

**STATEMENT OF
HARVEY JOHNSON
DEPUTY ASSISTANT SECRETARY
OFFICE OF RESOLUTION MANAGEMENT, DIVERSITY & INCLUSION
OFFICE OF HUMAN RESOURCES AND ADMINISTRATION/OPERATIONS,
SECURITY AND PREPAREDNESS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

SEPTEMBER 22, 2021

Good afternoon, Chairman Pappas, Ranking Member Mann and Members of the Subcommittee. Thank you for inviting us here today to provide an update on conscious Inclusion, Diversity, Equity and Access (I-DEA), and eight bills that relate to VA's important efforts on I-DEA. Joining me today is Kshemendra Paul, Chief Data Officer.

We are providing views on the following bills: H.R. 5170, H.R. 4845, H.R. 3930, H.R. 2806, H.R. 2385, H.R. 1596, and two draft bills concerning accessibility to demographic data that support diversity, equity and inclusion efforts. Before turning to the legislation on today's agenda, I would like to take this opportunity to update the Committee on several aspects of VA's ongoing efforts.

Advancing I-DEA at VA:

VA is at an inflection point, which provides a remarkable opportunity for the Department to proactively examine and improve I-DEA. We are focused on creating a culture guided by principles such as empathy and accountability to review and rethink policies and programs that may have caused unintended barriers to serving Veterans. Central to that effort is fostering opportunities to conduct deep listening sessions and gain the perspectives of Veterans, employees, and community partners.

On April 1, 2021, Secretary McDonough chartered an 18-member Task Force to identify strategic opportunities for I-DEA across VA's vast enterprise. The I-DEA Task Force conducted a 120-day enterprise review from April 1, 2021, through July 31, 2021. It conceptualized the agency's perspective on equity, identified and executed accomplishments to advance equity and conducted outreach to community partners to learn best practices. VA seeks to evaluate the intersectionality of systemic inequities and address institutional barriers to employee development, service delivery and access to improve Veterans' outcomes, experiences and quality of life. VA strives to understand barriers to opportunity with the goal of providing everyone, especially those in underserved communities, with fair access to health care and benefits.

The Task Force accomplished several goals in advancing I-DEA, particularly for our LGBTQ+ community. This was realized by initiating the rulemaking process to modify the Code of Federal Regulations to expand VA's gender affirming care and benefits package for Veterans and establishing the first ever VA PRIDE Employee Resource Group and raising the PRIDE flag at VA Central Office during PRIDE month for the first time. The I-DEA Task Force also developed 20 recommendations for improvement after several interviews with community partners for the Secretary to consider in the coming months.

Steps to Advance Equity

VA understands that advancing equity in outcomes extends to both Veterans and employees. For employees, VA established a barrier analysis workgroup in January 2021, with the purpose of identifying barriers to recruiting, retaining and promoting groups considered underrepresented at the present time. The first of these work groups will conclude in January 2022. VA will stand up two additional groups beginning November 2021.

For Veterans and their families, the Department continues to embed equity in the Veterans Health Administration's (VHA) operations, benefits, and services by understanding health care disparities. The current VA medical benefits package under 38 C.F.R. § 17.38 excludes "gender alteration," now referred to as gender affirming surgery and care. VA has long provided comprehensive care to transgender Veterans, with the exception of gender affirming surgery. Secretary McDonough in June 2021 signed an Executive Decision Memo to start the rulemaking process, which will enable VA to provide a full continuum of care for transgender Veterans. If a Veteran decides on that course of action, it is beneficial for it to be provided within the VA system, to prevent fragmentation of care. While the rulemaking process is underway, VA will develop internal guidelines, bolster capacity (internal and external) to deliver this care to Veterans and develop quality assurance metrics.

A cross-functional team of VA employees are working to examine and review internal and external policies that impact LGBTQ+ Veterans and employees, and our goal is to ensure LGBTQ+ Veterans and employees are treated equitably across the VA system. The Veterans Experience Office (VEO) is instrumental in this effort by incorporating Human Centered Design into their approach to capturing the experiences of Veterans through new capabilities in the Veterans Signals platform that translates experiences of underserved communities to inform actionable solutions. Starting in FY 2022, the Department plans to implement changes to VA's experience surveys to include questions about gender identity, sexual orientation, race, and ethnicity, which can lead to more refined qualitative insights about equity.

In addition, VA continues to assess the inequitable access to the benefits claims process for American Indian/Alaska Native (AI/AN) Veterans, including barriers created for those AI/AN Veterans who live in remote Tribal communities. To address this issue, VA engaged in consultation with Tribal governments to develop partnerships that enhance access to services and benefits by Veterans and their families. One notable outcome from these collaborations was the development of Tribal Claims Clinics. Although Tribal Claims Clinics were suspended in FY 2020 due to COVID-19, the Veterans Benefits Administration (VBA) partnered with the Office of Tribal Government Relations (OTGR) to conduct seven virtual claims clinics in three Tribal communities since March 2021. VBA participated in Tribal Veterans Representatives training for AI/AN individuals who are appointed by their tribes to assist Veterans with accessing VA benefits and services. VA is committed to ensuring AI/AN Veterans and their families have access to VA benefits and services they are entitled to receive.

Stakeholder Engagement / Community Partners

Engaging with community partners and experts outside of VA is essential to understanding lessons learned and best practices to advance equity. Outside advocates and subject matter experts (such as Veterans Service Organizations (VSO), non-governmental organizations, businesses, and academia partners) maintain a responsive relationship with Veterans. The I-DEA Task Force engaged with community partners consisting of professional associations and other stakeholders who have extensive experience on inequities that Veterans face when using VA programs and services. The purpose of these sessions is capture key insights, “pain points” and bright spots from our interviews with community partners that serve particularly Veterans from underserved communities. This will allow VA to learn where gaps exist in serving specific communities and the best practices VA can leverage to advance I-DEA. These engagements provided comprehensive insights from across the communities and demographics that VA serves. Upon capturing key insights, the I-DEA Task Force assessed key insights and used these insights to inform the recommendations outlined in the I-DEA Action plan.

These interactions provided comprehensive insights from across the communities and demographic groups VA serves. Community partners were essential to sparking new ideas and refining perceptions of how to best serve Veterans by integrating equity into the Department’s benefits and services. The I-DEA Task Force conducted targeted interviews with more than 20 community partners and this work is ongoing. We note that protection of Veteran privacy is paramount in these efforts. They are designed to avoid collection of personally identifiable information and use aggregate data to inform VA policies.

VA's Enduring Commitment to Equity, Diversity, and Inclusion

It is a strategic imperative that we build a VA that integrates the principles of I-DEA into the fabric of our mission, readiness and customer service. We can achieve our mission only by embracing the incredible diversity that defines the Veteran population and all of America and leveraging the talent of our diverse employees. The success of our mission depends on the inclusion and contributions of their expertise, talents, ideas, and perspectives. The ultimate goal through these strategies is to be an organization committed to efficiency, inclusivity and justice for employees and Veterans we serve. The work ahead in this area moves VA closer to fulfilling our sacred obligation to Veterans, employees, caregivers, and survivors.

We also appreciate being able to convey this update in our testimony today. Turning to the legislation on the Committee's agenda today, we provide the following. For all of the bills, we stand ready to be proactive in our collaboration efforts with the Committee on legislation that will support our common interest to advance inclusion, diversity, equity and access.

H.R. 5170, Securing the Rights our Veterans Earned Act, or SERVE Act

The draft bill would amend five provisions of law regarding eligibility for health care and benefits, specifically: (1) for health care under 38 U.S.C. § 1710; (2) for readjustment counseling services under 38 U.S.C. § 1712A; (3) for internment in national cemeteries under section 38 U.S.C. § 2402; (4) for post-9/11 educational assistance under 38 U.S.C. § 3311; and (5) for housing loans under 38 U.S.C. § 3702. The bill would amend 38 U.S.C. § 1710(a)(2), which requires the Secretary to furnish hospital care and medical services, and authorizes the Secretary to furnish nursing home care, which the Secretary determines to be necessary to certain individuals identified in subparagraphs (A) through (G). The bill would add a new subparagraph (H) concerning former members of the Armed Forces who, by reason of sexual orientation or gender identity (including a diagnosis of gender dysphoria) received an entry-level separation, a discharge under honorable conditions, or a discharge under conditions other than honorable. Sections 1712A, 2402, 3311 and 3702 of title 38, U.S.C., would be amended to include cross-references to this new 38 U.S.C. §1710(a)(2)(H).

We believe the intent of this bill is to expand access to VA benefits to certain individuals who were discharged from the Armed Forces, but we are concerned that the bill has significant technical issues. Eligibility for benefits is quite complex, and we would appreciate the opportunity to discuss this bill and the intended results with the Committee before it takes further action on the legislation.

VA has also recently announced efforts under its existing authority to offer relief for those discharged from military service under these circumstances. Given the technical issues and numerous open questions about the applicability of the language, as well as non-legislative initiatives in this area VA is unable to adopt a policy position or offer a cost estimate on the legislation at this time. We would be glad to meet with you or your

staff to discuss these issues, as well as how VA can assist Veterans who were discharged for sexual orientation or gender identity, including use of the discharge upgrade and correction process.

H.R. 4845, to amend title 38, United States Code, to establish the Advisory Committee on Lesbian, Gay, Bisexual, Transgender and Queer Veterans.

H.R. 4845 would establish in the Department the Advisory Committee on Lesbian, Gay, Bisexual, Transgender and Queer Veterans (the Committee). It would include members appointed by the Secretary from the general public, including: 1) representatives of Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Veterans; 2) individuals who are recognized authorities in fields pertinent to the needs of LGBTQ Veterans, including the specific health care needs of LGBTQ Veterans; 3) representatives of LGBTQ Veterans with service-connected disabilities, including at least one transgender Veteran with a service-connected disability; 4) Veterans who are minority group Veterans as that term is considered in VA's Advisory Committee on Minority Veterans; and, 5) LGBTQ Veterans who are recently separated from service in the Armed Forces, including those involuntarily separated from the Armed Forces due to being LGBTQ.

The bill would include as ex-officio members the Secretary of Labor, the Secretary of Defense, and VA's Under Secretaries for Health and Benefits (or their designees). If enacted, the Secretary may invite other Federal officials to participate in meetings or other activities of the Committee.

H.R. 4845 would grant the Secretary discretion as to the number, terms of service and pay and allowances of Committee members, except that a term of service may not exceed 3 years, although a member may be reappointed. The Committee would be required to meet at least two times each fiscal year.

If passed, this would require the Secretary to regularly consult with and seek advice from the Committee with respect to the administration of benefits for LGBTQ Veterans, reports and studies pertaining to LGBTQ Veterans and the needs of LGBTQ Veterans with respect to compensation, health care, rehabilitation, outreach and other VA benefits and programs.

H.R. 4845 also would require the Committee to report on its programs and activities by July 1 of every even-numbered year, with prescribed subjects to be covered in the report. Within 60 days of that report, the Secretary must submit the report to Congress, with any comments the Secretary deems appropriate. The Committee would be free to report to the Secretary other such reports and recommendations it deems appropriate.

The Secretary and VA leadership consistently and aggressively seek input from multiple organizations (including LGBTQ+ Veterans and their advocates), as well as experts within the Department. We expect this effort to broaden and deepen as VA's I-DEA Task Force continues its work, as set out in detail above. Therefore, we do not believe a new advisory Committee as called for in H.R. 4845 is necessary. We are glad to continue our discussions with the Committee on these efforts.

H.R. 3930, the Voices for Veterans Act

H.R. 3930, the Voices for Veterans Act, would expand the membership of the current VA Advisory Committee on Minority Veterans to represent Veterans described as "lesbian, gay, bisexual, transgender, gender diverse, gender non-conforming, intersex, or queer."

VA supports this legislation. Given the successful history of the VA Advisory Committee on Minority Veterans (the Committee) to represent Veterans who have historically encountered discrimination, including their representation in its membership will enhance its mission and outreach portfolio. We believe this change, if enacted, can be accomplished without disruption to ongoing Committee operations or significant additional expense.

H.R. 2806, the Honoring All Veterans Act

H.R. 2806 would codify VA's mission statement as the following: "To fulfill President Lincoln's promise to care for those 'who shall have borne the battle' and for their families, caregivers and survivors." It requires associated Federal Register notification of the change, website updates and the issuance of guidance within 30 days of enactment. It also requires VA to submit an implementation report within 180 days of enactment.

VA recognizes that not all Veterans find the current mission statement ("To fulfill President Lincoln's promise 'To care for him who shall have borne the battle, and for his widow, and his orphan' by serving and honoring the men and women who are America's Veterans") welcoming and inclusive. In addition, some non-combat Veterans have raised concerns that the phrase "borne the battle" can lead to perceptions that VA only serves combat Veterans.

The Secretary has directed that a process be started with the Department's VEO to consult Veterans and Congress. We expect that will conclude early in 2022. Accordingly, we ask Congress to refrain from codifying VA's mission statement while that consultative process runs its course.

H.R. 2385, the Justice for Women Veterans Act

H.R. 2385 presents a series of findings recounting a detailed history of the treatment of involuntary discharges by the Armed Forces due to pregnancy, the judicial fight to end the practice, accomplished in 1976, and the negative effects on those women of that practice. It contains a statement expressing Congress' remorse for that history. The bill would require the Comptroller General to conduct a study regarding women involuntarily separated or discharged from the Armed Forces during the period 1951-1976 and enumerates five different elements for that study.

VA appreciates the recognition of this issue by Congress and defers to the Congress and the Government Accountability Office as far as a position on H.R. 2385.

H.R. 1596, the Commission to Study the Stigmatization, Criminalization and Ongoing Exclusion and Inequity for LGBTQ Servicemembers and Veterans Act.

H.R. 1596 would establish a new "Commission to Study the Stigmatization, Criminalization and Ongoing Exclusion and Inequity for LGBTQ Servicemembers and Veterans" (Commission). The Commission principally would identify and compile information about the history of military policy from the year 1778 onward, with enumeration of multiple historical events to be examined, including the arguments that led to the creation of the "Don't Ask Don't Tell" policy.

The Commission would be expected to hold hearings in U.S. cities it finds appropriate, and conduct outreach and public relations efforts to advertise the hearing and the opportunity to provide testimony, including written and oral testimonies from members of the Armed Forces and Veterans about their experiences. The Commission is charged with examining the impacts of discriminatory policies on the physical and mental well-being of members of the Armed Forces as well as the lasting impacts of those policies on those who were discharged due to sexual orientation or gender identity. The impacts to be examined include the effect of "Don't Ask Don't Tell" and the Transgender Service ban had on minority groups in the Armed Forces, particularly racial minorities and women.

The Commission is charged with making recommendations on appropriate ways to educate the American public about institutionalized and Government-sanctioned discrimination, including 1) consideration of the Government offering an apology for enforcing harmful discrimination; 2) streamlining discharge upgrades and record amendment through the Boards for Correction of Military Records; and 3) highlighting the service of LGBTQ persons in the military in materials distributed by VA and the Department of Defense (DoD); among other topics. The Commission would submit a written report of its findings to the Congress within 1 year of the first meeting of the Commission.

The Commission would be comprised of 16 members to be appointed within 30 days of enactment, and included: 1) seven members selected by the President; 2) three members appointed by the Speaker of the House; 3) two members appointed by the President pro tempore of the Senate; 4) two members appointed by the Secretary of Defense; and 5) two members appointed by the Secretary of Veterans Affairs. The bill describes various qualifications for appointed members.

The bill requires the President to call the first meeting of the Commission within 120 days after enactment of the bill, or 30 days after enactment of legislation-making appropriations to carry out the Act, whichever is later. Other provisions in the bill address quorum, compensation, authorities to compel attendance, testimony, production of documents and other administrative details of the new Commission. The Committee would terminate 90 days after the issuance of its report to the Congress. VA notes the subject matter of the Committee almost wholly concerns actions by, and past policies of, DoD, and therefore strongly recommends the Committee seek DoD's input on this legislation. We also note the Commission would be heavily dependent on DoD as a resource. That said, we do believe VA has a role and shared responsibility to participate in resolving this issue on behalf of our Veterans. VA is eager to assist any individuals who have been affected by the past discriminatory policies described in the bill and is already helping direct Veterans for assistance in obtaining a discharge upgrade or correction—please see <https://www.va.gov/discharge-upgrade-instructions/>. Please also be assured that should a commission of this type be established; VA will be eager to assist in its efforts to provide appropriate outreach and assistance to those negatively affected by past discrimination.

Draft Every Veteran Counts Act of 2021 and the Draft VA Inclusion, Diversity, Equity and Access Data Improvement Act, or VA IDEA DATA Act

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

VA has been pleased with the dialogue we've already been able to have with the Committee staff on the important topic of demographic data. These include VA's ongoing efforts under Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021, 86 Federal Register 7009) (the Order). The Order charged VA with pursuing a "comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice and equal opportunity is the responsibility of the whole of our Government."

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

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

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

Conclusion

This concludes my statement, Chairman Pappas. I would be happy to answer any questions you or other Members of the Committee may have.