from VA to help veterans understand their duties in scenarios like these.

Unfortunately, not every veteran will benefit from the vigilance of a VSO or personally track their responsibility for follow up when VA makes an erroneous overpayment. We believe this bill can mitigate the associated risks.

Over a third of the post-9/11 wounded, ill and injured warriors who registered with Wounded Warrior Project carry more than \$20,000 in debt, excluding mortgages, and when the domino effect of inaction begins to harm their credit or when VA withholds payment that they depend on, trouble can manifest in many ways.

Our organization recognizes that physical and mental health are often built from the foundation that includes financial security, and

we believe the VA Overpayment Accountability Act would correct shortcomings in the benefit system that place veterans at unnecessary risk.

While further improvements to the system can still be made, such as policies to address the burden of debt repayment when it becomes necessary, we are pleased to support this bill and the steps it takes to protect veterans' credit.

In closing, I wish to express Wounded Warrior Project's support for other initiatives being considered by the Subcommittee today, including those that take care to address issues being faced by women veterans, minority veterans, and veteran families. Our statement for the record reflects more thoughts on these bills, but we are pleased that others on today's panel can speak to the merits of these important pieces of legislation.

We appreciate the opportunity to testify and we thank you for allowing us to be part of this very important work as we care for and serve those who have served our Nation.

Thank you.

[THE PREPARED STATEMENT OF BRIAN DEMPSEY APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Dempsey.  
I now recognize Mr. Murray for 5 minutes.

#### STATEMENT OF PATRICK MURRAY

Mr. MURRAY. Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee, on behalf of the VFW thank you for the opportunity to testify on legislation pending before the Subcommittee.

The VFW supports the VA Overpayment Accountability Act and has some recommendations to improve it. This legislation would improve VA's debt collection process, limit the authority of VA to recover overpayments caused by its own errors, and improve due process.

Many veterans who were never indebted to VA have had erroneous information submitted to consumer reporting agencies due to VA's mistakes. It is unconscionable for a veteran to receive a negative credit rating as a result of VA's error.

According, the VFW supports legislation that requires VA to implement safeguards to prevent the submission of false information and to make corrections in a timely manner.

Furthermore, the VA was pleased to review and offer feedback in the crafting of new, more simply worded letters of potential VA debts. We also request that VA collaborate with and inform VSOs regarding any updates to the standardized format of debt letters.

Due process requires that debt notices following overpayments are clear and provide concise information about the steps a veteran must take in order to resolve any outstanding debts.

The VFW also urges this Subcommittee to incorporate provisions that would grant additional safeguards and more flexibility within the debt repayment system.

The VFW supports the Protect Veterans From Financial Fraud Act of 2019. This legislation would ensure that VA repays the misused benefits of veterans with fiduciaries. This is a commonsense

bill that protects our most vulnerable veterans. Individuals assigned to help a fiduciary—individuals assigned a fiduciary need help and financial protection. And anyone who mistreats, preys upon or otherwise causes them harm must be held accountable and full restitution must be made.

Abusing the health and financial welfare of veterans in need must be punishable by law. Therefore, the VFW recommends imposing criminal and financial penalties on individuals found to prey upon veterans for personal gain.

The VFW supports the Identifying Barriers and Best Practices Study Act and has a few recommendations to improve it. This legislation will require the GAO to conduct a study on VA disability and pension benefits provided to members of the National Guard and Reserves.

In the years since the terrorist attacks of September 11th, 2001, the Guard and Reserve have faithfully answered the call to service. DoD has increasingly relied upon these components for missions at home and overseas.

Unfortunately, these servicemembers face unique challenges when applying for VA benefits. Guard and Reserve members frequently have trouble obtaining medical records which tend to be scattered and incomplete. VA disproportionately denies reservists and guardsmen benefits because they can't establish a condition that is service-connected.

The VFW recommends this Subcommittee authorize a study on benefits provided to members of the Guard and Reserve for the entirety of the global war on terror, not just the 10 year period.

Furthermore, the VFW encourages the Subcommittee to require VA to keep this data tracking as an ongoing analysis during the application and enrollment for benefits, not just simply for a specified amount of time.

Additionally, the VFW supports the Improving Benefits for Underserved Veterans Act to further identify disparities in usage of VA benefits. This legislation would assist VA in ensuring that all veterans use the benefits to which they're entitled, and that access to health care and outcomes remain consistent across all demographics.

Additional knowledge about the VA population and who is using care and benefits will help identify where gaps occur and where resources can be targeted.

The VFW supports the draft legislation to permit appellants to appear in disability compensation cases before the Board of veteran Appeals by picture and voice from locations other than VA facilities.

Emerging VA programs such as Telehealth and Project Atlas already utilize similar remote technology and veterans have found these programs incredibly convenient. This legislation would undoubtedly improve access for veteran appellants and would permit a greater number of veterans to attend their own hearings.

Now the VFW thinks this is an important provision, but urges the Subcommittee to ensure that adequate internet security measures are implemented to prevent data breaches and safeguard sensitive information.



Finally, the VFW supports the Veterans' Spouse Equal Treatment Act. The VFW believes that all veterans and their families deserve to be treated with dignity and respect, and the statutory language of Title 38 should be updated to conform to recent Supreme Court decisions.

Chairwoman Luria, Ranking Member Bost, Members of the Subcommittee, this concludes my testimony. I would be more than happy to answer any questions that you or any of the Members may have.

Thank you.

[THE PREPARED STATEMENT OF PATRICK MURRAY APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Murray.

I now recognize Ms. Haycock for 5 minutes.

#### **STATEMENT OF ASHLYNNE HAYCOCK**

Ms. HAYCOCK. Chairwoman Luria, Ranking Member Bost, and distinguished Committee Members, thank you for the opportunity to speak on behalf of the surviving families of our Nation's fallen heroes.

Ending the penalty on remarriage for surviving military spouses is one of the top legislative priorities for TAPS. We are incredibly thankful to Representatives Waltz, Moulton and Bacon for bringing it to the forefront this year. Preventing surviving spouses from maintaining benefits upon remarriage prevents them from being able to fully move forward with their lives and maintain financial security for themselves and their families. Many have children to consider and so commit to long-term relationships or engagements instead of legally remarrying.

The average age of a military widow in the post 9/11 era is 25. They should not have to wait 32 years to legally remarry.

Under current law, surviving spouses can legally remarry at age 57 and maintain all benefits except health care. If they choose to remarry after 57, they are no longer subjected to the SBP-DIC offset or widow's tax and receive both benefits in full. The age 57 is arbitrary and leaves spouses waiting for years or decades to legally remarry.

In one case, a surviving spouse who asked to remain anonymous was widowed in her 30s with young children. In her mid-40s she met her second chance who was also an Army Lieutenant Colonel. After a couple of years, they got engaged, but still have 7 more years before they actually get married. Her fiance believes that taking her benefits away is disregarding her late husband's sacrifice and his nearly 20 years of service.

She also asked me to make the Committee aware of his situation. He got married while on leave from Afghanistan many years ago. They had 2 children and were only married for 4 years. When it came time to PCS, she filed for divorce as she did not want to leave her home. He served well over 20 years. She receives 12 percent of his retired Lieutenant Colonel's pension for life, even if she remarries.

In this case we hold former spouses in higher regards than we do those who have made the ultimate sacrifice. Many military

spouses wanted to share their story with us, but asked to remain anonymous because in addition to the remarriage penalty, there's also a Federal statute that prevents them from holding themselves out to be married. The clause is incredibly vague and arguably VA could take away their benefits because they co-habitats.

While very few people have actually lost benefits due to this clause, surviving military spouses in long-term relationships live in fear of being investigated because someone turned them in for holding themselves out to be married. The clause and Federal statute should be removed because, honestly, it's archaic.

TAPS also believes that several other provisions should be considered as well so as to fully restore benefits for remarried spouses. TAPS would like to see surviving military spouses able to retain education benefits upon remarriage. The Fry scholarship is one of the most important benefits we have given surviving spouses.

Education benefits provide surviving spouses additional financial freedom. As we know, military spouses are one of the most unemployed and underemployed populations. Due to frequent moves, careers become difficult to maintain and it's almost impossible to fully vest in their own retirement, which is why the SBP benefit is so important.

After the death of their servicemember, many choose to follow their own dreams and pursue a career such as going into mental health, teaching or nursing. Just because they find love again does not mean they should not be afforded the same economic opportunities. We have seen time and time again the importance of our investment into the GI Bill and this should be no different.

In addition, it is not just financial benefits that survivors lose upon remarriage. It's access to all of the abilities to be their children's guardians in the eyes of DoD and Tricare. They do not have access to any Tricare records or referrals.

The story of Kaanan Mackey-Fugler, whose husband died in 2010 and who legally remarried in 2017 illustrates this point. She was fine with giving up the financial benefits, but never thought it would jeopardize her ability to take care of her children.

In June 2018, her youngest daughter, Hannah, was hospitalized after having flu like symptoms and losing 20 pounds in 2 weeks. She was only 9 years old at the time. She was diagnosed with Type 1 Diabetes. Tricare needed new HIPPA forms every time they talked to Kaanan because they did not view her as her child's legal guardian. Kaanan tried to change her daughter's primary care doctor in the system only to learn she no longer had access to it. She had to physically mail forms as she no longer had electronic access to her children's Tricare.

Minor children do not have their own accounts and Kaanan does not have an account because she's no longer in DEERS. As her daughter obviously has a long-term debilitating condition and needs a lot of medical care, yet she cannot help her child and has to wait weeks for referrals instead of being able to do it electronically. Just because she has remarried does not make her any less her children's only living parent.

TAPS request the Committee pass legislation that would end the hold yourself out to be married clause, reinstate education benefits for remarried spouses, and restore access to electronic medical

records for those who are guardians of minor children in addition to restoring the SBP and DIC for remarried spouses.

Thank you for the opportunity to be here today, and I look forward to answering any questions you may have.

[THE PREPARED STATEMENT OF ASHLYNNE HAYCOCK APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Ms. Haycock, and thank you to all of the witnesses for being here today.

I will now move on to the question portion of the hearing, and I recognize myself for 5 minutes for questions.

The first question for Mr. Dempsey and Mr. Murray as you both discussed this in your testimony. Can you provide an example of how the VA might provide erroneous or derogatory information to a consumer reporting agency due to their own error? And do you believe that negative credit reporting might produce extreme hardship, especially for lower income veterans?

Mr. MURRAY. Ma'am, the credit reporting that is erroneously done causes years of sometimes financial hardship that if anybody who has had to do it knows it is a pretty burdensome process to chase those down and get the appropriate records. Having VA assist in that as actively as they can is something that can help ease that burden for veterans. Doing it on your own is a tough process.

We recommend in this legislation adding some flexibility of kind of preventing VA from automatically reporting if the overpayment is under dispute, some flexibility so that there's a little bit of time for the veteran who may have had that erroneous overpayment notification to put a hold on that while the situation gets adjudicated before it gets sent to the reporting companies.

Ms. LURIA. And I think that you also made some recommendations specifically about the notification process to veterans so that they were better informed and could more clearly understand the debt to the VA. Can you comment on that?

Mr. MURRAY. Yes, ma'am. We do thank VA that we were allowed as a collaborative effort to help to clarify the debt notification process. We hope that it can always improve so that clear and concise notification about what is owed and why that overpayment might have been made, the processes for rectifying that, maybe a payment plan or, you know, what steps need to be taken, those are things that we think is vitally important so that it's not as simple of a notification that they receive that is too confusing.

Ms. LURIA. Thank you and thanks for your work on that.

Mr. Dempsey, did you have more to add?

Mr. DEMPSEY. Only a minor bit. I would share many of Mr. Murray's comments as well. And, you know, to the point of improving the process of notifying a veteran, I would say that the typical process typically relies on regular mail these days. There's typically not a phone call, e-mail, and mail typically goes to the last known address which as we know veterans, like others, move around, and given the short window of time that this typically takes place relying on an older mail system, you know, would require an improvement. But I would obviously commend VA for efforts that they're already undertaking to improve the process.

Ms. LURIA. So on that, can you comment on the e-notice that is outlined in the bill?

Mr. DEMPSEY. I can't specifically recall what the text of the bill says, but I would support, you know, initiatives to improve information technology systems that would support the process.

Ms. LURIA. Thank you.

Mr. Murray, again, in your written testimony you mentioned that the Wingman Act does not adequately safeguard veterans' privacy. Can you describe the potential impact on veterans' privacy if the appropriate privacy controls are not put in place if this act were to be implemented?

Mr. MURRAY. Absolutely.

So the VFW accredits about 2500 veteran service officers across the country, and our collective organizations it's thousands. And they go through rigorous training with privacy safeguards in place so that, you know, something that a lay person might not recognize is a disclosure of sensitive information without training, without just the knowledge of what it is they're actually looking at. While it sounds like something that's a very easy, let me just look up your file and tell you where it's at, you are actually looking at someone's medical information. Without the proper training and just even letting them know what you can and can't say to your office mates or your, you know, your boss, whatever it might be, things like that could disclose information that the patient might not want even if they did ask you to look at their file.

We recommend that while this sounds like a great idea, a little bit of training would make it even better so that everybody's collective staffs would know exactly what they're doing so that they aren't harming themselves or the patient they are looking after.

Ms. LURIA. Thank you.

And Mr. Liermann, I believe you also mentioned this in your written testimony. Do you have any additional feedback on the Wingman Act and whether it would be helpful or potentially harmful to the privacy of veterans?

Mr. LIERMANN. Thank you.

Not so much as interest to the privacy of the veteran, more of we want to make sure that veterans and their claimants would have certain safeguards or protections.

So, as Mr. Murray said, training really is a bit part of this. We want to make sure if this does move forward they are provided the same level and types of trainings that VSOs, attorneys and claims agents are so, 1, not only do they understand privacy issues, but more importantly, they understand exactly what it is they are looking at because it is not as simple as just opening up VBMS and knowing the status. You really have to understand what has been submitted, the process, where it is.

So we just want to make sure that if this does move forward, adequate training is provided just to make sure they are not providing any information or misinformation that may harm a veteran.

Ms. LURIA. Thank you. And I believe I'm out of time for this round. So I will pass it to Mr. Bost for 5 minutes of questioning.

Mr. BOST. Thank you, Chair.

My first question is for Ms. Haycock. Does TAPS have any recommendations for the way that H.R. 1911 could be amended to better serve surviving family members?

Ms. HAYCOCK. Sure. So because parts of the bill do fall under DoD we know that some of the health care provisions that we recommend as far as access to records would fall under them, we do believe that they could also include a provision to allow surviving spouses to co-habitate, so removing the hold yourself out to be remarried clause, as well as including provisions to allow surviving spouses to maintain education benefits upon remarriage.

Mr. BOST. Okay. So the next question I have is for the whole panel.

Can you each describe the extent to which that your organization received any consultation prior to the roll out of the board's tele-hearing program? And then also any suggestions you might have for the roll out that might even improve it or speed the process up.

Mr. Liermann, I guess you can—

Mr. LIERMANN. Oh, thank you.

Yes. DAV was invited and provided all of that information before it was rolled out. We have an office at the Board of Veterans' Appeals, our national appeals office, and they were involved from day one with the process, understood it. They have participated in several of these hearings. And we are getting positive feedback from our office that it is being very effective, especially as has been noted for veterans who have limited access to VA facilities due to distance or their disabilities.

Mr. BOST. Okay. Mr. Dempsey.

Mr. DEMPSEY. At the risk of, you know, misstating the amount of engagement that Wounded Warrior Project receives, I can't, you know, determine whether or not we were engaged at that stage. But what I would say is that the majority of assistance we are providing with veterans is at the pre-board of appeals stage, Board of Veterans' Appeal stage. So I would limit it to that for now.

Mr. MURRAY. Sir, the VFW also has an office at the Board of Veterans' Appeals, and much like my colleagues said, we were involved in some of the initial origins of this. And we would encourage to expand this for rural and veterans effected by distance and their disabilities to every extent practical.

Mr. BOST. You probably weren't affected, so that—yeah.

So, okay. Now I have got a question also on the Wingman Act. The reason I am asking this is, is you are not opposed to the legislative office having the ability. You are just requesting that some education goes along with it; is that correct?

Mr. MURRAY. Sir, recently we went out to Montana where one of the initial Project Atlas sites is and worked with center tester staff and went through a modified training course so that his staff knew exactly how to handle constituents and cases like this.

We would be more than happy to provide some kind of a framework for training. It is really—we don't want just the average lay person to be able to open up someone's file and provide the wrong information and send a veteran off to the wrong place. Training and education would make that something that we could get behind.

Mr. LIERMANN. And you are correct. We do not oppose the legislation, but training really is the big key. Personally, having represented veterans for 21 years, there is a lot of information contained within the file. You really need to understand not only what you are reading, but what you are relaying because some of the information you relay or the advice you give could actually be detrimental.

So we just want to make sure that there is a lot of training and even possibly an accreditation or certification process that holds some accountability for them so that way we all know they are trained, they are educated, and they are providing good service to veterans.

Mr. BOST. Mr. Dempsey.

Mr. DEMPSEY. Yes. I would echo a lot of the statements of my colleagues here at the table, while adding that we clearly support the intent of providing the best possible constituent services for veterans and non-veterans alike, and that our reservations about the bill are mostly focused just on training and staff turnover for organizations that have VSO service officers across the country. There is a lot more capacity to absorb any staff turnover or ensure that, you know, anyone representing a veteran is adequately trained.

And while I have no doubt that several member offices would be able to provide great service through covered congressional staff in the event that there is turnover or just, you know, staff that may not be as good at the job they have been expected to perform, just that, you know, the Wingman Act may, you know, provide help and support for many, but maybe at the possible exposure of risk in other situations.

Mr. BOST. And I appreciate that. And my time is expired, but I want to just quickly say that my—I guess I am blessed better than most because my 2 case workers that work are both themselves disabled veterans and were VSOs as well. And I have watched, and it is kind of like when you come to this place, the acronyms that flow out and you have got to know what those acronyms are and—because sometimes I have to slow them down and say, okay, now give me the full word, so.

But thank you. I yield back.

Ms. LURIA. Thank you, Ranking Member Bost.

I now recognize Mr. Sablan for 5 minutes.

Mr. SABLAN. Yeah. Thank you very much to all of you for what you do for our veterans.

Mr. Murray, VFW is the only VSO we have in the Northern Mariana's, and while they are organized, they are probably loosely organized. I stand to be corrected. But I think while they do provide help to other veterans, no one in the organization has actually received formal training on how to help veterans on the different aspects of a case that they may have.

And having said that, I had a wounded warrior fellow in the office, but I don't—I doubt also that that fellow was given enough training to handle complex veterans' cases. But I will reach out to someone in the VA for more training for my veteran case worker.

Mr. Liermann, my goodness, no one could say better, explain better how sad and difficult it is for someone who has ALS to say their

remaining life span they have, and it is unfortunate for those that are service-connected. But I understand. Thank you also for your service.

So as you know veterans who serve in the reserve unit report having harder times getting their disability benefits. I will tell you from personal experience, sir, that at my request the only record the Army had of my service was the 3 days I had at Fort Jackson in processing. I never served basic in AIT. I never served weekend trainings. I never served the annual trainings, although I was in the local legislature and I missed 2 annual trainings because we are in the appropriation process during the summers.

But do you think that Mr. Connor's [phonetic] view of the Identifying Barriers and Best Practices Study Act is helpful to better evaluate the hurdles that many of the veteran's face?

Mr. LIERMANN. I think it will be helpful in potentially addressing the different MOSs and different types of military jobs versus their types of disabilities. Yes.

As far as identifying barriers between active duty and reserve or guard, we are pretty confident we already know there is a big difference because the was regarding service-connection for both of those is completely different. So we already know there is going to be a difference noted in the report if you compare somebody who solely was in the guard or reserves for inactive duty or active duty for training, but never went on active duty versus someone who spent their entire enlistment or career on active duty. So there will be a difference noted in that type of a comparison.

Mr. SABLAN. All right, which is why I tell many of our reservists who get deployed or our National Guard who get deployed that don't sign that piece of paper getting deactivated unless you think that all of your health conditions have been addressed by the Department of Defense because once you sign that paper and you move towards the VA, it is a whole new world out there.

And so let me ask anybody who may have, I don't have very much time, but I know how impactful VA debt can be for veterans and how long it takes for the VA to correct it.

So can you tell me in a few words how important it is for the VA to get debt management actions and corrections right, please?

Mr. LIERMANN. Oh, absolutely. It's a big issue. And part of the—one of the biggest issues, and we testified at a hearing about this a few weeks ago, the way they notify a veteran is extremely confusing or the person who has the debt. First, they send out a letter from the VA Regional Office of Jurisdiction advising that there may have been an overpayment made without a lot of specific information.

Then 30, 60 or 90 days later, they may get a debt letter from the debt management center telling them you owe us \$10,000, and if you don't start paying it now, we are going to take what you have.

So I think a lot of the process that gets really confusing is all of the information required isn't in one notice and it is not easily given to them as was mentioned via email or even through e-benefits.

Mr. SABLAN. I don't have too much time left. Anybody want to take a quick stab? No? All right. That is fine. Well, thank you, everyone, for being here today.

And how do I get my records besides—more than the 3 days that I have got? Do you have any idea?

Mr. DEMPSEY. I would be happy to work with you and—

Mr. SABLAN. Yeah.

Mr. DEMPSEY [continued]. —connect you with folks on our board—

Mr. SABLAN. It took me a long time to get it. I finally got it from Kansas or Louisville or someplace. But it is—that is all they have.

Mr. DEMPSEY. I would—

Mr. SABLAN. I never actually in any of the training that I participated in.

Mr. DEMPSEY. Sir, I would be happy to follow up with you.

Mr. SABLAN. Thank you.

I yield back, Madam Chair.

Ms. LURIA. Thank you, Mr. Sablan.

We can continue with a second round of questions. So, Mr. Sablan, if you have more questions, we will get back to you in a few minutes.

Okay. So, Ms. Haycock, I wanted to recognize that you are the surviving daughter of Army Sergeant First Class Jeffrey and Air Force Senior Airman Nicole Haycock, and thank you for your willingness to testify today and the work that you do to assist survivors.

So you have mentioned several issues, and thank you for bringing up some that I was not aware of and that we will continue to investigate, you know, how we can make a remedy to some of these policies that seem inequitable, especially about remarriage of surviving spouses.

Just if you could take a minute today, can you talk about what is the most common thing that you are hearing from surviving spouses, you know, amongst we have talked about SBP–DIC offset, the specific remarriage clauses, but, you know, can you just take a few minutes to talk about, you know, what's the most pressing issue that you hear today from surviving spouses?

Ms. HAYCOCK. The widow's tax far and away is the number 1 priority for TAPS and several other organizations. It has been an 18-year fight. My mom was actually on the government relations committee for Gold Star Wives for many years before she passed herself. So I have been fighting this fight since I was 10 years old.

It is a huge priority for us, and it became even more crucial this year when there were the changes to the tax laws that caused the kiddie tax issue. And the kiddie tax issue, which of course put surviving children in a over 30 percent tax bracket this year, mostly—so not all surviving families would be made whole by ending the widow's tax, but a bulk would because the child option only exists to help families with minor children who were offset.

So there would still be families, especially those with remarried spouses or those who were never married who would still be subjected to the kiddie tax if we don't fix both. But those are the two big bills that we have been really pushing in this space. They are long overdue. And we know that the kiddie tax was an unintended consequence, but we look forward to seeing it get done this year.

Ms. LURIA. Well, I appreciate that feedback. And, you know, as mentioned earlier when we discussed these, the current NDAA



does fix the SBP–DIC offset and we are working very hard to fix the kiddie tax issue. I introduced a bill, H.R. 2481 which was incorporated in the Secure Act which passed almost unanimously in the House and we are waiting for the Senate to look at that bill and hopefully move that forward. And they have also considered separate legislation.

So we are working very hard to close the loop on that and make sure that we get that across the finish line because I have had groups of surviving spouses, a group of widows in Virginia Beach who sat down and came to me and said, why are my taxes more, and I know that we have to fix this.

And so thank you for continuing to be such a strong advocate for all of the families and the children who are affected by this. And we look forward to continuing to work with you to remedy these things that we think should be corrected.

So thank you for being here.

With that, I am complete with my questions.

Mr. Bost, do you have any further questions for the panel?

Mr. BOST. Just the only question I would have, and I know it is a draft bill so you, I think, Mr. Liermann, you mentioned 4748. If it is, it just got that number, that it would be the one that deals with Lou Gehrig's Disease. Is that the number that you have?

Mr. LIERMANN. Yes, sir.

Mr. BOST. Okay. When we were talking earlier, and I think this is a very large concern because I think all of us see the problem and really want to deal with it as well as the VA themselves. But do you not have the same concerns that let's say somebody that has a fast, aggressive cancer, they don't qualify, but yet someone under this law would then say, but if they have ALS would?

Mr. LIERMANN. Well, that is a big concern and that is something that we discussed internally, how do you separate the differences of those out.

Now speaking about just ALS, ALS is a very unique disease process within the VA community for the fact that it is the only presumptive that applies to all veterans regardless of time, service, or generation or exposures. So given that it is a unique disease process as a presumptive, and that it is an automatically 100 percent disability due to the severity of it, we support that because we know it is not going to be much longer.

As far as other diseases and other disease processes, that is something that, yes, we are willing to consider and discuss. Right now I would be badly armed if I tried to engage that completely. But, yes, that is something that we would be open to discuss.

Mr. BOST. Right. And that is kind of where we—the concerns probably all of us have are wanting to make sure that we get the right numbers together. We want them to be provided for. We don't want to just all of a sudden pull a rug out that all of a sudden, oh, well, you weren't diagnosed long enough for your surviving spouse to—you know, that's a problem. That's a real problem, especially if it is due them.

So hopefully we can all work together to try to figure out some kind of answer there. Of course, then you have to come up with the offset to try to figure out that as well. That is kind of our responsibility, so.

Mr. BOST. With that I yield back.

Ms. LURIA. Okay. Thank you, Mr. Bost.

Since there are no more questions, we will conclude this hearing. I want to thank the Members of both panels for your participation today as well as all of the other Members who attended to present testimony on their bills that are under consideration.

All Members will have 5 legislative days to revise and extend their remarks, including extraneous materials.

Without objection the Subcommittee stands adjourned.

[Whereupon, at 12:02 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### Prepared Statement of Ronald Burke

Good morning, Chair Luria, Ranking Member Bost, and Subcommittee Members. Thank you for providing us the opportunity to discuss the Department of Veterans Affairs' (VA) commitment to providing all Veterans, their families, and survivors with timely, accurate, and fair decisions on their benefits claims and appeals. I want to thank the Subcommittee for considering legislation on critical issues such as debt management, remedying fiduciary misuse, and expanding access to telehearings before the Board of Veterans' Appeals (Board), among other important topics. In this testimony we are providing background information on many of our ongoing efforts and strategies for addressing these important issues, so that we can provide context for our analysis of the proposals before the Subcommittee today.

#### H.R. 592

H.R. 592, the "Protect Veterans from Financial Fraud Act of 2019," would ensure that VA repays the misused benefits of Veterans with fiduciaries and provides an appeals process for determinations of Veterans' mental capacity. VA supports this bill if amended and can provide technical assistance.

Section 2 would authorize VA to reimburse all beneficiaries in the fiduciary program who have experienced benefits misuse by a fiduciary, regardless of the number of individuals the fiduciary served. VA supports extending such protections to individuals whose fiduciaries served fewer than ten Veterans. However, VA has concerns about the applicability date of the provision. As written, this paragraph would require the Veterans Benefits Administration (VBA) to determine the misuse date of the funds and would have to follow a different reimbursement process depending on if the funds were misused prior to or on/after the effective date of the bill. VA recommends that this language be changed to, "(b) Application - The amendments made by subsection (a) shall apply with respect to the misuse of benefits by a fiduciary discovered on or after the date of the enactment of this Act." Benefit costs for section 2 are estimated to be \$3.5 million in 2021, \$19.2 million over five years, and \$43.1 million over ten years.

Section 3 would provide appeal rights in accordance with chapters 71 and 72 of title 38, United States Code, for determinations made by VA regarding mental competence for VA benefits purposes. VA believes that this provision is unnecessary, as these determinations are already appealable in accordance with chapters 71 and 72 of title 38. In addition, a beneficiary found to be incompetent can submit medical evidence to VBA at any time and request that VA find the beneficiary competent.

#### H.R. 628

H.R. 628, the Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act, would require VA to provide a permanent, full-time congressional staffer designated by a Member of Congress with remote, read-only access to VBA's electronic records of the Member's constituents. The bill states that no more than two staffers of the Member may be designated. Staffers designated under this provision must satisfy the requirements to be recognized by VA as an agent or attorney but may not actually be recognized as an agent or attorney to assist Veterans with their benefits claims. VA may not impose any other requirements before treating a designated staffer as a covered congressional employee authorized to electronically access VBA's records.

VA opposes this bill for several reasons. First, it improperly conflates the concept of access to claims records, which is addressed in chapter 57 of title 38, United States Code, with the concept of recognizing individuals to act as agents and attorneys in the preparation, presentation, and prosecution of benefits claims before VA, which is addressed in chapter 59 of title 38.

The purpose of VA's recognition is to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for Veterans' benefits. The laws governing recognition do not address the issue of access to claimants' records, which are governed separately by privacy and information security laws. Instead, the provisions in chapter 59 of title 38, United States Code, and VA's implementing regulations address the regulation and oversight of persons providing representation before VA, including the ethical standards of professional conduct for representatives, requirements for continuing legal education, and whether fees may be charged in a particular case. Making congressional staffers' access subject to the criteria for recognition as an agent or attorney would subject them to provisions that are not relevant to their official duties as congressional staffers.

In providing remote read-only access to VBA records to a Veteran's agent or attorney, VA requires satisfaction of different criteria that are unrelated to, and without regard for, the individual's status as being "recognized." Although VA does provide read-only electronic access to recognized attorneys and agents who meet other relevant qualifications, the requirement that a congressional employee satisfy the criteria for recognition as an agent or attorney would have no logical relationship to the goals of ensuring access in a manner that is efficient, effective, and appropriately safeguards the security of the records. Incorporating a new proposed section in chapter 59, which pertains solely to claims representation, and requiring congressional staffers to satisfy the same criteria required by VA for recognition of agents and attorneys can only create confusion about "recognition" in general and the role of congressional staffers in the claims process. Moreover, making the requirements for congressional employees to gain access to claimant records a function of VA's recognition program would unnecessarily complicate the operation of that program.

This bill includes a requirement that VA provide to each Veteran who submits a claim an opportunity to permit a covered congressional employee access to all of his or her records through direct access to VBA databases. This is unnecessary from a privacy or confidentiality perspective as there are longstanding methods, such as authorizations to release information, for Congress to obtain the consent of a VA claimant to disclose information to a congressperson and their staff. Moreover, the bill appears to impose a new burden on VA to contact every Veteran to "provide them an opportunity to permit" access to VBA databases by a congressional staffer. This requirement would delay the Veteran's claim since VA would be required in many cases to send additional letters to claimants to solicit their consent. Further, it imposes a significant burden on VA to modify claims forms and corporate systems to track these consents. The extent of this burden would be partially dependent on if, and when, a congressional seat was to change hands. In those cases, VA would be required to resolicit consent with regard to the staffers of the newly selected Member of Congress because the Veterans' decision to authorize access to their VA records could change based on who is holding the congressional seat.

Furthermore, based on the current capabilities of VA systems, this bill, if implemented, would provide congressional staff who assist constituents of a Member of Congress with greater access to VA records than is provided to a VA employee. Under the Privacy Act, Federal employees may access private records only when necessary to perform their duties. This bill would impose no similar restriction on access by congressional staff. This generally means that a Veteran's record could be accessed by the congressional employee at any time without being targeted to the particular Veteran's specific needs. From a privacy and information security standpoint, granting congressional staff unrestricted access to the private information of Veterans and other VA claimants who have permitted such access with the understanding that it would be used to provide claim assistance could have serious unintended negative consequences for Veterans and their families who have entrusted VA with their personal medical and other information.

Similarly, although a Veteran's authorization or consent to disclose information to a congressional staffer under the Privacy Act and other applicable confidentiality laws would provide sufficient authority for VA to provide access to VBA databases, the WINGMAN Act confuses the Veteran's or other VA claimant's right to control the appropriate disclosure of information with their ability to control the access or available means to disclose the information. The bill removes the read-only form of congressional staff access from under the information security requirements of the Federal Information Security Modernization Act of 2014 (FISMA), the E-Government Act of 2002, 38 United States Code (U.S.C.) chapter 57, subchapter III, Information Security, and security baseline standards required by the National Institute of Standards and Technology (NIST). In effect, this legislation exempts congressional staff access to broad VBA databases from all requirements for VA to provide

information security. Such an exemption from Federal information security requirements would be unprecedented.

Additionally, VA would be required to address serious technological obstacles to implement this bill. Currently, the VBA system provides access to one representative per Veteran or claim and for only the records of a Veteran who has specifically authorized access. To implement the WINGMAN Act, VA would need to redesign its system architecture to allow more than one representative per Veteran or claim, which would require extensive time, monetary expense, and manpower. Absent such system changes, in order to provide the type of electronic access to congressional staff contemplated by the bill, VA would have to displace the electronic access of current representatives-Veterans Service Organization representatives, private attorneys, and claims agents-causing substantial administrative burdens on VA and hardships on those representing Veterans and the Veterans they represent, while also interfering with the relationship between Veterans and their representatives.

Due to the above-described limitations on VA systems, the only way VA could provide the access contemplated by this bill in the near term would be if the bill language is modified to permit VA to provide congressional staffers with unfettered access to all Veterans' electronic claims records, as opposed to limited access based on power of attorney code, which would obviously be harmful to the privacy of Veterans who had not consented to or permitted such access, in violation of the existing privacy laws, and beyond the scope of the current version of the subject bill.

In addition, the bill prohibits VA from obligating or expending more than \$10 million for the period of fiscal years 2019 through 2022 for the purposes of this bill. However, VA estimates that, for the period of fiscal years 2020 through 2022, implementation will require VA to expend an estimated \$145.8 million.

#### **H.R. 1030**

H.R. 1030, the "Veteran Spouses Equal Treatment Act," would amend provisions of title 38, United States Code, relating to VA's recognition of marriages as valid.

Current section 101(3) and (31) of title 38, U.S.C., limit the definitions of "surviving spouse" and "spouse" 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 (DOMA), 1 U.S.C. § 7, which the Supreme Court, in *United States v. Windsor*, 570 U.S. 744, 775 (2013), declared to be unconstitutional because it discriminates against legally-married, same-sex couples. On September 4, 2013, the United States Attorney General informed Congress that the President had directed the Executive Branch to cease enforcement of sections 101(3) and (31) of title 38 to the extent that those provisions preclude the recognition of legally-valid marriages of same-sex couples. Pursuant to this 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 and current practice.

VA supports the general intent of section 2(b) of the bill to revise the criteria for determining the validity of a marriage. Section 103(c) of title 38, United States Code, which provides that, in determining whether or not a person was a spouse of a Veteran, "marriage shall be proven as valid for the purposes of all laws administered by the Secretary 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," is specific to title 38 and is different than the standard used by nearly all other Federal agencies, including the Department of Defense. However, while VA supports the bill's intent to change to the current marriage-validity criteria, VA is concerned that the marriage-validity criteria in section 2(2) of the bill may be overly restrictive. For example, VA notes that the bill is silent as to the applicability of tribal law to marriage validity. Under section 103(c), tribal law would be considered as "the law of the place where the parties resided." However, VA would only consider the law of the "State" in determining if a marriage is valid for the purpose of Veterans' benefits. This could lead to the exclusion of some couples with valid marriages under tribal law. VA welcomes the opportunity to work with the Committee on this bill.

Since VA is currently using the amended definition to define marriage, no costs or savings are associated with the proposed bill.

#### **H.R. 1424**

H.R. 1424, the "Fallen Warrior Battlefield Cross Memorial Act," would provide that VA may not prohibit the display of the "Fallen Soldier Display" in any national cemetery, subject to standards established by the Secretary. The bill defines the

“Fallen Soldier Display” as a “memorial monument in honor of fallen members of the Armed Forces that may include a replica of an inverted rifle, boots, helmets, and identification tag.”

VA has no objection to the passage of H.R. 1424 in its current form because it allows VA to exercise discretion to establish standards for the display of these monuments, which VA refers to as “fallen soldier displays.” However, we believe the legislation is unnecessary because VA has an existing policy that allows for acceptance of such memorials and includes standards, such as those related to size and construction materials, that allow these monuments to be displayed in a manner that would enhance the appearance and operation of the national cemeteries.

In recent years, VA has noted an increased interest in donations of the fallen soldier display to several national cemeteries. However, review and acceptance of these donation offers was inconsistent across cemeteries, based on varying interpretations of the National Cemetery Administration’s (NCA) long-standing policy, established to facilitate a reflective and peaceful atmosphere for visitors, that prohibits acceptance of donations of military equipment or implements of war in VA national cemeteries as well as NCA guidelines that restricted acceptance of memorials featuring actual or realistic replicas of ordnance.

Upon review, NCA determined that the familiarity of the fallen soldier display and its particular use of a rifle was sufficient to warrant an exception from the established policy, with some additional guidelines regarding size and construction of the monument. For example, NCA policy notes that the fallen soldier display may be a three-dimensional replica or it may be an engraved image on a stone. The policy also includes specifications regarding size and construction materials. These requirements ensure a consistency in appearance, durability of the monument, and ease of maintenance for cemetery personnel.

VA estimates that VA would not incur any significant additional cost if H.R. 1424 were enacted because VA already has statutory authority to accept donations of monuments to VA. Maintenance for donated memorials is part of VA’s overall operational expenses for the national cemeteries.

#### **H.R. 1911**

Section 6 of H.R. 1911, the “SFC Brian Woods Gold Star and Military Survivors Act,” would expand the population of eligible beneficiaries for dependency and indemnity compensation (DIC) benefits by permitting VA to continue recognizing an individual as a surviving spouse for purposes of DIC, despite remarriage, regardless of the individual’s age at the time of remarriage. Under current law, an individual will no longer be recognized as a surviving spouse for purposes of DIC if that individual remarries prior to the age of 57.

VA cites concerns with the provisions in section 6 of the bill that would require VA, within one month of the bill’s enactment, to resume DIC payments to surviving spouses who previously remarried before age 57. VBA would experience a significant administrative burden related to identifying and locating all surviving spouses whose benefits were terminated due to remarriage before the age of 57. VBA does not maintain current contact information for surviving spouses whose benefits were previously terminated. Confirming the beneficiary’s whereabouts would involve substantial outreach efforts and resource investment. Further, while we believe the provision for resumption of benefits necessarily must be construed to apply only to persons previously found entitled to DIC, that limitation is not expressly stated in the bill.

Benefit costs associated with section 6 are estimated to be \$7.2 million in 2021, \$43.7 million over five years, and \$109.4 million over ten years.

VA defers to the Department of Defense regarding the remainder of this bill.

#### **H.R. 4165**

H.R. 4165, the “Improving Benefits for Underserved Veterans Act,” would require that, not later than 180 days after the date of enactment, the Secretary shall publish a report regarding Veterans who receive benefits under laws administered by the Secretary. The report would be required to contain data disaggregated by sex and minority group status. “Minority group member” is defined in section 544(d) of title 38 of the United States Code as an individual who is: Asian American, Black, Hispanic, Native American (including American Indian, Alaskan Native, and Native Hawaiian); or Pacific-Islander American.

VA does not support the bill, as currently written. Under section 1 of the bill, the title, “Improving Benefits for Underserved Veterans Act,” implies VA is not adequately serving certain groups of Veterans. Without empirical data to support this

assertion, VA suggests amending the language from “Underserved Veterans” to “Minority Veterans” or “Minority and Women Veterans.”

With respect to programs administered by VA, VA already publishes data regarding minority and women Veterans. Regarding gender, the Department added several gender tables to the Annual Benefits Report 2018, available online at <https://www.benefits.va.gov/REPORTS/abr/docs/2018-abr.pdf>, for most business lines, and VA will continue to add additional gender information to the report as appropriate. Regarding minority group usage of benefits, the Department, specifically the National Center for Veterans Analysis and Statistics (NCVAS), periodically produces a report that addresses benefit usage by minority groups. The latest version can be found at <https://www.va.gov/vetdata/docs/SpecialReports/Minority—Veterans—Report.pdf>. Therefore, the Department does not need additional guidance from legislation.

Moreover, typically, VA does not collect private citizen information (sex and minority group member status) when we have no business need to do so. Generally, VA cannot and should not collect information unless there is a legitimate government interest or need. The Privacy Act of 1974, which protects information held by the Federal government that pertains to individuals, requires agencies to maintain “only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order,” 5 U.S.C. § 552a(e)(1). Historically, it has been VA’s policy to gather data (demographic or identifying data) only when necessary to determine benefit eligibility.

In addition, it is unclear what data elements Congress is seeking to meet this requirement. Moreover, VA is concerned about the value of and the public perceptions gained from publishing aggregate benefits data without the proper context also being provided. For example, merely providing counts of Hispanic Veterans in receipt of disability compensation would not prove valuable unless other comprehensive comparative analyses were conducted, taking into account variables such as Veteran population, geography, culture, age, etc.

While VA supports efforts to improve the delivery of benefits to minority Veterans, the aim and title of the bill, as well as the reporting requirements contained in the bill, are unclear. VA does not support this bill since this data collection is not necessary for the delivery of benefits to Veterans.

#### **H.R. 4183**

H.R. 4183, the “Identifying Barriers and Best Practices Study Act,” would require the Government Accountability Office (GAO), not later than 36 months after the bill’s enactment, to complete a study on disability and pension benefits provided to Reserve Component (RC) members. In conducting the study, GAO would review various quantitative and qualitative data between January 1, 2008, and December 31, 2018, and would provide Congress a preliminary report not later than 18 months after the date of the enactment of this bill.

VA does not oppose the bill, which aims to identify barriers and best practices as it pertains to the administration of compensation and pension benefits for RC members. However, VA has concerns with section 2, paragraph (a)(2).

Paragraph (a)(2)(A) would require a comparison of disability percentages between RC members and Veterans who served in the regular components of the Armed Forces. VA notes concerns on this approach as many RC members have prior active duty service for which service-connected injuries or illnesses were incurred. It is not clear how such comparisons, without delineating such prior service, will be meaningful. Further, in comparing grant and denial rates between these cohorts, as stipulated in paragraph (a)(2)(D), VA notes the statutory requirements (see 38 U.S.C. § 101(21) through (27)) necessary to establish Veteran status for purposes of receiving service-connection for a claimed disability for a RC member, whose duty involves part-time duty, versus those Veterans who performed full-time duty in the Armed Forces.

Further, paragraph (a)(2)(C) of the bill would require a comparison by military occupational specialty (MOS) such as pilots, special forces, and Veterans who underwent diving or flight physicals. VA notes that such data elements are not stored in its corporate databases, and any efforts to conduct such analyses would require labor-intensive reviews of individual claims records in order to ascertain the Veteran’s MOS. VA defers to the DoD on the availability of lists of service members and Veterans who served in a certain MOS.

#### **H.R. 4360**

H.R. 4360, the “VA Overpayment Accountability Act,” would require VA to correct erroneous information submitted to consumer reporting agencies, provide certain no-

tifications to persons who are entitled to benefits under a program administered by VA who incur debts to the United States due to participation in that program, track certain metrics relating to debts arising from participation in a VA benefits program, and conduct an audit of erroneous payments.

While VA appreciates the intent of this bill and is continuing to work with Committee staff to mature VA debt management, VA does not support this bill in its current form. We believe some provisions are duplicative of current laws, such as the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act of 2019, enacted September 21, 2018, the Veterans Benefits and Transition Act of 2018, enacted December 31, 2018, and the Economic Growth, Regulatory Relief, and Consumer Protection Act, enacted May 24, 2018.

Further, other provisions present technical and implementation issues as detailed below. Regarding Section 2 (a), which would require VA to correct erroneous reporting to consumer reporting agencies, we concur that expeditious resolution of erroneous reporting is essential; however, VA has already implemented robust procedures to do so.

In accordance with the Debt Collection Improvement Act of 1996 (DCIA), VA submits debt information to consumer reporting agencies. When we discover our characterization of the debt to be erroneous, we use the Online Solution for Complete and Accurate Reporting (eOSCAR) in partnership with Equifax, Experian, Innovis and Transunion to electronically and expeditiously repair Veteran credit. Where the need is immediate, we also provide Veterans with a letter addressed to their creditor explaining the error.

While VA is authorized to use third-party debt collectors, the Department remains steadfast in using only VA employees or those of the Treasury for those debts referred pursuant to the DCIA to service Veteran debts. Therefore, 38 U.S.C. § 5320(b), as proposed to be added by this bill, would not be applicable to the Department.

VA appreciates the efforts this Congress is making to ensure erroneous reporting is corrected and has engaged with consumer reporting agencies to find solutions to mitigate derogatory credit reporting by third party medical providers using private collection agencies. On January 29, 2016, VA established the Veteran credit repair hotline for medical-related credit concerns. Currently, Transunion, Equifax, and Military.com have this hotline (877-881-7618) posted on their websites. Experian provides this number to those customers who contact them, and the Consumer Financial Protection Bureau is adding the information to their website.

Regarding Section 3(1) and 3(3), which would require VA to improve information technology to allow for Veteran notification of debts incurred, VA is already required to provide this notification. VA continues to make progress in creating notifications to Veterans who receive more financial assistance than they are entitled to by law, to include providing more standardized electronic and standard mail notifications. Due to the complexity of VA's enterprise and the number of systems involved in delivering healthcare, benefits, and services to Veterans and beneficiaries, VA tracks the amounts, ages, averages and other statistical attributes of overpayments independently in each Administration. We are working to improve our systems, so Veterans will be able to view their debt online within the next year.

The Veterans Health Administration (VHA) is developing an electronic option to permit viewing of monthly Patient Medical Statements via the MyHealthVet portal. We expect Veterans will be able to view or print their medical patient statements electronically via the portal within the next 3-4 months. By early to mid-2020, VBA anticipates launching the option for Veterans to opt-in to receive electronic correspondence. This project will initially encompass disability compensation and pension overpayments and later extend to all VBA lines of business. We intend to send electronic correspondence initially to Veterans who have opted in; however, some correspondence may remain solely in hard copy form to meet statutory requirements related to certain notifications. Ultimately, we intend to bring all debt together in one location by calendar year 2022.

VA has concerns with Section 3(2), Review of Information Regarding Dependents, which would require VA to allow a "person entitled to a payment from the Secretary under a benefits program administered by the Secretary" the ability to review "information relating to dependents of that person." In certain situations, it may not be appropriate for VA to provide a Veteran with information about debts incurred by a dependent. While VA routinely discloses information that affects the payment or potential payment to a claimant, such as the number of dependents, we recommend editing this section to require sharing of only information that pertains to the Veteran, not beneficiary information that is not about the Veteran, such as Federal Tax Information (FTI) of dependents.



Section 4 would require VA to conduct a benefit error audit, and then submit to committees of Congress a plan and description of resources required to align information systems to ensure errors identified are not the result of or caused by the lack of communication among information systems. VBA has numerous independent systems for the many benefits provided (Compensation, Education, Vocational Rehabilitation and Employment, etc.). None of these systems currently have the capability to delineate the amount of debt due to the Veteran's lack of/delayed response or VA benefit error. Funding and development time allotment would be required for both system enhancements and system integration, as well as to fund additional staff for training and operations.

We estimate an upfront IT improvement cost of \$1.75 million, with roughly \$500,000 annually thereafter for sustainment, and related FTE costs of roughly \$90,000 in the first year and \$20,000 annually thereafter (\$5.5 million over an 8 year period - please note these estimates are very preliminary, high-level, and would be subject to change if this legislation is enacted). VBA does not track nor have a metric to measure the degree to which vacant positions impact the frequency of errors that result in overpayments of benefits.

VA has been working with the Committee staff on these important issues and looks forward to continuing to work with the Committee for the benefit of Veterans.

#### **Justice for ALS Veterans Act of 2019**

The Justice for ALS Veterans Act of 2019 would entitle surviving spouses of Veterans who died of service-connected amyotrophic lateral sclerosis (ALS) to an additional \$246 per month in DIC. Under current law, the higher rate of DIC is only payable if the Veteran was rated totally disabled for a continuous period of at least eight years immediately preceding death.

VA has concerns with this bill. VA understands the intent of the bill - to ensure payment of the increased monthly DIC benefit to the surviving spouse due to the difficult and progressive nature of ALS - and recognizes this as an important step in caring for surviving spouses. However, VA notes the potential disparity of treatment related to other progressive diseases that may result in death in less than the eight-year period, such as cancer. Furthermore, clarification would be needed to determine if the bill would still require that the surviving spouse meet the marriage requirement (eight years immediately preceding death) to qualify for the increased benefit under this proposal.

#### **Board Telehearings Bill**

Under current law, the Board of Veterans Appeals may hold hearings either in person at its principal location, or through picture and voice transmission at a VA facility where VA has provided suitable equipment and facilities. 38 U.S.C. § 7107(c). This bill would 1) amend current law to permit such hearings to be conducted over a secure internet platform established and maintained by VA; 2) limit virtual hearing use to only disability compensation appeals; and 3) provide specific VA reporting requirements for appeals hearings at the Board that utilize remote technologies.

VA does not support this bill unless amended. VA supports the use of virtual technology to enable Veterans to participate in their appeals hearings without the need for travel to a specific VA hearing location and also supports clarifying language in current law to codify emerging practices for the use of virtual hearing environments. However, the Board does adjudicate non-disability compensation appeals originating from VBA, as well as appeals from VHA, NCA, and the Office of General Counsel. These types of appeals would be specifically excluded from using virtual hearing technology under this draft language. It is not clear if this limitation is a drafting error or is intended. VA is also supportive of specific reporting requirements, but expresses preference for reporting this information through the existing Annual Report process, as opposed to providing a partially redundant Congressional report. The Board also seeks clarification for reporting on statistical outcomes of cases heard, as this would establish a broad reporting requirement without clear guidance as to specific intent.

The technology needed for virtual hearings already exists, so no additional development cost would be incurred by the Department. Costs associated with the reporting requirements proposed in this legislative draft would be de minimis and also part of existing operations.

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



**Prepared Statement of Shane L. Liermann**

Madame Chair, Ranking Member Bost and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit veterans service organization comprised of over one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. DAV is pleased to offer our views on the bills under consideration by the Subcommittee.

**H.R. 592, Protect Veterans from Financial Fraud Act of 2019**

This bill would amend title 38, United States Code, § 6107(b) by clarifying the procedures to reissuance benefits to a beneficiary with a fiduciary when there is negligent failure by the Secretary and a misuse of benefits by a fiduciary.

Currently title 38, United States Code, § 5501A notes the beneficiary is entitled to a notice of the proposed adverse decision, a hearing, opportunity to present additional medical evidence, and a witness to the hearing. This bill would clearly add the right to appeal adverse or negative decisions.

DAV strongly supports both amendments of this bill as they are in agreement with DAV Resolution No. 363, calling for improvement of the Department of Veterans Affairs (VA) Fiduciary Program. It suggests improvements to the VA Fiduciary Program by creating a better monitoring system, a timely dispute resolution system when beneficiaries make complaints, initiation of investigations based on suspected reports of fiduciary fraud rather than putting the burden of proof on the vulnerable veteran, and assignment of an outside agency, such as VA Office of Inspector General, responsibility for investigating complaints of VA employees who work in the VA Fiduciary Program and Fiduciary Hubs.

Our most vulnerable veterans must be protected from abuses of fiduciaries and negligent failures by the Secretary and be given the right to appeal adverse competency decisions.

**H.R. 628, Working to Integrate Networks Guaranteeing Member Access  
Now Act**

H.R. 628 would allow veterans submitting a claim for benefits, to permit a covered congressional employee in the office of the Member of Congress representing the district where the veteran resides to have access to all of the records of the veteran in the databases of the Veterans Benefits Administration.

The covered congressional employee would have read-only access to the electronic records, similar to accredited veteran service organizations (VSO) and the covered congressional employee would not be considered an attorney or agent.

**Recommendations**

DAV does not have a resolution on this issue; however, we are concerned that this access could lead to negative consequences for veterans and their families, therefore, we recommend that covered congressional employees be provided training, VA accreditation or similar certification, and have safeguards in place to ensure that a veteran can be made whole.

**1. Training.** If a covered congressional employee in the office of the Member of Congress will have access to a veteran's or claimant's electronic claims folders and be advising veterans and claimants on their claims and appeals, they need to be trained to lessen the potential for misinformation. Accredited VSOs, agents, and attorneys all must go through a training and accreditation process which includes VA's Training, Responsibility, Involvement and Preparation of Claims (TRIP) training and VA's Talent Management System (TMS). Covered congressional employees need to be required to complete the same level of training as accredited VSOs, agents, and attorneys.

**2. Accreditation.** As a covered congressional employee in the office of the Member of Congress will be providing claims and appeals information to a veteran or claimant, they need to be held to the same standard as VSOs, agents, and attorneys. An accredited representative is an individual who has undergone a formal application and training process and is recognized by VA as being capable of assisting claimants with their affairs before VA. Accredited representatives may also work for state or county government entities.

As the covered congressional employee will be providing assistance to veterans and claimants already represented by VSOs, agents, and attorneys, we are con-

cerned that if the congressional employee is not adequately trained or accredited they may provide information or advice counter to their duly appointed representatives.

**3. Making Veterans and Claimants Whole.** If actions or delayed actions by an accredited VA representative cause financial harm to a veteran or claimant, they retain liability insurance to ensure that a veteran or claimant is made whole if there is a loss of benefits or other financial harm. We are concerned that if a covered congressional employee provides information, advice, or their lack of timely action causes financial harm to a veteran or claimant, the veteran or claimant will not be made financially whole.

The U.S. Supreme Court, in *Gravel v. United States*, held “that it is literally impossible, in view of the complexities of the modern legislative process, with Congress almost constantly in session and matters of legislative concern constantly proliferating, for Members of Congress to perform their legislative tasks without the help of aides and assistants; that the day-to-day work of such aides is so critical to the Members’ performance that they must be treated as the latter’s alter ego; and that if they are not so recognized, the central role of the Speech or Debate Clause . . . will inevitably be diminished and frustrated.” Therefore, the Court held “that the Speech or Debate Clause applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself.”

Although the Constitution’s Speech or Debate clause provides Members of Congress and their aides immunity to lawsuits arising out of protected legislative actions, providing assistance to veterans and claimants on VA claims and appeals would not be protected legislative actions, thus, we are concerned on how a veteran will be made financially whole if the covered congressional employee is liable.

#### **H.R. 1030, Veteran Spouses Equal Treatment Act**

H.R. 1030 would amend the definition of a spouse and surviving spouse in title 38, United States Code, § 101 paragraphs (3) and (31) by striking the phrase “of the opposite sex.” This bill would codify VA’s current mandate and practice of recognizing spouses of the same sex without regard to a veteran’s state of residence.

Section 3 of the Defense of Marriage Act (DOMA) defined “marriage” and “spouse” for purposes of Federal law to preclude recognition of marriages of same-sex couples. On June 26, 2013, the Supreme Court held, in *United States v. Windsor*, that Section 3 of DOMA violates the Fifth Amendment of the U.S. Constitution by discriminating against same-sex couples who are lawfully married under state law.

For purposes of VA benefits, title 38, United States Code, § 101(3) and § 101(31) define “surviving spouse” and “spouse” as persons “of the opposite sex.” These definitions (codified separately from DOMA) were not specifically addressed in the Supreme Court’s *Windsor* decision. On September 4, 2013, the United States Attorney General announced that the President had directed the Executive Branch to cease enforcement of title 38, United States Code, §§ 101(3) and 101(31), to the extent they preclude provision of veterans’ benefits to same-sex married couples.

This announcement allowed VA to administer spousal and survivors’ benefits to same-sex married couples, provided their marriages met the requirements of title 38, United States Code, § 103(c). It states, “[i]n determining whether or not a person is or was the spouse of a Veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary 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.” As such, prior to *Obergefell*, this provision precluded VA from recognizing a veteran’s same sex marriage where both the veteran and the veteran’s spouse resided in a state that did not recognize same-sex marriage at the time of the marriage, and at the time when the claimant’s right to benefits accrued, i.e., when the claimant became eligible for benefits or the date of claim, consistent with GC Precedent Opinion 4–2014.

On June 26, 2015, the Supreme Court held in *Obergefell v. Hodges* that the Fourteenth Amendment of the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

In order to protect these existing benefits for veterans and spouses from future legal challenges or changes in interpretation of existing practices, DAV supports H.R. 1030, which is consistent with our mandate to resist any efforts to deprive disabled veterans or their dependents of benefits already provided by VA. This bill would codify the U.S. Supreme Court’s holdings in *Windsor* and in *Obergefell* and

is consistent with VA's current practice of recognizing same sex marriages without regard to a veteran's state of residence.

#### **H.R. 1424, the Fallen Warrior Battlefield Cross Memorial Act**

H.R. 1424 would amend title 38, United States Code, § 2403 for the Secretary to permit the Fallen Soldier Display, also known as the battlefield cross. The bill defines the Fallen Soldier Display as a memorial in honor of fallen members of the Armed Forces that may include a replica of an inverted rifle, boots, helmets, and identifications tags.

Battlefield crosses were created to honor the fallen. A deceased soldier's rifle is planted, barrel-first, into their boots (or, in some cases, the ground) and their helmet is placed atop the rifle. Like all things military, this cross is part of a long-standing tradition that has evolved since its first use on the battlefields of the American Civil War. This tradition has found its way into the United States Army Field Manual. Under the Memorial Section, the battlefield cross is advised to be displayed during memorials and demonstrations are provided.

VA initially banned the battlefield cross as it violated their rule about realistic replicas of weapons within National Cemeteries. However at the September 5, 2018, House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing, Matthew Sullivan, NCA Deputy Under Secretary for Finance and Planning, indicated that VA does not support the Fallen Warrior Battlefield Cross Memorial Act as it would not allow VA any discretion to establish standards for the display of these monuments, which VA refers to as "fallen soldier displays." VA has an existing policy that includes standards, such as those related to size and construction materials that allow these monuments to be displayed in a manner that would enhance the appearance and operation of the national cemeteries. These standards may be rendered unenforceable under this bill as currently drafted.

DAV does not have a resolution on this issue; however, we would not oppose enactment of H.R. 1424.

#### **H.R. 1911, the SFC Brian Woods Gold Star and Military Survivors Act**

This bill would strengthen and expand various benefits affecting the survivors of those killed on active duty and disabled veterans who have died due to a service-connected condition.

Section 2 would allow survivors of a deceased military member or veteran to continue to have access to on-base facilities once they remarry if they have dependent children. Currently, once a surviving spouse remarries they lose all commissary and exchange privileges. This bill would allow those who still have guardianship of dependent children of the deceased service member to retain their entitlement to use commissary stores and Morale, Welfare, and Recreation (MWR) facilities to the same extent and on the same basis as surviving spouses that have not re-married. While DAV does not have a resolution specific to this issue, we would not oppose its enactment.

Section 3 would allow surviving spouses of service members who die while on active duty to continue to receive their Survivor Benefit Plan (SBP) should they remarry before the age of 55. Under current law, a surviving spouse of veteran or service member who is in receipt of SBP would lose their benefits if they choose to re-marry before the age of 55. This section would eliminate this bar to benefits. DAV does not have a resolution specific to this issue but would not oppose its enactment.

Section 4 would direct the Pentagon to pay the transportation costs of remains for those killed in the line of duty to their hometown for memorials or services and then to a national cemetery for internment. If a service member passes away while overseas, the Pentagon will only pay for transportation costs to the hometown or a National Cemetery but not both. However, many surviving loved ones choose to have a memorial service or funeral in their hometown prior to internment at a National Cemetery. This provision would require the Department of Defense to transport the remains for the fallen service member from Dover AFB, to the hometown, and then to their final resting place in a National Cemetery if requested by the surviving family members. DAV does not have a resolution specific to this issue, but would not oppose its enactment.

Section 5 would amend the existing child care service assistance program for civilian providers to include providers serving survivors of service members that die in the line of duty. Currently, this program only gives financial assistance to civilian child care providers of active duty service members and government employees. DAV does not have a resolution specific to this issue, but would not oppose its enactment.

Finally, Section 6 would remove the bar of Dependency Indemnity Compensation (DIC) benefits to the surviving spouses of veterans who have re-married prior to the age of 57. We consider this bar unduly punitive when you consider that Federal employee survivors, who are in receipt of Civil Service Retirement System, a similar benefit to DIC and veterans who are signed up for the SBP, both allow the surviving spouse to remarry at 55 without loss of benefits. Section 6 would allow a spouse of a service member who died while on active duty to continue to receive their DIC benefits even if the surviving spouse re-marries. DAV strongly supports this provision in accordance with Resolution No. 360, which supports legislation to improve and reform DIC benefits for survivors to include reducing the age that surviving spouses can re-marry without losing their survivor's benefits.

#### **H.R. 4165, the Improving Benefits for Underserved Veterans Act**

This bill would require the VA to publish a report regarding veterans who receive VA benefits disaggregated by sex and minority group status. This report would include those benefits administered through the Transition Assistance Program.

DAV does not have a resolution on this issue; however, we are concerned with the potential reliability of such a report. The VA does not currently track information regarding sex or minority group status and would have to rely on either diagnostic code ratings or be required to review every veteran's case to determine the sex or minority group status.

#### **H.R. 4183, the Identifying Barriers and Best Practices Study Act**

H.R. 4183 would require the Comptroller General to conduct a study on disability and pension benefits provided to members of the National Guard and members of reserve components for the period of January 1, 2008, to December 31, 2018.

This bill would require comparisons between the National Guard and members of the reserve to those who served in regular components. The comparisons would include:

- The percentage of each group of veterans with service-connected disabilities;
- The number of veterans in each group with each disability rating;
- The number of veterans in each group with a service-connected disability for pilots, special forces, veterans who participated in the Personnel Reliability Program, veterans who underwent flight physicals and who have muscular-skeletal or mental health conditions.

The bill would further require the identification of barriers for members of the National Guard and members of the reserve components in obtaining disability benefits.

DAV does not have a resolution on this issue; however, such a report will indicate a difference on disability benefits provided to members of the National Guard and members of reserve components versus those who served in the regular Armed Forces, because the statutory requirements for service-connection for those who served in the regular Armed Forces versus members of the National Guard and members of reserve components are very different.

For those who served in the regular Armed Forces, VA will award service-connection for a chronic disease or the residuals of an injury incurred coincident with service. For members of the National Guard and members of the reserve components VA will award service-connection from an injury or covered disease, while performing active duty for training or inactive duty training with a line of duty determination. However, when a member of the National Guard and members of the reserve components are called to active duty, their disabilities and injuries will be considered as the same as those serving in the regular Armed Forces.

#### **H.R. 4360, the VA Overpayment Accountability Act**

H.R. 4360 would amend Chapter 53 of title 38 to add a new section requiring the Secretary to correct any erroneous information submitted to consumer reporting agencies including information submitted by a third party collection agency. It would further require the Secretary to notify the beneficiary of VA's request for correction.

The bill would require VA to improve its information technology to allow beneficiaries to receive notice of any debts through electronic means such as VA's eBenefits system to include any successor programs. This improvement would include adding the ability to track all payments made to beneficiaries, the average debt incurred, as well how frequently waivers of debt or relief are granted. This bill

would further require the Secretary to provide reports regarding VA's errors made in payment of benefits.

DAV supports H.R. 4360 as it is in accord with DAV Resolution No. 108, calling for reforms relating to recovery of debts by the VA and would bring necessary reforms to the VA collection and reporting processes. Erroneous reporting to consumer reporting agencies can have serious negative consequences for veterans and their families and this bill would provide protections and corrections to credit reporting.

#### **Discussion Draft, the Justice for ALS Veterans Act of 2019**

This draft legislation would extend increased dependency and indemnity compensation (DIC) paid to surviving spouses of veterans who die from amyotrophic lateral sclerosis (ALS), regardless of how long the veterans had ALS prior to death.

Currently, title 38, United States Code, § 1311(a)(2) allows an additional DIC monthly payment of \$246 to survivors in the case of a veteran who at the time of death was in receipt of or was entitled to receive compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death. This is commonly referred to as the DIC "kicker."

This proposed legislation would amend the statute to provide the DIC kicker to a survivor of a veteran whom the Secretary determines died from amyotrophic lateral sclerosis (ALS) without regard for how long the veteran had such disease prior to death.

Per the ALS Association, "once ALS starts, it almost always progresses, eventually taking away the ability to walk, dress, write, speak, swallow, and breathe, and shortening the life span." They acknowledge the average life expectancy for a person with ALS is two to five years. VA regulations recognize ALS as a presumptive service-connected disease and due to its progressive nature is automatically rated at 100 percent disabling once service-connected.

DAV would support legislation to extend the DIC kicker to survivors of veterans whose cause of death is ALS as it is in agreement with DAV Resolution No. 360, calling for improvement and reform of DIC benefits. The aggressiveness of ALS leaves many veterans totally incapacitated and reliant on family members and caregivers and even in the best scenarios, generally does not allow life expectancy past eight years.

#### **Discussion Draft, Board of Veterans' Appeals TeleHearings**

This proposed legislation would permit appellants to appear in disability compensation cases before the Board of Veterans' Appeals (Board) by video from locations other than VA facilities.

Title 38, United States Code, § 7107 (c)(2) allows appellants to choose a hearing before the Board at their principal location or a video hearing at a VA facility where the Secretary has provided suitable facilities and equipment to conduct such hearings.

This proposed legislation would amend the statute to allow appellants to have a video hearing at a location selected by the appellant via a secure internet platform established and maintained by the Secretary. This proposal would also require the Secretary to provide biannual reports to the Congress on the number of hearings held under the proposed provision as well as the number of cancellations.

Starting in August of this year, the Board has established a pilot program, the "Board of Veterans' Appeals Tele-Hearing." The Board's user guide states their mission, "the tele-hearing conference system will provide an opportunity for Veterans to attend a Video conference hearing from any location, rather than traveling to their local regional office."

The presiding Veterans Law Judge (VLJ) has the ability to control all aspects of the hearing as well as allowing witnesses from locations other than the appellant's. A voice recording, not a video recording, is made of the hearing for transcription. As of September 19, 2019, the Board reported that 94 such hearings were scheduled, 62 were conducted, four failed and 25 cancelled or opted for a different type of hearing. The Board noted that a tele-hearing was conducted for a paralyzed appellant from their home so they did not have to travel 175 miles to attend a video hearing at the St. Petersburg VA Regional Office.

As the pilot program of the Board has shown to increase appellant hearing participation, it will also increase the efficiency and timeliness of requested hearings. This aligns with DAV Resolution No. 017, calling for meaningful appeals processing reform. DAV would support legislation to amend the statute to allow appellants to have a video hearing at a location selected by the appellant via a secure internet platform established and maintained by the Secretary.

Madame Chair, this concludes my testimony on behalf of DAV. I would be happy to answer any questions you or other members of the Subcommittee may have.

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### **Prepared Statement of Brian Dempsey**

Chair Luria, Ranking Member Bost, and distinguished members of the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs - thank you for the opportunity to present Wounded Warrior Project's positions and perspectives on key issues and legislation before the Subcommittee.

Wounded Warrior Project (WWP) is transforming the way America's injured veterans are empowered, employed, and engaged in our communities. Since our inception in 2003, we have grown from a small group of friends and volunteers to an organization of nearly 700 employees spread across the country and overseas delivering over a dozen direct-service programs to warriors and families in need. As part of our mission to connect, serve, and empower wounded warriors and those who support them, we are continually engaging with those we serve and commit ourselves to capturing an informed perspective on the challenges this community faces. We are pleased to share that perspective for this hearing on pending legislation.

#### **H.R. 592, the Protect Veterans from Financial Fraud Act**

Many in our nation maintain a deep respect for those who have served and sacrificed; however, there are others who seek to leverage positions of trust for their personal gain and benefit. The Department of Veterans Affairs' (VA) Fiduciary Program connects veterans who are unable to manage their financial affairs with fiduciaries who can supervise VA income and ensure that their veteran-beneficiary's debts are paid. Although VA enforces strict standards for fiduciaries and conducts thorough investigations to determine their fitness to serve, fraud and abuse still occur. A significant consequence of that fraud on many occasions is that veterans do not receive benefits they are entitled to and become exposed to risks associated with not paying bills.

Under current law, VA can re-issue benefits to a veteran when their benefits are misused by a fiduciary who manages benefits for 10 or more veterans. There is no similar authority for VA to re-issue benefits to a veteran whose funds were misused by a fiduciary that manages benefits for fewer than 10 veterans. The Protect Veterans from Financial Fraud Act would remove this inequity and create parity for all veterans who have been the victim of fraud or abuse by a VA-recognized fiduciary.

Wounded Warrior Project supports the Protect Veterans from Financial Fraud Act. Many warriors who participate in our Independence Program - a long-term, community-based support program available to warriors living with a moderate to severe traumatic brain injury, spinal cord injury, or other neurological condition that impacts independence - use fiduciaries to manage their VA benefit payments and would benefit from a system that better protects their assets should an unfortunate circumstance arise. This legislation would help minimize financial hardship on defrauded veterans and provide relief when looking to find a replacement fiduciary.

#### **H.R. 628, the Working to Integrate Networks Guaranteeing Member Access Now Act, or the WINGMAN Act**

Members of Congress have a long history of advocating for constituents who face delays when seeking VA benefits. As every veteran claim is unique, many member offices feel compelled to carefully review a constituent's VA case file in order to provide the best possible assistance.

There is no authority under current law for VA to provide expedited access to a veteran's claim file to a Member of Congress. To provide such access, the WINGMAN Act would authorize VA to give a veteran the option of allowing VA to provide read-only access to his or her file to their Member of Congress. A designated "covered congressional employee," whose responsibilities would have to include assisting constituents with Federal agency case work, would be required to meet VA criteria for recognition as an agent or attorney in order to access the read-only claims file.

Under the changes proposed by the WINGMAN Act, veterans would conceivably have an easier time working with their Member of Congress to resolve issues related to their VA benefit claims. WWP agrees with this aspirational goal but cautions against its practical implementation. New Members of Congress may assume office with staff unfamiliar with a complex VA benefit process, just as more seasoned members may be affected by staff turnover. Having easy access to claims files

and the ability to work with VA congressional liaisons will afford more opportunities for covered congressional staff to learn, understand, and navigate the claims process; however, there are risks associated with creating more opportunities for these employees to provide misguided claims advice, misinterpret nuanced details in the claims file, inadvertently misplace personally identifiable information, or hamper interactions with highly trained service officers at veteran service organizations or state-level veterans' agencies who may have stricter standards to adhere to in order to remain certified as agents. For these reasons, WWP does not urge passage of the WINGMAN Act at this time.

#### **H.R. 1030, the Veteran Spouses Equal Treatment Act**

In June 2013, the U.S. Supreme Court held in *United States v. Windsor* that Section 3 of the Defense of Marriage Act (1 U.S.C. § 7), which defined the term "marriage" for purposes under Federal law as "only a legal union between one man and one woman as husband and wife," was unconstitutional. Given *Windsor's* scope, which was limited to the Defense of Marriage Act, other state and Federal laws - including those that govern veterans' benefits - were not immediately affected. The Veteran Spouses Equal Treatment Act was first introduced shortly thereafter in order to bring alignment between the *Windsor* holding and veterans' benefits laws.

Under current law, VA defines a "surviving spouse" as "a person of the opposite sex" along with other criteria. Similarly, a "spouse" is defined as a person "of the opposite sex who is a wife or husband." The Veteran Spouses Equal Treatment Act would strike "of the opposite sex" in the definition of a surviving spouse and, for living spouses, refers to 38 U.S.C. § 103 for marriage references while striking "who is a husband or wife." The bill would further amend 38 U.S.C. § 103 to require VA to recognize a marriage based on the law of the State where the marriage occurred or, if it occurred outside a State, a lawful marriage that could have entered into under the laws of any State.

Wounded Warrior Project supports the Veteran Spouses Equal Treatment Act. Although VA provides clear guidance at <https://www.benefits.va.gov/persona/lgbt.asp> to explain to veterans that the agency will recognize all same-sex marriages without regard to a veteran's state of residence, this legislation would remove any doubt that veterans' spouses will receive equal treatment under the laws governing VA benefits.

#### **H.R. 1424, the Fallen Warrior Battlefield Cross Memorial Act**

Wounded Warrior Project's mission to honor and empower wounded warriors brings our focus to providing free programs and services for warriors and advocating for their current and long-term health and wellness. Within this context, we also recognize the need to memorialize those veterans who are no longer with us. For some who share this view, the "Battlefield Cross" has become a fitting memorial in VA's national cemeteries.

Under current law, VA has regulatory discretion to develop and maintain memorial areas for veterans in national cemeteries. In the relatively recent past, VA exercised its discretion to prohibit realistic looking depictions of firearms in "Fallen Soldier Displays" (the Battlefield Cross). More recently, VA updated its policy to allow an exception for the Fallen Soldier Display. The Fallen Warrior Battlefield Cross Memorial Act would create a statutory obligation to continue a special exception for the Fallen Soldier Display subject to standards established by VA.

Wounded Warrior Project supports the Fallen Warrior Battlefield Cross Memorial Act. This legislation offers a healthy balance between VA's interest in properly maintaining national cemeteries while preserving the ability of local communities around the country to continue using the Battlefield Cross to memorialize the veterans and soldiers who gave the ultimate sacrifice for our nation.

#### **H.R. 1911, the SFC Brian Woods Gold Star and Military Survivors Act**

The SFC Brian Woods Gold Star and Military Survivors Act proposes several amendments to Title 10 U.S. Code that WWP was unable to adequately review with the Department of Defense or the House Committee on Armed Services staff prior to this Subcommittee hearing. For these reasons, WWP is not able to provide a position on the bill at this time.

#### **H.R. 4165, the Improving Benefits for Underserved Veterans Act**

The Improving Benefits for Underserved Veterans Act would create new reporting requirements for VA to help identify minority veteran groups who are or who may be underserved by VA services and benefits. The bill lists women veterans as well as Asian, Black, Hispanic, Native American, and Pacific-Islander American veterans as groups that would be subjects of the new reporting requirements.



Wounded Warrior Project appreciates the need to monitor and assess the needs of the veteran population which is why we invest in developing the nation's largest and most comprehensive survey of Post-9/11 veterans and service members. According to survey data gathered for our 2018 survey, WWP has several salient points to share that inform our position on the Improving Benefits for Underserved Veterans Act.

- Women veterans not using VA as their primary health care provider report higher rates of difficulty accessing VA (51% compared to 44% of male veterans not using VA as primary)
- Across race/ethnicity, veterans who do not use VA as their primary care health provider reported the same top reasons why: bad prior experience, VA care is difficult to access, too much trouble or red tape, don't think VA health care would be as good as that available elsewhere, and don't trust VA
- Black or African American (73%) and Hispanic (72%) veterans reported utilizing VA as their primary health care provider at a higher rate than White (67%) veterans
- Across gender and race/ethnicity, similar rates of veterans have VA health care coverage (75%-79%)

As these results begin to illustrate<sup>1</sup>, there are veterans who are underserved by VA's programs and services - but that there is also demographic parity in many instances. While we appreciate the desire to have more data to explore these issues further, we would rather see the staff hours and resources required to gather the information for these proposed reporting requirements be utilized to serve these identified populations. Additionally, any reports generated by this proposal would only reflect information about who has reached out to VA for care or benefits, and would not necessarily reflect who is being underserved when one considers all who have chosen not to engage with VA. Outreach to these underserved population groups may be a better use of resources as it would actively engage a population which is known to be underserved. While we appreciate the intent and support the Improving Benefits for Underserved Veterans Act, WWP would rather see VA resources used for outreach to connect with underserved populations.

#### **H.R. 4183, the Identifying Barriers and Best Practices Study Act**

One of the largest barriers that WWP national service officers face when supporting current and former special operators and other United States Special Operations Command personnel who suffered injury or illness in combat is locating official documentation of their injuries in service. Similarly, the process for documenting injuries for Guard and Reservists could be improved to help veterans establish service-connection for their injuries later in life.

While many issues surrounding this population should be left to the Department of Defense, the Identifying Barriers and Best Practices Study Act proposes to have the U.S. Comptroller General develop a three-year study of disability and pension benefits that were provided to veteran members who served in special missions, such as pilots and divers, and who served on reserve components of the Armed Forces while on active duty. This report would also seek to identify common barriers that Guard and Reservists face when applying for VA disability benefits, including documentation of injuries incurred while serving.

Wounded Warrior Project supports the Identifying Barriers and Best Practices Study Act. Lack of medical evidence from service and the difficulties of working with the military to retrieve any available documents inform our perspective from an anecdotal point of view. We are confident that a Government Accountability Office report addressing how these populations are interacting with VA's benefit system will validate our beliefs and experiences, and we urge stakeholders to consider additional policies to help assist them as the report is being developed.

#### **H.R. 4360, the VA Overpayment Accountability Act**

In support of our mission to honor and empower our nation's wounded, ill, and injured veterans and service members, WWP recognizes that physical health and mental wellness are often built from a foundation that includes financial security.

<sup>1</sup>WWP prepared this specific data after being engaged by the U.S. Government Accountability Office in January 2019. GAO indicated that it was undertaking a review of whether VA provides quality and culturally appropriate care for minority veterans, to include making recommendations on how VA can structure its next generation electronic health record system to collect data on quality and patient experience data by race and ethnicity. [Source of mandate: P.L 115-141 Consolidated Appropriations Act, 2018. H. Rpt. 115-188 to Accompany H.R. 2998, Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018.]

VA disability compensation offers significant relief to many veterans, but the peace of mind that compensation offers can be interrupted when payments are unexpectedly withheld and credit is harmed. For veterans managing bills and other obligations, disruptions to expected income can quickly become a significant stressor.

According to WWP's 2019 Annual Warrior Alumni Survey, nearly all (97.1%) warriors who have registered for WWP programs and services carry some amount of debt. Among warriors with debt, excluding mortgages on primary residences, about a third (31.2%) pay less than \$1,000 per month on total household debt they owe, and another 36.7 percent make monthly payments ranging from \$1,000 to less than \$2,500 (36.5% in 2018). However, more than half (54.4%) of warriors with debt owe \$20,000 or more, excluding mortgages. In this context, we believe many of our warriors are at a heightened risk of being placed in the precarious position of being unable to pay bills and having their credit score damaged if VA benefits are withheld because of a previous erroneous overpayment by VA.

The VA Overpayment Accountability Act would address this problem through three distinct components. First, if VA determines that it has delivered erroneous information to a credit agency, it would be required to work with the credit agency to remove the erroneous information from a veteran's credit report. A similar process would ensue if VA has delivered erroneous information to a debt collector that subsequently reports to a credit agency. Second, the bill proposes IT improvements relating to debt notification and metrics tracking focused on debt, debt averages, and requests for debt relief. Third, the bill would require an audit of erroneous payments to determine the frequency of errors and whether, or to what degree, vacant positions at the Veterans Benefits Administration affect the frequency.

Wounded Warrior Project supports the VA Overpayment Accountability Act. This bill would provide adequate retrospective and prospective protection of veterans' credit scores in the event of an overpayment and mitigate the risk of potential hardship on veterans. While we maintain an interest in seeing policies that would ease the burden of debt repayment in instances when VA must recoup overpayment, this is a sound proposal in its current form.

**H.R. \_\_\_\_\_, a draft bill to extend increased dependency and indemnity compensation paid to surviving spouses of veterans who die from ALS**

According to the Amyotrophic Lateral Sclerosis (ALS) Association, approximately 5,000 Americans are diagnosed with ALS each year. The incidence of ALS is two per 100,000 people, and it is estimated that at least 16,000 Americans may be living with ALS at any given time - and research sadly shows that military veterans, regardless of branch or era of service, are nearly twice as likely as non-veterans to develop ALS<sup>2</sup>.

*Once ALS starts it almost always progresses, eventually taking away the ability to walk, dress, write, speak, swallow, and breathe, and shortening the life span. How fast and in what order this occurs is very different from person to person. While the average survival time is three years, about 20 percent of people with ALS live five years, 10 percent will survive 10 years and 5 percent will live 20 years or longer.<sup>3</sup>*

Under current law, VA can pay an additional monthly allowance of Dependency and Indemnity Compensation (DIC) to surviving spouses of veterans who die from a service-connected disability if that disability was rated as totally disabling for continuous period of at least eight years immediately preceding death. This draft bill proposes to remove the eight-year criteria for spouses of veterans who died of service-connected ALS.

Wounded Warrior Project supports this draft legislation because it recognizes that the tragically accelerated disease process of ALS keeps many deserving spouses from receiving important DIC benefits that they should otherwise be entitled to.

**H.R. \_\_\_\_\_, a draft bill to permit appellants to appear before the Board of Veterans' Appeals via picture and voice transmission from locations outside the Department of Veterans Affairs**

Under current law, veterans are limited to two types of hearings during their appeal before the Board of Veterans' Appeals: (1) in-person hearings at the Board's principal location, or (2) by picture/voice transmission at a facility where VA has provided suitable equipment and facilities. Under this draft legislation, VA would continue to initially offer these types of hearings, but a veteran would gain the ability to request a hearing at a place of their own choice provided there is a secure internet platform established and maintained by VA that protects sensitive personal

<sup>2</sup> ALS Association at <http://www.alsa.org/als-care/veterans/military-white-paper.html>.

<sup>3</sup> ALS Association at <http://www.alsa.org/about-als/facts-you-should-know.html>.

information from a data breach. Reporting requirements are included to track success rates and cancellations.

Wounded Warrior Project supports this draft legislation. The Board of Veterans' Appeals has been diligently working through a backlog of appeals for years, and efforts like this that reduce the likelihood of hearing cancellations should help more veterans receive timely consideration of their appeals.

#### **CLOSING**

Wounded Warrior Project thanks the Subcommittee on Disability Assistance and Memorial Affairs, its distinguished members, and all who have contributed to the discussions surrounding today's hearing. We share a sacred obligation to serve our nation's veterans, and WWP appreciates the Committee's effort to identify and address the issues that challenge our ability to carry out that obligation as effectively as possible. We are grateful for the invitation to testify and stand ready to assist when needed on these issues and any others that may arise.

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#### **Prepared Statement of Patrick Murray**

Chairwoman Luria, Ranking Member Bost, and members of the Subcommittee, on behalf of the women and men of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this Subcommittee.

##### **H.R. 4360, VA Overpayment Accountability Act**

This legislation would improve the Department of Veterans Affairs (VA) debt collection process, limit the authority of the Secretary of Veterans Affairs to recover overpayments caused by VA errors, and improve the due process afforded veterans with respect to such recovery. The VFW supports this legislation and has a recommendation to improve it.

The VFW understands that benefits overpayments must be recouped from veterans in order to ensure that VA programs are properly administered. However, many veterans who were not indebted to VA have had erroneous derogatory information submitted to consumer reporting agencies due to a VA mistake. It is unconscionable for a veteran to receive a negative credit rating as a result of VA's erroneous submission of information. Furthermore, correcting inaccurate credit reports entails a lengthy and burdensome procedure. Accordingly, the VFW supports legislation that requires VA to implement safeguards to prevent the erroneous submission of information to consumer reporting agencies, and to correct this information in a timely manner.

The VFW appreciates VA's acknowledging the importance of collaboration with the veterans service organization community regarding benefits or potential debts. The VFW was pleased to review and offer constructive feedback in the crafting of new, more simply worded letters and notices regarding potential VA debts. We also request that VA collaborate with and inform veterans service organizations regarding any updates to the standardized format of debt letters. Due process requires that debt notices following overpayments are clear and provide concise information regarding the steps a veteran must take in order to resolve any outstanding debts in a timely manner.

Finally, the VFW urges this Subcommittee to incorporate into this legislation the additional safeguards of subsections (a), (b), and (c) of section 3 of S. 805, Veteran Fairness Act of 2019. These provisions would grant additional protections to veterans concerning debt repayment and would provide more flexibility concerning the timing of repayment.

##### **H.R. 592, Protect Veterans from Financial Fraud Act of 2019**

The VFW supports this legislation, which would ensure that VA repays the misused benefits of veterans with fiduciaries. This is a common sense bill to protect some of our most vulnerable veterans. Veterans assigned a fiduciary need help and financial protection, and any individual who mistreats, preys upon, or otherwise causes them harm must be held accountable, and restitution must be made to make the veteran whole.

To further protect vulnerable veterans, the VFW recommends including a provision in this legislation to impose criminal and financial penalties on individuals found to maliciously prey on veterans for any financial gain, not just fiduciary fraud. Abusing the health and financial welfare of veterans in need must be punishable by law. The VFW supports legislation that protects all veterans from any individual

who commits financial malfeasance, sets substantial penalties for doing so, and ensures veterans receive any owed compensation as a result of the crime.

**H.R. 1030, Veteran Spouses Equal Treatment Act**

The VFW supports this legislation, which would align the definition of “spouse” in title 38, United States Code, with the Supreme Court’s ruling in *Obergefell v. Hodges*. The statutory language of title 38 should be updated to conform to recent Supreme Court decisions regarding the Federal recognition of same-sex marriage. The VFW believes that all veterans and their families deserve to be treated with dignity and respect.

**H.R. 4165, Improving Benefits for Underserved Veterans Act**

This legislation would direct VA to publish a report regarding veterans who receive benefits under laws administered by the Secretary, disaggregated by sex and minority group member status. The VFW supports this legislation and has a recommendation to improve it.

According to recent Department of Veterans Affairs data, more than 1.6 million veterans are women, which is roughly nine percent of the total veteran population. The percentage of women veterans has increased since the start of the Global War on Terrorism, and is expected to grow in the near future. Although VA has made vast improvements to address the needs of women veterans, more work is needed to ensure that female veterans utilize benefits at the same rate as males, especially in health care. More specifically, our members have routinely stated that VA must improve privacy at women’s health clinics, access to gender-specific health care, prenatal and maternity care, mental health care to treat military sexual trauma, and targeted outreach to women to ensure that no veteran is left to wonder what benefits she is eligible to receive. Accordingly, the VFW believes that the future needs of women veterans can only be met through continued research and studies specifically tailored toward women veterans.

Similarly, minority veterans face challenges when accessing VA benefits, particularly with health care. According to VA’s Office of Research and Development, health care is distributed unevenly in the United States. Minority populations often receive less care or care of lesser quality compared to their Caucasian peers. The minority veteran population makes up 22 percent of all veterans and accounts for over 34 percent of the women veteran population. Unequal health outcomes faced by racial and ethnic minorities include higher rates of chronic illnesses such as diabetes and high blood pressure, higher rates of cancer, and mental illness diagnosis. These disparities are ubiquitous within the entire American health care system and are still prevalent within VA, where many financial barriers to receiving care are minimized. Therefore, more research is required to understand and eliminate racial and ethnic disparities in the VA health care system.

A study on veterans who receive VA benefits, disaggregated by sex and minority group member status will help identify disparities in usage of VA benefits. The VFW recommends that this Subcommittee authorize a study to determine the cause of such disparities in addition to overall VA benefits usage. This will assist VA in ensuring that all veterans use the benefits to which they are entitled, and that access to health care and health outcomes remain consistent across all demographics.

**H.R. 4183, Identifying Barriers and Best Practices Study Act**

This legislation would require the Government Accountability Office to conduct a study on VA disability and pension benefits provided to members of the National Guard and Reserve components of the armed forces. The VFW supports this legislation and has a recommendation to improve it.

In the years since the terrorist attacks of September 11, 2001, National Guard and Reserve forces have consistently answered the call to service. The Department of Defense has increasingly relied upon these components for national security missions at home and overseas. Unfortunately, these service members face unique challenges when applying for VA benefits. National Guard and Reserve component members frequently have difficulty obtaining medical records, which tend to be scattered and are often incomplete. VA disproportionately denies reservists and guardsmen benefits because they cannot establish that a condition is service-connected due to missing Line of Duty (LOD) determinations. An LOD determination is an administrative tool for determining a member’s duty status at the time of injury, illness, disability, or death, and is the gateway to VA benefits.

A comprehensive study on disability benefits provided to members of the National Guard and Reserve components will help identify barriers to filing successful claims and will ensure that these veterans receive the VA benefits to which they are entitled. The VFW recommends that this Subcommittee authorize a study on disability

and pension benefits provided to members of these components for the entire period of the Global War on Terrorism. Furthermore, the VFW encourages this Subcommittee to require VA to conduct an ongoing analysis of application for benefits and enrollment for members of the National Guard and Reserve components.

**H.R. 628, Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act**

This legislation would authorize congressional employees to easily access veterans' sensitive information with few restrictions. The VFW does not support this legislation.

Firstly, while we agree there should be a more efficient way for congressional constituent services staff to assist veterans, there are current privacy controls in place to limit access to veterans' records, and those controls must be preserved under any expansion of access due to the complexities of the compensation and benefits process. The VFW insists that the authorized congressional staff be required to obtain a VA-specific privacy release from veterans they seek to assist before accessing records for those veterans.

Secondly, access to veterans' records and any resulting action by the Department of Veterans Affairs due to congressional involvement must be shared with whomever holds power of attorney for such veterans. Doing so would mitigate duplication of efforts and ensure that congressional staffers are not abusing or otherwise exceeding their authority.

Lastly, VA must have a tracking system to ensure that congressional employees are assisting only their own congressional constituents. There are level-sensitive restrictions on most VA employees and accredited service officers, preventing access to files for which expressed consent has not been granted. These restrictions must extend to any proposed accredited staffers as well.

**H.R. 1424, Fallen Warrior Battlefield Cross Memorial Act**

The VFW supports this bill, which would require the Department of Veterans Affairs to permit fallen soldier displays in VA national cemeteries.

Two years ago, VFW members from VFW Post 3345 in Strongsville, Ohio, erected a battlefield cross by the Ohio Western Reserve National Cemetery chapel as a sign of respect for their fallen comrades. They were later disheartened to learn that the former director improperly removed the memorial, claiming that it depicted violence. To VFW members, all of whom have deployed into harm's way in a foreign land, the battlefield cross bears a sacred significance and is used to honor and remember our brothers and sisters who have made the ultimate sacrifice in service to our nation.

The VFW is pleased that VA reversed the Ohio Western Reserve National Cemetery director's decision and issued a notice to all national cemetery directors entitled "Acceptance of Donations Featuring the Fallen Soldier Display," which makes clear VA's policy to allow the display of the battlefield cross at any VA national cemetery. VFW Post 3345 members report that the unfortunate Ohio Western Reserve National Cemetery incident was resolved within three days and has not reoccurred. To prevent similar incidents in the future, the VFW supports legislation that safeguards a veteran's right to honor fallen brothers and sisters.

**H.R. 1911, SFC Brian Woods Gold Star and Military Survivors Act**

This bill would expand survivors' benefits for spouses and children of service members who die in the line of duty. The VFW has consistently advocated for the expansion of child care benefits for military and veteran families, and encourages this Subcommittee to do everything it can to ensure that survivors receive adequate support and assistance. Additionally, the VFW supports section 4 of this legislation, which would provide for the transportation of remains of fallen service members to no more than two locations if the second location is a national cemetery.

**Draft Legislation to Permit Appellants to Appear in Disability Compensation Cases Before the Board of Veterans' Appeals by Picture and Voice Transmission from Locations Other Than Facilities of the Department of Veterans Affairs**

The VFW supports this draft legislation, which would permit appellants in disability compensation cases before the Board of Veterans' Appeals to appear remotely by picture and voice transmission from locations other than VA facilities. VA programs such as Telehealth and Project Atlas already utilize similar remote access technology, which many veterans find incredibly convenient.

Currently, veterans may appear remotely from one of roughly 65 locations in Board of Veterans' Appeals cases. This legislation would undoubtedly improve ac-

cess for veteran appellants in disability compensation cases and would permit a greater number of veterans to attend their own hearings. The VFW also strongly urges this Subcommittee to ensure that adequate internet security measures are implemented in order to prevent data breaches and safeguard sensitive personal information.

#### **Draft Legislation, Justice for ALS Veterans Act of 2019**

This draft legislation would extend increased dependency and indemnity compensation paid to surviving spouses of veterans who die from amyotrophic lateral sclerosis (ALS), regardless of how long the veterans had such disease prior to death. Although the VFW cannot support this draft legislation, we recommend that this Subcommittee consider legislation that would grant a similar exception for surviving spouses or family members of veterans who die from service-connected diseases or injuries.

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#### **Prepared Statement of Ashlynn Haycock**

The Tragedy Assistance Program for Survivors (TAPS) is the national nonprofit organization providing compassionate care for the families of America's fallen military heroes. TAPS provides peer-based emotional support, grief and trauma resources, grief seminars and retreats for adults; Good Grief Camps for children; and casework assistance, connections to community-based care, online and in-person support groups, and a 24/7 resource and information helpline for all who have been affected by a death in the Armed Forces. Services are provided free of charge.

TAPS was founded in 1994 by Bonnie Carroll following the death of her husband in a military plane crash in Alaska in 1992. Since then, TAPS has offered comfort and care to more than 85,000 bereaved surviving family members. For more information, please visit [TAPS.org](http://TAPS.org).

TAPS receives no government grants or funding.

Chairman Luria, Ranking Member Bost, and distinguished members of the House Veterans Affairs Committee, the Tragedy Assistance Program for Survivors (TAPS) thanks you for the opportunity to make you aware of issues and concerns of importance to the families we serve, the families of the fallen.

While the mission of TAPS is to offer comfort and support for surviving families, we are also committed to improving support provided by the Federal government through the Department of Defense (DoD), the Department of Veterans Affairs (VA), Department of Education (DoED), Department of Labor, state governments, government contractors, and local communities for the families of the fallen - those who fall in combat, those who fall from invisible wounds and those who die from accidents, illness or disease.

TAPS was honored to enter into a new and expanded Memorandum of Agreement with the Department of Veterans Affairs in 2017. This agreement formalizes what has been a long-standing, informal working relationship between TAPS and the VA. The services provided by TAPS and VA are complementary, and in this public-private partnership each will continue to provide extraordinary services through closer collaboration.

Under this agreement, TAPS continues to work with surviving families to identify resources available to them both within the VA and through private sources. TAPS will also collaborate with the VA in the areas of education, burial, benefits and entitlements, grief counseling and other areas of interest.

#### **H.R 1911- SFC Brian Woods Gold Star & Military Spouses Act**

One of the top 3 legislative priorities for TAPS in 2019 is allowing surviving military spouses to remarry and retain benefits. The SFC Brian Woods Gold Star & Military Spouses Act addresses some of the issues related to remarriage. In addition, TAPS would like to highlight other issues related to remarriage that have not been brought up before the committee.

Many surviving military spouses opt not to remarry after the death of their service member because the loss of financial benefits would have a negative impact on them, especially those with children. Many choose to cohabitate instead of legally remarrying to retain their benefits. If a surviving spouse waits until age 57 to remarry, not only do they retain benefits but they are no longer offset. In 2013 the United Kingdom eliminated the remarriage penalty for surviving spouses.

#### **Remarried Surviving Military Spouses**

Surviving military spouses who choose to remarry lose virtually everything afforded to them by the service and ultimate sacrifice of their service member spouse, this includes their healthcare, DIC, SBP, education benefits, military ID cards, etc. While they choose to remarry for a second chance at love, surviving military spouses should not have to pay this penalty. They would much rather have their spouse back.

The average age of a surviving spouse is 25 years old. They should not have to wait 32 years to get remarried, if they choose to, in order not to lose the benefits their spouse earned in service to their country.

Here are just some of the testimonials TAPS has received from surviving military spouses who have chosen to remarry, and what it would mean to them to have these benefits restored:

"I was 22 years old when my husband, 1LT Jonathan Rozier, was killed in a fire-fight in Baghdad. I was always afraid of remarriage because I never wanted to lose the ability to care and provide for myself or my child - these are things that America gave us when Jonathan died. I decided to remarry when I was 11 years out from my first husband's death. It was a hard and terrifying decision to sign away the healthcare, the education benefits and the monetary compensation. I never understood why the price of my husband's life changed because I remarried. Widows should retain their VA benefits regardless of remarriage because the life exchanged for those benefits does not change when or if a widow decides to remarry."

"The military spouse gives up their lives to spend by their husband's side. Their career is often put on hold to move and be there for the kids during training and deployments. When tragedy strikes the benefits are what we rely on to make up for the years of career we lost. We shouldn't be penalized for moving forward with our lives, years later. I chose to live my life as my late husband asked me to do. I shouldn't be penalized financially because I chose to live and love."

"If we were civilians and entitled to a benefit from our spouses' work we would not forfeit those benefits if we remarried yet we lose everything. Many of us have lost our loved ones in our mid 20's and they are asking us to stay widowed for the rest of our lives. That is unfair and unrealistic. Several of us will not remarry out of fear of losing, so we lose out on the legal benefits of our new relationship based on the fear of losing the benefits of our deceased loved one."

### **Surviving Military Spouses Who Remarry After Age 57**

If a surviving military spouse waits until age 57 to remarry, not only do they retain their survivor benefits they are exempt from the Survivor Benefit Plan (SBP) - Dependency and Indemnity Compensation (DIC) offset. Current Federal law requires a \$1 reduction in SBP annuity for each \$1 received in DIC.

On December 16, 2003, the Veterans' Benefits Act of 2003, P.L. 108-183, repealed the DIC offset for widows/widowers who remarry after the age of 57. On July 19, 2007, three widows sued the U.S. government, arguing that the Act applies equally to the DIC offset of SBP. On August 26, 2009, in *Sharp versus the United States*, the United States Court of Appeals for the Federal Circuit ruled that widows/widowers who remarry after age 57 must receive full SBP and DIC payments without an offset.

The ruling created two distinct classes of widows/widowers affected by the SBP-DIC offset, those who remarry after age 57 and those who do not. If a surviving spouse does not remarry after age 57 their SBP continues to be offset.

### **Unremarried Surviving Military Spouses**

Many military surviving spouses have long term relationships but choose not to legally remarry because they financially cannot afford to due to the remarriage penalty. They may have 20 year engagements, have children with their new significant others, some even have commitment ceremonies but being legally married is not something they can do as the benefits do not outweigh the consequences.

We know that military spouses are the most unemployed or underemployed population due to frequent moves and everything that comes with the military lifestyle. This does not change because they become widowed. Adding to this reality are additional layers of grief, helping children grieve, and becoming the only parent in many cases. It makes it significantly harder for a spouse who was already unemployed to then go back to work.

Many military spouses are unable to fully vest in their own retirement and were banking on the retirement of their spouse as a joint venture. They struggle with wanting to find a new normal and a second chance at love and making the best financial decisions for them and their families. In addition, choosing not to remarry

has other negative impacts on their family as they can be viewed as “living in sin” by family and churches. Because the VA can take away benefits from surviving military spouses for “holding themselves out to be married” all of the stories we are sharing here will be unattributed:

“Not being able to remarry without losing everything has left me with hard choices that have broken my heart. My fiancé’s family has disowned us for “living in sin”- this includes my fiancé’s 3 adult daughters. For practical reasons, I can’t remarry. I have too much to lose. However, it is a punch in the stomach that the reason for this is the government has decided my sacrifice - the loss of my husband - no longer matters if I remarry. The 19 years and 9 months he served, the overseas moves, the constant disruptions to our family, the delay of any education or career pursuits for myself, the absence of sound mental health help for my husband, all become meaningless to the government if I remarry. My husband’s sacrifice would become forgotten just as I would be. On principle, I can’t live with that. But, that principle (and my practical needs) costs me dearly in the relationship with my fiancé’s family. I’m surprised he even chooses to stay with me sometimes. It is a lot to ask of him.”

“Disallowing spouses to maintain the benefits earned during their marriage supports the archaic notion that a woman will/should be supported by the next man. It ignores the fact that they knowingly contributed to the success of the family they intended to keep, and forces them into a position where they must stay alone, or rely on someone else to commit to the burden of support that their husband fulfilled. Removing benefits with remarriage signifies that their previous contribution was worthless. The benefits we received were earned through commitment to the military. Our contribution should not be regarded as less based on relationship status.”

“At the time of my husband’s death, we had been married for 18 years, all served on active duty. His military career was all I’d ever known and our family’s only financial future. Multiple deployments and overseas moves greatly limited my ability to work. When he died, I found myself raising 3 kids alone without the means to financially support them myself. Giving up his benefits for a choice of remarriage is not something I feel that I could ever do. Not only did he serve for those benefits, I served alongside him too. His benefits are also my benefits and the only retirement plan that I have.”

TAPS strongly supports ending the remarriage penalty for all surviving spouses. We would also like to address our views on ending the “Hold yourself out to be married” clause, electronic medical record access for surviving military spouses, and adding education benefits to the bill.

### **Hold Yourself Out to be Married**

A top priority for TAPS and The Military Coalition (TMC) survivor committee is the removal of the “hold yourself out to be married” clause within the definition of surviving spouse and the removal of the term “opposite sex” in Title 38 U.S. Code, section 101, paragraph 3.

According to 38 U.S. Code § 101 Paragraph 3:

(3) The term “surviving spouse” means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

We believe this language unduly penalizes surviving military spouses and may cause them to lose their survivor benefits. Many military widows/widowers choose not to remarry to protect their survivor benefits. Instead, some choose to live together with their boyfriend or girlfriend without marriage but still live in fear of losing their benefits.

TAPS has collected stories from surviving military spouses that helps illustrate this issue. Here are just a few of their personal testimonials:

“I have been engaged to my boyfriend since June 2011. We have not married due to the penalty nor do we live in the same household because I am in fear of common law marriage if we lived together. We have been together for 14 years. He has been very supportive in my decision to not remarry. I made this decision so that I do not have to work full time and have more time to spend with my daughter. Being so young it has been difficult over the past 15 years. I am now 35 years old, still unmarried and with no other children.”



"I was widowed when I was 24. The single most pervasive issue I have faced besides losing my husband, has been the knowledge that I will not be able to remarry without losing eligibility for my health insurance/access to crucial mental health services that I have relied on at places such as Home Base and the Vet Center in Boston. After my husband's death, I chose to return home to live near my family in the North Shore of Massachusetts. This is not an easily affordable place to live, and even with a bachelor's degree and a 9-5 job, I depend very heavily on my monthly DIC allotment to help me survive. I do not have an extravagant lifestyle; I do not own a car, I have a condo, and I am in love with a man I cannot afford to marry, because despite how hard he works, his income would not cover the losses that marriage would bring to my life. As I approach my mid 30's, I feel that my relationship is valued less by others in our community because we are not married. It feels infantilizing to always have to refer to my 33-year-old partner, as a 'boyfriend' because to call him anything else threatens my ability to live comfortably and independently near my family and my husband's resting place."

"I won't remarry because it affects what I can provide for my children but it's greatly awkward to have to tell people the man I have 3 children and one more on the way that he is just a boyfriend. I think he also feels a little less important without the 'husband' title and some part of me yearns to be a wife again, but this penalty would hurt financially. I think it also affected me when I started dating. Having to make it clear I would not be able to remarry probably discouraged some type of men. As a woman, being married isn't everything but it's sure a part of a feeling of being whole again."

"I have been a widow for 10 years this coming Christmas Day. I have been in a relationship with my boyfriend for 6 years now. Though he has asked, I've asked him to 'postpone' his proposal as I do not want to risk losing my VA Benefits. It's unfortunate that I have to choose money over love, but it is being stuck between a rock and a hard place as the VA benefits are my source of income and healthcare. And though he would be able to provide for me, I have 3 children that I still provide for so it would not be fair to him to have to compensate if I lost my benefits. Therefore, we choose not to marry at this time. Do I think it's fair? No. My husband fought and died for, well, a lot. And to make sure his family was secured in the event of his death brought him comfort on his deployments. He was taken from me. I didn't leave him. I don't think it's fair that I would lose everything my husband fought and died for simply because I want to move forward with my life. Those benefits are owed to me. And though I'm not the type of person to feel entitled to anything, the truth is I am. My husband died under the U.S. Government's watch."

"At the time of my husband's death, we had been married for 18 years, all served on active duty. His military career was all I'd ever known and our families only financial future. Multiple deployments and overseas moves greatly limited my ability to work. When he died, I found myself raising 3 kids alone without the means to financially support them myself. Giving up his benefits for a choice of remarriage is not something I feel that I could ever do. Not only did he serve for those benefits, I served alongside him too. His benefits are also my benefits and the only retirement plan that I have."

"I'm engaged with a plan to get married next year. My fiance is nervous to even set a date because he feels guilty of me losing my benefits. My son has no security legally without Chris and I being married. I have made my will so that Chris will become his legal guardian if something happens to me. It's scary living in a way where there's no foundation, because we're not able to build one with the way our benefits are set up. It feels like we're 'playing house'."

### **Access to Children's Medical Records**

In addition to losing financial benefits, ID cards and TRICARE for themselves, surviving military spouses lose access to electronic medical records and referrals for their children. The referrals have to be physically mailed as opposed to being able to immediately access it. In addition, they no longer have access to the electronic records. Minor children do not have their own accounts, its under their parents' account. If the parent is no longer in the system under TRICARE the remaining parent cannot access them.

The story of Kanaan Mackey-Fugler is representative of so many surviving military spouses who have remarried and been hit with the penalties to their children. Had she known that her daughter was going to be diagnosed with T1 diabetes and almost die, and she could not access any of her medical records, she may have waited to legally remarry (her words). Here is her story:

"June of 2018, my then 9-year-old daughter was admitted to ICU in DKA and diagnosed with T1 diabetes. While at the hospital I learned that Tricare would not

speak to me. Why? Because as their only living parent I needed to sign a new HIPPA form as their guardian to allow me to talk to someone. That was only the beginning of what I would encounter since that day! My status as their only living parent did not change only my marital status. Let that sink in; while my child is in critical condition in ICU I had to fill out a new HIPPA form just to have someone that would speak to me!"

"The next was trying to change her PCM from one that had left her in a room for 4 hours and doing no tests on her that could have prevented my daughter from almost dying. After trying to log on to the website to change her PCM, I discovered I no longer had access to her "privilege" information to be able to access, change, or even view referrals. I called DMDC and was told that I'm no longer privileged to that information on my minor children. I would have to call, make a request, and wait for the mail referrals. Once I finally got someone to help me transfer PCM, I learned that I could only get the referrals for my children sent to my mail. Why? Because I was no longer granted access to any of their electronic files through DMDC."

"After numerous referrals had to go through for nutrition, dietitian, and an endocrinologist and I had to wait for it to come in the mail to schedule these things (all of which are specialties and are backlogged normally) it further put my child behind on adequate healthcare. Because I was punished by DoD for getting remarried and giving up my benefits. I was unable to access their Survivor Benefit Plan online, their MyBenefit portal is no longer something I can access. If my child needs anything medically I have to hope I can get someone on the phone after a long wait time hoping they don't disconnect in the middle of the call and then I have to wait for a mailed out form to say whether it's granted or not. If they need proof of anything, I CAN NOT provide them with copies. I can't even get them a copy showing they have dental insurance because I have no access."

"I truly just want electronic access to her referrals so I can set up appointments for specialty doctors and equipment like her insulin pump and continuous glucose monitor (both of which took over a month to get a paper copy to send and get these lifesaving things ordered even though the referral was approved in days.) Further, to be able to access my children's MyBenefit and to be able to access their survivor benefit plan through DMDC are all things that my children should have access to as it's their benefits and as minors they can't access for themselves. That should not be too much to ask as I am their ONLY living parent. It shouldn't matter if I'm remarried or not, I am still the ONLY living parent that these children have left."

### **Maintaining Education Benefits After Remarriage**

One of the things TAPS would like to see added to the bill is the inclusion of allowing surviving military spouses to maintain education benefits after remarriage. As many studies have shown, the GI Bill is an investment into the future for both the student and the economy. It's why we have done so much to strengthen it over the past 10 years. Remarried spouses are no different. They would like the opportunity to use those benefits to pursue a degree and career. Many may not have had the opportunity to pursue them while being a military spouse, and if they are losing all other benefits due to remarriage, they will need the ability to financially help their family.

"At the time of my remarriage, I had just finished my bachelors degree and wasn't sure what to do. I had a child who required multiple doctors and therapy appointments, making going to school hard and graduate school impossible. I still had time to use my benefits, which had made it possible for me to return to school as a single parent. After graduation, I was given the opportunity to serve my community as a police officer. My plan had always been to go back to school, as I am now a Ph.D. candidate, and had saved a portion of my education benefits for that purpose but at the time, I had to make a choice. I could stay widowed and risk state intervention if I died on duty or I could remarry to protect my son and lose my benefits. I chose my son. As a result, the benefits that would have helped me get my masters and doctorate disappeared, and I have had to pay for it myself. The assistantship I have barely covers rent and bills, much less anything extra my son may need."

TAPS knows that ending the remarriage penalty as a whole will be a difficult and expensive bill to get done. We believe doing a smaller bill that handles education benefits, holding yourself out to be married, and the medical records would be a good foot in the door to start building support for eventually ending the remarriage penalty, and would have a huge impact on many surviving military families. However, we still hope to see pieces of the remarriage penalty eliminated this year and

support built for eventually doing away with it completely, just like our friends in the UK.

TAPS thanks the committee for starting the conversation on this important legislation, and thanks Representative Walz & Representative Bacon for introducing a bill that is a good starting point. We greatly appreciate your thoughtful consideration of the needs of our nation's veterans and surviving families.

It is the responsibility of the nation to provide for the support of the loved ones of those who have paid the highest price for freedom. Thank you for allowing us to speak on their behalf.

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## STATEMENTS FOR THE RECORD

### Honorable Andy Kim

America's veterans deserve America's best. They deserve the best health care and the best government service.

I introduced the bipartisan VA Overpayment Accountability Act with Congressman French Hill because sometimes, our veterans do not receive the best.

Through several programs, the Department of Veterans Affairs provides monthly payments to veterans and other beneficiaries. Because the VA often relies on outdated systems to provide those payments, those recipients sometimes receive overpayments at no fault of their own.

When this happens, it's the veterans who pay a price. In order to compensate for their mistake, the VA will withhold payments from veterans. At a time in which 1.4 million veterans across the United States are struggling with poverty issues, withholding payment can have severe consequences for Americans who earned these benefits.

Because there is no limit on how much the VA can ask a vet to repay, and no limit on how far back it can go to collect the debt, these sums can impact the credit and financial stability of veterans.

The VA Overpayment Accountability Act aims to fix these issues by improving VA IT systems that are often the cause of these overpayments. It also provides credit protections for veterans who are the victims of overpayments and become targets of unfair VA practices.

As a grateful nation, we should aim to honor our veterans, not send debt collectors after them because of a failure at the Department of Veterans Affairs.

Barbara Kim-Hagemann, the State Commander of the Department of New Jersey Veterans of Foreign Wars said in her endorsement remarks of this bill, that it is imperative that Congress work to correct, "harsh Veterans Administration procedures in recouping benefit overpayments from veterans who are barely living paycheck to paycheck."

On behalf of the thousands of veterans that Barbara fights for every day, and the millions across our country who sacrificed in their service, I call on the members of this committee to join me and Congressman Hill in this bipartisan effort to make the VA work and honor our veterans.

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## PARALYZED VETERANS OF AMERICA (PVA)

Chairwoman Luria, Ranking Member Bost, and members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on some of the pending legislation impacting the Department of Veterans Affairs (VA) that is before the Subcommittee. PVA is proud of its rich history and no group of veterans understand the full scope of care and benefits provided by the VA better than PVA's members-veterans who have incurred a spinal cord injury or disorder, such as Amyotrophic Lateral Sclerosis (ALS).

### H.R. 592, the "Protect Veterans from Financial Fraud Act"

PVA supports H.R. 592 which will ensure that every veteran participating in VA's Fiduciary Program can recover their benefits in cases of fiduciary misuse and fraud. Studies show veterans are particularly vulnerable to scams, including those perpetrated by someone entrusted with their care. Too often we hear about a VA appointed fiduciary failing to honor the trust given them and illegally misusing a veterans funds for their own personal gain.

Unfortunately, not all veterans who have VA-appointed fiduciaries are treated equally under Federal law. If a fiduciary misuses a veteran's benefits, the VA will remove the fiduciary, but it can only re-issue stolen benefits to the veteran if the fiduciary manages benefits for ten or more veterans. According to the VA however, 80 percent of beneficiaries have a one-on-one relationship with their fiduciary. The "10 or more" requirement leaves thousands of veterans and unable to recoup benefits lost through no fault of their own.

H.R. 592 clarifies existing procedures for the reissuance of benefits by VA in all cases of negligence or fraud, and adds the right to appeal adverse or negative decisions. Both actions are consistent with PVA's efforts to improve the current fiduciary program.

**H.R. 628, the "Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act"**

PVA supports the goal of ensuring veterans receive timely information regarding the status of their claims. H.R. 628 would allow veterans submitting a claim for benefits, to permit a covered congressional employee in the office of the member of Congress representing the district where the veteran resides to have access to all of the records of the veteran in the databases of the Veterans Benefits Administration.

We appreciate that this bill ensures that congressional employees granted access to such a program undergo the same training and certification program that VA currently uses to certify veterans service organization representatives and attorneys representing claimants. This legislation, however, allows access to a claimant's information regardless of whether the covered employees are acting under a power of attorney.

Claims files contain the most private information about that particular veteran and, often times, information of other individuals consulted during the claim's development. PVA believes that in the interest of maintaining strict protection of such private information, this legislation should be limited to those who hold a power of attorney. Other logistical issues may also arise in the form of the added administrative burden on VA of managing the certification process and tracking users. Certainly we do not want to see resources that should be applied to adjudicating claims shifted to facilitating congressional involvement unless it produces a significant increase in productivity.

**H.R. 1911, the "SFC Brian Woods Gold Star and Military Survivors Act"**

PVA supports H.R. 1911, which seeks to improve benefits and services for the surviving family members of those killed in the line of duty. If passed, H.R. 1911 would:

- Allow survivors that re-married to continue to have access to on-base facilities if they have dependent children;
- Allow surviving spouses of servicemembers who were killed while on duty to continue to receive Dependency and Indemnity Compensation (DIC) or military Survivor Benefit Plan (SBP) payments should they re-marry and ensures survivors that re-married before the bill becomes law are eligible to collect benefits moving forward;
- Direct the Department of Defense (DoD) to pay the transportation costs of remains for those killed in combat back to their hometown for any memorial services and then to a national cemetery of the surviving family's choice for final internment (current law only authorizes one trip); and
- Authorize DoD to extend the existing child care service assistance program (for civilian providers) to survivors of servicemembers that die in the line of duty.

Surviving spouses should not have to forfeit lifesaving benefits afforded to them and we support this effort to keep their existing benefits intact. It's an equity issue as well and repealing the remarriage penalty would make eligibility requirements for DIC and SBP consistent with other Federal programs

**H.R. 4183, "Identifying Barriers and Best Practices Study Act"**

PVA supports H.R. 4183, which would require the Comptroller General to conduct a study on disability and pension benefits provided to members of the National Guard and members of reserve components for the period of January 1, 2008, to December 31, 2018. Specifically, the bill would require comparisons between the National Guard and members of the reserve to those who served in regular components. The comparisons would include the percentage of each group of veterans with

service-connected disabilities; the number of veterans in each group with each disability rating; and the number of veterans in each group with a service-connected disability for pilots, special forces, veterans who participated in the Personnel Reliability Program, veterans who underwent flight physicals, and who have muscular-skeletal or mental health conditions.

#### **H.R. 4165, “Improving Benefits for Underserved Veterans Act”**

PVA supports H.R. 4165, which would require VA to publish a report regarding veterans who receive VA benefits disaggregated by sex and minority group status. This report would include those benefits administered through the Transition Assistance Program. A key to understanding the health care needs of veterans is first knowing what services VA offers to veterans, especially women and minority veterans. With this information Congress can ensure VA has the appropriate resources to meet the needs of all veterans.

#### **H.R. 4360, the “VA Overpayment Accountability Act”**

PVA supports H.R. 4360, which would amend Chapter 53 of title 38 to add a new section requiring the VA Secretary to correct any erroneous information submitted to consumer reporting agencies including information submitted by a third party collection agency. It would also require VA to notify the beneficiary of the Department’s request for correction. Too many individuals receiving VA benefits have had their credit history tarnished by unnecessary mistakes made by debt collectors. PVA applauds Congress for taking this action to protect our veterans and their survivors.

#### **Discussion Draft, the “Justice for ALS Veterans Act of 2019”**

PVA gives its strongest endorsement to this proposed Act, which seeks to expand eligibility for increased DIC paid to the surviving spouse of a veteran who dies from ALS regardless of how long the veteran had been receiving VA disability compensation for the disease prior to death.

Under current law, increased DIC, commonly known as the the “DIC kicker,” is available to an eligible survivor of a veteran with a service-connected disability rated as totally disabled, which ALS is, for a continuous period of at least eight years immediately preceding death. Unfortunately, ALS is a disease that progresses rapidly once it is diagnosed, and most patients die within three to five years.<sup>1</sup> Some veterans may live longer but the mortality rate for the disease is 100 percent and the overwhelming majority of veterans with ALS do not live long enough to meet the eligibility criteria required for the DIC kicker.

This was the case with George Vasiloff, a veteran of the United States Marine Corps, and his widow, Jann. George was diagnosed with ALS in September 2013 and VA rated him as 100 percent disabled for ALS in November of that year. He passed away from ALS in March 2015. Shortly thereafter, his wife began to receive DIC benefits but not the kicker like other surviving spouses because her husband did not live eight years with ALS.

Jann contacted her congressional representatives in August 2015 and even met with some of her elected official’s staffers. In March 2018, she contacted the VA Office of Regulation Policy and Management to ask that requirement be changed since victims of ALS do not generally survive eight years with this disease. In their response, they acknowledged the problem and stated that only Congress could change the rule.

VA’s response eventually brought her to PVA and led to the drafting of this legislation. Jann’s effort to pursue passage of this bill is an honorable one. She would not benefit from it. Her desire is to change this rule so future surviving spouses of ALS victims receive the same DIC benefits that others receive whose veterans have survived for the required eight years with their service-connected disability before dying. Again, that survival rate is not attainable for the overwhelming majority of ALS victims.

The additional assistance afforded through the DIC kicker may not be a lot of money, currently \$280.09, but none of us knows the circumstances of our veterans’ families who are left to cope after this devastating disease and loss. For some, it could be a car payment, food on the table, or a utility payment. Few diseases are as catastrophic as ALS, emotionally, physically, and financially for the entire family. Surviving families should not be denied a benefit others receive simply because the service-connected disease their loved one contracted made it impossible for them to

<sup>1</sup>Muscular Dystrophy Association, Amyotrophic Lateral Sclerosis (ALS): [https:// www.mda.org/disease/ amyotrophic- lateral-sclerosis](https://www.mda.org/disease/amyotrophic-lateral-sclerosis)

meet a life expectancy of eight years. We thank Representatives Cisneros and Fitzpatrick for reintroducing this important legislation, and urge the House to pass it quickly.

#### **Discussion Draft on Board of Veterans' Appeals Telehearings**

PVA generally supports this proposed legislation which would amend Title 38 to permit appellants to appear in hearings before the Board of Veterans' Appeals (BVA) by video and voice transmission from locations other than VA facilities. Hearing no shows are a big problem for the Board and add to large backlogs of cases. However, for many veterans, it can be very challenging to travel to a VA Regional Office. Use of telehearings may increase the likelihood of veterans making their BVA hearings as scheduled. Although it is too early to assess, a telehearing pilot program started by BVA in August of this year suggests that this option does indeed produce higher rates of participation. Also, in order to best preserve the evidence of record of the "telehearing," VA should be directed to preserve any and all forms of communication between the veteran, the veteran's representative, and the Board employees conducting the hearing. This should include transcription of any chat functions embodied within the technology used to conduct the hearings or any other communication methods in addition to the transcribed hearing.

Again, PVA would once again like to thank the Subcommittee for the opportunity to submit our views on the legislation considered today. Enactment of much of this proposed legislation will significantly enhance the benefits available to veterans, service members, and their families. We look forward to working with the Committee on their passage and would be happy to take any questions you have for the record.

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#### **THE AMERICAN LEGION (TAL)**

H.R.592, "Protect Veterans from Financial Fraud Act of 2019"

**Support**

H.R.628, "Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act"

**Oppose**

H.R.1030, "Veteran Spouses Equal Treatment Act"

**No position**

H.R.1424, "Fallen Warrior Battlefield Cross Memorial Act"

**Support**

H.R.1911, "SFC Brian Woods Gold Star and Military Survivors Act"

**Support**

H.R.4165, "Improving Benefits for Underserved Veterans Act"

**No position**

H.R.4183, "Identifying Barriers and Best Practices Study Act"

**Support**

H.R.4360, "VA Overpayment Accountability Act"

**Support**

Draft: Legislation to permit appellants to appear before the Board of Veterans' Appeals via picture and voice transmission from locations outside the Veterans Affairs Department.

**Support w/amdt**

Chair Luria, Ranking Member Bost, and distinguished members of the Subcommittee, on behalf of our National Commander, James W. "Bill" Oxford and our nearly 2 million members, we thank you for inviting The American Legion to submit the following testimony.

The American Legion is directed by millions of active Legionnaires who dedicate their time and resources to the continued service of veterans and their families. As a resolution-based organization, our positions are guided by more than 100 years of advocacy and resolutions that originate at the grassroots level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

**H.R. 592 - The “Protect Veterans from Financial Fraud Act of 2019”**

*To amend title 38, United States Code, to ensure that the Secretary of Veterans Affairs repays the misused benefits of veterans with fiduciaries, to establish an appeals process for determinations by the Secretary of Veterans Affairs of veterans’ mental capacity, and for other purposes.*

The VA’s Fiduciary Program was established to protect veterans and other beneficiaries who are unable to manage their financial affairs by appointing a fiduciary to assist in managing benefit payments. Currently, the VA can remove the fiduciary if they mismanage or steal a veteran’s benefits but can only re-issue benefits to the veteran if the appointed fiduciary manages benefits for 10 or more veterans. Under this current policy, a veteran’s only recourse is to sue the fiduciary in an attempt to recoup the lost or mismanaged funds. There is also no process to appeal a determination of the need for a fiduciary based on a veteran’s mental capacity.

The American Legion believes that no veteran should be harmed or put in a financial hardship through no fault of their own. The American Legion is aware that mismanagement and theft of veteran’s funds by fiduciaries does happen on occasion. When a veterans funds are mismanaged or stolen by a VA-appointed and vetted fiduciary, the VA should re-pay the benefit to the veteran. H.R. 592 will require the Secretary of Veteran Affairs to repay the misused benefits of veterans with fiduciaries and to establish an appeals process for determinations of a veterans’ mental capacity by the VA. Through Resolution No. 377: Support for Veteran Quality of Life, The American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents.<sup>1</sup>

**The American Legion supports this legislation as currently written.**

**H.R. 628 - “The Working To Integrate Networks Guaranteeing Member Access Now Act” or the “WINGMAN Act”**

*To amend title 38, United States Code, to permit veterans to grant access to their records in the databases of the Veterans Benefits Administration to certain designated congressional employees, and for other purposes.*

The WINGMAN Act would permit veterans to grant certain congressional employees in the office of a member of Congress to have read-only access to all of the veteran’s records in the Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) for the purpose of assisting constituents. A Member may designate up to two such congressional employees, but the employees may not be recognized as an agent or attorney with respect to veterans’ benefit claims. Funds under this bill may not be used to design or administer any training for congressional employees.

The American Legion has more than 3,600 accredited representatives who assist veterans with their claims located throughout the nation. These professionals receive regular professional training ensuring they have the most current understanding of the impact of changes in statutes, regulations, and case law. It is simply not a matter of receiving initial training and meeting the requirement of being accredited, like many professions, it requires on-going, thorough training. Additionally, veterans are repeatedly advised of their opportunity to elect to have a Veterans Service Organization (VSO) represent them in their quest to receive VA disability benefits at no cost. The American Legion does not have a resolution to support the enactment of this bill; however, we urge Congress to consider the long-term ramifications of supporting legislation that requires their own employees to have a minimal level of understanding in veterans’ law assisting their constituents. To ensure our veterans receive the assistance they deserve, we highly recommend that a VSO advocate on their veterans’ behalf.

**The American Legion opposes this legislation.**

**H.R. 1030 - “Veteran Spouses Equal Treatment Act”**

*To amend title 38, United States Code, to amend the definition of the term “spouse” to recognize new State definitions of such term for the purpose of the laws administered by the Secretary of Veterans Affairs, and for other purposes.*

<sup>1</sup> [https:// archive.legion.org/ handle/20.500.12203/5696](https://archive.legion.org/handle/20.500.12203/5696)

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American Legion is a resolution based, grassroots organization that takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current position on H.R. 1030 dictated by resolution, however, as laws evolve we expect VA to act in accordance with them.

**The American Legion has no current position on H.R. 1030.**

#### **H.R. 1424 - “Fallen Warrior Battlefield Cross Memorial Act”**

*To amend title 38, United States Code, to ensure the Secretary of Veterans Affairs permits the display of Fallen Soldier Displays in national cemeteries.*

The proposed legislation would allow the Secretary of VA to display the “Fallen Warrior Battlefield Cross Memorial” at all national cemeteries. The Fallen Warrior Battlefield Cross Memorial consists of helmet, rifle (inverted), boots, and identification tags (dog tags) draped from the rifle. A U.S. Army field manual notes: “The helmet and identification tags signify the dead soldier. The inverted rifle with bayonet signals a time for prayer, a break in the action to pay tribute to our comrade. The combat boots represent the final march of the last battle.”<sup>2</sup>

The tradition of inverting the rifle into the ground dates back to the Revolutionary War as a crude way of marking the position of a fallen soldier. The custom continues to this day; units in theater traditionally hold a remembrance ceremony in country (as the body is flown back stateside for burial) to allow the unit to pay last respects to those killed in action (KIA).

In October 2017, at Ohio’s Western Reserve National Cemetery, a battlefield cross was removed by cemetery officials. The National Cemetery Administration (NCA) cited the reason for removal as a violation of the administration’s policy regarding monuments depicting weaponry. The cemetery ultimately decided to restore the cross.

The Fallen Warrior Battlefield Cross Memorial Act (H.R. 1424) would permit the display of the weapon when accompanying the other items that make up the Battlefield Cross. NCA currently allows for the display of the cross, however, it does not specifically mention the Battlefield Cross. The passage of H.R. 1424 would prevent another NCA cemetery/official from misinterpreting the policy and disallowing the display of the Battlefield Cross.

Relevant here is the recent U.S. Supreme Case decision in *American Legion v. American Humanist Association*, No. 17–1717, 588 U.S. — (2019), dealing with the separation of church and state related to maintaining the Bladensburg Peace Cross, a World War I memorial shaped after a Latin cross, on government-owned land, though initially built with private funds on private lands.<sup>3</sup> In a landmark victory for The American Legion, the Court ruled 7–2 that the 40-foot memorial can remain on public land in Prince George’s County, Md., where it has stood since 1925.

“This was not just about a single cross,” then American Legion National Commander Brett Reistad said of the victory. “This was about the right of a community to honor its fallen heroes. And that’s why the World War I veterans of Bladensburg sacrificed their lives, to protect the freedom of others.”

Additionally, The American Legion supported the same legislation, as H.R. 4312, during the 115th Congress and testified in support on September 5, 2018.<sup>4</sup> Since its creation in 1919, The American Legion has been dedicated to preserving the memories of our fallen and we will continue to do so whenever possible.

**The American Legion supports H.R. 1424 as currently written.**

#### **H.R. 1911 - “SFC Brian Woods Gold Star and Military Survivors Act”**

*To amend titles 10 and 38, United States Code, to expand certain benefits for survivors of members of the Armed Forces who die in line of duty, and for other purposes.*

<sup>2</sup> <https://www.milsci.ucsb.edu/sites/secure.lsit.ucsb.edu.mili.d7/files/sitefiles/resources/FM%207-21.13%20Soldier%27s%20Guide.pdf>

<sup>3</sup> <https://www.legion.org/honor/246061/legion-wins-bladensburg-memorial-supreme-court-case>

<sup>4</sup> <https://archive.legion.org/bitstream/handle/20.500.12203/11937/aa007254.pdf?sequence=1&isAllowed=y>



No family of a servicemember ever wants to receive the dreaded knock at the door informing them that their loved one has paid the ultimate sacrifice. Dealing with such loss can be a life long struggle, and every available resource must be at the family's disposal to help them try to heal. Unfortunately, the loss of a servicemember means a change in status for the surviving spouse and dependent children which often leads to loss of certain benefits and access to the military community they have been a part of.

After the passing of a servicemember, the surviving spouse will lose access to military installations and on-base facilities such as the commissary and post exchange. Loss is not only access, but potentially monetary as well. Under current policy a surviving spouse is entitled to Dependent Indemnity Compensation (DIC) through the Department of Veteran Affairs, however, they will lose this benefit if they chose to remarry prior to age 55. The American Legion believes that surviving spouses are being unfairly cut off from their military community, facilities and are being unduly harmed by taking away their monetary benefits.

Another issue is the transportation of their loved one's remains. Under current policy all in-theater KIA's are flown to Dover Air Force Base. The Department of Defense (DoD) will then transport the remains to a location of the families choosing. The problem is that some families want to add another location for transport by DoD. An example would be if the service member is from California, but their wishes were to be buried at Arlington National Cemetery (ANC), the family can request the remains be flown to California for a memorial service but must pay out of pocket to transport their loved one to ANC for burial.

The bill would alleviate the aforementioned issues by:

- Allowing survivors that remarry to continue to have access to on-base facilities if they have dependent children;
- Allowing surviving spouses of servicemembers who were killed while on duty to continue to receive DIC or SBP should they remarry and ensures survivors that remarried before the bill becomes law are eligible to collect benefits moving forward;
- Directing the Pentagon to pay the transportation costs of remains for those killed in combat back to their hometown for any memorial services AND to a national cemetery of the surviving family's choice (current law only authorizes one trip); and
- Authorizing the Pentagon to extend the existing child care service assistance program (for civilian providers) to survivors of servicemembers that die in the line of duty.

We can never fully repay the debt we owe to a Gold Star family, but we can try to do what is possible to support them after their loss. The American Legion, through Resolution 85: Support for Military Quality of Life Standards, supports H.R. 1911 in its endeavors to address the issues that reduce the quality of life of America's Gold Star Families.<sup>5</sup>

**The American Legion supports H.R. 1911 as currently written.**

#### **H.R. 4165 - "Improving Benefits for Underserved Veterans Act"**

*To direct the Secretary of Veterans Affairs to publish a report regarding veterans who receive benefits under laws administered by the Secretary, disaggregated by sex and minority group member status.*

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American is a resolution based, grassroots organization that takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current position on H.R. 4165. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

**The American Legion has no current position on H.R. 4165.**

#### **H.R. 4183 - The "Identifying Barriers and Best Practices Study Act"**

*To direct the Comptroller General of the United States to conduct a study on disability and pension benefits provided to members of the National Guard and mem-*

<sup>5</sup> <https://archive.legion.org/handle/20.500.12203/10004>

*bers of reserve components of the Armed Forces by the Department of Veterans Affairs, and for other purposes.*

The United States military has increasingly relied on its reserve components to meet the national security demands during the War on Terror and the current security environment. This has required increased commitments from reservists and their families as the nation has moved from a strategic to an operational reserve. However, those serving in these reserve components do not receive the benefits they deserve to account for these increased responsibilities. This is compounded by the fact that Guard and Reserve veterans have historically been at a disadvantage when seeking VA compensation and disability benefits due to poor reporting and documentation of injuries which occur during a period of reserve or Active Duty for Training (ADT).

The American Legion believes that all veterans should be afforded the benefits they have earned regardless of service component and that veterans should not be hindered in their attempts to gain access to VA benefits. The American Legion supports legislation to provide the military reserve components with greater benefits befitting of the increased role they play in the security of the nation and the greater commitments they must sustain. H.R. 4183, the “Identifying Barriers and Best Practices Study Act” would direct the Comptroller General of the United States to conduct a study on disability and pension benefits provided to members of the National Guard and members of reserve components of the Armed Forces by the Department of Veterans Affairs. The American Legion Resolution No. 17: Position on the Operational Reserve urges Congress to reform the laws and policies governing the reserve components to provide them programmable sustainability as an operational force.<sup>6</sup>

**The American Legion supports this legislation as currently written.**

#### **H.R. 4360 - “VA Overpayment Accountability Act”**

*To amend title 38, United States Code, to improve due process accorded veterans with respect to recovery of overpayments made by the Department and other amounts owed by veterans to the United States, to improve the processing of veterans benefits by the Department of Veterans Affairs, and for other purposes.*

VA overpays hundreds of thousands of veterans yearly. During fiscal year 2018, VA made a total of \$1.6 billion in overpayments.<sup>7</sup> The most common reasons for overpayments include a change of status in a veteran’s income, dependents, school attendance, military drills, or incarceration. Most concerning is that a large portion of VA overpayments are created due to lack of integration between IT systems used by VA. The overpayment will be forwarded to the Debt Management Center in Saint Paul, MN, for collection action. If a veteran is receiving an active benefit, it will be garnished to repay the amount owed. If the overpayment is not paid, it will be referred to the Department of Treasury for collection. Due to overpayments by the VA, thousands of veterans are potentially being placed in financial hardship situations which might include loss of an active benefit or damage to a veteran’s credit history.

The proposed legislation contains three key elements that are aimed at protecting veterans during the overpayment and debt collection process. Firstly, it introduces measures to correct erroneous information sent to credit reporting agencies about a debt incurred by a veteran as a result of their participation in a benefits program. Secondly, it requires the VA to improve the notification system once a veteran has incurred a debt and requires tracking of metrics associated with the overpayment process. Thirdly, it requires VA to conduct an audit to study the metrics previously mentioned and examine how a multitude of factors, to include vacancies at VA, contribute to perpetuating the issue.

The American Legion, through Resolution No. 228: Timely Processing of Overpayments for Reserve Components and/or Active Duty Pay, supports efforts to “place greater emphasis on processing of these overpayments.”<sup>8</sup> Debt caused by VA overpayments are a major concern for The American Legion. Since 1978, The American Legion has retained a dedicated staff member at the Debt Management Center for the sole purpose of advocating on behalf of veterans and their dependents facing

<sup>6</sup> <https://archive.legion.org/handle/20.500.12203/5500>

<sup>7</sup> <https://www.militarytimes.com/news/pentagon-congress/2019/09/19/va-concedes-its-debt-collection-systems-leave-veterans-confused-frustrated/>

<sup>8</sup> <https://archive.legion.org/bitstream/handle/20.500.12203/5558/2016N228.pdf?sequence=4&isAllowed=y>

garnishment. Too often, we have seen unnecessary financial burdens placed on veterans and their families as a result of bureaucratic errors.

The American Legion most recently testified on this issue on September 19, 2019, and we are encouraged to see that many of the recommendations made by the Veteran Service Organization (VSO) community are included in pieces of legislation like H.R. 4360.<sup>9</sup> If passed, this legislation would greatly improve the way VA manages debt collection while minimizing the negative impact for veterans.

**The American Legion supports H.R. 4360 as currently written.**

#### **Draft Legislation**

*To amend title 38, United States Code, to permit appellants to appear in disability compensation cases before the Board of Veterans' Appeals by picture and voice transmission from locations other than facilities of the Department of Veterans Affairs.*

Historically, veterans have had long wait times to go before the Board of Veterans Appeals (BVA) and have suffered from barriers based on the locations they could go for a hearing. BVA has made great strides and seeks to reduce the backlog and decide appealed cases in under 365 days. Among these options to reduce the backlog is to utilize a video or tele-conferencing option which would allow greater access to resources to accommodate veterans hearing requests. However, under current law, the Veterans Law Judge who presides over a given hearing must do so from inside the BVA building in Washington, D.C., and the veteran must travel to a VA regional office or local Veterans Health Administration facility to join the video conference. The veteran's representative must be with the veteran in person, or at a similar facility. This places unnecessary burdens on both the veterans and VA staff.

The American Legion believes that veterans should not be unduly burdened with cost, time, and physical limitations when attempting to make their case before a Veterans Law Judge at the BVA. The American Legion supports legislation that would decrease wait times and remove barriers for veterans during the appeals process. This draft legislation would permit veterans to appear in disability compensation cases before the BVA by picture and voice transmission from locations other than VA facilities. Through Resolution No. 377: Support for Veteran Quality of Life, The American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents.<sup>10</sup>

The American Legion supports this legislation as currently written, but would strongly encourage the draft legislation be amended to include all veterans' appeals before the BVA, not just disability compensation cases. The American Legion believes all veterans and the VA would greatly benefit from utilizing a video or tele-conferencing option outside of VA facilities, not just disability compensation cases. Additionally, the need for security regarding transmission and atmosphere should be considered as policies for implementation are developed.

**The American Legion supports this draft legislation but strongly encourages the amendment noted above.**

#### **CONCLUSION**

Chair Luria, Ranking Member Bost, and distinguished members of the Subcommittee, The American Legion thanks you for your leadership on these matters and for allowing us the opportunity to explain the positions of our nearly two million members. Questions concerning this testimony can be directed to Mr. Lawrence Montreuil, Legislative Associate, National Legislative Division at (202) 861-2700, or lmontreuil@legion.org.



<sup>9</sup> <https://www.legion.org/legislative/testimony/247102/> "preventing-harm-veterans-examining-vas-overpayments-and-debt"

<sup>10</sup> <https://archive.legion.org/handle/20.500.12203/5696>