

TO IMPROVE THE AUTHORITY OF THE SECRETARY OF VETERANS AFFAIRS  
 TO HIRE AND RETAIN PHYSICIANS AND OTHER EMPLOYEES OF THE DE-  
 PARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES

MARCH 10, 2017.—Committed to the Committee of the Whole House on the State  
 of the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans' Affairs,  
 submitted the following

R E P O R T

[To accompany H.R. 1367]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1367) to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## PURPOSE AND SUMMARY

H.R. 1367 was introduced by Representative Brad Wenstrup of Ohio, Chairman of the Committee on Veterans' Affairs Subcommittee on Health, on March 6, 2017.

The bill would make a number of improvements to the Department of Veterans Affairs' (VA's) ability to identify staffing shortages, recruit and retain high-quality employees, and quickly onboard new hires.

## BACKGROUND AND NEED FOR LEGISLATION

*Section 2. Modification to annual determination of staffing shortages in Veterans Health Administration*

Subsection 3304(a) of title 5, United States Code (U.S.C.), authorizes Federal agencies to appoint candidates without regard to certain hiring preferences and competitive service selection requirements directly to positions for which the Office of Personnel Management (OPM) has determined there is either a severe shortage of candidates or an identified critical hiring need. This is referred to as direct hiring authority.

Committee oversight as well as Government Accountability Office (GAO) and VA Inspector General (IG) reports have found inadequate staffing and gaps in health care professional hiring at VA medical facilities nationwide. This can adversely impact care to veteran patients by creating or contributing to access issues and scheduling delays. In recognition of this, Congress acted in section 301 of the Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113–146) to require the IG to annually identify and publish the five occupations of health care providers with the largest staffing shortages and authorize VA to utilize direct hiring authority to fill shortages for each of the five occupations identified. According to the latest such IG report, which was published on September 28, 2016, VA's largest critical need occupations are: (1) Medical Officer; (2) Nurse; (3) Psychologist and Physician Assistant (tied); and, (5) Physical Therapist and Medical Technologist (tied).<sup>1</sup> According to the IG, the top five occupations from the two previous reports were identical to the 2016 ranking with the exception of the addition of Medical Technologist.

Section 2 of the bill would modify the annual determination of Veterans Health Administration (VHA) staffing shortages by including five clinical occupations and five non-clinical occupations within each VA medical center. The Committee believes this will allow for the identification of local staffing needs—which could vary significantly among VA medical facilities and improved utilization of direct hiring authority to address those needs, resulting in a VA healthcare staff that is better equipped to provide high-quality care to veteran patients.

*Section 3. Executive Management Fellowship Program*

According to the 2016 Best Places to Work in the Federal Government survey—based on the nonpartisan Partnership for Public

<sup>1</sup> Report no. 16–00351–453, VA Office of the Inspector General, “OIG Determination of VHA Occupational Staffing Shortages,” September 28, 2016. <https://www.va.gov/oig/pubs/VAOIG-16-00351-453.pdf>

Service’s analysis of OPM’s Federal Employee Viewpoint Survey—VA ranks 17 out of 18 among large agencies in effective leadership, with a score of just 48.7 out of 100.<sup>2</sup> Given that concerning fact, the Committee is committed to finding creative ways for VA employees with leadership potential to improve their skills through leadership development and training opportunities that could then be utilized in those employees’ VA service. Various other Executive agencies have similarly sought to promote such opportunities through fellowship programs such as the White House Fellows Program and the State Department Franklin Fellows Program, which allow employees from the private sector to spend a year serving in the Federal government while their private sector employer continues to pay their salary and benefits. This provides a valuable influx of experience and knowledge without diverting resources from other priorities. The Committee believes that VA could benefit from such a fellowship program that would not only allow private sector employees the chance to work in VA but also allow emerging VA leaders to hone and enhance their skill sets in comparable private sector companies, contingent upon their agreement to return to VA employment for at least a certain set time period.

Accordingly, Section 3 of the bill would establish an Executive Management Program to allow eligible VHA and Veterans Benefit Administration (VBA) employees the opportunity to take one-year fellowship positions in comparable private sector entities and eligible private sector employees to take one year fellowship positions in comparable VHA or VBA sites. The Committee believes this program will foster and facilitate a mutually-beneficial exchange of people, ideas, knowledge, and best practices between VA and comparable private sector entities, while providing VA employees with an additional leadership development opportunity that is vital to maintaining the long-term health of VA’s workforce.

#### *Section 4. Accountability of leaders in managing the Department of Veterans Affairs*

As referenced for Section 3 above, VA ranked 17 out of 18 among large Federal agencies in effective leadership according to the 2016 Best Places to Work survey.<sup>3</sup> Since the 2014 VA nationwide access scandal, the Committee’s legislative and oversight efforts have focused on increasing accountability for VA employees as a means of assessing leadership and strengthening the Department as a whole. Accordingly, the Committee has often reviewed performance plans for VA’s many Senior Executive Service (SES) employees. However, while performance plans are required for career SES employees by subchapter II of Chapter 43 of title 5, U.S.C., political appointees are not required to undergo performance plans. As senior leaders, political appointees play a critical role in setting and achieving Departmental priorities and, as such, the Committee believes that they should be held accountable as well for their performance and achievements.

Section 4 of the bill would require VA to conduct annual performance plans for VA political appointees. This would ensure that the

<sup>2</sup>Partnership for Public Service, Best Places to Work in the Federal Government, <http://bestplacestowork.org/BPTW/>.

<sup>3</sup>Partnership for Public Service, “Best Places to Work Large Agency Rankings,” Accessed March 9, 2017. <http://bestplacestowork.org/BPTW/rankings/overall/large>

Department's senior political appointees undergo a performance planning and appraisal process similar to that of the Department's career senior executives, which the Committee believes will assist in establishing a culture of accountability throughout VA and in restoring transparency and trust in the Department's senior leaders. Each performance plan would be required to contain assessments in the following areas: recruiting, selecting, and retaining well-qualified individuals for VA employment; engaging and motivating employees; training and developing employees and preparing them for future VA leadership roles; and, holding each manager accountable for addressing performance issues for the employees under their purview. The goal of the Committee, however, is not to provide performance awards to political appointees as a result of these new required performance plans. These plans would only serve to provide the Secretary and others a way to track the performance of these senior employees who are critical to the Department's overall mission and management.

#### *Section 5. Modification to veterans preference*

One of the hallmarks of hiring within the civil service system is veterans' preference, which, in some form, dates back to the Civil War. The purpose of veterans' preference is to provide eligible veterans with an advantage when they compete with equally qualified non-veteran candidates for Federal employment. For decades, Congress has seen the benefit of rewarding those who serve by providing them with hiring preference in the Federal government. According to OPM, ". . . [v]eterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to disabled veterans."<sup>4</sup> Under current law, there are several different categories of preference that are based on a veteran's time on active duty service or their disability rating.

The Committee believes that the economy and the Federal government, as a whole, benefit from having more qualified veterans employed within their ranks. Unfortunately, there are certain segments of veterans and servicemembers that do not qualify for veterans' preference due to an outdated statute that does not accurately reflect the current characteristics of the U.S. Armed Forces. For example, section 2108 of title 5, U.S.C., requires that in order to receive veterans' preference, a national guardsman or reservist must have served at least 180 consecutive days on active duty. The Committee believes that this requirement is obsolete and does not take into account, the reality of the Department of Defense's utilization of the National Guard or Reserve components since September 11, 2001. In a statement for the record for a March 16, 2016, legislative hearing on this section, the Reserve Officers Association (ROA) indicated that, "since September 11, 2001, more than 900,000 members of our reserve components—the National Guard and Reserves of our Army, Navy, Air Force, Marines and Coast Guard—have served in support of the war on terrorism. More than

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<sup>4</sup>U.S. Office of Personnel Management, "VET Guide" <https://www.opm.gov/policy-data-oversight/veterans-services/vet-guide-for-hr-professionals/>

1,200 have died in that fight.<sup>5</sup>” ROA’s statement for the record also attested to the fact that it was not uncommon for individuals in the National Guard and Reserve components to serve less than 180 consecutive days on active duty service at any given point, therefore making them ineligible for veterans’ preference benefits. The Committee believes that this is important to note, despite the unemployment rate for veterans continuing, on average, to be lower than their non-veteran counterparts, because there is a concern about the growing unemployment rate amongst members of the National Guard and Reserve.

The Committee is also concerned that section 2108 of title 5, U.S.C., does not allow for retired members of the Armed Forces to receive some form of veterans’ preference. While the Committee agrees that veterans’ preference was put in place mainly to assist enlisted servicemembers, the Committee believes that in today’s growing economy, and with the reality that many military retirees do not “retire” from the workforce following their military service, there is no need to make the distinction between retirees and other veterans in providing veterans’ preference eligibility.

Therefore, to address both of these issues, Section 5 would amend section 2108 of title 5, U.S.C., to change the requirement that guardsmen and reservists must serve 180 consecutive days on active duty to require that they instead serve 180 cumulative days on active duty to be eligible for veterans’ preference. Additionally, this Section would further amend section 2108 of title 5 U.S.C., to allow retired members of the Armed Forces to qualify for veterans’ preference. The Committee believes that these two changes are necessary to modernize this important benefit, bring needed skill sets to Federal service unique to those who have served in uniform, and potentially reduce the unemployment rates among this population of veterans.

#### *Section 6. Reemployment of former employees*

Currently, former Federal employees who have left Federal service may be non-competitively reinstated only to a job at or below the grade level they last held. As a result, medical and other professionals who have left VA employment to gain valuable education and/or experience elsewhere cannot be considered for non-competitive reinstatement to a position above their prior grade level. This creates a disincentive for former employees to return to VA employment and utilize new skills to benefit veterans and assist in addressing the significant access and other challenges facing VA.

To address this recruitment issue, Section 6 of the bill would allow VA to noncompetitively reappoint a former VA employee to a position not more than one grade higher than his or her former position as long as the employee left voluntarily within the prior two years, had a satisfactory performance record, and maintained necessary licensures and credentials. The Committee believes this will encourage experienced former employees to reconsider VA service while providing VA an additional recruitment tool and a

<sup>5</sup> Statement for the Record of the Reserve Officers Association for the House Committee on Veterans Affairs Subcommittee on Health and Subcommittee on Economic Opportunity Hearing, “Legislative Hearing on draft legislation to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs,” March 16, 2016. <http://docs.house.gov/meetings/VR/VR03/20160316/104606/HHRG-114-VR03-20160316-SD011.pdf>

talented applicant pool that can be quickly leveraged to meet immediate hiring needs.

#### *Section 7. Recruiting database*

The Committee has long been concerned about the lack of stable leadership at many VA medical facilities. During an October 22, 2015, interview on CNN, then VA Deputy Secretary, Sloan Gibson, stated that, “[m]ore than 50 percent of our senior leaders in the Veterans Health Administration have turned over in the last 24 months.” When questioned by the Committee, VA has been unable to produce a plan to prioritize recruitment and retention for medical center leaders to address that turnover.

Section 7 of the bill would require VA to establish a recruiting database listing each vacant position that VA determines is critical to its mission, is difficult to fill, or both. The database would contain information on qualified individuals who applied for a position within VA and were not chosen but could be qualified for other similar VA positions elsewhere. VA would be required to use the database of qualified applicants in an effort to fill prolonged vacant positions. The Committee believes such a database will assist VA in increasing the identification and hiring of qualified applicants system-wide for critical medical facility leadership positions.

#### *Section 8. Human resources academy*

In late 2016, GAO found that, between the end of fiscal year 2011 and the end of fiscal year 2015, VHA lost 1,904 human resources (HR) staff to attrition, which is a reflection of a government-wide struggle to recruit and retain HR professionals.<sup>6</sup> In VA’s case, the Committee believes that VHA HR personnel are at an increased likelihood of departure due to burnout resulting from a failure to properly train HR officials on the intricacies of VHA hiring practices. VHA currently utilizes two personnel systems one for title 5 U.S.C., competitive service and another one for title 38, U.S.C. excepted service. Of the two, hiring authorities under title 38, U.S.C., are unique to VHA and can be complex. In an effort to increase the retention of needed HR professionals and also increase the efficiency of hiring across VHA, Section 8 of the bill would require VA to train VHA HR professionals after their initial hire and annually thereafter on how to recruit and retain VHA employees, in general, and on recruitment and retention matters that are unique to VHA under title 38, U.S.C., specifically.

#### *Section 9. Promotional opportunities for technical experts*

The Committee has a demonstrated interest in seeing VA retain high-quality employees and recognizes that many positions throughout the Department require a high-level of technical expertise. However, according to testimony from the Partnership for Public Service in 2016, “[t]he rigid structure of the GS system requires employees to move into supervisory and management roles, even in cases where the employee may not have the skills or desire to perform as a manager but must take on such duties in order to

<sup>6</sup> GAO-17-30, December 2016, “Management Attention is Needed to Address Systemic, Long-standing Human Capital Challenges,” <http://www.gao.gov/assets/690/681805.pdf>

advance in their career.”<sup>7</sup> Requiring highly technical employees to either leave VA employment, remain in their current position indefinitely, or take on managerial roles for which they may be ill-suited and uninterested is not an effective recruitment or retention tool.

To address this issue and create a pathway to promotion for high-performing employees in highly-technical positions, Section 9 of the bill would require VA to establish a promotional track for technical experts that does not require transition to a managerial position. The Committee believes this will allow VA to retain needed, high-quality employees who desire to advance in their career without taking on management role within VA.

#### *Section 10. Comptroller general study on succession planning*

Succession planning is a process for identifying and developing new leaders to replace those retiring or otherwise vacating their current roles. According to testimony from the Partnership for Public Service before the Subcommittees on Health and Economic Opportunity in March 2016, VA’s considerable recruitment and retention issues are worsened by an aging workforce that is becoming increasingly retirement-eligible.<sup>8</sup> Given that, succession planning is particularly critical for VA to prevent gaps or a reduction in the quality of services provided to veterans as current employees depart. However, the Committee believes that VA’s succession planning efforts across VHA, VBA, and the National Cemetery Administration (NCA) is in need of greater study.

Section 10 of the bill would require GAO to study and report on succession planning for each medical facility within VHA as well as mission-critical positions within VBA and NCA. This study would include: a determination of the mission-critical positions and the vacancy risk of such positions; an analysis of the future needs for the identified positions; and, strategies to fill gaps through training for existing staff, targeted recruitment and hiring.

#### *Section 11. Information on hiring effectiveness*

In December 2016, GAO released a report, which found that VHA fell short of Federal standards for effective internal controls to support HR functions, compromising VHA’s ability to deliver HR services and effectively serve veteran patients.<sup>9</sup> This finding is consistent with the Committee’s findings that VA and VHA HR employees in the field and in leadership often lack information regarding key measures that could indicate weaknesses in HR practices. GAO subsequently recommended that VA develop a plan to collect and apply leading HR practices within the Department, a finding with which the Committee concurs.

As such, Section 11 of the bill would require VA to collect information, indicators, and measurements on hiring effectiveness and employee satisfaction and submit an annual report to Congress on

<sup>7</sup> Testimony from the Partnership for Public Service, March 16, 2016, “Legislative Hearing on draft legislation to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs,” <https://veterans.house.gov/hearings/legislative-hearing-draft-legislation-improve-authority-secretary-veterans-affairs-hire-0>.

<sup>8</sup> Ibid.

<sup>9</sup> GAO-17-30, December 2016, “Management Attention is Needed to Address Systemic, Long-standing Human Capital Challenges,” <http://www.gao.gov/assets/690/681805.pdf>

the information collected for each Veterans Integrated Service Network. Some of these indicators include: recruiting and hiring well-qualified talent from diverse talent pools, the use and impact of special hiring authorities and flexibilities to recruit the most qualified applicants (including the use of student internships as a talent pool for future hires), and the use and impact of special hiring authorities and flexibilities to recruit diverse candidates (including veteran, minority and disabled candidates). The Committee believes that this requirement will assist VA leaders and HR professionals in identifying shortcomings and targeting improvements as well as provide needed transparency to Congress, allowing the Committee to conduct better oversight of VA's HR functions.

#### *Section 12. Employment of students and recent graduates*

As noted in Section 10 above, VA's existing workforce is aging and increasingly retirement eligible, creating concerns about the Department's ability to continue providing high-quality benefits and services to future generations of veterans. Worryingly, in 2015, GAO found that 42% of VHA's overall senior leadership was eligible to retire and, by fiscal year 2019, one in five VA nurses would be eligible to retire.<sup>10</sup> The Committee believes that improving the recruitment and retention of younger employees is critical to the Department's continued success. However, VA has historically performed poorly in comparison to other Federal agencies in hiring younger employees. According to OPM, in 2015, 25.2% of new hires government-wide were under the age of 30 compared to just 15.7% of VA's new hires. While VA has an important medical professional training mission that could be leveraged to recruit young providers to VA service, just 0.68% of VA's total workforce were under the age of 25 and just 5.35% were under the age of 30 in 2015.<sup>11</sup>

To assist VA in bringing needed young employees on-board, Section 12 of the bill would require VA to promulgate regulations to allow for excepted service appointments for students and recent graduates leading to conversion to career or career conditional employment. The Committee is hopeful that this authority will be useful in creating a pipeline of younger professionals that will offset staffing shortages as the current VA workforce retires.

#### *Section 13. Exit surveys*

Voluntary, anonymous exit surveys are an important tool to inform HR professionals and agency leaders about why departing employees choose to leave their current positions and, thus, how to better retain others in the workforce. While VHA has an existing exit survey process, the Committee believes that VHA currently does a lackluster job at administering exit surveys and often fails to request the completion of a survey from a departing employee, thus denying VHA the opportunity to improve retention moving forward. This is evidenced by a 2016 GAO finding that only an average of 30 percent of all clinical employees who leave have com-

<sup>10</sup>GAO-15-794, September 2015, "Oversight Improvements Needed for Nurse Recruitment and Retention Initiatives," <http://www.gao.gov/assets/680/672839.pdf>

<sup>11</sup>Testimony from the Partnership for Public Service, March 16, 2016, "Legislative Hearing on draft legislation to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs," <https://veterans.house.gov/hearings/legislative-hearing-draft-legislation-improve-authority-secretary-veterans-affairs-hire-0>



pleted VHA's exit survey over the last five years.<sup>12</sup> This is particularly concerning given that GAO also found that voluntary resignations accounted for an average of 54 percent of losses from VA's top five most critical shortage occupations from 2011 to 2015.<sup>13</sup> Factors that lead to employee resignations cannot be addressed if they are not identified. To address this shortcoming, Section 13 of the bill would require VA to develop and conduct a standardized, anonymous exit survey to be voluntarily completed by VA employees who voluntarily elect to terminate their employment with the Department. The results of these surveys are to be compiled and shared with Congress in an annual report.

#### HEARINGS

There were no Subcommittee or Full Committee hearings held on H.R. 1367.

#### SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 1367.

#### COMMITTEE CONSIDERATION

On March 8, 2017, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 1367 to be reported favorably to the House of Representatives by voice vote. A motion by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs, to report H.R. 1367 favorably to the House of Representatives was agreed to by voice vote.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 1367 reported to the House.

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<sup>12</sup>GAO-16-666R, July 29, 2016, "Personnel Data Show Losses Increased for Clinical Occupations from Fiscal Year 2011 through 2015, Driven by Voluntary Resignations and Retirements," <http://www.gao.gov/products/GAO-16-666R>.

<sup>13</sup>Ibid.

REPUBLICANS  
DAVID P. ROE, TENNESSEE, CHAIRMAN

COMMITTEE CORRESPONDENCE

DEMOCRATS  
TIM WALZ, MINNESOTA, RANKING

**U.S. House of Representatives**

COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED FIFTEENTH CONGRESS  
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WASHINGTON, DC 20515  
<http://veterans.house.gov>

March 10, 2017

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

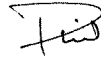
Dear Chairman Chaffetz:

In reference to your letter on March 10, 2017, I write to confirm our mutual understanding regarding H.R. 1367, to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs and for other purposes.

I appreciate the Committee on Oversight and Government Reform's waiver of consideration of provisions under its jurisdiction and its subject matter as specified in your letter. I acknowledge that the waiver was granted only to expedite floor consideration of H.R. 1367 and does not in any way waive or diminish the Committee on Oversight and Government Reform's jurisdictional interests over this or similar legislation. I will support a request from the Committee on Oversight and Government Reform for appointment to any House-Senate conference on H.R. 1367. Finally, I will also support your request to include a copy of our exchange of letters on this matter in the *Congressional Record* during floor consideration.

Thank you for your attention and assistance in this matter.

Sincerely,



**DAVID P. ROE M.D.**  
Chairman

cc: The Honorable Paul Ryan, Speaker of the House  
The Honorable Elijah E. Cummings, Ranking Member, Committee on Oversight and Government Reform  
The Honorable Tim Walz, Ranking Member, Committee on Veterans' Affairs  
Mr. Thomas J. Wickham Jr., Parliamentarian

JASON CHAFFETZ, UTAH  
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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March 10, 2017

The Honorable David P. Roe  
Chairman  
Committee on Veterans' Affairs  
335 Cannon House Office Building  
Washington, D.C. 20515

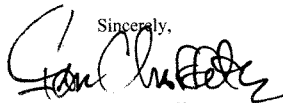
Dear Mr. Chairman:

I write concerning H.R. 1367, "to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs, and for other purposes." As you know, the Committee on Veterans' Affairs received an original referral and the Committee on Oversight and Government Reform a secondary referral when the bill was introduced on March 6, 2017. I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Oversight and Government Reform will forego action on the bill.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 1367 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation. Further, I request your support for the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Veterans' Affairs, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Sincerely,



Jason Chaffetz  
Chairman

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Elijah E. Cummings, Ranking Minority Member, Committee on Oversight and Government Reform  
The Honorable Thomas J. Wickham, Parliamentarian

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to improve VA's ability to identify staffing shortages and recruit, retain, and quickly on-board high-quality employees to serve veteran patients and beneficiaries.

#### EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1367 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee believes that enactment of this bill would result in no additional direct spending over the 2018–2022 period. Assuming the appropriation of authorized amounts, the Committee estimates that the legislation would also have a discretionary cost of \$33 million over the 2018–2022 period.

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

#### FEDERAL MANDATES STATEMENT

With respect to the requirements of Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Sec-

tion 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4), the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether the provisions of the reported bill include unfunded mandates.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1367.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1367 is authorized by Congress’ power to “provide for the common Defense and general Welfare of the United States.”

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1367 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1367 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), H.R. 1367 would require the Secretary of Veterans Affairs to prescribe regulations pursuant to Section 12 of the bill that would allow for excepted service appointments of students and recent graduates of qualifying educational institutions leading to conversion to career or career conditional employment at the Department of Veterans Affairs.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Table of contents*

Section 1 of the bill would establish the table of contents.

##### *Section 2. Modification to annual determination of staffing shortages in Veterans Health Administration*

Section 2 of the bill would amend section 7412(a) of title 38 U.S.C. by striking “five occupations” and inserting “the five clinical occupations and the five nonclinical occupations” and striking “throughout the Department” and inserting “with respect to each medical center of the Department.”

*Section 3. Executive Management Fellowship Program*

Section 3(a) of the bill would amend chapter 7 of title 38 U.S.C. by adding at the end the following new subchapter, “SUBCHAPTER III—EXECUTIVE MANAGEMENT FELLOWSHIP PROGRAM §741. Executive Management Fellowship Program”.

Section 741(a) would establish an Executive Management Fellowship Program within VA with the purpose of providing eligible VHA and VBA employees with training and experience in the private sector and eligible private sector employees with training and experience in VA.

Section 741(b) would stipulate that the fellowship established pursuant to section 741(b) would last for one year. The VA participant would receive training and experience at a private sector entity that is engaged in the administration and delivery of health care or other services similar to the benefits administered by the Secretary of Veterans Affairs. The private sector participant would receive training and experience at VBA or VHA. Section 741(b) would also require VA to enter into agreements with private-sector entities as are necessary to carry out this Section.

Section 741(c) would require the Secretary, in August of each year, to select not fewer than 18 and not more than 30 eligible employees of VBA and VHA and not fewer than 18 and not more than 30 eligible employees of private-sector entities to receive a fellowship pursuant to section 741(a). Section 741(c) would also require the Secretary, to the extent practicable, to select eligible employee to participate in the fellowship from among employees who are veterans in a manner that is reflective of the demographics of the veteran population of the United States.

Section 741(d) would define an eligible employee with respect to a VBA or VBA employee, as an employee who: is compensated at a rate of basic pay not less than the minimum rate of basic pay payable for grade GS-14 of the General Schedule and not more than either the minimum rate of basic pay payable to a member of the Senior Executive Service under section 5382 of title 5 U.S.C. or the minimum rate of basic pay payable pursuant to chapter 74 of title 38 U.S.C. as the case may be; enters into an agreement with the Secretary under section 741(e); and, submits to the Secretary an application containing such information and assurances as the Secretary may require. Section 741(d) would define an eligible employee with respect to an employee of a private sector entity as an employee who: is employed in a position whose duties and responsibilities are commensurate with an eligible VA employee; enters into an agreement with the Secretary under section 741(e); and, submits to the Secretary an application containing such information and assurances as the Secretary may require.

Section 741(e) would require an agreement between the Secretary and a VA participant in the fellowship program established pursuant to section 741(a) to be in writing, to be signed by the participant, and to include the following: the Secretary’s agreement to provide the participant with a fellowship agreement; the participant’s agreement to accept the fellowship and to serve as a full-time employee in VBA or VHA for at least two years after completion of the fellowship as specified in the agreement and, that, during the two-year period beginning on the last day of the fellowship, the participant will not accept employment in the same industry of

the private sector entity at which the participant accepts the fellowship; a statement of the damages to which the United States is entitled under this subchapter for the participant's breach of this agreement; and, such other terms as the Secretary determines are required to be included in the agreement. Section 741(e) also requires an agreement between the Secretary and a private sector participant to be in writing, to be signed by the participant, and to include the following provisions: the Secretary's agreement to provide the participant with a fellowship, the participant's agreement to accept the fellowship, and such other terms as the Secretary determines are required to be included in the agreement.

Section 741(f) would require a VA participant to be considered a VA employee for all purposes, including for purposes of receiving a salary and benefits, and to remain eligible for all promotion and incentive programs otherwise available to such employee. Section 741(f) would also require a private sector participant to be considered an employee of the private sector entity that employs the participant for all purposes, including for purposes of receiving a salary and benefits, and to be treated as a VA contractor during the fellowship.

Section 741(g) would, not later than 60 days after completing a fellowship, require the Secretary to submit a report on the fellowship describing the duties of the fellowship participants and any recommendations of the participant for the Secretary of industry processes, technologies, and best practices and to submit such report without change to the Committees on Veterans' Affairs of the House of Representatives and of the Senate no later than seven days after receiving such report.

Section 741(h) would define the term "Department participant" as an employee of VBA or VHA who is participating in the fellowship pursuant to section 741 (a) and the term "private sector participant" as an employee of a private sector entity who is participating in the fellowship pursuant to section 741 (a).

Section 3(b) of the bill would require the Secretary to implement the Executive Management Fellowship Program required under section 741 of title 38 U.S.C. as added by Section 3(a) of the bill not later than 90 days after the date of enactment.

Section 3(c) of the bill would amend the table of sections at the beginning of chapter 7 of title 38 U.S.C. by adding at the end the following new items, "SUBCHAPTER III—EXECUTIVE MANAGEMENT FELLOWSHIP PROGRAM § 741. Executive Management Fellowship Program".

*Section 4. Accountability of leaders in managing the Department of Veterans Affairs*

Section 4(a) of the bill would amend chapter 7 of title 38 U.S.C. by inserting after section 717 the following new section, "§719. Annual performance plan for political appointees".

Section 719(a) would require the Secretary of Veterans Affairs to conduct an annual performance plan for each VA political appointee that is similar to the annual performance plan conducted for a VA employee who is appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5 U.S.C. within the VA Senior Executive Service.

Section 719(b) would require each performance plan pursuant to section 719(a) to include an assessment of whether the appointee is meeting the following goals: recruiting, selecting, and retaining well-qualified individuals at VA; engaging and motivating employees; training and developing employees and preparing those employees for future leadership roles within VA; and, holding each VA employee that is a manager accountable for addressing issues relating to performance, in particular issues relating to the performance of employees that relate to the manager.

Section 719(c) would define the term “political appointee” as a VA employee who holds a position which has been excepted from the competitive service by reason of its confidential policy-determining, policy-making, or policy-advocating character or a position in the Senior Executive Service as a noncareer appointee as such term is defined in section 3132(a) of title 5 U.S.C.

Section 4(b) of the bill would amend the table of sections at the beginning of chapter 7 of title 38 U.S.C. by amending after the item relating to section 717 the following new item, “§719. Annual performance plan for political appointees”.

*Section 5. Modification to veterans preference*

Section 5(a) of the bill would amend section 2108(1)(B) and (D) of title 5 U.S.C. by striking “consecutive” and inserting “cumulative” in every instance.

Section 5(b) of the bill would amend section 2108(4) of title 5 U.S.C. to read as follows: “(4) ‘preference eligible’ includes a retired member of the armed forces; and”.

*Section 6. Reemployment of former employees*

Section 6(a) of the bill would allow the Secretary of Veterans Affairs to noncompetitively appoint a qualified former employee to any position within the competitive service or any excepted service position under chapter 74 of title 38 U.S.C. at VA that is one grade higher than the grade of the position at VA most recently occupied by the employee.

Section 6(b) of the bill would prohibit the Secretary from appointing a qualified former employee to a position that is more than one grade (or equivalent) higher than the position at VA most recently occupied by the employee.

Section 6(c) of the bill would define the term “qualified former employee” to mean any individual who: formerly occupied any position at VA within two years of applying for reemployment at VA; voluntarily left such position or was subject to a reduction in force and had a satisfactory performance record; and, since leaving, has maintained licensing requirements related to the position, if any, and gained skill, knowledge, or other factors related to the position.

*Section 7. Recruiting database*

Section 7(a) of the bill would establish a single database that lists each vacant position at VA that the Secretary of Veterans Affairs determines is critical to VA’s mission, difficult to fill, or both.

Section 7(b) of the bill would require the Secretary, at the election of the applicant, to consider the applicant for other similar vacant positions listed in the database established under Section 7(a) of the bill if the Secretary determines that the applicant for a va-



cant position listed in the database is qualified for such position but does not select the applicant for same.

Section 7(c) of the bill would stipulate that, if the Secretary does not fill a vacant position listed in the database established under Section 7(a) of the bill after a period determined appropriate by the Secretary, the Secretary is required to ensure that applicants described in Section 7(b) of the bill are considered for such position and are required to use the database established under Section 7(a) of the bill to assist in filling such position.

Section 7(d) of the bill would require the Secretary to submit a report to Congress on the use and efficacy of the database established under Section 7(a) of the bill not later than one year after the date of enactment.

#### *Section 8. Human Resources Academy*

Section 8(a) of the bill would require the Secretary of Veterans Affairs to provide VHA HR professionals training on how to best recruit and retain VHA employees, including with respect to any recruitment and retention matters that are unique to VHA pursuant to chapter 74 of title 38 U.S.C. or other provisions of law. Section 8(a) of the bill would also provide such training in manner in which the Secretary determines appropriate in light of budget, travel, and other constraints.

Section 8(b) of the bill would require the Secretary to ensure that each VHA HR professional receives the training described in Section 8(a) of the bill as soon as practicable after being hired by the Secretary as a HR professional and annually thereafter.

Section 8(c) of the bill would require the Secretary to ensure that each VHA HR professional, upon completion of the training described in Section 8(a) of the bill, certifies that the professional received the training and understands the information provided by the training.

Section 8(d) of the bill would require the Secretary to submit the Committees on Veterans' Affairs of the House of Representatives and the Senate an annual report on the training described in Section 8(a) of the bill, including the cost of providing such training and the number of human resources professionals who received such training during the year covered by the report.

#### *Section 9. Promotional opportunities for technical experts*

Section 9 of the bill would, not later than one year after the date of enactment, require the Secretary of Veterans Affairs to establish a promotional track system for VA employees that the Secretary determines are technical experts pursuant to regulations prescribed by the Secretary for purposes of carrying out this Section. The promotional track system is required to provide any such employee the opportunity to advance within VA without being required to transition to a management system and, for the purposes of achieving career advancement, provide for the establishment of new positions within VA and provide for increases in pay for any such employee, notwithstanding any other provision of law.

#### *Section 10. Comptroller General study on succession planning*

Section 10(a) of the bill would require the Comptroller General of the United States to conduct a study on the succession planning

conducted at each VA medical facility as well as the succession planning at VBA and NCA.

Section 10(b) of the bill would require the study mandated under Section 10(a) of the bill to include, for each entity, the following: a determination of the mission-critical positions within the entity and the vacancy risk of such positions; an analysis of the future needs for mission-critical positions and gaps within the existing talent pool of the entity; a description of strategies to close skill gaps through the use of training for existing staff, targeted recruitment, and hiring; a plan to regularly evaluate progress of staff and update existing succession plans using clear and measurable metrics and benchmarks; a demonstration of the capacity of the entity to execute succession plans with successful succession management strategies; and, any other matters the Comptroller General determines appropriate.

Section 10(c) of the bill would, not later than one year after the date of enactment, require the Comptroller General to submit to the Committees on Veterans' Affairs of the House of Representatives and of the Senate a report containing each study conducted under section 10(a) of the bill.

#### *Section 11. Information on hiring effectiveness*

Section 11(a) of the bill would require the Secretary of Veterans Affairs to measure and collect the following information on indicators of hiring effectiveness: (1) with respect to recruiting and hiring, (A) the ability to reach and recruit well-qualified talent from diverse talent pools, including sources of candidates for mission-critical occupations, (B) the use and impact of special hiring authorities and flexibilities to recruit most qualified applicants, including the use of student internships as a talent pool for permanent hires, (C) the use and impact of special hiring authorities and flexibilities to recruit diverse candidates including veteran, minority, and disabled candidates, (D) the use and impact of special hiring authorities to recruit candidates for mission-critical occupations and occupations with shortages, (E) the age, educational level, and source of applicants, (F) the length of time between the date on which a position is advertised and the date on which a first offer of employment is made, (G) the length of time between the date on which a first offer of employment for a position is made and the date on which a new hire starts in that position, (H) the number of internal and external applicants for positions, (I) and the number of offers accepted compared to the number of offers made for permanent positions; (2) with respect to hiring authority, the satisfaction of the hiring authority with the quality of new hires, the match between the skills of newly hired individuals and the needs of VA, the hiring process and hiring outcomes after the first year of the new hire's employment, the length of time that elapses to fill a position for a new hire to begin working in a new position, and mission-critical deficiencies filled by new hires and the connection between mission-critical deficiencies and annual agency performance; (3) satisfaction of employment applicants with the hiring process, including with respect to the clarity of the job announcement, reasons for withdrawal of applications, user-friendliness of the application process, communication regarding status of applications, and timeliness of hiring decisions; (4) with respect to a newly

hired employee, (A) the satisfaction of the employee with the hiring process, (B) the satisfaction with the process of joining and becoming oriented with VA, including with respect to timeliness, the orientation process, and being provided with timely and useful new employee information and assistance after the hire is made but before the new hire starts and after the new hire has begun, (C) attrition and reasons for leaving, (D) investment in training and development for the employee during the first year of employment, (E) and significant barriers to effective recruitment, selection, joining, and becoming oriented with VA and retention of employees.

Section 11(b) of the bill would, to the extent practicable and in a manner which protects personally identifiable information of applicants and employees, require the Secretary to collect and report the data collected pursuant to Section 11(a) of the bill disaggregated by facility or Veterans Integrated Service Network.

Section 11(c) of the bill would require the Secretary to submit to the Committees on Veterans' Affairs of the House of Representatives and Senate a report on the information collected pursuant to Section 11(a) of the bill on an annual basis. Section 11(c) of the bill would also require the Secretary to make publicly available the information collected pursuant to Section 11(a) of the bill in a consistent and machine-readable format to allow for a comparison of hiring effectiveness and experience by Veterans Integrated Service Network or comparable public or private sector organization.

#### *Section 12. Employment of students and recent graduates*

Section 12(a) of the bill would require the Secretary to prescribe regulations to allow for excepted service appointments of students and recent graduates leading to conversion to career or career conditional employment of a student or recent graduate of a qualifying educational institution, as defined by the Department.

Section 12(b) of the bill would require the conversion authority described in Section 12(a) of the bill to be applicable to individuals in good standing who are employed in a qualifying internship or fellowship program at VA; are employed by VA in a volunteer capacity and performing substantive duties comparable to those individuals in internships or fellowship programs and meet the required number of hours for conversion; or are employed by VA under a contract or agreement with an external non-profit organization and performing substantive duties comparable to those of individuals in internship or fellowship programs.

Section 12(c) of the bill would, for the purposes of Section 12(b) of the bill, require the hours of work performed by an individual to be considered equal to those performed by an individual employed in a qualifying internship or fellowship program of VA.

#### *Section 13. Exit surveys*

Section 13(a) of the bill would require VA to develop and carry out a standardized exit survey to be voluntarily completed by career and noncareer employees and executives at VA who voluntarily separate from VA. Section 13(a) would also require the exit survey to be developed in consultation with an appropriate non-VA entity with experience developing such surveys.

Section 13(b) of the bill would require the survey to contain, at a minimum, the: reasons for leaving VA; efforts made by the super-

visor of the employee to retain the individual; extent of job satisfaction and engagement during the employment; intent of the employee to either remain employed within the Federal government or to leave employment with the Federal government; and other matters the Secretary determines appropriate.

Section 13(d) of the bill would require the Secretary to ensure that the results of the survey required by Section 13(a) of the bill are shared on an annual basis with directors and managers of VA and Veterans Integrated Service Network facilities.

Section 13(e) of the bill would, not later than one year after the date of enactment, require the Secretary to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report containing aggregate results of the exit survey under Section 13(a) of the bill covering the year prior to the report and containing: an analysis of the most common reasons employees choose to leave VA; steps the Secretary is taking to improve retention, particularly for mission-critical occupations; the demographic characteristics of employees choosing to leave VA; any legislative barriers to improving employee retention; and the number of employees who took the exit survey under Section 13(a) of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

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**PART I—GENERAL PROVISIONS**

\* \* \* \* \*

**CHAPTER 7—EMPLOYEES**

SUBCHAPTER I —GENERAL EMPLOYEE MATTERS

Sec.

701. Placement of employees in military installations.

\* \* \* \* \*

719. *Annual performance plan for political appointees.*

\* \* \* \* \*

*SUBCHAPTER III—EXECUTIVE MANAGEMENT FELLOWSHIP PROGRAM*

741. *Executive Management Fellowship Program.*

\* \* \* \* \*

SUBCHAPTER I—GENERAL EMPLOYEE MATTERS

\* \* \* \* \*

**§ 719. Annual performance plan for political appointees**

(a) *IN GENERAL.*—The Secretary shall conduct an annual performance plan for each political appointee of the Department that is similar to the annual performance plan conducted for an employee of the Department who is appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

(b) *ELEMENTS OF PLAN.*—Each annual performance plan conducted under subsection (a) with respect to a political appointee of the Department shall include an assessment of whether the appointee is meeting the following goals:

(1) Recruiting, selecting, and retaining well-qualified individuals for employment at the Department.

(2) Engaging and motivating employees.

(3) Training and developing employees and preparing those employees for future leadership roles within the Department.

(4) Holding each employee of the Department that is a manager accountable for addressing issues relating to performance, in particular issues relating to the performance of employees that report to the manager.

(c) *DEFINITION OF POLITICAL APPOINTEE.*—In this section, the term “political appointee” means an employee of the Department who holds—

(1) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(2) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a) of title 5).

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**SUBCHAPTER III—EXECUTIVE MANAGEMENT FELLOWSHIP PROGRAM**

**§ 741. Executive Management Fellowship Program**

(a) *FELLOWSHIP PROGRAM.*—There is in the Department an Executive Management Fellowship Program. The purpose of the program shall be to provide—

(1) eligible employees of the Veterans Benefits Administration and the Veterans Health Administration with training and experience in the private sector; and

(2) eligible employees of a private-sector entity with training and experience in the Department of Veterans Affairs.

(b) *FELLOWSHIP.*—(1) A fellowship provided under this section is a one-year fellowship during which—

(A) with respect to a Department participant, the participant receives training and experience at a private-sector entity that is engaged in the administration and delivery of health care or other services similar to the benefits administered by the Secretary; and

(B) with respect to a private-sector participant, the participant receives training and experience at the Veterans Benefits Administration or the Veterans Health Administration.

(2) The Secretary shall enter into such agreements with private-sector entities as are necessary to carry out this section.

(c) *SELECTION OF RECIPIENTS.*—(1) *In August of each year, the Secretary shall select—*

(A) *not fewer than 18 and not more than 30 eligible employees of the Veterans Benefits Administration and the Veterans Health Administration to receive a fellowship under this section; and*

(B) *not fewer than 18 and not more than 30 eligible employees of private-sector entities to receive a fellowship under this section.*

(2) *To the extent practicable, the Secretary shall select eligible employees under subparagraphs (A) and (B) of paragraph (1) from among eligible employees who are veterans in a manner that is reflective of the demographics of the veteran population of the United States.*

(d) *ELIGIBLE EMPLOYEES.*—*For the purposes of this section, an eligible employee is—*

(1) *with respect to an employee of the Veterans Benefits Administration or the Veterans Health Administration, an employee who—*

(A) *is compensated at a rate of basic pay not less than the minimum rate of basic pay payable for grade GS–14 of the General Schedule and not more than either the minimum rate of basic pay payable to a member of the Senior Executive Service under section 5382 of title 5, United States Code, or the minimum rate of basic pay payable pursuant to chapter 74 of this title, as the case may be;*

(B) *enters into an agreement with the Secretary under subsection (e); and*

(C) *submits to the Secretary an application containing such information and assurances as the Secretary may require; and*

(2) *with respect to an employee of a private-sector entity, an employee who—*

(A) *is employed in a position whose duties and responsibilities are commensurate with an employee of the Department described in paragraph (1);*

(B) *enters into an agreement with the Secretary under subsection (e); and*

(C) *submits to the Secretary an application containing such information and assurances as the Secretary may require.*

(e) *AGREEMENTS.*—(1) *An agreement between the Secretary and a Department participant shall be in writing, shall be signed by the participant, and shall include the following provisions:*

(A) *The Secretary's agreement to provide the participant with a fellowship under this section;*

(B) *The participant's agreement—*

(i) *to accept the fellowship;*

(ii) *after completion of the fellowship, to serve as a full-time employee in the Veterans Benefits Administration or the Veterans Health Administration for at least two years as specified in the agreement; and*

(iii) *that, during the two-year period beginning on the last day of the fellowship, the participant will not accept employment in the same industry as the industry of the pri-*

*vate-sector entity at which the participant accepts the fellowship.*

*(C) A provision that any financial obligation of the United States arising out of an agreement entered into under this subchapter, and any obligation of the participant which is conditioned on such agreement, is contingent upon funds being appropriated.*

*(D) A statement of the damages to which the United States is entitled under this subchapter for the participant's breach of the agreement.*

*(E) Such other terms as the Secretary determines are required to be included in the agreement.*

*(2) An agreement between the Secretary and a private-sector participant shall be in writing, shall be signed by the participant, and shall include the following provisions:*

*(A) The Secretary's agreement to provide the participant with a fellowship under this section.*

*(B) The participant's agreement to accept the fellowship.*

*(C) Such other terms as the Secretary determines are required to be included in the agreement.*

*(f) TREATMENT OF RECIPIENTS.—(1) A Department participant shall be considered an employee of the Department for all purposes, including for purposes of receiving a salary and benefits, and shall remain eligible for all promotion and incentive programs otherwise available to such an employee.*

*(2) A private-sector participant shall be considered an employee of the private-sector entity that employs the participant for all purposes, including for purposes of receiving a salary and benefits, and during the fellowship shall be treated as a contractor of the Department.*

*(g) REPORTS.—Not later than 60 days after completing a fellowship under this section, a recipient of the fellowship shall submit to the Secretary a report on the fellowship. Each such report shall describe the duties of the recipient during the fellowship and any recommendations of the recipient for the application by the Secretary of industry processes, technologies, and best practices. Not later than seven days after receiving each such report, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives such report without change.*

*(h) DEFINITIONS.—In this section:*

*(1) The term "Department participant" means an employee of the Veterans Benefits Administration or the Veterans Health Administration who is participating in the fellowship under this section.*

*(2) The term "private-sector entity" includes an entity operating under a public-private partnership.*

*(3) The term "private-sector participant" means an employee of a private-sector entity who is participating in the fellowship under this section.*

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**PART V—BOARDS, ADMINISTRATIONS, AND SERVICES**

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**CHAPTER 74—VETERANS HEALTH ADMINISTRATION - PERSONNEL**

**SUBCHAPTER I—APPOINTMENTS**

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**§ 7412. Annual determination of staffing shortages; recruitment and appointment for needed occupations**

(a) IN GENERAL.—Not later than September 30 of each year, the Inspector General of the Department shall determine, and the Secretary shall publish in the Federal Register, **[the five occupations]** *the five clinical occupations and the five nonclinical occupations* of personnel of this title of the Department covered under section 7401 of this title for which there are the largest staffing shortages **[throughout the Department]** *with respect to each medical center of the Department*, as calculated over the five-year period preceding the determination.

(b) RECRUITMENT AND APPOINTMENT.—Notwithstanding sections 3304 and 3309 through 3318 of title 5, the Secretary may, upon a determination by the Inspector General under subsection (a) that there is a staffing shortage throughout the Department with respect to a particular occupation, recruit and directly appoint, during the fiscal year after the fiscal year during which such determination is made, qualified personnel to serve in that particular occupation for the Department.

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**TITLE 5, UNITED STATES CODE**

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**PART III—EMPLOYEES**

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**SUBPART A—GENERAL PROVISIONS**

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**CHAPTER 21—DEFINITIONS**

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**§ 2108. Veteran; disabled veteran; preference eligible**

For the purpose of this title—

(1) “veteran” means an individual who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign



badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 **[consecutive]** *cumulative* days any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(C) served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(D) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 **[consecutive]** *cumulative* days any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom;

and, except as provided under section 2108a, who has been discharged or released from active duty in the armed forces under honorable conditions;

(2) “disabled veteran” means an individual who has served on active duty in the armed forces, (except as provided under section 2108a) has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department;

(3) “preference eligible” means, except as provided in paragraph (4) of this section or section 2108a(c)—

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B), (C), or (D) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the parent of an individual who lost his or her life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—

(i) the spouse of that parent is totally and permanently disabled; or

(ii) that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse;

(G) the parent of a service-connected permanently and totally disabled veteran, if—

(i) the spouse of that parent is totally and permanently disabled; or

(ii) that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse; and

(H) a veteran who was discharged or released from a period of active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10);

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

[(4) except for the purposes of chapters 43 and 75 of this title, “preference eligible” does not include a retired member of the armed forces unless—

[(A) the individual is a disabled veteran; or

[(B) the individual retired below the rank of major or its equivalent; and]

(4) “*preference eligible*” includes a retired member of the armed forces; and

(5) “retired member of the armed forces” means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.

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