

**STATEMENT OF JOHN BOERSTLER
CHIEF VETERANS EXPERIENCE OFFICER
VETERANS EXPERIENCE OFFICE (VEO)
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
U.S. HOUSE OF REPRESENTATIVES**

March 21, 2024

Good afternoon, Chairwoman Kiggans, Ranking Member Mrvan, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss pending legislation affecting a wide variety of administrations and program offices at the Department of Veterans Affairs (VA). Accompanying me today are Ms. Tracey Therit, Chief Human Capital Officer, Human Resources and Administration/Operations, Security, and Preparedness; Mr. David Perry, Chief Officer, Workforce Management and Consulting, Veterans Health Administration; and Mr. Charles Worthington, Chief Technology Officer, Office of Information and Technology.

H.R. 6452 – Veterans Scam and Fraud Evasion (VSAFE) Act

H.R. 6452 would establish a Fraud Evasion Officer within the Department of Veterans Affairs. This position would be responsible for scam and fraud prevention, reporting, and incident response plans at the Department.

VA supports this bill, if amended, and subject to the availability of appropriations.

VSAFE has existed as a cross-enterprise project team since January 2023. At that time, it was recognized that there are a number of offices all doing great work in the Veteran targeted fraud space. However, there was opportunity for coordination of efforts, cross-pollination, and partnered response both within VA and in conjunction with Federal, state, local, tribal and community partners.

Examples of this work include robust consumer protection outreach efforts in all formats by the Veterans Benefits Administration, the Veterans Health Administration, Office of Technology, and Office of the Inspector General. This includes electronic media, print media, targeted outreach events, sharing of resources with community partners to get the word out, and a dedicated call center for reporting. Larger outreach campaigns, conducted nationwide and in concert with our partners, can reach up to 31 million Veterans.

VA fraud protection and response groups also engage in advanced detection capabilities and proactive response wherever possible. A good example of proactive response comes from the Veterans Benefits Administration, which sent email

notifications via GovDelivery to 587,720 Veterans within 24 hours of a change being made to their direct deposit banking information in FY23. Such alerts tell Veterans what to do if they did not make these changes. They also investigated 12,474 referrals for potential benefits fraud and provided one-on-one remediation support for payment redirect fraud to 1,164 victims, protecting \$847,494 of Veterans benefits from being stolen by fraudsters through prevention or recovery (returned by Treasury from the fraudulent bank account).

The same is true for our fellow VSAFE federal partners, to include the Department of Education, Department of Justice, Department of Defense, Social Security Administration, Internal Revenue Service, Federal Trade Commission, Federal Communications Commission, and Consumer Financial Protection Bureau. Ongoing conversations and partnering have resulted in simplifying navigation for Veterans and their families as well as creation of the “no wrong door approach”. The goal has been to amplify the efficacy of outreach, detection, and shared response to Veteran targeting attempts by “bad actors.” Several prime examples include the most recent socialization of the combined tool kit resource, several jointly developed one-page consumer protection fliers, and jointly released blogs. These materials were force multiplied by sharing them with over 400 community partners, through the same channels just mentioned, and with Federal and community partners. Ongoing collaborative work will continue to hone this “no wrong door” and “easy to find” front door for Veterans and their families to find the information and support they need to recognize predatory activity, to protect themselves, and to get help when, where, and how they need it.

While VA appreciates H.R. 6452 and its codification of a permanent Veteran Scam and Fraud Evasion or “VSAFE” program office function, VA seeks to further expand the language to increase the success of the program office and would support the bill if amended as described below.

The recommendations are based in the foundational tenets of VSAFE, which are to simplify and coordinate the navigation of resources, and to enhance backstage partnership for detection and response regarding Veteran targeted predatory activity. It is recognized in all sectors that fraud is continually evolving and is more prevalent than ever. It is critical for organizations like VA to act as force multipliers to effectively fortify Veterans, their families, and caregivers against such predation. With that in mind, VA suggests the following revisions:

- VA recommends that the bill require the Fraud Evasion Officer to report to the Chief Veterans Experience Officer within the Veterans Experience Office. This placement would ensure appropriate prioritization of coordinated and unified fraud prevention and response internal and external to VA. Furthermore, the position would support partnership engagement to increase access, build trust, and participate in conversation at the appropriate high-level decisional tables needed for the program to effectively carry out initiatives across VA, including setting strategy, framework, policy, and other guidance for the Department.

- VA recommends that the Fraud Evasion Officer lead the recent VA-established VSAFE Program, which also resides within the Veteran Experience Office. This program was formally established as a permanent program by VA leadership on December 19, 2023.
- VA recommends that, in Section 2, the Veterans Scam and Fraud Evasion Officer work with all VA offices to effectively coordinate and disseminate Veteran fraud prevention messaging and resources.
- VA recommends that, in Section 5, the Veterans Scam and Fraud Evasion Officer develop comprehensive curriculum and training materials for Department employees. In VA we feel that it is all employees' responsibility to be able to recognize potential vulnerability factors, to actively monitor for any predatory activity, and to know when, how, and where to connect Veterans, their families, and caregivers with appropriate and correct support resources.
- VA recommends that, in Section 7, Tribal governments be included among the list of non-Federal Governments as valued partners.
- VA does not believe the authorization for only one person to serve the function of the VSAFE office will be sufficient; instead, we recommend that, in Section 7(c), up to and no more than five (5) full-time employees be authorized to successfully manage the VSAFE operations in VA and across partnering Federal agencies. Given the number of partners involved and the need to develop strong collaboration as well as backstage intervention strategies, a significant investment of time, attention, and expertise will be required. While a single officer may have significant expertise, a team will be needed to be able to forge the deep partnerships, insights, and robust communications necessary for the success of this program.

Costs associated with H.R. 6452 – to cover salaries, administrative contract costs, travel, Government-furnished equipment, and miscellaneous expenses – are estimated to be \$1.2 million in the first year, \$6.1 million over 5 years, and \$12.2 million over 10 years.

H.R. 6531 – Training Responsible and Informed National (TRAIN) VA Employees Act

H.R. 6531 would require VA to develop a training program after consulting with heads of at least three other Federal Departments and agencies, including the Department of Defense, and requires all supervisors to complete the training no later than 18 months after enactment. The bill also requires VA to develop a refresher training program that supervisors would complete every two years. The bill requires the training be delivered by an instructor and in-person. The training shall focus on performance management, mentoring and engagement and managing misconduct and

poor performance, addressing harassment, collaborating with human resources on hiring and recognition, and the overall duties and responsibilities of a supervisor.

VA supports this bill, if amended, and subject to appropriations. VA takes seriously the responsibility to develop supervisors and leaders to manage the workforce to best care for our Veterans. In alignment with the Secretary of Veterans Affairs' priorities to invest in our workforce and retain the best talent in the marketplace, VA offers an array of training and development opportunities, including mandatory supervisor training. VA requires all new supervisors to complete 7 hours of training that focuses on many of the subjects covered in this bill ("Super U for New Supervisors") supplemented by learning opportunities on a collaborative learning site for supervisors. There are segments that are asynchronous and self-paced online, a virtual instructor-led segment, and training that ends with a week of instruction for an in-person segment. VA also requires supervisors to complete refresher training every 4 years ("Supervisor Manager Refresher Training"). The training is delivered online and tracked in VA's Talent Management System to ensure compliance. The training satisfies the Office of Personnel Management's new supervisor requirements and complies with Federal mandates (5 C.F.R. § 412.202).

VA supports continuing to require that supervisors complete training within 12 months of appointment to a supervisory position and can modify the requirement for refresher training from every 4 to every 2 years consistent with this bill. As a standard practice in developing training, VA benchmarks with other agencies to research/share best practices, training models, and related information. In evaluating the training VA will benchmark with other Federal agencies and industry to ensure this training aligns with these findings as is practicable.

VA supports the position that investing in developing our supervisors is critical to the organization's mission, as outlined in VA Handbook 5015, Employee Learning and Professional Development, and Veterans Health Administration (VHA) Directive 1052, Appropriate and Effective Use of VHA Employee Mandatory and Required Training. VA requests that continued flexibility in our methods of delivery be maintained (particularly for the refresher training requirement). The funding needed to meet the requirements as stated in the bill would be excessive and place an undue burden on the administration if enacted.

VA further suggests strengthening legislation in this area around reporting, benchmarking, and evaluation. VA can provide the Committee with suggested language for Sections 2(a), (b) and (e) to clarify and strengthen these requirements but allow VA the flexibility to implement.

If VA is required to change the delivery of current new supervisor and refresher training from online to in-person, appropriations would be needed to cover the costs of salaries, benefits, and travel to deliver the training to VA's more than 50,000 supervisors nationwide. In the absence of the appropriations to deliver in-person training, VA would propose that a test-out option be made available in place of the full refresher training.

VA estimates the mandatory costs for H.R. 6531 of \$4.7 million in the first year, \$27.4 million over 5 years, and \$64.4 million over 10 years. In order to limit the travel associated with each participant, these costs are based on the use of decentralized teams of instructors who would deploy regionally, conducting training 48 weeks each fiscal year. There would be 4 teams comprised of a Senior Training Specialist and 2 Junior Training Specialists, with each team conducting 3 classes of up to 100 participants per week. There are no discretionary costs associated with the bill.

H.R. 6538 – VA Correct Compensation Act of 2023

Under current law in section 7422(b) of title 38, collective bargaining (and any grievance procedures provided under a collective bargaining agreement) for certain employees described in section 7421(b) may not apply to any matter concerning or arising out of the “establishment, determination, or adjustment of employee compensation” under title 38. H.R. 6538 would amend section 7422 to provide for a definition of “establishment, determination, or adjustment of employee compensation”. Currently, that phrase is understood to include all kinds of compensation decisions, including the initial setting of rates of pay, the determination of awards, adjustment of compensation such as physician market pay reviews , and other compensation determinations.. The proposed definition would be limited to the setting of a rate of pay as required by applicable law, rule, or regulation. The proposed definition would further specify that the term would not include a grievance challenging whether an employee described in section 7421(b) of title 38 has received “the correct compensation as required by law, rule, regulation, or binding agreement.”

VA cites concerns with the bill and suggests replacing the proposed text with a requirement to establish an internal process through which title 38 employees can challenge compensation errors in violation of law, rule, regulation, and policy. This new internal process would provide an enforcement mechanism for compensation errors for title 38 medical professional employees while preserving VA’s statutory authority for compensation decision-making.

VA is fully invested in paying all of its employees timely and accurately and demonstrates this commitment by the fact that it is currently developing an internal process for title 38 medical professional employees to utilize when they believe they have not been paid correctly, in violation of law, rule, regulation, or policy. VA takes proactive steps analyzing data from our human resources (HR) system to identify systematic data issues which could cause employee pay errors. We also have quality review and auditing processes at the national and servicing HR level to proactively find data issues which may cause employee pay errors. When there are compensation errors that are brought forward to HR and leaders, we work to correct these errors and prevent future occurrence. Finally, it should be noted that title 38 employees have access to other enforcement processes such as FLSA claims.

The proposed modification of 38 U.S.C. § 7422 would have far-reaching, negative consequences on VA's ability to adjust clinicians' salaries in response to market conditions at the appropriate speed. In an ultra-competitive health care market, VA needs to retain the ability to be flexible and maintain independence to compete for top-level talent in direct patient care positions while operating in the current VA policy framework for title 38 compensation. The proposed definition of exclusions from collective bargaining for title 38 medical professional employees is limited to setting a rate of pay for an employee pay. Given the limited definition, this bill would, therefore, result in VA being required to bargain over the "determination" and "adjustment" of title 38 medical professional employee compensation which would make decisions of management discretion in compensation—such as the bi-annual salary adjustment amount for a physician— negotiable and likely place such decisions in front of external impasse panel members and arbitrators. Currently, the bi-annual salary review process relies on prescribed salary ranges based on provider specialties and takes into account individual provider skills and market factors. This change could result in all facets of this process, to include salary ranges, being negotiable. It would also allow unions and employees to grieve their compensation, as well as management's decisions concerning employee compensation, which is not linked to setting a rate of pay for an employee as required by law, rule, or regulation. This is problematic because this would give title 38 employees more rights than are currently provided for title 5 employees within VA. Unlike title 5 pay setting, title 38 pay setting is not standardized – and not specifically governed by law, rule, or regulation – in order to provide flexibility given the varying market conditions and skill levels of title 38 medical professionals. The flexibility within the current statutory framework also addresses the individual circumstances of a medical center and the healthcare field generally. Additionally, the phrase "rate of pay" could be interpreted to solely mean an employee's rate of basic pay—which would significantly expand topics for negotiation and grievances.

Consequently, the proposed definition would require bargaining and allow for grievances over myriad pay setting and compensation decisions for title 38 employees that are not specifically governed by law like title 5. For instance, when a physician is brought on board, the initial salary is set considering rates paid in the local labor market to the same specialty, rates paid internally to the same specialty, board certifications the provider may hold, and any additional skills that will be utilized in position. Holistic compensation reviews, like those undertaken under title 38, do not have rigid outcomes. The specific framework of laws, rules and regulations in title 5 is replaced with analysis flexible enough to meet the varying circumstances of medical centers across the country. Because of this approach to title 38 compensation, the definitions in the associated bill do not specifically address the underlying premise of the bill – namely, compensation errors for title 38 employees.

Moreover, limiting the proposed definition of "establishment, determination, or adjustment of employee compensation" to pay-setting situations limits the bargaining and grievance exclusion for compensation matters to situations where VA is solely establishing or setting pay for title 38 medical professionals and does not address the clear current statutory exclusion of the "determination" and "adjustment" of title 38

medical professional “compensation” from bargaining and the negotiated grievance process in 38 U.S.C. § 7422(b)(3). After the initial onboarding of an employee, decisions to adjust and determine title 38 employee compensation are performed on a regular basis when determining promotions, awards, schedule adjustments, and numerous other management decisions under title 38. Implementing the proposed definition of compensation as drafted would require VA to bargain and engage in the negotiated grievance process over tens of thousands of routine compensation decisions. These provisions would impact the compensation strategy development and delivery across title 38 market-based pay systems. They could result in grievances that then go to arbitration regarding each of the approximately 31,000 compensation reviews conducted at least biannually for physicians and the approximately 6,000 Title 38 Locality Pay schedules reviewed annually.

In addition to decreasing and correcting pay errors, VA is committed to proactively managing pay for title 38 employees. The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 requires Medical Center Directors to ensure competitive compensation for nurses and physicians assistants. Competitive pay reviews for all remaining title 38 occupations have been proactively directed through VHA’s Hire Faster and More Competitively initiatives. We have also invested in additional technology and are actively working on the development of a compensation analytics module within our personnel system to assist approving officials in ensuring vital health care staff are compensated commensurate with market trends. Last year, VA invested in improvements to our personnel systems to automate the pay schedule development, approval, and processing timeframes for title 38 locality pay schedules. This allowed VA to reduce the wait time for employees to see pay increases in their checks from 4 months down to 2-3 weeks. We have concerns that adding additional process steps will further delay employees from receiving appropriate compensation.

VA is actively focused on correctly paying employees and will seek input from its labor partners on an internal process being developed for title 38 medical professional employee compensation claims resulting from law, rule, regulation, or policy violations. This new internal process will provide transparent accountability and an enforcement mechanism for compensation errors for title 38 medical professional employees while preserving VA’s interest in keeping our statutory authority for compensation decision-making, which includes the establishment and the determination and adjustment of employee pay. It would also provide trackable metrics for complaints and outcomes and allow VA to take a proactive approach to solving recurring issues. For instance, this process will cover situations such as a nurse not being paid time and a half overtime per the statutory requirement found at 38 U.S.C. § 7459. It will also cover a nurse being paid incorrect night differential per policy or any loss of pay resulting from an untimely promotion for a nurse. These employees would be able to submit a claim to correct these pay issues through this new process that VA is currently developing.

VA believes that the internal process will meet the proposed legislative intent in creating a transparent accountability and claims process for our title 38 employees when they encounter compensation errors. Therefore, VA recommends an amendment

to the proposed legislation which requires VA to establish an internal process for employees to pursue allegations of compensation errors in violation of law, rule, regulation or policy, outside of the scope of collective bargaining.

VA cannot project the cost impact due to the complexity of potential complaints and uncertainty regarding the frequency and required review time. VA would establish and implement the process at national, regional, and local levels, but VA does not currently track the data for title 38 employees that would be required to develop a cost estimate.

H.R. 6874 – Department of Veterans Affairs Watching Over Electronic Benefits (VA WEB) Act

H.R. 6874 would require VA to ensure the collection of select information about the use of VA's main website, provide notice to Congress within 30 days of a significant adverse event involving the website, and provide a detailed report to Congress within 30 days of a request about any adverse event. It would also require VA to provide Congress with a comprehensive testing strategy for all systems that support the website.

We have a number of concerns about this bill. VA supports the intent of this bill to ensure that Congress is timely informed of significant Veteran-impacting adverse events that occur on VA's main website. With that purpose in mind, the Department has many performance accountability mechanisms in place, and the types of system monitoring required by this bill are a natural part of software development. However, **VA cites concerns with several specific elements of the bill.**

As written, the definition of "adverse event" in Sec. 2(f)(1) may be overly broad and include events which do not have a negative impact on Veterans' use of a covered feature. For example, insufficient storage in a system component does not necessarily negatively impact Veterans' use of a covered feature if appropriate system redundancy measures are put in place. To ensure VA focuses its effort on Veteran-impacting events, we recommend amending the definition of "adverse event" to "(1) The term "adverse event" means, with respect to the covered website, Veteran-impacting issues with covered features, such as—".

The definitional threshold for "adverse event" provided in section 2(f) of the bill could be implicated if a single Veteran encountered an issue and, upon request, would require a detailed report to be provided. By defining an adverse event in this manner, incident reporting would be magnified and would likely encompass matters not generally intended to be considered "adverse" in terms of overall impact.

In section 2(c)(1), the bill requires VA to provide notice to Congress of any significant adverse event within 30 days of the event's occurrence. However, in some cases it may not be possible to comply with this requirement as a significant adverse

event may not be discovered until more than 30 days after its occurrence. It would be more effective to align the reporting requirement to the discovery of a significant adverse event, rather than an occurrence. In addition, 30 days will often be insufficient time to determine the scope of any adverse event, determine if it meets the notice thresholds set in this bill, and draft and approve the appropriate notice to Congress. We believe 60 days would allow VA to accurately identify, analyze, and prepare notice for significant adverse events.

In section 2(c)(2), the bill requires VA to provide a report to Congress on any adverse event within 30 days of request by Congress. It can take more than 30 days to gather the kinds of information required in this section, and this is more likely to be the case for instances of adverse events that did not trigger the significant adverse event notice requirement under section 2(c)(1). VA believes that 90 days would be a more achievable timeframe to respond to these requests.

VA notes that the definition of “significant adverse event” provided in section 2(f) of the bill is sufficiently broad that VA may be obligated to report dozens of times per month on issues involving temporary unavailability of specific covered features, typically due to intermittent or temporary issues in a downstream system or in VA’s networking infrastructure. Such events may be outside the core interest of the bill’s intent. Changing the definition of “significant adverse event” to a higher volume threshold such as “10,000 or more users”, or by time such as “over a continuous period of more than 24 hours” will allow VA and Congress to focus oversight and reporting on more significant or impactful adverse events.

VA additionally notes that many features of the VA website are periodically unavailable when downstream systems are undergoing scheduled maintenance. Reporting on periods of unavailability due to schedule maintenance appears to be outside of Congress’s intent with this bill. Therefore, VA recommends Congress exclude these periods of unavailability of covered features if this unavailability is due to planned maintenance, by amending the definition of a “system outage” as defined in section 2(f)(1)(B) to read “system outages, excluding outages caused by planned maintenance.”

H.R. 6947 – Veterans Affairs Centennial and Heritage Act of 2024

H.R. 6947 would codify the recent establishment of the VA History Office within the Department. Headed by the Chief Historian, the office would be supported by professional and administrative staff as determined necessary by the Secretary to carry out its purposes. The bill also provides additional gift acceptance authorities, enhanced funding mechanisms, and additional lease authorities for the Secretary, and it establishes an internal coordination group comprised solely of VA employees which will provide a logical governance protocol for what will likely be a VA-wide initiative (the centennial) and for management and resourcing decisions related to an enterprise asset (the VA History Office (VAHO) and National VA History Center (NVAHC)). Not later than 180 days following enactment, the Secretary of Veterans Affairs would be required to

submit a report to the Senate and House Committees on Veterans' Affairs detailing the operations of VAHO and the activities that will mark the centennial. The Chief Historian would also be required to submit yearly reports to the Senate and House Committees on Veterans' Affairs through December 31, 2030, detailing VAHO progress.

VA supports this legislation, subject to the availability of appropriations, as development of VAHO and NVAHC are ongoing projects of importance to the Department. The upcoming centennial celebration will draw positive attention to the Department through outreach, events, and permanent exhibits emphasizing the Department's role in assisting our Veterans throughout our Nation's history.

Since publication of VA Directive 7777, Implementation of the VA History Program, VA has undertaken the establishment of VAHO and has begun work on building a history of the Department to ensure that the Department, and the Veterans that we serve, are recognized and celebrated. The Department welcomes the opportunity to engage with Congress to continue to ensure that both the centennial celebrations in 2030 and the ongoing activities of VAHO and NVAHC continue to celebrate the important role of Veterans to this country and the support that the Department has provided to those Veterans.

By statutorily establishing VAHO, which encompasses the National VA History Center, Congress is recognizing the historical accomplishments of the Department. Authorizing the Department to "collect, preserve, and provide access to relevant historical records, artifacts, and cultural resources of the Department [will] tell a comprehensive story of the Department and its predecessor organizations to Veterans, Government agencies, and the public." The bill also allows VA to engage in public outreach, advertising, and publication, and to participate in and host centennial events and public activities. VA Directive 7777 establishes VAHO, and this bill provides statutory authorities that will allow it to fully execute its stated mission.

H.R. 6947 provides the Secretary of Veterans Affairs the authority to enter into partnerships and cooperative agreements; additional gift acceptance authority; and enhanced lease authorities in support of the bill's purposes. This language provides a clear path for VA to accept funds donated by the 501(c)(3) NVAHC Foundation for the NVAHC project and any donation that may be provided directly to VA for the purposes and activities of VAHO, which is not an uncommon process for Federal agency history/heritage center projects like the NVAHC. (VA does request clarification as to what type of Treasury fund is to be established. Knowing whether it would be a revolving fund, whether funds will remain available until expended for these purposes, and whether the established Treasury fund is anticipated to be the sole source of VA funding for the VAHO/NVAHC project will allow the History Office and the Department to fully exercise these authorities.)

H.R. 6947 also provides additional construction and land acquisition authorities that allow for construction, renovation, repair, operation, and maintenance of facilities used for the preservation, restoration, and public access to Department historic

materials, archives, and artifacts. These authorities are needed to execute the 2017 Memorandum of Agreement between VA and Dayton stakeholders regarding the development of plans, partnerships, and a pathway for development of the NVAHC. This language will allow VA to commit resources to VAHO and the NVAHC project without concern for violating existing regulations or statutes and would provide agreement on proceeding with certain planning and developmental tasks.

The mandatory reporting requirements, while creating an additional administrative burden, will provide a consistent, scheduled reporting process on VAHO and the NVAHC progress, and we look forward to working with Congress to achieve the objectives of the VA History Office.

Costs associated with H.R. 6947 represent funds actually spent from Fiscal Year (FY) 2020 to FY 2023 (\$3.6 million) as well as estimates for FY 2024 to FY 2030 based on the baseline functions and tasks outlined in the bill and the duties already specified in VA Directive 7777. Future costs are estimated to be \$3.0 million for FY 2024, \$32.2 million over 5 years, and \$47.9 million through FY 2030. Note that these cost estimates do not include some key components such as construction of the museum building, final renovation cost of associated historical buildings, or additional centennial-specific costs, which we will not be able to accurately estimate without further time, research, and information.

H.R. 7342 – Veterans Accessibility Advisory Committee Act of 2024

H.R. 7342 would establish within the Department an advisory committee on matters related to accessibility of the Department for Veterans with disabilities. This committee would be subject to the provisions of the Federal Advisory Committee Act, 5 U.S.C., Ch. 10. The committee would be comprised of 15 voting members and 4 *ex officio* members.

VA does not support this bill. There are several existing advisory committees that focus on disability accessibility to VA services, benefits, and facilities, as well as multiple entities within the Department that already address accessibility to benefits, technology, services, and facilities.

The bill requires the Department to abolish a discretionary committee that is currently inactive, consolidate two discretionary committees, or submit to the Senate and House Committees on Veterans' Affairs a recommendation to abolish an existing non-discretionary committee established by an Act of Congress that is also inactive. The Department is already required to evaluate all existing discretionary committees to determine an existing need for continuation and engages in this process biennially. Discretionary committees are terminated when no longer valid. The nine active discretionary committees have all been determined to provide necessary insight and advice to Department operations. There are no discretionary committees that would currently meet the requirements for abolishment.

Combining an existing committee with this committee comes with related feasibility concerns and efficiency concerns. Existing committees are already providing invaluable assistance to the Department with their guidance and recommendations. Combining committees would require either including members of the current committee into the makeup of this committee, or completely reconstituting a single committee and releasing those members already serving on a committee. Both eventualities could impact the membership balance and make it more difficult to constitute the membership. Further, while there is admitted crossover between the work of existing committees and this committee, expanding the responsibilities of an existing committee, or incorporating the scope of work into a single committee, would risk diluted recommendations owing to the increased areas of concentration of the committee.

The estimated cost of establishing the committee is approximately \$600,000 per year and \$6,000,000 over the initial proposed 10-year period of existence, unless extended by Congress.

H.R. XXXX – To authorize the Secretary of Veterans Affairs to carry out a pilot program to use weapon detection technology at medical centers of the Department of Veterans Affairs.

This draft bill would authorize the Secretary of Veterans Affairs to carry out a pilot program to implement the use of weapon detection technology at the main entrance of VA medical centers.

VA supports this bill, subject to the availability of appropriations, which presents a crucial opportunity to enhance the safety and security of VA facilities. The safety of Veterans, their families, VA staff, and visitors is of paramount importance, and the implementation of weapon detection technology can play a vital role in mitigating potential threats and preventing violent incidents within VA medical centers.

Supporting this bill aligns with the VA's mission to provide a safe and welcoming environment for Veterans to receive quality health care services. By deploying advanced weapon detection technology, the VA can bolster security measures and better protect the individuals who rely on VA facilities for their medical needs. This proactive approach to security aligns with the best practices of other health care facilities and demonstrates a commitment to ensuring the well-being of our Veterans, staff, and visitors.

The proposed bill to authorize a pilot program for weapon detection technology at VA medical centers would merit strong support from police services. By prioritizing safety and security, the VA can create a safer environment for Veterans and health care providers while upholding its commitment to delivering world-class care.

VA notes that while the Federal Acquisition Regulation (FAR) contemplates and permits procurements both contingent upon Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act designation pre-award, and presuming SAFETY

Act designation post award, such contingencies are not preferred. FAR 50.204(a)(3) states that “Agencies should not mandate SAFETY Act protections for acquisitions because applying for SAFETY Act protections for a particular technology is the choice of the offeror.” There are additional factors required if a solicitation is contingent upon either pre- or post-solicitation compliance with the SAFETY Act designation. The Department seeks clarification as to section (e)(3)(B) to ensure compliance with the will of Congress as well as FAR and contracting requirements.

VA estimates the cost for equipment and personnel for the 1-year pilot program to be \$3.1 million.

H.R. XXXX – Required Notation of Investigation in Personnel Record File Act

Similar to 5 U.S.C. § 3322, Voluntary separation before resolution of personnel investigation, the draft “Required Notation of Investigation in Personnel Record File Act” requires VA to make a permanent notation in the official personnel record file of an employee who is the subject of a personnel investigation and who resigns from Government employment prior to the resolution of such investigation. The bill also requires an additional notation if any of the allegations of the investigation are substantiated.

VA supports this bill, if amended, and subject to availability of appropriations. VA recommends making clarifying amendments to the bill to improve its applicability. Specifically, the bill does not exempt VA employees from the mandatory – and more comprehensive – provisions of 5 U.S.C. § 3322. Therefore, it appears that both mandatory laws will continue to apply to VA employees in the competitive and excepted service. Further, pursuant to 38 U.S.C. § 7403(f)(3), VA is required to apply the provisions of Title 5 to employees appointed under 38 U.S.C. § 7401(3), known as “hybrid Title 38 employees,” in specific circumstances. VA recommends clearly addressing the applicability of this law to hybrid Title 38 employees. Further, the bill does not include Senior Executive Service (SES) employees because it only covers competitive and excepted service employees. Additionally, the Bill does not apply to situations in which a covered employee retires; it only applies to those who resign. VA recommends the language in the Bill be modified to include SES employees and situations in which an employee retires or transfers to another federal agency.

VA is concerned that this bill, if not applied in conjunction with 5 U.S.C. § 3322, does not afford employees due process or appeal rights. An annotation, especially if the allegations are not substantiated, has the potential to impact an employee’s constitutional rights. Thus, VA is concerned the bill will be found deficient as written. Additionally, in paragraph (b) of the proposed 38 U.S.C. § 729, an annotation will be made in the employee’s record if it is determined the allegations in the investigation would have been substantiated. This deprives the employee of an opportunity to

present a defense to an action that can impact future employment. Therefore, VA suggests providing the due process and appeal rights as provided for in 5 U.S.C. § 3322, with modification to the timeframes.

Of note, if VA is required to query offices internal and external to VA at the time an employee resigns to determine if there is a pending investigation and to obtain the results to ascertain if any allegations were substantiated, this will require staff and technology to manage. Further, when an employee moves to another Federal agency or leaves Federal service, VA no longer has access to the official personnel record file. Determining where the record is located and how to make a notation in the file will require coordination in these instances and other options for complying with the intent of the Bill need to be considered when the record is no longer within the control of VA.

VA looks forward to working with Congress on this bill, to include providing technical assistance review, and ensuring VA efficiently and effectively implements the levels of accountability sought.

Given the many uncertainties associated with determining the presence of pending investigations and their outcomes, both internal and external to VA, for employees who have resigned before resolution of a personnel investigation (and the uncertainty of how many times such a scenario will occur), we are unable to provide a meaningful cost estimate.

H.R. XXXX – Reporting Performance Plans for VA Political Appointees Act

The draft “Reporting Performance Plans for VA Political Appointees Act” would amend section 725 of title 38 by requiring VA to submit to the Committees’ on Veterans Affairs of the House and Senate the annual performance plans of covered political appointees in VA.

VA does not support the bill, and has a number of concerns.

VA administers a performance management system for non-career SES members and Schedule C employees. VA’s performance management system holds these individuals accountable for individual and organizational performance and ensures “accountability for honest, economical, and efficient Government.” 5 U.S.C. § 3131.

The VA Choice and Quality Employment Act of 2017 added section 725 to title 38 and defined which political appointees shall receive an annual performance plan and the minimum contents of the plan. Further, VA’s SES performance appraisal system is certified by the Office of Personnel Management with concurrence from the Office of Management and Budget. Certification criteria require that all SES members’ performance plans be aligned to the agency’s mission, strategic goals, program/policy objectives, and/or annual performance plan and budget priorities and that the annual

summary rating be based on individual and organizational performance 5 U.S.C. § 4311, *et seq.*

VA has concerns with the annual performance plan submission requirements of this bill because of the exclusive focus on political appointees. VA welcomes the ability to have further discussions on this bill and to work with Congress on the best way to balance accountability and confidentiality of personnel records.

Conclusion

Chairwoman Kiggans, this concludes my testimony. My colleagues and I are prepared to respond to any questions you or other Members of the Committee may have.