STATEMENT OF

DAVID MCLENACHEN

DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE

VETERANS BENEFITS ADMINISTRATION

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

HOUSE COMMITTEE ON VETERANS' AFFAIRS

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Good afternoon, Mr. Chairman, Ranking Member Titus, and other Members of the Subcommittee. Thank you for the opportunity to be here today to discuss legislation pertaining to the Department of Veterans Affairs' (VA) programs, including the following: H.R. 3715, H.R. 3936, H.R. 4087, H.R. 4757, H.R. 4758, H.R. 4759, H.R. 4782, a draft bill "to pay special compensation to certain Veterans with the loss or loss of use of creative organs," a draft bill "to improve the consideration of evidence by the Board of Veterans' Appeals," and a draft bill entitled the "Love Lives on Act of 2016." There is also a draft bill under discussion today entitled "Medal of Honor Legacy Act," which would affect programs or laws administered by the Secretary of the Army. Respectfully, we defer to the Secretary of the Army's views on that draft bill. Accompanying me this afternoon is Mr. Matthew T. Sullivan, Deputy Under Secretary for Finance and Planning and Chief Financial Officer for the National Cemetery Administration.

H.R. 3715

H.R. 3715 would require VA to permit interments, funerals, memorial services, and ceremonies of deceased Veterans at national cemeteries during weekends, except weekends that include Federal holidays, if requested for religious or cultural reasons. The bill would also require that VA make any grant to a State to assist in establishing a Veterans' cemetery conditioned upon the State permitting interments, funerals, memorial services, and ceremonies during weekends, except weekends that include Federal holidays, if requested for religious or cultural reasons. The bill would require VA to provide notice to anyone requesting burial of a decedent in a national cemetery that he/she may request, for religious or cultural reasons, that the interment, funeral, memorial service, and ceremony be conducted on a weekend, except a weekend that includes a Federal holiday.

Although VA appreciates the intent of the bill, VA does not support the bill because it could inadvertently disrupt VA's flexibility to accommodate the very requests the bill is addressing. Across the national cemetery system, VA conducts committal services and interments on weekend days on a case-by-case basis to accommodate exceptional circumstances, including religious or cultural reasons. VA also provides weekend burials for Servicemembers who are killed in action. As a long-standing policy, VA will not go more than two days without offering national cemetery burial, so even when others may have a three-day Federal holiday weekend, VA cemeteries will conduct burials on at least one of those three days. VA is concerned that memorializing this in statute may be interpreted as allowing weekend burials for only religious and cultural reasons. VA believes that these

operational decisions are best left to VA to decide on a case-by-case basis, as a matter of policy.

VA's current policy is designed to minimize the number of interments during weekends to allow a peaceful time for families to visit the gravesites of loved ones without the disruption of cemetery burial and maintenance operations, or by special ceremonies that are held to honor Veterans and Servicemembers. However, VA has requested VA's Advisory Committee on Cemeteries and Memorials to review the feasibility and resource requirement of offering weekend burials at VA national cemeteries. The Secretary of Veterans Affairs is authorized by Congress (38 U.S.C. § 2401) to "advise and consult" with the Advisory Committee on "administration of the cemeteries." The Advisory Committee was charged with making recommendations regarding weekend burials, with its final recommendations to be presented at its spring 2016 meeting.

Additionally, VA does not support the requirement in H.R. 3715 that would mandate VA to condition a grant provided to a State under VA's Veterans Cemetery Grants Program (VCGP) on the State's agreement to permit weekend interments, funerals, memorial services, and ceremonies of deceased Veterans. This provision would significantly increase the supervision and control that VA has traditionally exercised over State Veterans cemeteries funded through the VCGP. The VCGP allows VA to partner with States and Tribal organizations to increase Veterans' access to a burial option. The grants are not without conditions, but those conditions are generally designed to ensure that the burial option provided by the State or Tribal organization is of a quality consistent with that available to Veterans at the national

cemeteries. The condition proposed in H.R. 3715 would involve VA in operational decisions that we have left to the States since the inception of the VCGP. VA codified this position in 38 C.F.R. § 39.11, which prohibits the Secretary or any employee of VA from exercising "any supervision or control over the administration, personnel, maintenance, or operation" of any Veterans cemetery operated by a State or Tribal organization that receives a grant. Requiring, by statute, the addition of weekend interments imposes a potentially serious resource burden on the States' cemetery budgets, staffing, and resources. Making weekend burials a condition of receiving a cemetery grant may cause States to reconsider application for a grant, out of concern that they could not meet the condition without significant resources. This could have a negative impact on VA's initiative to provide burial options in partnership with State cemeteries. These partnerships are a critical element of VA's plans to ensure access to a burial option to the greatest number of Veterans. Imposing an operational requirement, such as weekend burials, may hinder States' ability or willingness to partner with VA to open new cemeteries, which would constrain access to underserved populations. We note, too, that the proposed provision applies only to cemeteries operated by States, not those operated by Tribal organizations. This could raise further concerns by the States about conditions being imposed on them, but not other VA grantees. VA would be happy to work with the Committee to address these issues.

An estimate of the costs that would be associated with enactment of this bill is not available at this time.

H.R. 3936

H.R. 3936 would direct VA to carry out a three-year pilot program of "Veterans Engagement Teams events." During these events, VA would be required to initiate, develop, and finalize any claims for disability compensation and pension benefits received. The bill would require VA to allocate sufficient personnel, such as claims processors and medical personnel, to carry out this pilot program. During the first year of the pilot, VA would be required to have monthly events at ten regional offices. During the second and third years, VA would be required to carry out monthly events at a minimum of fifteen regional offices. The bill would not authorize additional funding to create or support these events.

VA does not support the proposed bill. VA is currently piloting a similar program (termed "VA claims clinics") to the event-based team concept advocated in this bill. While VA has not completed its analysis of the claims clinic pilots, preliminary analysis of this program has found that it takes significantly more resources compared to VA's current claims process to initiate, develop, and finalize a claim for benefits all in one event. These clinics, while successful for some of the individual Veterans who attend the clinics, have not resulted in an overall reduction in processing time for Veterans' claims. The claims clinics have demonstrated that event-oriented processing is vastly more costly than VA's traditional claims processing methods.

An estimate of the costs that would be associated with enactment of this bill is not available at this time.

H.R. 4087

H.R. 4087 would amend title 38, United States Code, to adjust the effective date of certain reductions and discontinuances of compensation, dependency and indemnity compensation, and pension under the laws administered by the Secretary of Veterans Affairs.

Section 2(a) of the bill would amend 38 U.S.C. § 5112(b)(1) by striking "last day of the month before" and inserting "last day of the month during which." As a result, the statute would read, "The effective date of a reduction or discontinuance of compensation, dependency and indemnity compensation, or pension . . . by reason of marriage or remarriage, or death of a payee shall be the last day of the month during which such marriage, remarriage, or death occurs."

VA opposes the proposed bill. VA was provided the opportunity to provide technical assistance on the proposed legislation earlier this year. At that time, we were informed that the purpose of the amendment is to prevent situations where families may be required to return VA benefits that have already been paid.

The amendment is ambiguous in that it would either prevent payment of a benefit to a Veteran's surviving spouse under 38 U.S.C. § 5310(a) ("Payment of benefits for month of death"), or it would result in a double payment for the month of death—one payment to the surviving spouse under existing law and a second payment to the Veteran's heirs under the amendment. Under section 5310, a Veteran's surviving spouse is entitled to receive a benefit for the month of the Veteran's death if the Veteran was receiving, or was entitled to receive, compensation or pension under chapter 11 or 15 of title 38, United States Code. The

amount of the benefit to the surviving spouse is the amount the Veteran would have received for the month of the Veteran's death had the Veteran not died. 38 U.S.C. § 5310(a)(2). Pursuant to the amendment, the Veteran would still receive payment for the month of death, and therefore the amendment would either override section 5310 or it would result in double payment.

Similar to the Social Security Administration, VA pays benefits one month in arrears. Therefore, the benefit that a beneficiary received on December 1, 2015, for example, was the benefit owed for the month of November 2015. If the Veteran passed away in December 2015, his entitlement would cease as of November 30, 2015, under current 38 U.S.C. § 5112(b)(1). VA would not recoup the benefits paid on December 1, because the Veteran was entitled to that payment for the month of November. The technical assistance request described a situation in which a surviving spouse received two payments in December 2015 – one dated December 1, 2015, for the month of November and one dated December 31, 2015, for the month of December (paid prior to January 1, 2016, due to the holiday). The surviving spouse was not owed a benefit for the month of December because she died during that month.

According to the technical assistance request, the bill is for the purpose of preventing situations where families may be required to return benefits that VA has already paid. The bill would not achieve that purpose. Although the bill would potentially allow for an additional month of benefits, current law ensures that survivors and other individuals receive the accrued benefits to which they are entitled. *See* 38 U.S.C. §§ 5121, 5121A, 5310(a). In the example described in the

technical assistance request, VA might still be required to recoup the benefit paid to allow for proper determination of entitlement under 38 U.S.C. § 5121.

The bill would increase mandatory benefit expenditures resulting from the additional month of entitlement after a beneficiary's death. Currently, only a Veteran's surviving spouse is entitled to the Veteran's month-of-death benefit. *See* 38 U.S.C. § 5310(a). The bill would require VA to pay a Veteran's benefits for the month of death irrespective of whether there is a surviving spouse, and such payments could pass to an estate or other heirs, or might escheat to the State. Finally, the bill would significantly increase VA's accrued benefits caseload because the beneficiary's payment for the month of death could be an accrued benefit (benefit due to the beneficiary at the time of death).

This bill could also complicate VA and Treasury's efforts to meet the requirements of the *Improper Payments Elimination and Recovery Improvement Act of 2012* (IPERIA). Pub. L. No. 112-248. The process under current law (payment for the preceding month) furthers the IPERIA requirement that VA prevent payments to individuals not entitled to the benefit, including those who are deceased.

An estimate of the costs that would be associated with enactment of this bill is not available at this time.

H.R. 4757

H.R. 4757 would amend 38 U.S.C. § 2306(d) to authorize VA to furnish, upon request, a headstone, marker, or medallion for recipients of the Medal of Honor (MOH) who are interred in private cemeteries. The bill also authorizes VA to replace, upon request, an existing government-furnished headstone, marker, or medallion for

a decedent if the original headstone, marker, or medallion does not signify the decedent's status as an MOH recipient. These changes would apply to decedents who served in the Armed Forces on or after April 6, 1917; who are eligible for a Government-furnished headstone, marker, or medallion (or would have been eligible but for the date of death); and who received the MOH (including posthumously). The bill impliedly requires design of a new medallion for MOH recipients.

Currently, section 2306(d) allows VA to provide, upon request, a government-furnished headstone or marker for the gravesite of a Veteran in a private cemetery, even if that gravesite is marked with a privately purchased headstone or marker, or, in the alternative, to provide a medallion that may be affixed to the privately purchased headstone or marker. These provisions allow families who elect private cemetery burials and private memorialization to ensure that the gravesites of Veterans appropriately signify the burial location of someone who served our Nation. These "supplemental marker" benefits, however, are available only for the gravesites of Veterans who died on or after November 1, 1990. *See* Pub. L. 110-157, § 203(b), 121 Stat. 1831, 1833 (Dec. 26, 2007). VA is not authorized to provide a "supplemental" headstone or marker, or a medallion, for Veterans who died prior to November 1, 1990, who are interred in private cemeteries, and whose gravesites are marked with privately purchased headstones or markers, even if those Veterans were MOH recipients.

VA supports the general intent of H.R. 4757 to ensure that the gravesites of MOH recipients buried in private cemeteries are identifiable. However, the extraordinary and distinctive service that the award of the MOH represents should be

permanently and distinctively memorialized for all MOH recipients, regardless of their date of death or burial location. H.R. 4757 would limit VA's authority to provide a MOH headstone or marker to those who died on or after April 6, 1917, and only for those who are buried in private cemeteries. The bill also fails to take into account concerns associated with replacing government-furnished headstones and markers that may have been provided decades ago and are therefore subject to historic preservation issues. Historic preservation concerns could also arise when considering affixing a medallion to a privately furnished headstone provided decades ago.

VA would strongly support an amendment to H.R. 4757 to authorize the provision of a separate and distinct MOH marker to be placed at any marked gravesite of any MOH recipient in any cemetery, without regard to the decedent's date of death. Allowing for marking MOH graves with a separate marker would avoid concerns with removal or alteration of an existing, and possibly historic, headstone that already marks the MOH recipient's grave. It also would ensure consistent marking of those MOH gravesites that were marked prior to VA's development and provision of the distinctive MOH headstone that VA has provided since 1976. Finally, it would eliminate the need to design a separate medallion for MOH recipients. We are happy to work with the Committee to address these issues and to ensure consistency in the manner in which VA honors and memorializes all MOH recipients.

We estimate mandatory benefit costs associated with enactment of this bill would be $33 thousand in 2018, $169 thousand over 5 years, and $353 thousand over 10 years. While costs are identified, this would reflect an insignificant cost to the

compensation and pension benefits account, as it does not meet the $500,000 annual threshold established by OMB.

H.R. 4758

H.R. 4758 would amend 38 U.S.C. § 112(a) to authorize VA to furnish, upon request, a Presidential Memorial Certificate (PMC) for decedents who are eligible for burial in a VA national cemetery based on death while engaged in certain duty as members of the Reserve components of the Armed Forces and members of the Reserve Officers' Training Corps. These changes would apply to deaths occurring on or after date of enactment of this bill.

The PMC program confers no entitlement for other VA benefits or services but serves an honorary and ceremonial function for Veterans who were discharged under honorable conditions, and for persons who died while on active military, naval, or air service. H.R. 4758 would extend eligibility for a PMC to two additional categories of individuals and would align the categories of individuals eligible for a PMC with the categories of individuals eligible for burial in a VA national cemetery. First, H.R. 4758 would allow provision of a PMC to any member of the Reserve components of the Armed Forces, and members of the Army or Air National Guard, whose death, as defined in 38 U.S.C. § 2402(a)(2), occurred under honorable conditions while the member was hospitalized or undergoing treatment at the expense of the United States, for an injury or disease contracted or incurred under honorable conditions while performing active duty for training, inactive duty training, or while undergoing hospitalization or treatment at the expense of the United States. Second, by

referencing section 2402(a)(3), H.R. 4758 would allow provision of a PMC for members of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while the member is attending an authorized training camp or on an authorized practice cruise, performing authorized travel to or from that camp or cruise, or hospitalized or undergoing treatment at the expense of the United States.

Although VA supports the general proposal in H.R. 4758 to expand eligibility for the PMC, we strongly recommend that the bill be amended to include another category of individuals who are eligible under 38 U.S.C. 2402 for burial in a national cemetery. Section 2402(a)(7) includes as eligible those individuals who, at the time of death, are entitled to retired pay under chapter 1223 of title 10 or those who would have been entitled to retired pay but who died before reaching the age of 60. VA would strongly support an amendment to H.R. 4758 to allow for provision of a PMC for these individuals who, like those noted in the current bill, are eligible for burial in a national cemetery. Such an amendment would ensure alignment of the categories of individuals who are eligible for the PMC and for burial based on their service and would allow VA to provide eligible recipients (next-of-kin, relatives, or friends) of Reservists and retirees with a meaningful symbol of remembrance of their loved one's honorable service and sacrifice.

Finally, VA disagrees with the provision in H.R. 4758 that limits availability of the PMC to recognize individuals in the newly added categories who die after the effective date of the bill. The PMC program issues certificates based on the military service, not the date of death, of the individual who served. To include an effective

date based on the date of death would allow VA to provide a PMC to relatives or friends of a Reservist who died after the effective date of the provision, while denying a PMC to the family of a Reservist who died before the effective date—even if the two served together. We recommend that the provision be amended to allow issuance of the PMC regardless of the date of death of the individual honored by the PMC.

If H.R. 4758 were enacted, VA anticipates no significant increases in workload or cost to the Government given the low number of deaths that occur in these groups each year, including the additional group of individuals eligible for burial under section 2402(a)(7) noted above.

H.R. 4759

H.R. 4759 would extend the monetary allowance provision for transport of remains of eligible Veterans to a State or Tribal Veterans' cemetery. The current statutory provision provides the transportation allowance only for transportation of eligible Veterans' remains to a VA national cemetery. This bill would amend 38 U.S.C. § 2308 to allow payment of the monetary allowance for transport of eligible Veterans' remains to covered Veterans' cemeteries. The bill defines a covered Veterans' cemetery as a Veterans' cemetery owned by a State or Tribal organization in which a deceased Veteran is eligible to be buried. This bill increases the options of burial locations for eligible Veterans including (1) a Veteran who dies as a result of a service-connected disability; (2) a Veteran who dies while in receipt of disability

compensation (or would have received disability compensation but for the receipt of retirement pay or pension); and (3) Veterans whose remains are unclaimed.

The Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 expanded eligibility for the transportation allowance to ensure the dignified burial in a VA national cemetery of unclaimed remains of Veterans, who have no next of kin. This expansion was in recognition of the sad fact that many Veterans die homeless or, for a variety of reasons, do not have family or friends who are able or willing to claim their remains and make burial arrangements. VA regularly collaborates with organizations and volunteers who work to ensure these Veterans receive proper burials. H.R. 4759 provides support for these efforts by extending the allowance for transport of eligible Veterans remains to State and Tribal Veterans' cemeteries.

VA supports the concept contained in H.R. 4759, subject to the availability of funds. We especially support expanding the transportation allowance to State and Tribal cemeteries for the unclaimed remains of Veterans who die without next of kin, as there are no costs associated with this expansion and it would ensure the availability of a dignified burial option for these Veterans. VA has developed strong partnerships with State and Tribal organizations that operate cemeteries for Veterans and eligible dependents. We view the additional option that this bill would provide for the unclaimed remains of Veterans as another step toward ensuring the goal of granting all eligible Veterans a dignified and proper burial, whether it is at a n8ational, State or Tribal Veterans cemetery.

The Department has determined that as drafted the legislation would have associated benefit costs. However, VA is still determining those costs at this time.

H.R. 4782

This bill would increase, effective December 1, 2016, the rates of compensation for Veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled Veterans and for other purposes.

H.R. 4782 would amend, effective December 1, 2016, each of the dollar amounts under the following sections of title 38, United States Code, for a cost–of-living adjustment (COLA):

- Section 1114, Wartime Disability Compensation;
- Section 1115(1), Additional Compensation for Dependents;
- Section 1162, Clothing Allowance;
- Section 1311(a) through (d), Dependency and Indemnity Compensation to Surviving Spouse; and
- Sections 1313(a) and 1314, Dependency and Indemnity Compensation to Children.

This bill would provide that each dollar amount described above would be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. § 401 et seq.) are increased effective December 1, 2016, as a result of a determination under section 215(i) of such Act (42 U.S.C. § 415(i)). Each dollar amount increased, if not a whole dollar amount, would be rounded to the next lower whole dollar amount. This would

renew round-down provisions that had been allowed to expire at the end of fiscal year 2013.

Because VA compensation and DIC payments are not indexed, Congress generally enacts legislation on a yearly basis to adjust compensation and DIC benefits to reflect the percentage of change in the consumer price index relative to the prior year.

VA supports this bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children and would ensure that the value of their benefits will keep pace with increases in consumer prices.

We estimate the cost of the COLA, effective December 1, 2016, would be $490.8 million during the first year, $3.0 billion for five years, and $6.6 billion over ten years. The FY 2017 President's budget assumes annual COLA increases for disability compensation and DIC in its baseline budget estimate. Therefore, there would be no increases to costs above the current baseline budget associated with the COLA. There would be no additional administrative costs.

Draft Bill "to pay special monthly compensation to certain Veterans with the loss or loss of use of creative organs."

This bill would provide that Veterans who receive special monthly compensation under 38 U.S.C. § 1114(k) ("SMC K") for anatomical loss or loss of use of one or more creative organs would be entitled to receive two lump-sum payments, each in the amount of $10,000, to be paid not less than one year apart. The lump-sum payments would be paid in addition to SMC K payments, except for the month in

which the Veteran receives the lump-sum payments. The Veteran must submit a separate, specific application for each $10,000 payment. This new expanded authority would be added to 38 U.S.C. § 1114 and would be placed in new subsection (u). This would apply only to Veterans who receive disability compensation on or after the date of the enactment of the bill.

VA cannot support this amendment. Expanding statutory authority to pay increased benefit payments for one particular group of disabled Veterans is inequitable. Moreover, administration of this benefit would add an undue level of complexity to the claims process.

While sympathetic to Veteran cases involving anatomical loss or loss of use of creative organs, VA is concerned that the creation of a new type of benefit, in the form of lump-sum payment, would be inequitable. First, it should be noted that the compensation program, to include the VA Schedule for Rating Disabilities (38 C.F.R. Part 4) and special monthly compensation provisions (contained in 38 C.F.R. Part 3), already provides additional compensation to Veterans based on impairment from certain significant losses, such as amputations and loss of use of creative organs. Further, it could be argued that other categories of service-disabled Veterans should also qualify for additional lump-sum payments based on similar factors as experienced by those with a loss of a creative organ. VA is amenable to working with Congress and the Veteran community to further explore the appropriateness of lump-sum payments and specifically the effects of a loss of a creative organ and the monetary value that should potentially be placed on this, as well as other types of losses.

In addition, VA is concerned about the increased complexity that would be created in the claims process and benefit systems if this bill were enacted. Lump-sum payments represent a departure from the longstanding monthly payment structure, and initiating and managing the required systemic changes for this single benefit would require significantly increased resources that otherwise could be used for providing faster and more efficient delivery of benefits and services to Veterans.

In summary, VA does not support the draft bill, as the creation of a lump-sum payment for this purpose would represent a departure from the current benefits payment structure, would be inequitable to Veterans, and would be complex to administer.

An estimate of the costs that would be associated with enactment of this bill is not available at this time.

Draft Bill "to improve consideration of evidence by the Board of Veterans' Appeals"

This bill would allow the Board of Veterans' Appeals (Board) to consider, in the first instance, evidence submitted or identified by appellants or their representatives during the period beginning when the agency of original jurisdiction (AOJ) receives a substantive appeal and ending on the date the case is certified to the Board. If evidence submitted or identified during said timeframe requires VA to gather additional evidence, this bill would also subject such evidence to initial review by the Board. Appellants or their representatives would be permitted to elect to have the AOJ review evidence in the first instance. In cases where such an election occurs, this bill would require the AOJ to review the evidence submitted or identified within

180 days after the evidence is received or identified, and to certify the case to the Board within 180 days of completing the review.

Although VA appreciates the intent of this bill to expedite processing of appeals, VA does not support the bill as written. Improvements to the timeliness of appeals processing should be achieved through comprehensive reform of the multi-step, open-record appeal process set in current law. However, this bill seeks to address a single step in the multi-step process, while ignoring significant defects in the overall statutory framework that currently preclude efficiency in the process as a whole.

Under current law, an appellant may submit or identify additional evidence at any point in the appeal process. Under its statutory duty to assist, VA is required to consider such evidence and obtain any additional evidence that may help the appellant substantiate the claim. *See* 38 U.S.C. § 5103A. This process is repeated each time the appellant submits or identifies additional information. Therefore, in many cases VA cannot control the time it takes for completion of a particular stage in the appeal process. Therefore, this proposed legislation would not be helpful without first reforming the overall statutory scheme that governs the process, as VA requested in the FY 2017 President's Budget.

It should be noted that Congress has already provided some legislative relief in this area by amending 38 U.S.C. § 7105 to allow the Board to consider evidence in the first instance when it is received with or after a VA Form 9, substantive appeal. *See* 38 U.S.C. § 7105(e)(1). Transferring jurisdiction to the Board to consider in the first instance evidence identified by appellants may provide some additional relief in

this area. However, as stated, such an incremental measure as that proposed in this bill would fail to address the multitude of existing defects in the current statutory framework.

Finally, a few technical issues should be noted. First, this bill would establish a window – from the date the AOJ receives a substantive appeal to the date the AOJ certifies the appeal – for the submission of evidence that would be subject to review by the Board in the first instance. As written, the proposed legislation would lead to absurd results where evidence identified after certification to the Board would require initial review by the AOJ, but evidence received prior to certification would not. To avoid this result, the statutory language could be clarified to apply to all evidence submitted or identified at the time or after the AOJ receives a substantive appeal. In addition, the bill would require the AOJ, upon election by the appellant for initial review of new evidence by the AOJ, to review evidence within 180 days of either receiving or being notified of new evidence, and certify the case to the Board within 180 days of completing this review. However, these timeframes do not account for the time it may take the AOJ to obtain or attempt to obtain evidence in accordance with the duty to assist. To address this issue, the bill could be amended to state that the AOJ should review new evidence and certify cases to the Board within a certain timeframe of either receiving or gathering new evidence, or of "fulfilling its statutory duty under 38 U.S.C. § 5103A."

No mandatory costs would be associated with enactment of this bill. An estimate of discretionary costs is not available at this time.

Draft Bill "Love Lives on Act of 2016"

This bill would modify the definition of surviving spouse to permit entitlement to VA benefits when a surviving spouse of a Veteran remarries.

Currently, section 101(3) of title 38, United States Code, provides that to be considered a Veteran's surviving spouse, a person must not have remarried and must not have lived with another person and held him/herself out as the spouse of that other person. Other statutes provide exceptions. For example, a surviving spouse who remarries after age 57 may continue to receive DIC under 38 U.S.C. § 103(d) and, under 38 U.S.C. § 2402, a surviving spouse does not lose eligibility for interment in a national cemetery due to remarriage.

Section 2(a) of the draft bill would modify the definition of "surviving spouse" for all VA purposes to remove the requirement that a surviving spouse must not be remarried (or must not have lived with another person and held him/herself out as a spouse).

Section 2(b) of the draft bill would make conforming amendments to various provisions of title 38, including section 5120, which currently provides that a postal worker may not deliver a benefit check to a surviving spouse whom the postal worker believes has remarried. VA cannot support this bill because it is overly broad, would be very costly, and would overburden VA's survivor benefit programs. VA does not oppose amending or rescinding 38 U.S.C. § 5120 as it appears to be largely obsolete; VA benefits are now directly deposited into beneficiaries' bank accounts.

Removing the general requirement that surviving spouses must not be remarried would have a significant workload and cost impact on all VA survivor benefit

programs (pension, DIC, Dependents Educational Assistance, loan guaranty). For example, currently for survivors' pension to be payable, the surviving spouse must not be remarried, unless the marriage is voided or annulled. Because there is currently no provision allowing surviving spouses to remarry and maintain eligibility, the general definition at section 101(3) as well as the provision for voided or annulled marriages at section 103(d)(1) currently apply to such surviving spouses. Removing the requirement rendering ineligible surviving spouses who have remarried would result in significant increases in both mandatory and discretionary costs, and the increased workload would pose major program implementation challenges. There would be a similar impact on DIC workload and entitlements. Currently, under section 103(d)(2)(B), surviving spouses may remarry after age 57 and retain entitlement to DIC and ancillary benefits. Surviving spouses who have not yet attained age 57 may regain entitlement to DIC if the remarriage terminates by death or divorce. We believe that these existing provisions strike the appropriate balance between extending DIC benefits to survivors and maintaining program viability.

An estimate of the costs that would be associated with enactment of this bill is not available at this time.