

LEGISLATIVE HEARING ON
H.R. 2971, H.R. 6362, H.R. 6507, H.R. 7729, H.R.
8792, H.R. 8854, H.R. 8910, H.R. 8893, H.R.
8874, H.R. 8881, H.R. 8879, H.R. XXXX, H.R.
XXXX, H.R. 8880, H.R. XXXX, H.R. XXXX, H.R.
XXXX, AND H.R. XXXX

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY
ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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AND H.R. XXXX

WEDNESDAY, JULY 10, 2024

SUBCOMMITTEE ON DISABILITY ASSISTANCE &
MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 360, Cannon House Office Building, Hon. Morgan Luttrell (chairman of the subcommittee) presiding.

Present: Representatives Luttrell, Ciscomani, Self, Crane, Pappas, Ramirez, and McGarvey.

Also present: Representatives Rosendale, Valadao, and Peters.

OPENING STATEMENT OF MORGAN LUTTRELL, CHAIRMAN

Mr. LUTTRELL. The subcommittee will come to order. Good morning, everyone. As always, it is a pleasure.

We are here to discuss 18 bills that would modernize and improve the delivery of benefits for veterans and their survivors. The bills we will discuss today will and would improve access to the U.S. Department of Veterans Affairs (VA) burial benefits for servicemembers, veterans, and veterans' survivors, and provide more choices for survivors to honor their veterans, loved ones buried in the U.S. and overseas. It will protect veterans' constitutional due process and Second Amendment rights, ensure quality and efficiency in the VA claims process by providing automation technology tools to process all veterans and survivors claims, and by providing training for claims based on Military Sexual Trauma (MST).

It will: streamline the VA claims process by simplifying the forms that veterans and survivors must complete and improving the notices that they receive regarding who may represent them on their claims, provide VA with more options for the expansion of the Dayton National Cemetery, and improve access to disability compensation examinations for rural and Tribal veterans by allowing examiners to meet veterans where they are.

I am proud to have introduced one bill myself on today's agenda, H.R. 6507, the Mark Our Place Act, would ensure that all Medal of Honor recipients are recognized, regardless of when they served. Currently, VA is authorized to furnish or replace a headstone, grave marker, or medallion for Medal of Honor recipients who served on or after April 6, 1917. My bill would remove the date limitations. The servicemembers and veterans displayed extraordinary valor, and this bill would ensure that every Medal of Honor recipient, no matter when they served, is properly honored, where they have been laid to rest.

I look forward to working with Chairman Bost and my colleagues on this subcommittee to advanced the many important proposals today. My colleagues have worked hard on each and every one of these bills, as has the staff, to increase access to VA disability and memorial benefits for veterans and their survivors, and to streamline the VA's claims process and expand the services provided by the American Battle Monument Commissions for the families of those servicemembers who made the ultimate sacrifice overseas. I look forward to discussing these bills on our agenda and hearing from the witnesses who have joined us today.

Mr. Duarte, good morning. The ranking member is in a meeting right now; he will be here shortly. We are going to move directly into recognizing our witnesses. Mr. Duarte from California. How are you today, sir?

Mr. DUARTE. Very good, thank you, Mr. Chairman.

Mr. LUTTRELL. Mr. Duarte, I recognize you for 5 minutes, sir.

STATEMENT OF JOHN DUARTE

Mr. DUARTE. Well, thank you, Chairman Luttrell, for holding this hearing today on legislation pending with the committee, including the Simplifying Forms for Veterans Claims Act, which I introduced last month. The Department of Veterans Affairs requires veterans and their survivors to complete specific forms to receive the benefits they earned in the course of their service to the United States. This includes disability ratings, healthcare and pension benefits, among other things. However, we have heard from Veterans Service Organizations (VSO) that completing these forms is often difficult due to their complexity.

Working with the Republicans and Democrats, I introduced Simplifying Forms for Veterans Claims Act, H.R. 8880, that takes an important step toward ensuring our veterans receive the support and benefits they earned by making the claims process as straightforward as possible. Specifically, my bill directs the Secretary of Veterans Affairs to contract with a nonpartisan, federally funded research entity to conduct a study in conjunction with VA and advocates for veterans and survivors how to revise VA claims forms to be more understandable for veterans and their survivors. The bill will also require the VA Secretary to implement recommendations that are compliant with VA law.

In conclusion, the Simplifying Forms for Veterans Claims Act builds on legislation I previously introduced, the Clear Communications for Veterans Claims Act, that directs the VA Secretary to conduct a study on simplifying notice letters sent to a veteran during

the VA claims process, which the full Veterans Affairs Committee forwarded to the full house in May.

As a Member of Congress, I would like to reiterate that it is my honor and privilege to help veterans get the benefits, healthcare, and support they have earned, and I want to thank my colleagues for their support on my bill and Chairman Bost and Chairman Luttrell for advancing my bill on this committee.

I yield back the remainder of my time.

Mr. LUTTRELL. Thank you, sir. It is our practice that we will forego a round of questioning for the Members. Any questions may be submitted for the record.

Mr. Duarte, you are now excused, sir, if you wish. I do understand some of you may—if you want to stay and ask questions for the next round, you are more than welcome to do so, sir.

In accordance with committee rule 1, I ask unanimous consent that the following Members be permitted to participate in today's subcommittee hearing: Representative Rosendale from Montana, Representative Valadao from California, Representative Zinke from Montana, Representative Yakym from Indiana, Representative Duarte from California, and Representative Peters of California. Without objection, so ordered.

I now invite our second panel to the table, please.

Everyone ready? Joining us today from the Department of Veterans Affairs is Mr. Glenn Powers, deputy undersecretary for Field Programs and Cemetery Operations in the National Cemetery Administration (NCA). He is accompanied by Mr. Jeffrey London, executive director of the Medical Disability Examination Office at the Veterans Benefits Administration (VBA). Mr. London, it is good to see you again, sir. Ms. Kristina Messenger, deputy executive director of operations for the VBA Compensation Service; and Mr. Kevin Friel. Mr. Friel, I believe I have seen you more than anybody else in the Department of Veterans. Good to see you once more, deputy director of Pensions and Fiduciary Services for the VBA. Also joining us from the American Battle Monuments Commission is Hon. Charles K. Djou, correct?

Mr. DJOU. Yes.

Mr. LUTTRELL. Outstanding. Secretary and chief executive.

I will ask all the witnesses to please stand and raise your right hand.

[Witnesses sworn.]

Mr. LUTTRELL. Thank you, and let the record reflect that the witnesses have answered in the affirmative.

Mr. Powers, you are now recognized for 5 minutes, sir, to present the Department's testimony.

STATEMENT OF GLENN POWERS

Mr. POWERS. Good morning, Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee. My VA colleagues and I appreciate the opportunity to appear before you today and look forward to discussing the bills on today's agenda.

VA supports the following bill in its entirety, H.R. 6507, the Mark Our Place Act. We also support the unnumbered bills, permanent licensing portability, VA Insurance Improvement Act, Veterans' Burial Improvement Act, and the Survivors Benefits Update

Act, but suggest technical edits to ensure consistency within the statutes and to provide adequate implementation time. Although VA supports the concepts in the Improving VA Training for Military Sexual Trauma Claims Act and the Simplifying Forms for Veterans Claims Act, our written testimony notes several concerns with the contents of each. We also could support H.R. 2971, the Veterans Claims Education Act of 2023, and H.R. 6362, Protecting Benefits for Disabled Veterans Act of 2023, if amended.

VA appreciates the intent of H.R. 7729, the Dennis and Lois Krisfalusy Act, and the unnumbered bill titled Preserving Veterans' Legacy Act, each of which would address the date of death limitations in a different section of Title 38 that will prevent VA from providing memorialization or burial to spouses and eligible dependent children of active duty servicemembers if the spouse or dependent child dies on or after October 1st of this year. However, we support the more comprehensive language in section 101 of the Veterans' Burial Improvement Act, which would eliminate the restriction in both statutes.

VA must oppose several of today's bills, including the Dayton National Cemetery Expansion Act of 2024. VA has no need for additional land to expand the cemetery now or in the foreseeable future. Additionally, there is no assurance the land is suitable for use as a cemetery.

The bill entitled Ensuring Veterans' Final Resting Place Act proposes to amend the current authority under which a VA may provide a plaque or urn in lieu of burial and other VA memorialization benefits to a survivor who chooses to retain cremated remains of a veteran. While we do believe the law should be amended, we cannot support the concept of families being asked to pay for one benefit to preserve eligibility for other benefits.

The Modernizing All Veterans and Survivors Claim Processing Act would direct VA to submit a plan to Congress regarding the feasibility of expanding VBA's automated decision support technology beyond disability compensation claims. However, this bill would duplicate VA's efforts already underway with its 5-year Information Technology (IT) modernization plan.

VA opposes the Veterans Second Amendment Restoration Act because it would require the Secretary to notify the Attorney General that VA had erred by reporting incompetent beneficiaries to the National Instant Criminal Background Check System. VA understands the sponsors of this legislation seek to restore the ability for persons VA has deemed incompetent to lawfully possess firearms. However, VA already provides individuals an opportunity to petition for relief from that prohibition. VA did not err in reporting and if passed into law, VA could not comply.

Additionally, VA opposes the Safeguarding Veterans' Second Amendment Rights Act as it would prevent VA officers and employees from participating in the execution of Extreme Risk Protection Order (ERPO) proceedings. This places the security and safety of veterans, their families, and communities at risk and ultimately prevents VA from providing appropriate care for some of our most vulnerable veterans.

While VA appreciates Congress's concerns regarding the Board of Veterans' Appeals' (VBA) ability to attract and retain staff, we op-

pose the Board of Veterans' Appeals' Attorney Retention and Backlog Reduction Act. This new authority conflicts with existing personnel law and is not needed, as VA's qualification standards for general attorneys already allow for a GS-15 level, providing the duties and responsibilities that merit classification at that level. In addition, the Board's current recruitment and retention incentives have dramatically improved retention rates, with attrition rates decreasing by 50 percent from Fiscal Year 2018 through Fiscal Year 2023.

Mr. Chairman, this concludes my statement. My colleagues and I are prepared to respond to any questions you or other members of the subcommittee may have. You know, honored to sit next to Secretary Djou, who we work hand-in-hand with, in honoring veterans and servicemembers who have given their lives.

[THE PREPARED STATEMENT OF GLENN POWERS APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Mr. Powers. Mr. Djou, you are recognized for 5 minutes.

STATEMENT OF CHARLES DJOU

Mr. DJOU. Thank you very much, Mr. Chairman. Good morning, Mr. Chairman, Ranking Member, and members of this committee, it is my delight to be here as secretary of the American Battle Monuments Commission, the ABMC, to testify on the Flowers for Fallen Heroes Act of 2024. I would like to begin by just introducing some of my staff who are in the audience behind me. To my left, your right, is my deputy secretary, Robert Dalessandro; the executive director of my agency for operations, Mr. Tom Spohr; and the executive director for my agency for management, Mr. Mike Conley. Each of us are multi-decade veterans, and between the four of us have nearly a century's worth of service to our Nation, which we are very proud of.

Mr. Chairman and members, I have already submitted my written testimony regarding this particular bill. In the interest of the economy of time, I am going to summarize the written testimony, make three very quick points. Number one, the ABMC does not oppose this proposed legislation, and we thank Congressman Zinke for introducing it. Number two, whether or not this legislation passes, it is the intent of the ABMC and my agency to implement this Flowers Fund project. We will do so forthwith. Number three, I would like to emphasize to this committee, with or without passage of this legislation, whether or not my agency implements this program, I want to strongly emphasize that placement of flowers at all of the ABMC sites has been allowed, is allowed, will continue to be allowed, and we very much welcome it and encourage the placement of flowers at all of our sites around the world.

Otherwise, Mr. Chairman, I stand on my written testimony and am available for questions. Thank you for your time.

[THE PREPARED STATEMENT OF CHARLES DJOU APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, sir. The written statements of our witnesses will be entered into the hearing record. We will now move to questioning.

I am very excited to hear you say what you just said. Yes, I have had some very interesting conversations about the lack of your or-

ganizations to provide the ability for members who lost their loved ones overseas to get the flowers to the gravestones. I am not going to wire brush you today, because I am going to let you—what you said to me straight to my face, eye to eye, I am going to hold you to that.

Mr. DJOU. Yes, sir.

Mr. LUTTRELL. I am very—I am going to—because we just met, so I am going to take you at your word that you are going to lead that and make sure that it is absolutely, profoundly done. Can we agree on that today in this committee?

Mr. DJOU. Yes, sir.

Mr. LUTTRELL. All right. I will not dig into the weeds of why there seemed to be a gap in a certain timeframe of the ability for the members to get flowers to their loved ones. I am going to—we are going to move on to that one. Thank you for coming—

Mr. DJOU. Yes, sir.

Mr. LUTTRELL [continuing]. and thank you for doing what you say you are going to do.

Mr. DJOU. Thank you, Mr. Chairman. Would you like me to explain for the record, sir?

Mr. LUTTRELL. Have at it. I was going to give you a leash, but you want to run with it, go ahead.

Mr. DJOU. Well, Mr. Chairman, let me begin by saying thank you very much. I appreciate the opportunity to testify. Let me also respectfully say that I very much appreciate you and your family's service. Prior to my election to Congress, I served as a member of the Honolulu City Council and would like to just respectfully point out I was very honored to rename one of the parks in my district after Operation Red Wings. I understand the gravity of your family's service and very much appreciate it.

Mr. LUTTRELL. Thank you.

Mr. DJOU. Mr. Chairman, it has been the agency's position, and this was a position taken by my predecessor's predecessor, that the placement of flowers was something better handled and left by the private sector. When it was originally launched, of course, there was no Internet when my agency was originally established in 1923. However, my agency clearly hears and understands the concerns raised by Congress. We understand the concerns raised by Congressman Zinke. We appreciate hearing from Congress. As a consequence of that here, while flowers have always been, and I really want to strongly emphasize this, have always been allowed to be placed at all of the ABMC cemeteries around the world, we will reinitiate this as not just allowed by private sector handling this, but my agency also taking the initiative to offer this as a program, sir.

Mr. LUTTRELL. Sure. The agency, I think, should take the lead on this one given that it is those individuals that fought and died for our country. The government needs to step in and say that we got this.

Mr. DJOU. Yes, sir.

Mr. LUTTRELL. Okay. Thank you, again. If this does not happen, I can assure you there are some people in this room right now with you and the rest of us today, they are going to be very forthcoming of their concern.

Mr. DJOU. Yes, sir.

Mr. LUTTRELL. Okay. How we need that.

Mr. DJOU. Mr. Chairman, we hear you loud and clear.

Mr. LUTTRELL. All right.

Mr. DJOU. We will get this done.

Mr. LUTTRELL. Mr. London, a question for you, sir. How often are contracting examiners required to take sensitivity training for military sexual trauma?

Mr. LONDON. Mr. Chairman, thank you very much for your question. All examiners, all contract examiners are required to take a training before they complete any exams. They also have to recertify every—at least every 5 years. If they have not conducted an exam within the last month, they must recertify to include sensitivity training.

Mr. LUTTRELL. If not every month if they have not done an examination?

Mr. LONDON. Within the last 12 months they have not.

Mr. LUTTRELL. Twelve months, Okay.

Mr. LONDON. Yes.

Mr. LUTTRELL. In 5 years are we comfortable with that window?

Mr. LONDON. Yes. We found that most examiners, they routinely do exams. By the fact that they take the training and also complete exams and get feedback from the vendors for quality and also from our office for quality, we feel as though that the 5-year window is adequate.

Mr. LUTTRELL. Okay. I will yield my time and I will recognize the ranking member.

Mr. PAPPAS. Thank you, Mr. Chairman. Thank you to the panel.

Mr. Powers, I wanted to start with you and ask you about H.R. 2971. This is the Veterans Claims Education Act. It would require more, and more-direct, notification to veterans about where they can find accredited help in filing their claim and clearer warnings about those who might be trying to scam them by charging egregious fees illegally. I understand VA feels they are doing a lot on this already, but I respectfully think that more can be done here to help give veterans the information that they deserve.

Mr. Powers, can you tell me what efforts VA is currently undertaking to better promote accredited agents and attorneys? Is there harm, from VA's perspective, to doing more?

Mr. POWERS. Thank you, Mr. Congressman, for the question. I am going to yield for a better answer to some of my colleagues from the Veterans Benefits Administration.

Mr. PAPPAS. Sure.

Ms. MESSENGER. Thank you very much for that question. We do agree that there is always more that we can do. Some of the efforts that we have taken to promote some of those predatory actors in the accreditation process, is that in our—in one of our notifications or our applications, the 526 EZ, as well as in our decision notifications, we do have information where veterans and beneficiaries can find a representative. Then also we have taken significant—we have undergone significant efforts to make sure that we are providing information to our veterans and beneficiaries about predatory actors. We have had communication strategies that we have

undergone that have reached up to about 32 million people. We are very proud of that.

Mr. PAPPAS. Thanks for that response. Mr. London, if I can turn to you about a different bill, this is a bill I have under consideration that would expand and make some other minor adjustments to VA's insurance program. Can you explain how VA feels expanding the program to more veterans and whether that will help improve the financial soundness of the program?

Mr. LONDON. Yes. Thank you very much for the question. The insurance actuaries ran a model to determine what the outcome of adding additional beneficiaries would be for the overall life of the program. We found that by adding more healthy veterans to the rules would actually improve the premiums and also the outcome long term for the program as a whole.

Mr. PAPPAS. Well, thanks for that. Yes, it seems obvious that having more payers in the system and relatively healthy members would make it stronger from an actuarial perspective. I thank you for that response.

Mr. Powers, regarding Mr. Valadao's bill, which is on VA's plans to make better use of Artificial Intelligence (AI) to develop automated decision support tools and from programs other than disability compensation, I would certainly agree that VA can and should do more in terms of its use of automation tools, so long as it does not lead to workforce replacement. I recognize that money is not infinite and that VA prioritizes limited resources in the area where it might provide the greatest return. My question is, what sort of strain would it put on VA Office of Information and Technology (OIT) if it were to have to simultaneously develop multiple automation tools for different programs with different needs?

Mr. POWERS. Thank you, Congressman. Once again, I am going to ask one of my colleagues to comment.

Mr. PAPPAS. Certainly.

Mr. LONDON. Thank you very much for that question. I will be able to answer that. As you may be aware, the VA OIT, in collaboration with VBA, developed a 5-year modernization plan, and we are in process of adding an addendum to that plan that goes into a little bit more detail about the efforts that we are going to take to modernize systems over the next 5 years. We feel that the current bill that is under consideration today is duplicative of what we already have in place and that we will be able to report to you very shortly.

Mr. PAPPAS. Well, thanks very much. I appreciate those perspectives, and I yield back, Mr. Chairman.

Mr. LUTTRELL. Thank you, Mr. Pappas. Gentlemen, we have two members that are in kind of a time hack here. Is there any issues with Mr. Ciscomani going and then Mr. Zinke? Anyone else underneath the time hack? Mr. Rosendale, you good? Mr. Self? Okay.

I recognize Mr. Ciscomani. Mr. Zinke, you will go next. Mr. Ciscomani, you are recognized for 5 minutes, sir.

Mr. CISCOMANI. Thank you, Mr. Chairman. It is good to see such a large number of bills here coming before this subcommittee, some of which I sponsor or colead with my colleagues on and off this committee, which I believe is a testament to the good bipartisan work being done here on behalf of our veterans. I want to thank

all of you as well for your words this morning and for the positive updates that you provided for us.

I wanted to highlight one of my bills, H.R. 8881, the Rural Veterans' Improved Access to Benefits Act. This legislation builds upon two of my previous bills, H.R. 5470, the Veteran Medical Exams for Distant Areas (VET MEDS) Act, and H.R. 5938, the Veterans Exam Expansion Act, in order to make it easier for all veterans, but especially those in rural areas, to receive medical exams for VA claims evaluations. It does so by making permanent the VA's authority to grant license portability to medical professionals to perform exams across State lines, as well as expand the categories of providers eligible for licensed portability. This temporary program has proven to be successful in expediting our veterans' disability claims, which is something that I kept hearing over and over again as I came into my first term here. The disability claim time was something that I kept hearing about from our veterans and still do so today. I have over 70,000 veterans in my district, so this was a big part point here. These disability claims, which is why I am proud to support this legislation.

Additionally, I am thrilled to see this legislation supported by the Veterans of Foreign Wars (VFW) and the Disabled American Veterans (DAV). Whether it is crossing State lines or crossing the street, red tape should not stop our veterans from accessing care when and where they need it.

Thank you so much. With that, Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. Ciscomani.

Mr. Zinke, sir, you are recognized for 5 minutes.

STATEMENT OF RYAN ZINKE

Mr. ZINKE. Thank you, Mr. Chairman and Ranking Member Papas. Thank you, indulgence of the Members.

Today I rise and speak of my bipartisan Flowers for Fallen Heroes Act of 2024. The bill would authorize the American Battle Monuments Commission to restore the flower ordering program to services to overseas cemeteries where thousands of Americans were killed during the combat in World War I and World War II. I appreciate the Secretary's remarks that the administration is determined to begin the planning process for it.

Just a reminder that, you know, sometimes those of us in Washington forget who we serve, the people. This issue was brought by those that have fallen family members there. Sometimes, you know, we need to listen to the people out there on veterans issues. It was the dedication and sacrifice and time spent for a very important issue for a lot of families. I appreciate those, Mr. Chairman, on it. It is important to also honor our commitment and remembrance of those that have given the lives in our great battles overseas and have defended the freedom that we share and enjoy today.

With that, Mr. Chairman, thank you. I appreciate your indulgence. With that, have a great day. I am off to Appropriations.

Mr. LUTTRELL. Well, have a great day, Mr. Zinke. Thank you for coming.

Mr. Self, sir, you are recognized for 5 minutes.

Mr. SELF. Thank you, Mr. Chairman. I want to address H.R. 6362, Protecting Benefits for Disabled Veterans Act of 2023. I am

deeply concerned about the provision in H.R. 6362 that grants the VA discretion to award Total Disability Individual Unemployability (TDIU) as appropriate. The language used in this section is extremely vague and raises serious concerns about the consistency of decision making at VA. It is also subjective.

Given the recent repeal of the Chevron deference, it is imperative that Congress take a more prescriptive approach when we craft legislation. Chevron allowed agencies like the VA to get away with wild interpretations of ambiguous statutes. In a post Chevron world, the burden falls squarely on us, the lawmakers, to ensure our statutes are clear, precise, and to the point. This bill, with its broad and ambiguous language, fails to meet any of those criteria. It is our duty to provide explicit guidelines that leave no room for misinterpretation of an out of control administration.

Ms. Messenger, regarding the TDIU bill, can you elaborate on VA's concerns regarding allowing VA to decide an award of TDIU as appropriate after considering the totality of circumstances, even when a veteran can maintain gainful employment?

Ms. MESSENGER. Yes, sir, and thank you for that question. When it comes to the way that the bill is written, as you described, it is broad, which in normal circumstances, we would say that could be a good thing. However, post Chevron, as you mentioned, that is not a good thing. We do need to be prescriptive.

The Individual Unemployability (IU) benefit is extremely important because it fills that critical gap when the VA schedule for rating disability does not fully address the impact of the service-connected disabilities in a veteran's circumstances. One of the areas that this bill would require is for us to consider medical expenses as well as cost of living. This is, aside from the administrative complexity that is involved in this, it is also—we are afraid that it would create inequity with our veterans by—

Mr. SELF. You are suggesting we amend the bill?

Ms. MESSENGER. Yes.

Mr. SELF. Okay. I really—Mr. Powers, when you say you could not comply with the bill, that perked up my ears real fast.

Ms. Messenger, under current regulation, even when veterans do not meet the traditional criteria, you can grant TDIU in exceptional circumstances. Now, this bill has removed the extra scheduler TDIU award. It has removed it. It is gone. Why does VA continue to believe that it can award TDIU in exceptional circumstances, even when it is not in statute? We either amend this bill or you will, post Chevron, not be allowed to do that. Is that correct? Is that your understanding?

Ms. MESSENGER. Based on how the bill is written, it does remove the extra schedular benefit which we would like to work with the committee to be able to ensure that that is included, because that is a piece of that where veterans that do not meet the percentage eligibility, we do want to make sure that that is in the statute.

Mr. SELF. Okay. Thank you for that. Real quickly on 8879, Improving VA Training for Military Sexual Trauma Claims Act, Ms. Messenger, again, I will stick with you, did VA provide any military sexual trauma sensitivity training for the VA employees in Roanoke?

Ms. MESSENGER. Specific to sensitivity training, I am not sure, but I do know that they have undergone MST training that is specific to Post-Traumatic Stress Disorder (PTSD) and personal assault, as well as MST. All of our claims processors are required to complete those.

Mr. SELF. I ask you to follow up on that because I am told they received no sensitivity training, and we are talking about sexual trauma here. I would I ask you to follow up on that.

Ms. MESSENGER. Yes, sir.

Mr. SELF. With that, Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. Self.

Mr. Rosendale, sir, you are recognized for 5 minutes.

Mr. ROSENDALE. Thank you, Mr. Chair. Appreciate it.

Mr. LUTTRELL. I am sorry, no. Yes, Mr. Rosendale.

Mr. ROSENDALE. Okay. Thank you very much, Mr. Chair. Thank you to the witnesses for being here today.

Mr. Friel, I am going to start with you. Actually, I am going to keep most of my questions on you. My questions are going to be about the Veterans Second Amendment Restoration Act and the Safeguarding Veterans Second Amendment Rights Act that Representative Crane is going to be bringing through.

Would you agree with me that it is imperative that eligible veterans feel comfortable receiving healthcare from the VA?

Mr. FRIEL. I would.

Mr. ROSENDALE. Thank you very much. As taken directly from the VA's mission, the core values are integrity, commitment, advocacy, respect, and excellence, known as ICARE. Okay. That is taken directly from your mission statement. Do you think referring to veterans who need a fiduciary as mentally incompetent fulfills this mission or makes veterans less likely to pursue care at the VA?

Mr. FRIEL. One thing I would like to clarify, Representative Rosendale, is that Veterans Health Administration (VHA) does not report individuals to National Instant Criminal Background Check System (NICS). That is a VBA function.

Mr. ROSENDALE. Mr. Friel, I know the process. Okay? Stop using someone else as a scapegoat. What I am trying to find out is, do you think that identifying veterans that request a fiduciary as mentally incompetent builds confidence in them coming to the VA and receiving healthcare there when you identify them as mentally incompetent?

Mr. FRIEL. I do believe because that mental incompetency decision is based on——

Mr. ROSENDALE. You do believe that that makes them more inclined to come to VA.

Mr. FRIEL. Yes, I do. I am sorry, I mean——

Mr. ROSENDALE. Okay. I do not believe that it does, but if you believe that it does.

Mr. FRIEL. I do not believe that it sways them in any way because the decision is based off of benefit, not off medical treatment.

Mr. ROSENDALE. I just think it is very degrading terminology. That is what I think. I think if we went around the table here and started talking to the veterans and said, do you feel comfortable with the Veterans Administration identifying you as mentally in-

competent, that you would probably find that most of the veterans find that offensive as well. Does the terminology respect the contributions veterans have made to our country?

Mr. FRIEL. I believe, sir, that we could probably look at better language than mentally incompetent, but.

Mr. ROSENDALE. You would say that it does not recognize the contributions that veterans have made to our country?

Mr. FRIEL. I would say that is a bad comparison, sir, in that we are looking at making that decision based off of what the fiduciary program is and what the—

Mr. ROSENDALE. All right Mr. Friel, are you concerned that veterans might be less willing to seek care at the VA, knowing that it could result in them unfairly losing their Second Amendment rights?

Mr. FRIEL. I am not. As I said before, seeking care is not what gets you into the fiduciary program. It is actually applying for benefits that puts you into that program.

Mr. ROSENDALE. The National Academy of Sciences found that 35 percent of the veterans identify, and I quote, “the potential of having their personal firearms taken away as an obstacle to use VA mental health services.” If the VA will not acknowledge and you will sit here and not acknowledge this or try to change that belief, that only leads us to believe that the VA is either trying to reduce the delivery of mental health care because we have evidence that shows that it does reduce the confidence that veterans have in going and seeking this care. If you will not acknowledge that, and if you want to change that, then that leads us to believe that you are either trying to reduce the amount of healthcare that is being delivered by the VA or you are making this an attempt to seize firearms from the veterans.

VA’s testimony stated that if the Veterans Second Amendment Restoration Act is signed into law, and this is even more troubling, the VA could not comply because the VA states the Department of Justice (DOJ), an executive branch agency, affirmed VA’s interpretation of the Brady Act. Is it the VA’s position that the VA will not comply with an act of Congress based on another agency’s interpretation of the law?

Mr. FRIEL. The VA has—always works to comply with all laws. We complied with the Brady Handgun Act when it was, in fact, the law—

Mr. ROSENDALE. Again, is the VA’s position, because based on the statement they could not comply with the Restoration Act, the Veterans Second Amendment Restoration Act, is it your position that you will not comply with an act of law passed by Congress?

Mr. FRIEL. Yes, sir. I guess based off of what you have in testimony, yes, sir.

Mr. ROSENDALE. That you would not comply?

Mr. FRIEL. Yes, sir.

Mr. ROSENDALE. Well, I am glad everybody hears that on the record that the VA is going to refuse to comply with—regardless of what we actually pass here, including questions that Representative Self was just asking in view of the Chevron not being passed.

Mr. Chair, I have just a couple more questions, but I think that Mr. Friel has incriminated himself and the VA that they are not—

Mr. LUTTRELL. Mr. Friel—

Mr. ROSENDALE. They are going to have complete disregard for what we are going to do anyway. I would yield back.

Mr. LUTTRELL. Mr. Friel, you are very well aware of how you just answered the Congressman's question, correct?

Mr. FRIEL. As I said, it is in our testimony that we would have trouble complying with that law. As I said.

Mr. LUTTRELL. Mr. Friel, are you very well aware of how you answered the Congressman's question?

Mr. FRIEL. Yes, sir.

Mr. LUTTRELL. Mrs. Ramirez, are you ready?

Ms. RAMIREZ. Thank you, Chairman.

Mr. LUTTRELL. You are recognized for 5 minutes.

Ms. RAMIREZ. Thank you, Chairman and Ranking Member Pappas, and thank you for the witnesses for being here today.

I want to begin by reaffirming my commitment to legislating with the goal of preserving life and that being our ultimate priority. We have all heard time and time again that suicide by firearm is one of, if not the, leading cause of veteran suicide. A hundred and fifty-five veterans have lost their lives to suicide in Illinois, and 66.5 percent of these veterans lost their lives by firearms.

The Veterans Second Amendment Restoration Act and the Safeguarding Veterans Second Amendment Rights Act do the opposite of legislating with the goal of preserving life. In fact, these bills disempower the VA to use the tools they have to prevent veteran suicide. An appeals process for names added to the NICS list already exists. These bills restrict the VA's ability to find other avenues to prevent harm by prohibiting the VA from seeking or participating in the state-level enhanced risk protection orders that have proven, and we know this, to be effective to prevent gun tragedies.

I will say to you, at least on this side, that I will not be supporting any legislation that would potentially endanger the lives of veterans. I certainly urge my colleagues to do the same here.

Let me get to my questions here. Mr. Friel, you have been on the hot seat at least certainly since I got here. I want to start by asking you, what are some of the most common reasons for the VA determining that a veteran is mentally incompetent, such so that they need a fiduciary and should be prohibited from purchasing or possessing firearms?

Mr. FRIEL. The majority of the individuals that are found to be put into the fiduciary program are based off of medical evidence. You know, where a physician says that the individual does not have the ability to manage their affairs, and they indicate what physical condition that might—or what physical or mental condition might impair them. As far as the specifics, we are currently doing data research on that, so I do not have that answer readily available about what specific disabilities are the highest cause.

Ms. RAMIREZ. Let me follow up with you. I want to talk a little bit more about this Veterans Second Amendment Rights Act. The language in the Safeguarding Veterans Second Amendment Rights

Act prohibits the VA employees from participating in proceedings relating to a State gun confiscation law. Many states have implemented domestic violence restraining order laws that authorize or require the removal of a firearm from the person subject to the order. Like ERPOs, E-R-P-Os, these protective orders are issued after notice and hearing, and can result in temporary firearm prohibitions.

These laws, which have existed for decades, are necessary because we know that every year, more than 600 American women are literally shot to death by intimate partners. We know that domestic violence assaults involving a gun are 12 times more likely to result in death than assaults with other weapons.

My follow up to you, Mr. Friel, is do VA healthcare providers treat individuals facing domestic violence? Let me give you the second question so you can just answer together. Are they trained to recognize signs that domestic violence may be occurring?

Mr. FRIEL. I will tell you as far as the second part, I am not a VHA employee, so I do not have that readily available, but we will take that back..

As far as the first piece, yes, we believe that this restricting VA from using red flag laws puts the safety of our veterans, as well as other—you know, their family members at risk.

The number one cause in VA right now is the prevention of suicide. You know, what we do know is that 72.2 percent of the veterans who committed suicide in 2021 used firearms. We are highly concerned about making sure that, you know, they are—that we can reduce that access. We reduce that access, to your point about the ERPO, is that we are truly looking at, when we put—if this were to go in place, our clinicians and our VA police could not testify in those domestic violence, you know, issues where there is potential for a beneficiary to be at risk or the veteran themselves would be at risk, and it would restrict us from being able to utilize those laws that exist within the states for those reporting purposes.

Ms. RAMIREZ. Then, Mr. Friel, do you understand this bill to prohibit VA employees from participating in domestic violence restraining order proceedings, for example, as an expert witness presenting medical evidence in support of the veteran's petition for a restraining order?

Mr. FRIEL. We do.

Ms. RAMIREZ. Thank you. With that, I yield back.

Mr. LUTTRELL. Thank you, ma'am.

Mr. Rosen—I am sorry, Mr. Duarte, you are recognized for a minute, sir. You good?

I am sorry, Mr. Yakym, do you have—are you on a time crunch? Mr. Duarte.

Mr. DUARTE. Thank you, Mr. Chairman. Happy to be here today. Thank you to our candidates or panel.

Ms. Messenger, is it—how long does it typically take to revise a form with a form's attached instructions when reviewing a veteran's claim?

Ms. MESSENGER. The question was how long does it take to update the form?

Mr. DUARTE. Yes, reviewing the form and get back. I am not a veteran myself. I have many veterans in my district and the con-

cern I get is that just the turnaround time for veterans claims when it comes to either families or veterans themselves making their claims is up to 12 months. Is that true?

Ms. MESSENGER. To update a form? To update a form, it can take up to 12 months.

Mr. DUARTE. Families are waiting for the enhanced benefits or services that they need—

Ms. MESSENGER. No, they are not.

Mr. DUARTE [continuing]. for 12 months?

Ms. MESSENGER. No, no, no. That is just to update a form. That is how long it would—it could typically—it could take anywhere from 6 to 9 to 12 months, depending on the types of changes that need to be to a form. Whenever we make changes to a form, there is still a form that veterans and beneficiaries can use that they would be submitting to us for those claims so that we can continue to process.

Mr. DUARTE. An initial claim, what is the turnaround time there?

Ms. MESSENGER. To complete an initial claim?

Mr. DUARTE. Yes.

Ms. MESSENGER. I believe right now our average days to complete is—to complete a claim is around 152 days.

Mr. DUARTE. I understand that there is an IT project underway. When will that be complete and what are the objective benefits that you expect from that?

Ms. MESSENGER. Can you be more specific?

Mr. DUARTE. Well, a veterans claims management IT project is underway, I understand. What benefits and timeframes is that going to improve?

Ms. MESSENGER. I am not sure which—

Mr. DUARTE. Was it—someone in the panel—

Ms. MESSENGER. Is this the automation? Is this the automation?

Mr. DUARTE. Mr. London, was that yourself that mentioned that there is a major enterprise—

Mr. LONDON. Sure. So—

Mr. DUARTE [continuing]. IT platform coming available?

Mr. LONDON. Yes, thank you for the question. I understand your inquiry here. Currently VA is already deploying claims automation for certain types of claims, and we have seen that that has been able to decrease the amount of time that it takes. We have a plan over the next several years to have that technology to be rolled out to all claimed contentions so that we can see reduction in the timelines and how long it takes to promulgate a claim.

Mr. DUARTE. What are your goals for that? Where are we now? What are the objective timeframes and metrics you are using now? What do you think the outcomes of that project are going to be when fully implemented?

Mr. LONDON. Sure. We will be able to get back to you with the details, but from my understanding, the last information that I saw is that we are seeing that in certain circumstances, claims that would take months or weeks, we can actually get them done within days. We will give you more details for you and your staff to give you specifics on where we are and the outcomes that we expect.

Mr. DUARTE. Okay. Well, I am a little surprised, I have to be candid with you, that we are here at a hearing on veterans claims processing and veterans claims issues, and you do not have more for us than that today. I mean, if we have a major IT program underway, if we are developing this, if we are claiming we are going to enhance these services, this is a big issue for my constituents. I hope, I hope, that we can speak in terms of specifics in the future.

Mr. LONDON. I understand and appreciate your concern and we will definitely get the details to you and your staff.

Mr. DUARTE. Sure. My colleague, Mr. Self, mentioned Chevron. Chevron really afforded two problems with the agencies, from my perspective anyways. One was it gave the agencies enormous latitude in how to interpret standards, how to interpret legislation, and sometimes drive trucks through areas where I do not think the legislation was vague, but was simply reinterpreted by the administration and its agencies. The other was a simple lack of uniformity. The same deference that gave the agencies the ability to find ambiguity, whether it existed or not, and then create law according to their own expertise or, in my sense, values, was a lack of uniformity that the agencies would then exercise this discretion with.

Are you working post Chevron to make sure that there is a uniform application of your interpretation of legislation?

Ms. MESSENGER. Thank you for that question. We are working with the Office of General Counsel as this is a significant change to make sure that we are applying Chevron in the way that we need to, in a uniform manner to your point.

Mr. DUARTE. Thank you. The subjectivity and ambiguity are separate problems, and a lot of us are very interested in seeing Chevron applied thoroughly at all levels, in all agencies. It was a big change in how we are going to relate to each other.

Ms. MESSENGER. Yes, sir.

Mr. DUARTE. Another bill on the floor, Mr. London, why does the VA support the Rural Veterans' Improved Access to Benefits Act?

Mr. LONDON. Thank you very much for the question. The license portability authority that we have today has been a game changer, and without it we would have been unable to serve veterans in communities where they live, especially rural and remote veterans. The bill under discussion today would actually allow VA to assist veterans.

For example, one of the highly claimed contentions are eye conditions, and today we cannot send an optometrist to a rural area if they are not licensed in that State. What this legislation would do in this example would allow us to travel in an optometrist to meet the veteran's need where he or she or they reside.

Mr. DUARTE. Thank you. I will yield back, Mr. Chairman.

Mr. LUTTRELL. Thank you, Mr. Duarte.

Mr. Yakym, you are recognized for 5 minutes, sir.

STATEMENT OF RUDY YAKYM

Mr. YAKYM. Thank you, Mr. Chairman, for your service to our country, and thank you for the opportunity to testify today on behalf of my legislation, H.R. 8854, the Ensuring Veterans' Final Resting Place Act of 2024.

Under current law, if a veteran's family chooses to have the VA furnish a commemorative plaque or urn for their loved one, they inadvertently forfeit their right to later inter the veteran at a national cemetery, which require either a headstone or a marker at the gravesite. This issue came to my attention because one of my constituents, Mrs. Jeri Simmons, was attempting to get a plaque for her late husband, Mr. Gary Simmons, a Vietnam veteran. The VA had not yet implemented the Johnny Isakson and David Rowe Veterans Healthcare and Benefits Improvement Act of 2020, which requires the VA to furnish plaques and urns in lieu of a headstone. This prompted the VA to deny Mrs. Simmons' claim for a plaque, which is why she called my office for help. We were able to help secure a plaque for Mrs. Simmons after a phone call with the then VA undersecretary for memorial affairs. During this exchange, we highlighted the oversight in the law and developed a solution.

The Ensuring Veterans' final Resting Place Act of 2024 would allow a veteran's survivor to choose to have their veteran loved one interred in a VA national cemetery, even after their survivor initially chose an urn or plaque in lieu of internment in a VA national cemetery, so long as the expense of that urn or plaque is paid for.

We demand a great deal of sacrifice from our servicemembers, but we do not often think about the burden those sacrifices place on our military families. Being a loved one for a member of the armed forces is no easy task. They are asked to move often, sometimes overseas, endure extended periods of time without their spouse during deployment, and, tragically, sometimes continue life without a member of their family. Like our veterans, we owe our military families an unpayable debt.

We grant veterans the final honor to be interred on solemn grounds at a national cemetery, but those logistics are left to the veterans families. The death of a family member is always a difficult and solemn—it is difficult time, and seldom do arrangements after a death go smoothly. Sometimes families do not immediately know if they want to have the remains of their loved one interred at a national cemetery, or they simply may not want to part with the ashes right away. In that case, they may opt to have an urn or a plaque. This snap decision has permanent consequences as the law is currently written. We must allow the grieving families of America's veterans the flexibility to wait to choose whether or not to inter their loved ones at a national cemetery. We should not deny veterans that right simply because their remains were placed in a VA urn.

Thank you, Mr. Chairman, for the opportunity to testify today. I do have one brief question.

Mr. Powers, how much does the VA-furnished urn or plaque typically cost to the VA?

Mr. POWERS. Thank you, Congressman, for the question. We implemented the plaque and urn about a month ago, and we were happy to provide your constituent the second one. The first one was provided to the widow who initially made a constituent request to her Congressman, and we understand she appreciates the plaque that we gave her.

In answer to your question, the plaque cost us \$179.69 and the urn costs \$370.67.

Mr. YAKYM. Thank you, Mr. Powers. I appreciate your answer, and thank you for finally implementing that law.

With that, Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. Yakym.

Mr. Valadao, sir, you are recognized for 5 minutes.

Mr. VALADAO. Thank you, Chairman Luttrell, members of the subcommittee, and witnesses for taking time to hold this important hearing today.

Veterans across the country and in my district are being impacted by long wait times when it comes to receiving their benefits. While these delays can happen for all sorts of reasons, one source of this delay is outdated technology throughout the Veterans Benefit Administration and the VA Board of Veterans' Appeals. These unnecessary delays are harmful to the veterans—to veterans and survivors. We need to ensure our veterans have timely access to the benefits and services they have earned.

My legislation, the Modernizing All Veterans and Survivors Claims Processing Act, would require the VA to create a plan and report to Congress on making automation tools available for the purposes of processing veterans' and survivors' claims for VA benefits. This is an important step to equip the employees at the VA with the tools they need to better serve our veterans.

Now, I just have a couple questions for Ms. Messenger. Ms. Messenger, why is the VA opposed to simply providing Congress with a report on the extent to which it is feasible and beneficial for the compensation service automation technology to be implemented in other VA program offices?

Ms. MESSENGER. Thank you for that question. I am going to defer to my colleague, Mr. London. Thank you.

Mr. LONDON. Thank you very much for the question. As I stated earlier, VA is implementing the section 701(b) of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act legislation that required it to provide a report on how we plan to modernize the claims process and benefits delivery to veterans. We are in the process of providing an addendum to you and other Members of Congress on the plans that we have to not only deal with disability compensation, but also the other benefit programs that we administer.

Mr. VALADAO. All right. Then follow up on that, and I do not know if you want to defer to Mr. London on this one as well, but all types of veterans and survivor claims require VA employees to send letters. Why does not the VA provide all program offices with automated letter packs that Compensation Services uses?

Mr. LONDON. If I understand your question correctly, you are saying that Compensation Services use automated letters. Your understanding is other programs do not. I am aware that there are projects underway to allow other benefit programs to have access to that technology so they can have symmetry across programs.

Mr. VALADAO. All right. Well, I appreciate your responses.

Thank you, Chairman. I yield back.

Mr. LUTTRELL. Thank you, Mr. Valadao.

Mr. Peters, you are recognized for 5 minutes, sir.

Mr. PETERS. Thank you, Chairman Luttrell, and to Ranking Member Pappas for holding this hearing.

It is a privilege to be here to discuss my bill, the Veterans Claims Education Act. This bill is a simple but meaningful step that Congress can take to address the threat posed by nonaccredited entities, or claims sharks, to veterans hard-earned benefits. Specifically, my bill would require VA to inform all veterans filing a claim that there are accredited entities that can assist them, provide an online search tool that lists accredited entities, and require a public website where veterans can report unaccredited entities that target veterans by charging a fee for their services.

I am so fortunate to represent one of the largest concentrations of veterans in the San Diego area. This bill is response to a constituent's plea for help once they realized how much of their monthly VA check would go to a nonaccredited company they hired to file their claim. It is unconscionable to think that companies would prey on a veteran's desperation for profit. This bill would give veterans in San Diego and throughout the country the information they need to readily access information and free resources without fear of being swindled by a shady company. This bill has bipartisan support in the Senate, has the endorsement of multiple veterans service organizations, including the American Legion, the Veterans of Foreign Wars, Paralyzed Veterans of America, and many others.

When our brave servicemembers raise their hands and swear an oath to the Constitution, we in turn make a promise to care for them and their families. Whether it is taking care of their health, their retirements, or their educational aspirations, we say that we will be there, and too often we fall short of this promise. That is a lot of the work that we do on this committee, and I appreciate your work on that. The least we can do is give our vets and servicemembers, the backbone of our country, the tools to easily claim what we have promised them and what they have earned.

Thank you, Mr. Chairman. I yield back.

Mr. LUTTRELL. Thank you, Mr. Peters.

Mr. Crane, sir, you are recognized for 5 minutes.

Mr. CRANE. Thank you, Mr. Chairman, for holding this hearing today.

I am going to start with you, Ms.—excuse me, Mr. Friel. When a fiduciary decides they are going to report a veteran to NICS, do they look at any findings that a veteran is in danger to himself or others? Do they look at mental health records? Do they look at arrest records? Do they look at judicial records?

Mr. FRIEL. Yes. See, so today, when we report someone to NICS, we are following the Appropriations Act of 2024, where we are only reporting those where we have a court finding or order of potential harm to oneself or others. We do not actively search for those. We do rely on first party information or if the veteran were to have, say, a court-appointed guardian or custodian, then we would seek to see what the order is. We are not actively investigating or doing background checks on any veteran put into the fiduciary program.

Mr. CRANE. Thank you. Ms. Messenger, do VA employees currently initiate or participate in any State proceedings, temporarily confiscate any veteran's firearms, even when experts on red flag laws inform us that such proceedings would provide them with no adequate opportunity to defend themselves in court?

Ms. MESSENGER. Thank you for that question. I am going to yield to Mr. Friel.

Mr. FRIEL. Just so I can clarify, make sure I am giving you—you are asking, is there anything currently where VA is pursuing those red flag laws or participating in those? Is that—

Mr. CRANE. Yes.

Mr. FRIEL. Yes, sir.

Mr. CRANE. Participate in any State proceedings to temporarily confiscate any veteran's firearms.

Mr. FRIEL. The VA unto itself does not confiscate firearms. It is not within our purview. However, VA police—

Mr. CRANE. That is not what the question was, sir. Do VA employees currently initiate or participate in any State proceedings that go on to temporarily confiscate—

Mr. FRIEL. Yes, they could be—

Mr. CRANE [continuing]. a veteran's firearms?

Mr. FRIEL. Yes, they could be ordered—they could testify, VA police or clinicians could testify in hearings where there are domestic violence or in some—in an area where the veteran may have to be temporarily in in-residence medical care. Yes, in those cases, they would participate in a hearing.

Mr. CRANE. Mr. Friel, did you tell Congressman Rosendale earlier that you would not comply with laws passed by Congress that overrode the VA's interpretation of law?

Mr. FRIEL. I would like to clarify.

Mr. CRANE. Please do.

Mr. FRIEL. Within the VA perspective, you know, we have put in our testimony that the Secretary could not comply. I work within the VA. I work for the Secretary. We would, as the instruction is provided to us, we would demonstrate and imply—and implement as we are directed to do so.

Mr. CRANE. By who?

Mr. FRIEL. By the Secretary.

Mr. CRANE. Do you see how that creates a problem, sir? Do you recognize that the position that you are taking in this room today takes the power away from the people in this country who send representatives to Washington, DC, to become lawmakers?

Mr. FRIEL. I do.

Mr. CRANE. Then why is that your position?

Mr. FRIEL. So—

Mr. CRANE. Do you not care, sir, that this country was formed and founded by the people, for the people?

Mr. FRIEL. I do. I have taken an oath to uphold the Constitution.

Mr. CRANE. Well, then why would you take a position like that?

Mr. FRIEL. I—as I said, I work for the Secretary. We would take—we would follow the guidance.

Mr. CRANE. Oh, so you work for the Secretary, so you would override what the people and the Constitution actually say? Is that what you are telling me, sir?

Mr. FRIEL. Sir, I would be following the direction provided to me by my leadership.

Mr. CRANE. Okay. If he told—you see how far down the rabbit hole we can go with that, sir?

Mr. FRIEL. I do, sir.

Mr. CRANE. If he told you to do stuff that was unconstitutional, you would do it? That is what you are telling us.

Mr. FRIEL. No, sir, I would not—

Mr. CRANE. Who are the lawmakers here in Washington, DC.?

Mr. FRIEL. It is this body, sir.

Mr. CRANE. Is it unelected bureaucrats?

Mr. FRIEL. No, sir.

Mr. CRANE. Did the Secretary of Veterans Affairs, did he get elected by the people of the United States or was he appointed?

Mr. FRIEL. He was appointed, sir.

Mr. CRANE. Right. Was I elected?

Mr. FRIEL. Yes, sir.

Mr. CRANE. Was the chairman elected?

Mr. FRIEL. Yes, he was.

Mr. CRANE. Yes. You see the problem.

Mr. FRIEL. I do, sir.

Mr. CRANE. Where are your—where is your loyalty, sir? Is it to the Constitution or is it to your boss?

Mr. FRIEL. My loyalty is to the Constitution. However—

Mr. CRANE. Does not seem like it, Mr. Friel, especially—and the problem is, sir—you seem like a nice guy. The problem is we are talking about veterans' rights and due process and their right to bear and keep arms, another constitutional premise. You are willing to do what your boss tells you to do, even if it violates their rights.

Mr. FRIEL. Sir, we have conflicts of law—

Mr. CRANE. You should do some soul searching, sir, you really should, on where your loyalties lie. Unfortunately, you are definitely on the wrong side of this one constitutionally.

Thank you, Mr. Chairman. I yield back.

Mr. LUTRELL. Thank you, Mr. Crane.

Mr. McGarvey, you need a minute, sir?

Mr. MCGARVEY. I am good. Thank you, Mr. Chairman.

Mr. LUTRELL. You are recognized for 5 minutes.

Mr. MCGARVEY. Thank you, Mr. Chairman. Thank you, Mr. Chairman. I appreciate you having this hearing today. I appreciate everyone being here today. I am glad we are progressing on a bipartisan basis for a good percentage of these bills. I think that is what this committee does so well, is take care of the men and women who are willing to put on a uniform and take care of us.

I would be remiss today, though, if I did not register my concern over two of the bills today: the Veterans Second Amendment Restoration Act and Safeguarding the Veterans Second Amendment Rights Act. The reason I register concern with these is I am afraid they are going to put veterans' lives in danger.

Right now, 18 veterans a day die by suicide, 13 with a firearm. We cannot divorce ourselves from the reality of this topic or the reality of the fact that the most at likely risk group—the most at-risk group for suicide in this entire country are men over 50 who served in the military and own a firearm.

The VA already provides an avenue for appealing the decision if a veteran is wrongfully placed on the NICS list. Wrongfully placed on the NICS list. We have had that discussion multiple times at different hearings and roundtables. I cannot support this tool—re-

moving it entirely when we are talking about the well-being of veterans. Veterans are still allowed to own firearms. This is if a veteran is found in some way to not be completely competent about purchasing new weapons. I think it is on us to keep veterans safe.

I also understand we do not want to discourage veterans from going to the VA, and I think that is worth talking about. For veterans' safety, I just have to urge my colleagues to rethink this particular approach and get back to the drawing board in a bipartisan manner.

Mr. Chairman, I ask unanimous consent to enter into the record a joint letter from Brady, Everytown, Giffords, and March for Our Lives about these two bills.

Mr. LUTRELL. So ordered.

Mr. MCGARVEY. Thank you. I also want to talk about ways to improve the functions of the VA to be more responsive to our veterans. My bill, the Board of Veterans' Appeals (BVA) Attorney Retention and Backlog Reduction Act, would grant BVA the authority and flexibility to promote attorneys to the GS-15 level, if they so choose, and not be capped at GS-14.

Mr. Powers, I know you do not represent BVA, but as the VA witness, I will direct my questions to you. As you know, the VA wrote in its testimony that it currently does not support the bill. In 1994, Congress put veteran law judges, also known as board members, on the Administrative Law Judge (ALJ) pay scale. Yet we also know that the BVA attorneys are the ones who often write the decisions.

Mr. Powers, do you think it is hypocritical of BVA leadership to oppose a bill that would give frontline attorneys an opportunity for a higher salary, while the people who supervise the frontline attorneys have benefited from a similar change for 30 years? In other words, leadership was placed on a higher pay scale three decades ago and are now against allowing their workers to be bumped up a bit. As a manager, do you think that is fair.

Mr. POWERS. Thank you for the question, Congressman. As you said, I do not have a lot of expertise on the board and these decisions that were made. The reason we opposed—the VA opposes the bill was it—because of it is not aligned with personnel law, and, therefore, we cannot support the bill.

Mr. MCGARVEY. You probably can understand my reason for allowing the flexibility for if it happens for people who are working and serving in the VA, serving our veterans, to be able to get a little bump in pay, if nothing else, for the retention, for the recruitment, for the morale of the people looking after our veterans.

I do want to highlight some of the discrepancies. Right. The BVA leadership cites budgetary concerns as a reason to oppose this bill and paying their employees what they are due. Are you aware of how much money the Board returned to the Treasury unused last fiscal year?

Mr. POWERS. Congressman, I am not.

Mr. MCGARVEY. The BVA returned \$15 million that they did not use. That is more than I will ever make. That number is certainly enough to pay for about 1,500 attorneys to go from the GS-14 step to the GS-15 steps, the GS-14 step 4 to GS-15 step 1, about a \$10,000 increase each. We know the number of attorneys actually

promoted under this bill would not be nearly that high. Plus, BVA only has about 1,000 attorneys. This bill simply gives the BVA the discretion to raise the pay of top attorneys, if they so choose, if they so choose, within their existing appropriations.

I think if we are serious about addressing the case backlog, the 200,000-case backlog, and if we know that there are experienced attorneys who have experts in veterans law for years and years that were leaving elsewhere for higher pay, then we have got to do something. This bill is a great step in addressing the recruitment, retention, and the service to the veterans that we also so want.

Mr. Chairman, I am out of time and I yield back.

Mr. LUTTRELL. Thank you, Mr. McGarvey. We will move into a second round of questioning.

Mr. Friel, sir, after Mr. Rosendale's question, I was going to express my concerns that you were walking on thin ice, but I think you have absolutely fallen through the water—into the water, and you have put the Secretary in an awkward position, I think, and I am disappointed in that.

You or no appointed official has the right to subvert the will of Congress. We speak for the will of the people. Okay? I highly recommend you go back and listen to the testimony you gave today in response to the questions you were asked by the members of this committee. You understand?

Mr. FRIEL. Yes, sir. Thank you.

Mr. LUTTRELL. Mr. Pappas, do you have a question, sir? Mrs. Ramirez?

Mr. Self, you are recognized for 5 minutes, sir.

Mr. SELF. Thank you, Mr. Chairman.

Mr. Powers, what is the average amount that VA reimburses for domestic transportation of a deceased veteran to a cemetery currently?

Mr. POWERS. Thank you for the question, Congressman. By the way, the transportation allowance is so critical. That is one of the ways we partner within the VA and Mr. Friel and the Pension and Fiduciary Service can more appropriately answer that question.

Mr. FRIEL. Yes, sir. Today we make a full payment based off of the receipts that we receive. On average, based on analysis, we did it like 2 years ago, it is about \$670 per.

Mr. SELF. How did you arrive at the \$745 for your proposed flat fee?

Mr. FRIEL. We looked at cost of living adjustments and looking at, you know, making sure that we could provide the best benefit possible. We increased the amount higher than what we were doing for average, for the fact that, you know, we realize people pay more and the cost of funerals continues to go up and the transportation allowance.

Mr. SELF. I do not understand. Your current is six-what?

Mr. FRIEL. Our current is full benefit.

Mr. SELF. Right.

Mr. FRIEL. The current is whatever the cost of that—

Mr. SELF. The average is six—

Mr. FRIEL. That was a couple years ago, sir. I would have to go back and repull the numbers to give you more current data.

Mr. SELF. You just quoted 690?

Mr. FRIEL. I did say it is about 670, 690, but that was from data from a few years ago.

Mr. SELF. Interesting. Mr. Friel, I will stick with you. I want to know more about why you believe, and we have heard your testimony, why do you believe that the VA could not comply with this bill if it goes into law?

Mr. FRIEL. Sir, at the time when we reported all these individuals, we were following the law, the Brady Act, which required, you know, as interpretation where individuals—

Mr. SELF. I understand what you were doing in the past.

Mr. FRIEL. Right.

Mr. SELF. What I want, what I am focusing on is in the future. If this law becomes—if this bill becomes law, why do you think you could not comply?

Mr. FRIEL. I think the struggle is, sir, that we are being requested to go back and tell DOJ that we reported an error, which we do not believe we reported those individuals at error. We were following the law of the time, which was the Brady Act.

Mr. SELF. I am not talking about the law at the time. I am talking about this law. If this bill becomes law, I want to know why you could not comply with the current law.

Mr. FRIEL. If the bill became law, as I said, I think the issue we have within the bill is the fact that we are saying that—

Mr. SELF. The issue you have with the bill is to obey it. You are the executive branch. That means you execute the laws of this land as this body passes.

Mr. FRIEL. As I said, I believe the concern is that we are being asked to go back and remove everybody who is already previously been reported, which we did based on—

Mr. SELF. Whatever the law requires. I agree with the chairman. You have put the Secretary in a bad position because we have often talked about this lawless administration on the border. We now see subpoenas. We are now having to go to the second level of subpoena on the Attorney General of this Nation. Now you sit here and tell us that you are not going to comply with the law.

This is more than concerning, Chairman. I yield back.

Mr. LUTTRELL. Thank you, Mr. Self.

Mrs. Ramirez, Mr. McGarvey, anything? Mr. Pappas?

Mr. Crane, you are recognized for 5 minutes.

Mr. CRANE. I am sorry. Back to you, Mr. Friel. Earlier I asked you if when a fiduciary decides they are going to report a veteran to NICS, do they look at any findings that a veteran is in danger to himself or others, i.e., do they look at mental health records? Do they look at arrest records? Do they look at judicial records, et cetera? I believe you said no. Is that correct?

Mr. FRIEL. We do not actively pursue them, yes, sir.

Mr. CRANE. Okay. Do you see why that might be a problem, sir? As far as reporting a veteran to the National Instant Criminal Background Check System without looking at any of those things, do you see how that might be a problem for a veteran—

Mr. FRIEL. We are—

Mr. CRANE [continuing]. in maybe purchasing a firearm and being able to exercise those constitutional rights that I was talking about?

Mr. FRIEL. Sir, there are two pieces there. Right now, we are following the Appropriations Act of 2024. We are only reporting those in which we have information of a court finding or order where a beneficiary is a threat to—

Mr. CRANE. I understand that, sir. I am asking you, do you see how that might be a problem with overstepping veterans' constitutional rights to due process?

Mr. FRIEL. I do, sir, but I want to emphasize that VA's number one concern is veteran suicide. As I said, you know, 72 percent of the veterans who committed suicide in 2021 did that through the use of firearms. That is our major concern, and it is one of the things that we continually strive to work on.

Mr. CRANE. Mr. Friel, does the VA—do you have any studies that you can cite that show that veterans are more at risk of firearm suicide if they are simply unable to balance their checkbooks and, therefore, need a fiduciary to manage their finances? Do you have any studies showing that?

Mr. FRIEL. I do not have the information readily available, sir, but I know there are studies that say that people who are at financial risk are more likely have a higher propensity toward suicide.

Mr. CRANE. Yes. What about people that feel like their constitutional rights are being trampled on? Do you think they might have a higher risk of harming themselves? Not being able—somebody who came from a military unit and came home and because they need somebody to help them balance their checkbook or help them with their finances, is now stripped of their right to protect and defend themselves and their family. Do you think that might cause stress on an individual?

Mr. FRIEL. Well, prior to—we do not just put people into the NICS program, as I said, under current processes, but we do offer due process when we make the finding of a proposed incompetency. We also have an opportunity for relief and the opportunity to appeal our decision. There are multiple avenues for a beneficiary to seek relief from being put into the NICS program. As I said today, we are only currently reporting those where we have a court order or decision.

Mr. CRANE. Thank you. I yield back.

Mr. LUTTRELL. Thank you, Mr. Crane. That is all the questions we have. This panel is excused. The next panel, please, at your leisure.

Mr. Friel may I have a word with you, sir? Thank you.

Still good morning. Good morning. Mr. Holliday, how are you? Are you in a good mood?

Mr. HOLLIDAY. A little bit, I guess.

Mr. LUTTRELL. A little bit. I guess I will take that. I will take what I can get.

Today, I will introduce our third panel. Ms. Candace Wheeler, director of Government and Legislative Affairs for the Tragedy Assistance Program for Survivors (TAPS). Good morning. Ms. Lesley Witter, senior vice president of Advocacy at the National Funeral Directors Association (NFDA). Good morning, ma'am. Mr. Bob Carey, director of National Defense Committee. Sir. Mr. Robert M. Holliday, Gold Star son of Captain Karl O. "Hap" Holliday. Sir, good to see you again. Ms. Nicholas Keogh—Mr. Nicholas. Sorry,

that was an accident. Second vice president, Local 17, American Federation of Government Employees (AFGE).

I please ask the witnesses to stand. Mr. Holliday, can you, please? I know you got some bad knees. Sir, please raise your right hand.

[Witnesses sworn.]

Mr. LUTTRELL. Thank you. Let the record reflect that all witnesses answered in the affirmative.

Ms. Wheeler, you are now recognized for 5 minutes to present the testimony of the Tragedy Assistance Program for Survivors.

STATEMENT OF CANDACE WHEELER

Ms. WHEELER. Chairman Luttrell, Ranking Member Pappas, and distinguished committee members, the Tragedy Assistance Program for Survivors appreciates the opportunity to testify on legislation impacting our veterans and surviving families.

We support the majority of these important bills, and we will focus on our top priorities. TAPS thanks Representative Peters for introducing the Veterans Claims Education Act, which ensures veterans and survivors are made aware of the free resources available for filing a VA claim. Since the passage of the PACT Act, there has been an influx of media advertisements and solicitations from predatory claim consultants. Historically, veteran and survivors have been vulnerable to predatory actors, and claim sharks are no exception. TAPS is committed to protecting surviving families from being exploited by predatory claim actors when numerous free options are available.

TAPS applauds Representative Zinke for introducing the Flowers for Fallen Heroes Act. This important bill aims to reestablish the Flower Program, which offered a meaningful way for survivors to honor their loved ones who died in service to our country and were laid to rest in American military cemeteries overseas. The Flower Program was administered by the American Battle Monuments Commission and operated successfully for 65 years until it was discontinued in 2015. TAPS is proud to stand with the American World War II Orphans Network to support the reinstatement of the Flower Program, and we ask Congress to preserve it in perpetuity.

TAPS thanks Ranking Member Pappas for introducing the Survivor Benefits Update Act. We support section 2 of the bill, which extends the timeline for surviving spouses of Persian Gulf War veterans to apply for VA survivor benefits. However, we oppose section 3 regarding the processing of survivor benefit claims, which changes “shall be considered” to “may be considered.” This change would require survivors to determine which benefits they qualify for and file a separate claim for each. Under current law, survivors file a single claim to be reviewed for all benefits. Although TAPS appreciates the intent to streamline the survivor claims process, it should not shift the burden to our survivors.

TAPS is grateful to Chairman Luttrell for introducing the Mark Our Place Act. This important legislation removes time limitations on burial benefits for Medal of Honor recipients and ensures they receive the recognition they have earned and deserve.

TAPS appreciates Representative James introducing the Preserving Veterans’ Legacy Act. This bill provides permanent author-

ity to the National Cemetery Administration to bury eligible spouses and dependent children who predeceased their veteran or servicemember. The current law sunsets on October 1, 2024. Our military families serve and sacrifice for our Nation and should be afforded the honor of burial with their loved ones in a VA national cemetery. We urge swift passage of this critical legislation before the current law expires.

TAPS thanks Representative Reschenthaler for introducing the Dennis and Lois Krisfalusy Act, which would allow spouses and dependent children to be added to a memorial headstone or marker regardless of their date of death. TAPS appreciates this bill would extend the Federal law for 10 years, and we recommend it be made permanent.

TAPS is grateful to Representative Yakym for introducing the Ensuring Veterans' Final Resting Place Act. This legislation would allow surviving families to reimburse the VA for the cost of an urn or plaque for their deceased veteran if they elect to inter them in a VA national cemetery. Surviving families who elected to receive an urn or plaque were unaware this decision would forfeit burial benefits for their veterans going forward. This has caused surviving families additional emotional and financial stress.

TAPS thanks Representative Valadao for introducing the Modernizing All Veterans and Survivors Claims Processing Act. This bill expands the use of automation tools to process veteran and survivor claims to help improve efficiency and timeliness.

TAPS supports the Improving VA Training for Military Sexual Trauma Claims Act. This critical legislation would establish MST sensitivity training for VA claims employees and contracted healthcare professionals and require VA to update it annually. Improving MST sensitivity training is vitally important to safeguarding the ongoing physical and mental health of MST survivors.

TAPS is grateful to Ranking Member Pappas for introducing the Veterans' Burial Improvement Act. This comprehensive legislation mirrors provisions within various standalone bills. Combined, they honor our veterans, servicemembers, and their survivors.

TAPS thanks you for the opportunity to testify, and we look forward to your questions. Thank you.

[THE PREPARED STATEMENT OF CANDACE WHEELER APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Ms. Wheeler.

Ms. Witter, you are now recognized—it is Witter, I am correct? Okay. Thank you. You are recognized for 5 minutes.

STATEMENT OF LESLEY WITTER

Ms. WITTER. Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, thank you for the opportunity to testify before you today on behalf of the National Funeral Directors Association I am Lesley Witter, senior vice president of Advocacy for NFDA, representing over 20,000 licensed funeral directors and embalmers throughout the Nation.

NFDA, with its extensive national network of over 10,000 funeral homes, remains steadfast in our commitment to ensuring that every veteran receives a dignified, final tribute honoring their dedicated service to our country. Mr. Chairman, NFDA extends grati-

tude to you and your fellow veterans in Congress for your service to our Nation both on Capitol Hill and in the armed forces. We commend the committee for its ongoing efforts to ensure veterans receive the benefits they have earned through their sacrifice and service. Today, as the committee deliberates on 18 bills addressing critical issues affecting veterans, NFDA appreciates the opportunity to provide our perspective on matters related to funeral and burial benefits.

We enthusiastically support your legislation, H.R. 6507, known as the Mark Our Place Act. This legislation is crucial to ensuring that every veteran continues to receive the memorialization they deserve.

Similarly, NFDA supports H.R. 7729, which expands eligibility for headstones, markers, and burial receptacles to include certain individuals who passed away before November 11, 1998.

Furthermore, NFDA endorses H.R. 8792, the Flowers for Fallen Heroes Act, designed to establish a program for ordering flowers at gravesites overseen by the American Battle Monuments Commission to ensure that over 200,000 Americans who perished in World War I and II are respectfully memorialized in perpetuity.

Additionally, NFDA supports the Veterans' Burial Improvement Act, particularly its provisions making certain burial benefits permanent for spouses and children of armed forces members who die while on active duty. We also endorse the provision enabling the Secretary to cover a standard transportation allowance for transporting a veteran from the place of death to a designated cemetery.

Mr. Chairman, funeral directors advocate passionately for every unclaimed individual to receive a dignified funeral and burial. Having collaborated closely with the VA and the NCA, we understand the challenges posed by grave sites containing commingled remains or multiple individual graves. The current limitations prevent the provision of a single headstone for each individual in these circumstances. We firmly support this legislation, which empowers the VA to furnish a group burial headstone or marker for eligible decedents while ensuring that every effort is made to acknowledge each individual by name whenever feasible. NFDA stands committed to advocating for dignified treatment of our veterans, and we urge the committee to support this legislation.

Mr. Chairman, funeral directors nationwide firmly uphold the principles that decisions made by grieving families should not compromise a veteran's rightful entitlement to burial in a veteran cemetery. While we commend the VA's efforts to offer burial options through the commemorative plaques and urns for veterans whose cremated remains are not interred, NFDA has raised concerns about a provision in section 2207 of Public Law 116-315. This provision risks confusion the purchase of merchandise with a veteran's fundamental right to burial in a national cemetery.

NFDA has underscored this to the VA, our concern that a grieving spouse might unintentionally jeopardize the veteran's eligibility for ground burial by opting for an urn benefit from the VA. This contrasts starkly with privately purchasing an urn, which does not impact burial rights. Therefore, NFDA supports legislative adjustments that allow families to reimburse the VA for an urn provided by the VA, thereby safeguarding continued eligibility for interment

alongside their spouse in a VA or national cemetery. In alignment with this stance, NFDA supports ensuring Veterans Final Resting Place Act.

In closing, I would like to express my sincere gratitude for the opportunity to testify before you today on behalf of the National Funeral Directors Association. I hope my testimony has provided valuable insights, and I am happy to address any questions you have.

[THE PREPARED STATEMENT OF LESLEY WITTER APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Ms. Witter.

Mr. Carey, sir, you are recognized for 5 minutes.

STATEMENT OF BOB CAREY

Mr. CAREY. Thank you, Mr. Chairman, members of the subcommittee.

Frankly, I am gobsmacked by Mr. Friel's comments, and so my testimony I had to rewrite. Let me go into that. I am sorry, sir? Okay.

I started, and I may have misunderstood it, but I started with his statement that a fiduciary determination has no impact upon seeking mental health care. Then he went into saying that care is not what leads to the fiduciary process, it is the applying of benefits. The fundamental fact is that I put in my 18 July 2023 testimony and today's testimony is, in fact, any rating official or any clinician in the VA can refer someone to the fiduciary program, and then the veteran is responsible for—has 60 days to prove their competency, not the other way around. The burden of proof lies upon the veteran to prove their competency, not upon the VA to prove their incompetency.

He also says that suicide prevention is their number one goal. The fact of the matter is that the VA has repeatedly refused to examine the issue of combat exposure and veteran suicide risk, despite the fact that the 2016 VA suicide study specifically showed that combat veterans had a suicide risk of about four to five times that of overall veterans. Now they say there is no linkage between the two. We are no longer going to look at that.

The fact of the matter is that, and I am going to—as I discussed in my testimony and I will discuss here in my oral, the VA cannot be trusted in this issue. It will do whatever it is necessary, laws or not, to report veterans to the NICS data base and the states as mental defectives. What I want to discuss now is that fiduciary program. It is not that the fiduciary program law—it is not that this is what the law was at the time. That law was—it was a regulation, and that regulation was fundamentally not in compliance with due process or due process rights. The fiduciary program, before it even gets to the NICS data base, before it even gets to the determination and the reporting to DOJ, is fundamentally not in compliance with that veteran's due process rights.

As I detailed in my July 18, 2023, testimony, the veteran's disability benefits have legal standing as personal property only subject to control through a judicial due process. That was *Cushman v. Shinseki*. *Goldberg v. Kelly* found the due process clause requires an evidentiary hearing to deprive and, "recipients are at the

mercy of a vast bureaucracy without procedural protections, which could be turned into an arbitrary decision maker.” Therefore, “individuals need to be protected from the bureaucracy. I would argue that Mr. Friel’s commentary today makes that even more so.

Now with *Loper v. Raimondo* setting aside Chevron deference, I think there is going to be a lot of people that are going to have a good case to say, why was I referred? The fact of the matter is, the VA’s fiduciary program does not meet the legal standards for adjudicating these deficits.

There is no independent oversight. It does not even meet the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ definition of mental defective. In effect, VA has made themselves, I believe unconstitutionally, the legislature, the executive, and the judiciary in order to be able to make these findings.

Only VA can cure this finding of mental defective. I get it. VA reports to DOJ. DOJ then sends you the letter saying you can no—you have been found to be a mental defective. You can no longer purchase or possess a firearm. The finding of mental defective is by the VA, and, therefore, it is only the VA who can cure that. There is no process for appeal of that underlying process. The appeal process is only over at DOJ to be said that you were not—that you should not have been put into the fiduciary program. The fundamental finding of mental defective, that can only be cured by the VA. That is why we need the Veterans Second Amendment Restoration Act, because that is the only way we are going to get that done.

Furthermore, given the fundamental due process in taking clause constitutional problems with the fiduciary program before it goes to DOJ, the only procedure that will work will be the Safeguarding Veterans Second Amendment Rights.

Happy to answer any of your questions. Sorry that I was a little disjointed, but remarkable day.

[THE PREPARED STATEMENT OF BOB CAREY APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Mr. Carey. Absolutely, this is a place that you can do that. Rest assured.

Mr. Holliday, sir, you are recognized for 5 minutes.

STATEMENT OF ROBERT HOLLIDAY

Mr. HOLLIDAY. Chairman and everyone on the committee, I am Bob Holliday from Des Moines, Iowa. I am here asking you to see that the Flowers for Fallen Heroes Act is passed.

I think, let us look at this this way. Everybody in this room and everyone who is a citizen of the United States lives in the most free country in the history of this planet. Those freedoms have come with a price, and the price has been the death of our soldiers or those that have served with a uniform. It is that simple. Let me give you some numbers. World War II, there were 407,000 Americans that lost their lives. That averages 220 people a day, Americans that were killed for that matter. About half of that number is either buried overseas or at sea, on the wall of the missing, for that matter.

Now, the American Battle Monuments Commission, where it was in here today, in 1923, Congress gave birth to that organization to

build and maintain the overseas cemeteries. I know you have all seen the pictures or maybe been in them for that matter. Now, with that said, by 1950, the ABMC realized that no one could simply get in their car and go visit these graves overseas. They themselves gave birth to the Flower Program.

I think sitting here today myself—and with me, by the way, is Marilyn Lieurance, who is behind me. Her dad was a B-17 pilot who was killed in World War II. We are here absolutely representing Gold Star families that have people buried in these cemeteries. By 1950, as I say, the ABMC realized we could not visit these cemeteries ourselves. It cost several thousand dollars to do it. They started this Flower Program themselves.

I am going to tell you exactly what happened to me. I want you to know I am not the king of the hill here. We are representing a lot of people. My experience is just one of many, but it is a good example.

I found out about that Flower Program in 1974, when I was standing at my dad's grave and the superintendent of that cemetery heard there was family there. He came out and introduced himself to me and told me about it. I had no idea it even existed. They have never truly advertised it to this country. From 1974, for the next 41 years, I decorated that grave three times a year. I am going to tell everybody in this room, there was never a problem. There was never a hiccup. There was never anything but just good service.

What did that mean to the people like myself? When you lose your dad to a sudden, violent death protecting the freedoms of this country, there is a hole created in your heart that does not close. It is that simple. That Flower Program meant something. I mean, it meant something, and it meant something to everybody in this country, whether they know it or not.

I decorated that grave over 123 times if you do the math on that itself. Well, right before Memorial Day of 2015, we get a note from the ABMC. We are not going to do that anymore. Pardon me? We are not going to do it anymore.

Well, I was here this morning. I heard what they said. Thank you to the ABMC. They finally have listened to it, but it is taken an act of Congress to get them to listen to it, and it has for that matter.

Let me tell you a few other things that you should know. I will be honest with you, I am the guy that started this fight, but that is all right, for that matter. What they were saying is, what was going on was so easy for if we wanted to do it the way they wanted to do it, in other words—let me back up here. When they ran that program, I am going to go back to the point we had no problems at all. It worked smooth as glass.

The lady that is sitting behind me, who I should have brought with me, when she tried to go about it through the method the ABMC had, for that matter, her dad is in Luxembourg. He was a B-17 pilot that augured in. He is buried in Luxembourg at their cemetery. She personally called every florist in that country. None of them spoke English. They did not, regardless of what you hear from the ABMC. That is why we did not have a problem with that kind of thing. The problems we had was that, was language bar-

riers, money. We do not understand their money. The prices of these flowers, once they stopped, it tripled. It was just terrible. People quit buying them, and because of that, quit honoring them.

Let me tell you another thing as far as honoring flowers—I mean honoring soldiers, the Americans. Now, I am one of 183,000 American kids, now adult kids, if you will, that lost their dads in that war. He is buried in Holland, in Margraten, Holland; 8,301 Americans are buried in that Holland. Every grave in that cemetery has been adopted by a Dutch family. They are on their third generation of doing that. There is a waiting list of people that does that.

What did our country do? They dropped it. It takes an act of Congress. It does not quite fit. That is not the heritage this country wants to leave for that matter. I go back to the point that we live in the freest country in the history of this world and they want to drop this Flower Program.

I was real interested today when they said, we are going to do it and we will be proud to do it. That is fine. I loved what Representative Zinke said, you ought to listen to the people you serve. That is basically what he meant and I just really enjoyed hearing that kind of thing. We are not trying to be their enemy. We set out trying to be their friend, but they would not give us the time of day. They would not listen to us. That is why we had to go this route for that matter.

We today are the voices of our fathers that are laying in these cemeteries and in the dirt of these countries, and they are not here. The reason, if you want to know, that they did not bring them home, our government, was a cost factor trying to ship all those bodies home. They, the government, had to get our family's permission to bury our family member overseas. Our family gave the government a favor doing that. The government needs to return this favor a little bit, for that matter.

It is—when the ABMC walked from this, it was like somebody pulling something out of your heart. You know, I try not to be a too emotional guy. I think I am pretty tough, but maybe not as tough as I think I am. It was just an absolutely horrible thing to do to the Gold Star families and there is a lot of people are not real happy about that, if that it.

That is what I would say to you today. Thank you for listening to me. Please, please see this bill is passed.

One other thing—

Mr. LUTTRELL. You have to wrap it up, Mr. Holliday. I have given you 3 minutes extra.

Mr. HOLLIDAY. Well, I hope I will not need that.

Mr. LUTTRELL. Oh, I have already given them to you. You are welcome.

Mr. HOLLIDAY. Thank you. If this bill passes, do not let them farm this out to a third party. They tried that with us before, that is the first thing they wanted to do. I will be honest with you, when I met—I have been to DC six times on this thing, trying to get this done, not by myself, but with others. First thing they told me was, go get \$2 million for our budget. Me, I am going to raise them money.

I went home to Iowa, and I know Senator Ernst pretty well. I called Senator Ernst and she said, Bob, let me tell you something.

She must have been on the Senate Veterans Affairs Committee, or something. She said, go back to them and ask them what they are going to use the 2 million for, and I did, called them on the phone. You know what the answer was? We have not quite worked that out yet.

They were going to farm it out. Give them \$2 million, they are going to hire a third party just to run it, and they can step out of it. It would have been one more thing off their plate, in my opinion. They are forgetting the fact, I am going to repeat this, everybody within the four corners of this country lives in freedom, and that is been paid for, stick with it. Do not walk away from these Gold Star families.

Thank you for letting me speak to you.

[THE PREPARED STATEMENT OF ROBERT HOLLIDAY APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Yes, sir, Mr. Holliday.

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

STATEMENT OF NICHOLAS KEOGH

Mr. KEOGH. Thank you. Thank you, Mr. Holiday, for—and to—thank you to all the Gold Star families. Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, thank you for inviting AFGE to participate in today's hearing. On behalf of AFGE and the National VA Council (NVAC), representing 300,000 VA employees, it is a privilege to offer insights to the subcommittee on legislation being considered, particularly bills affecting the VA workforce.

The primary reason I come before the subcommittee today is to express AFGE's strong support for the draft legislation known as the Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act. AFGE applauds Representative McGarvey for sponsoring this legislation that will help the Board retain its attorney workforce by making the full performance level for nonsupervisory decision-writing Board attorneys Grade 15 of the general schedule.

As Local 17 President Doug Massey testified to the subcommittee in November, the Board had a GS-14 career path for attorneys for many decades. However, in November 2021, Board leadership downgraded the career path to GS-13, which undermines this committee's goal of recruiting and retaining legal talent to serve America's veterans. Reducing the level of compensation for attorneys dissuades qualified applicants from choosing to work at the Board or from choosing to stay long term. Instead of attempting to remain competitive, Board management has widened the pay gap between Board attorneys and the private sector.

AFGE believes that this committee shares our commitment to ensuring that disability claims for veterans and their families receive the highest level of attention and that Board management's policy changes contrary to that goal. Following Mr. Massey's testimony, we were glad to see that members of the subcommittee do not agree with this penny wise and pound foolish treatment of Board attorneys, especially considering the critical role we play for veterans, the relatively small size of the Board, and the nuanced expertise required to properly adjudicate veterans' claims.

If enacted, Representative McGarvey's bill will authorize the Board to promote nonsupervisory decision-writing attorneys to the GS-15 level. With this authority, the Board can fulfill the goal of retaining senior attorneys who have institutional knowledge and expertise in veterans law. This will encourage these attorneys to stay at the Board and not look for jobs elsewhere.

Furthermore, by making the full performance level for Board attorneys GS-15, it will also undo the Board's GS-13 promotion cap for new attorneys. This increased retention will also benefit the Board financially by reducing expenditures on recruitment and training of new attorneys by reducing turnover. Most importantly, this will help keep the most experienced and productive Board attorneys at the Board long term to continue serving America's veterans.

There is precedent for Congress taking legislative action on compensation issues at the Board. In 1994, Congress passed legislation to place veterans' law judges on the ALJ pay scale. Historically, veterans' law judges were GS-15s and their staff writing attorneys were GS-14s. By enhancing the compensation levels of the adjudicators signing Board decisions, retention levels for veterans' law judges significantly increased. The retention issue was resolved. Today this legislation would also resolve the retention issues caused by highly qualified decision-writing attorneys leaving the Board for the VA Office of General Counsel, to other agencies for greater compensation and a better work environment.

The latest Best Places to Work in the Federal Government rankings issued by the Partnership for Public Service and Boston Consulting Group, released in May 2024, has the Board ranked at 444 out of 459 Federal agency subcomponents. Again, 444 out of 459, by far the worst ranking in all of VA. By contrast, the VA Office of General Counsel, where these nonsupervisory GS-15 attorney jobs exist, is ranked 81st. This dismal ranking from Board attorneys is largely due to unreasonable workloads and pay that is not commensurate with the increasing complexity of veterans law.

This legislation, by establishing a career path to GS-15, will address the compensation issues which have made recruitment and retention such a challenge at the Board. Consequently, it will help reduce the current 206,000-case backlog by incentivizing highly proficient and productive attorneys to stay at the Board rather than leave for better opportunities elsewhere.

Thank you for the opportunity to testify today and present AFGE's views on this legislation. I look forward to answering your questions.

[THE PREPARED STATEMENT OF NICHOLAS KEOGH APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Mr. Keogh.

Ms. Wheeler, with the veteran service organizations that seem to dance around helping veterans in parallel to TAPS, and I get the argument that some are out there that, like you said, they are sharks, they are taking advantage of the veterans, do you agree that there are organizations out there that work by, with, and through TAPS or assist TAPS in any way to help veterans with their claims? TAPS is TAPS, right? You and I could probably get into a debate on how successful TAPS is to date. Do you agree that

there needs to be other organizations out there assisting veterans besides TAPS or not?

Ms. WHEELER. Absolutely, sir.

Mr. LUTTRELL. Okay, good.

Ms. WHEELER. We actually are there to assist survivors, but we are not an accredited VSO. We do help survivors with the process, but we work through accredited VSOs that help with survivor claims. Yes, we think they are very important, and I stipulate that it needs to be accredited VSOs. We believe that they do a tremendous service for our veterans and survivors.

Mr. LUTTRELL. That would put TAPS and other organizations in their comfort zone if we made an organization be accredited?

Ms. WHEELER. There are still good and bad actors in this space and I should say there are accredited free services. That is really what we are looking at. There are a lot of these consultants, they call themselves, that have come into this space that want to charge veterans and survivors for their service. There are accredited VSOs that do it for free already, that do a tremendous service.

Mr. LUTTRELL. TAPS shares that information out of a portal or a data base or an enclave with those in need?

Ms. WHEELER. Yes, if we have a survivor call us, then we can help walk them through the process. If there is a veteran that calls us, and we do get veteran calls, every day, honestly, and we will refer that veteran to one of the accredited VSO partners that we work with.

Mr. LUTTRELL. I can share with all the veterans I have in my district and nationally that if I get those questions I could say contact TAPS and they will guide you through the effort?

Ms. WHEELER. We can do that. It is better if they talk to the veteran service organization directly that can help them with their claim. We are there for families and because we are not an officially accredited organization at this point to do a claim, we then refer those veterans to other agencies.

Mr. LUTTRELL. Okay, thank you.

Ms. WHEELER. Thank you, sir.

Mr. LUTTRELL. Ms. Witter, I kind of got lost in veterans' benefits and the purchase of an urn. Clarify that for me, will you, please?

Ms. WITTER. Thanks, Mr. Chairman. I spoke to a lot of veterans about this, including the current president of NFDA, who is a veteran and a funeral director. We look at this legislation as empowering families to make informed decisions regarding their loved one's final resting place.

As you know, a veteran is entitled to funeral and burial benefits, but so is the spouse. We came up with a scenario where a veteran could die and the spouse might decide that he or she wants to keep the veteran's urn at home with them until it is—until they pass. At that point, the veteran is no longer entitled to a ground burial because the burial benefit went for the urn. The spouse is entitled to be buried in a veteran national cemetery, but the veteran is not. Obviously, this is not a great situation. I think this legislation goes toward helping that.

In an ideal world, we would not love to see veterans families having to pay for an urn, but at the moment, there is no option. Once you accept that benefit, then you are done. The veteran actually

loses the right to be buried in a cemetery, which every veteran I spoke to said that that is one of the highest honors. They consider that they have earned that benefit, and they do not want to lose it, because in a moment of grief, their spouse says, no, I do not want to leave my husband. I want my husband's urn with me until I die, assuming that then they will both be entitled to burial.

Mr. LUTTRELL. Interesting. Okay. Mr. Holliday, this is a yes or no question.

Mr. HOLLIDAY. I do not like those.

Mr. LUTTRELL. You got 20 seconds, and I am going to burn 10 of it down just asking you to this question.

Mr. HOLLIDAY. All right, sir.

Mr. LUTTRELL. Given the testimony of Mr. Djou today in the first panel, are you happy with what he said? Yes or no?

Mr. HOLLIDAY. Yes.

Mr. LUTTRELL. Thank you. All right. Mr. Pappas, you are now recognized.

Mr. PAPPAS. I was happy to hear it, too, but thank you, Mr. Chairman. Thanks to the panel. We really appreciate your inputs on these pieces of legislation, the vast majority of which are incredibly noncontroversial, bipartisan, and we really hope we can get them through the Congress and signed into law this session.

Mr. Keogh, if I could start with you. I appreciate what you and all the frontline VA employees do day-in and day-out for our Nation's veterans. I wanted to ask about H.R. 8874 from Mr. Valadao, who we heard from earlier today. I agree that VA needs to be looking at how it can deploy automation to help assist our VA employees, help our veterans. What I hear from the veteran population is that they do not want to just know that a bot is going to be dealing with their claim or processing their information. They want to know that there is a well-trained person on the other end of that transaction.

I am just wondering how AFGE feels about VA's current automation efforts and where you think automation tools can help employees in their day-to-day work supporting veterans, where they might prove a hindrance.

Mr. KEOGH. Thank you for the question, Congressman. AFGE supports using new technological tools to streamline the claims process because America's veterans wait entirely too long. We—AFGE opposes any steps to replace employees, frontline employees with technological tools. Additionally, we support comprehensive training for all frontline employees with dealing with new technology. That is something that VA management has been difficult in the past, that they do not always provide the comprehensive training that we would like.

In terms of—technology can be of assistance in terms of reviewing claims files. Again, we would want to make sure that no frontline employees are replaced due to technological changes and the training is done comprehensively on any new changes.

Mr. PAPPAS. I appreciate that feedback.

Ms. Wheeler, maybe I can turn to you next. Thanks very much for your testimony and appreciate you highlighting a couple of the bills that I have introduced on the slate today, including the Burial Improvement Act. You also mentioned the Survivor Benefits Up-

date Act and some concern that TAPS has around one of the provisions in the bill, and I really appreciate those comments. We are going to put a lot of weight in terms of what you had to say today about that piece of legislation and how we can work to shape it moving forward.

I am curious, though, in lieu of that specific provision that you had an issue with, are there other places in the application process for survivors benefits that we can push VA to find some efficiencies? The goal here is to get survivors their benefits more quickly with less difficulty. Any feedback you have on where VA can do better there, I think would be helpful.

Ms. WHEELER. Yes, thank you for that question, sir. Part of what we see is in this discussion of using those tools that are out there, the advancements in technology and being able to focus those on our veteran and survivor claims process. It has worked for disability claims. It has actually improved that process. We could see that would be very helpful in the survivor space as well, and for veterans benefits. Especially when we are looking at survivor benefit claims, we are still seeing a lag and a backlog in trying to get through those. We have also been concerned with the letters sent to our survivors and knowing what they should even choose in terms of benefits.

One of the pieces of legislation we have been looking at, and we talked about earlier, was the fact that our survivors are covered by being able to do one claim form for all. We think that is important to continue to keep because survivors do not always know what to apply for. We think it is important that they do one claim form that is used for all. That is one of the things we could see that VA could continue to do to help. Thank you, sir.

Mr. PAPPAS. Well, thanks very much for your work. You assist these individuals during an incredibly difficult time often in their lives, and making sure that they get the help they need as quickly as possible has got to be a top priority. Thanks for your work.

I yield back, Mr. Chairman.

Mr. LUTRELL. Thank you, sir.

Mr. Crane, you are recognized for 5 minutes.

Mr. CRANE. Thank you, Mr. Chairman. Mr. Carey, is it true that you are a veteran yourself?

Mr. CAREY. Yes, sir, retired Navy.

Mr. CRANE. What did you do in the Navy, sir?

Mr. CAREY. Started off as a ship driver and then became an A-6 bombardier, navigator, and then in the Reserves. I was everything that the active duty did not want to do.

Mr. CRANE. I gotta ask, what does "Shoebob" mean?

Mr. CAREY. Started off as a black shoe, became a brown shoe.

Mr. CRANE. All right.

Mr. CAREY. The brown shoes did not like that, so they gave me a bad call sign. No one gets a good call sign.

Mr. CRANE. There you go. All right.

Mr. Carey, can you explain why VA's practice of sending the names of veterans with fiduciaries to NICS, National Instant Criminal Background Check is a violation of those veterans' constitutional due process rights?

Mr. CAREY. The underlying fiduciary determination program is in and of itself a violation of the due process. There is no independent authority overlooking this. There is no judicial oversight. There is no judicial action. The veteran is required to prove their competence, not the VA is required to prove their incompetence. The entire fiduciary program is a violation of the veteran's due process.

Then to add on—to add insult to injury, then the VA reports them to the NICS data base. Now, based upon a faulty determination of mental defective, they are then—they are then informed, oh, by the way, you can no longer purchase or possess a firearm.

The effect of the program leading to their loss of their gun rights is also a taking and a violation of due process and a violation, I think, of the 14th due process and no taking of life, liberty, or property without judicial due process.

Mr. CRANE. Yes. You said that any clinician at the VA could assign a veteran that they are treating a fiduciary, is that correct?

Mr. CAREY. Can refer them to the fiduciary program, and a lot of them come from that. It is, you know, the doc asks the veteran, you know, how are your finances? My spouse takes care of all that. They take that as, oh, you know what? You are—you should probably be referred to the fiduciary program. It is that level of—it is that lack of level of analysis by the rating official or the clinician that leads to that.

Mr. CRANE. Mr. Kerry, and this is something that I asked Mr. Friel about, have you seen any studies? I know you are studying this in some of the work that you do that show that veterans are more at risk of firearm suicide if they are simply unable to balance their checkbook or need help with their finances.

Mr. CAREY. No. In fact, you know, what the whole mental defective issue is saying is that we are predicting that this person has a mental health issue and they are a mental defective because of that. There has been significant studies that show no correlation between mental health illness and gun risk: Education Fund to Stop Gun Violence, now the Johns Hopkins Center for Gun Violence, "Mental illness is not the cause of gun violence." Dr. Jeffrey Swanson down at Duke, "Can we reliably predict violence? No is the short answer." Psychiatrists using clinical judgment are not much better than chance at predicting which individuals will do something violent and which will not.

There is correlation between poverty and income inequality and violence, but that is overwhelmingly—but there is also a lot of studies that say, yes, you know what? That sort of underscores, underplays how much violence there is in white communities and overestimates how much violence there is in communities of color. Therefore, those poverty and economic inequality determinants are, in fact, not statistically valid.

Mr. CRANE. The last thing I want to ask you, Mr. Carey, is about Mr. Friel's comments that if this Congress was to pass a law to fix this, that the VA would not comply with that law. What did you have to think—what do you have to say about that?

Mr. CAREY. It underscores how the VA really does not care. I mean, the whole purpose, how this all came about in the first place, is that when the Brady Gun Violence Prevention Act made

the NICS data base back in 1994, in 1998, the White House is saying, oh, there is not enough people that are being classified as mental defectives in the data base. It is looking like a failure. Some enterprising bureaucrats within the Department of Justice and the Department of Veterans Affairs got the Department of Veterans Affairs to submit their own comment on the regulation saying, ah, you know, fiduciaries are also mental defectives. We will start sending them in. It was to plus up the numbers. You know, I think this is a solution in search of a problem. The VA has consistently shown itself to go that route, and they cannot be trusted.

Even if the Secretary were to abide by what Mr. Friel recommends and not abide by the law, it would still give us a lot more power having this law passed to be able to take it to court.

Mr. CRANE. Thank you, Mr. Carey.

Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. Crane.

Mr. McGarvey, sir, you are recognized for 5 minutes.

Mr. MCGARVEY. Thank you, Mr. Chairman. Appreciate everybody being here today.

I am going to ask some questions about my bill, which is the Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act. What this bill does, very simply, it allows the BVA attorneys to reach a GS-15 and not be capped at GS-14. In and of itself, this bill does not mandate any new hiring or promotion of attorneys. It simply gives the BVA the flexibility and tools to increase the pay if it so chooses. One important point, it also allows it within the current appropriations it already has.

Mr. Keogh, as an attorney at the BVA, you know more than anybody else about the changes needed there. In the May 2024 Partnership for Public Service, Best Places to Work, and Federal Government rankings, what is the BVA ranked?

Mr. KEOGH. The BVA is ranked 444 out of 459 Federal agency subcomponents in the latest Best Places to Work issued by the Partnership for Public Service.

Mr. MCGARVEY. Out of the best places to work, with 1 being the best and 459 being the worst, BVA is currently 444th, which is 15 spots from rock bottom. It is also, and I think this is important to point out, it is 188 spots below the next VA office.

Mr. KEOGH. That is correct.

Mr. MCGARVEY. Yet, BVA management is opposed to this bill because according to the BVA management, their current recruitment and retention incentives have proven to be, quote, "very effective." Mr. Keogh, do you think that is accurate?

Mr. KEOGH. I would be very skeptical of any assurances offered by a management team that has managed to run an organization into the ground. When you are at 444 out of 459, it does not get much worse than that. This current team, you never know, they may be able to hit 459 next year. Hard to predict.

Absolutely. I think that the employees are unhappy. I have known numerous highly qualified attorneys, productive attorneys who have left. They are now GS-15s at different agencies. They are moving up the ranks at other agencies, and as a result, they are not there to issue those decisions on those complex cases. As a result, America's veterans have to wait longer because of the current

Board management's inability to retain the current talent that they have, and they are continuously trying to hire more and more people.

Mr. MCGARVEY. Let us drill into that just to put a very fine point on it quickly. Terrible ranking in best places to work. You just said you have seen attorneys leave because of pay, correct?

Mr. KEOGH. Correct.

Mr. MCGARVEY. They are going to other government agencies because in the government—another government agency, even within the VA, they have an ability to be a GS-15 rank, but they do not at the BVA.

Mr. KEOGH. That is correct.

Mr. MCGARVEY. That is all we are trying to do, is give that flexibility. You also, I think, brought up a very important point, which is we are doing this to take care of the veterans. All right? We are doing this to make sure that veterans claims and the backlog is worked through.

We only have a minute and 40 seconds left. Can you elaborate on how long it takes Board attorneys to become proficient in their jobs and what some of the value of retaining the best and most experienced attorneys is at the Board to the veterans?

Mr. KEOGH. Yes. Thank you for the question. That is a great point. It is an incredibly complex area of law, veterans law. It is constantly evolving. There are precedential decisions coming out almost daily from the Court of Appeals for Veterans' Claims, from the Federal Circuit. Additionally, regulations are changing. Laws are changing. The PACT Act that Congress enacted a couple of years ago also significantly changed the claims processing for some of these claims. The Appeals Modernization Act passed in 2017 also did so. Attorneys must be proficient on both the legacy system of Appeals and the Appeals Modernization Act; appeals, which those are different rules you need to apply.

I know that a colleague of mine testified that the veterans law may be more complicated than the Tax Code, and I think that that is fair to say. It is a very difficult, esoteric area of law. It really takes attorneys hundreds and hundreds of cases to develop that kind of knowledge and years and years of work. Then when those attorneys leave, I have known many talented ones for the Office of General Counsel, as a result that knowledge is lost, and they will not be adjudicating those claims for America's veterans.

Mr. MCGARVEY. I agree with you, and I want to finish up here because we are running out of time. Like a good attorney, you took a lot of it. There is an old saying, you want a young doctor and an old lawyer, and I think you just put that in and the amount of words a lawyer would.

I am going to say this really quickly. The budgetary concerns are the reason the BVA cites to oppose this, but they had returned \$15 million last year. That is 1,500 attorneys in the 10,000 difference between a GS-15 and a GS-14. We can afford it. We can afford it. The real question is, can we afford not to? I think for our veterans and for the care they deserve, that answer is clear.

Thank you, Mr. Chairman. I yield back.

Mr. LUTTRELL. Thank you, Mr. McGarvey.

Thank you to all the witnesses for testifying before us on the important proposals. These bills discussed today will ensure that we properly honor our fallen servicemembers and veterans at home and abroad. They would also protect the constitutional rights of our veterans, improve the VA disability claims process, and improve access to VA benefits for veterans and their families. I look forward to working through these issues with the VA and ABMC and my colleagues on the subcommittee.

Ranking Member Pappas, you are recognized for closing remarks, sir.

Mr. PAPPAS. Well, thank you. Thank you to all the participants in the hearing today. I think you provided us with a lot of really terrific information to go about our work moving forward.

Before I close, I just want to mention a tragedy that has hit close to home in my district in New Hampshire. It is the untimely loss of Brigadier General John Pogorek. He was the commander of the New Hampshire Air National Guard. He was sadly killed in a hit-and-run accident just a few days ago, and I am thinking of him today and his family. He was a 1989 graduate of the U.S. Air Force Academy. He was named commander of the New Hampshire Air National Guard in 2022 after a distinguished career in both the Air Force and the Air National Guard. My thoughts are with his family and his loved ones at this difficult time. General Pogorek's absence will be felt immensely, both in his community and the New Hampshire National Guard community as a whole.

I yield back.

Mr. LUTTRELL. Thank you, Mr. Pappas.

I want to close with what we have heard today in the multiple panels, and there is always a friction point. There is always—there will always be a bubble up. I want the VA, and I do not know if the Secretary is going to hear this now, but the VA, the machine itself, it is doing the absolute best that it can with the problem set that it is presented with. The veterans are hard to wrangle. Right? There is so many different intricacies that go into what they see, how they act, and how they react every single day, period. I want to applaud the VA for the work and the continued work that they do, but always, I am sure the VA is going to understand this, it is our job on this committee to make sure that we hold and held them accountable for any and all actions, which we have done today.

Legislation moves forward in order to course correct ships that are out of sorts. Every single individual that works at the VA carries an extremely heavy rucksack. If you do not think that they do not, I highly recommend you work for the VA for a little while. I have never done that, but I engage with every single person that is on this committee and after the fact, and I can assure you they lose sleep every night. I will happily argue that with anybody outside these quarters right now in the hallway if you want to.

With that, I ask unanimous consent that the statements for the records we have received will be entered into the record. Hearing no objections, so ordered.

I ask unanimous consent that the members have 5 legislative days to revise and extend their remarks and include extraneous materials. Hearing no objection, so ordered.

[Whereupon, at 12:28 p.m., the subcommittee was adjourned.]

A P P E N D I X

PREPARED STATEMENTS OF WITNESSES

Prepared Statement of Glenn Powers

STATEMENT OF MR. GLENN POWERS, DEPUTY UNDER SECRETARY FOR FIELD
PROGRAMS AND CEMETERY OPERATIONS, NATIONAL CEMETERY
ADMINISTRATION,
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE

July 10, 2024

Good morning, Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to present our views on eighteen bills that would impact various programs and services of the Department of Veterans Affairs (VA). Joining me today are Mr. Jeffrey London, Executive Director of Medical Disability Examination Office, Veterans Benefits Administration; Mr. Kevin Friel, Deputy Director of Pension and Fiduciary Service, Veterans Benefits Administration; and Ms. Kristina Messenger, Deputy Executive Director, Operations, Compensation Service, Veterans Benefits Administration.

H.R. 2971 Veterans Claims Education Act of 2023

This bill would amend 38 U.S.C. § 5103A to include specific notice requirements for VA to provide to unrepresented claimants upon receipt of an initial claim and require VA to regularly maintain an easily accessible online tool to allow claimants to search a list of accredited representatives that would be updated quarterly. The bill would provide definitions for "accredited person" and "represent" applicable to amended section 5103A. The bill would also direct VA to add a "warning" regarding fees that may be charged by accredited agents and attorneys to all VA web portals through which an individual may file a claim for certain VA benefits. The bill would require that the warning link the aforementioned search tool for finding accredited representatives and link a website for reporting unaccredited entities who prepare, present, or prosecute VA benefits claims. Finally, the bill would require VA to review VA accreditation under 38 U.S.C. § 5904 and submit to Congress recommendations for legislative or administrative action for improvements.

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

VA generally supports the intent of this bill, which is consistent with VA's own efforts to warn Veterans and claimants about predatory practices and connect them with VA-accredited representatives. However, VA requests clarification of certain provisions of the bill and recommends removal of certain provisions where the requirements have already been met by current practice or required by existing law.

As an initial issue, 38 U.S.C. § 5901 was amended in November 2023 to require that anytime a claimant logs into a VA website or online tool, such website or online tool would issue to the claimant: (1) a warning of potential predatory practices that violate 38 U.S.C. chapter 59; (2) a link to an online VA tool through which the claimant may report an individual who violates 38 U.S.C. chapter 59; (3) a link to an online VA tool through which the claimant may search for an agent, attorney, or entity that is recognized by VA for the preparation, presentation, or prosecution of VA claims; and (4) a link to a VA website or online tool that provides final disciplinary decisions for VA-recognized agents, attorneys, and entities. VA requests clarification as to the intended interplay, if any, of the bill with the existing law.

The bill would require upfront notification on initial claims to claimants about the availability of VA accredited representatives and Veterans Service Organizations (VSOs). VA agrees that such a proactive approach helps ensure that claimants, especially those without a VA-accredited representative, are informed from the outset about their options for representation. However, this requirement would be largely duplicative of VA's current practices. For example, for disability compensation claims, VA already provides, on VA Form 21-526EZ, information regarding representation and a link to VA's online search tool.

The bill would require VA to provide the web address of a publicly available VA website through which a claimant may report to VA an unaccredited person who represented the claimant and any fee charged for such representation. However, VA's current enforcement authority against these unaccredited individuals and organizations is limited. VA sends them a cease-and-desist letter informing them of the law and requests that, to the extent they are violating it, they stop. Currently, absent a statute specifically criminalizing these actions by unaccredited actors, VA and its Federal partners lack effective tools to regularly take more stringent actions against these actors for these violations of VA law. VA is concerned that encouraging claimants to report their complaints to VA, without also implementing a specific Federal criminal prohibition that targets this type of wrongdoing, may confuse Veterans into thinking that VA may be able to provide recourse for them. This may deter them from reporting their complaints to other enforcement entities that may be better positioned to take more meaningful action on their behalf (for example, state attorneys general for possible violations of state laws, the Federal Trade Commission for possible fraud or scams, or the Consumer Financial Protection Bureau for issues with debt collection or other consumer financial products and services). VA notes that the fiscal year (FY) 2025 President's Budget request for VA includes a legislative proposal to "Reinstate penalty for certain acts." [LeqSum-20](#).

Also, the bill would require VA to maintain an online tool to search for VA-recognized VSOs and their representatives, claims agents, and attorneys that is already available. VA understands that this tool is important to Veterans and claimants, and VA is in the process of improving the website interface for this tool to make it easier to use. The "Find a Rep" feature was launched in March 2024, and enhanced in May 2024 to include the Veteran's representation status. In the first quarter of FY 2025, VA aims to

include the online digital submission of VA forms for appointing representation. Importantly, the information for the "Find a Rep" tool pulls from the same data system as the long-standing web search tool on OGC's webpage, located at: <https://www.va.gov/ogc/apps/accreditation/index.asp>. The link for the OGC website is included on both forms that claimants use to appoint representation. Claimants may currently use either tool to search for VA-recognized VSOs and their representatives, claims agents, and attorneys. The bill would require that the online tool be updated at least once each calendar quarter. The database supporting VA's current search tools is continuously updated based on requests for changes in accreditation information and through annual compliance checks relating to accreditation. Currently, based on changes in the data, the OGC's search tool is updated every 72 hours, and the "Find a Rep" tool is updated weekly.

The bill's requirement that, in each VA web portal through which an individual may file a claim for a benefit administered by the Veterans Benefits Administration (VBA) or Veterans Health Administration (VHA), VA place a warning regarding fees an agent or attorney may charge for assistance in filing such a claim is similar to VA's existing webpages discussed previously. Currently VA's webpage on accredited representatives (<https://www.va.gov/get-help-from-accredited-representative/>) provides a link to FAQs (<https://www.va.gov/resources/va-accredited-representative-faqs/>), which provides information for claimants on when an accredited attorney or agent may charge a fee and how to file a complaint if a claimant believes their VA-accredited representative acted unethically or violated the law. Additionally, OGC's long-standing webpage at <https://www.va.gov/ogc/accreditation.asp> provides information on when fees may be charged. Last, because benefits claims are often submitted to VHA differently than claims to VBA, VA recommends that this requirement be limited to claims for benefits administered by VBA.

The bill would require VA to review and provide to Congress, within 180 days of enactment of the bill, recommendations for legislative or administrative action regarding section 5904, which pertains to accreditation of claims agents and attorneys. This provision is unnecessary. The Government Accountability Office is currently reviewing the OGC ADF program and developing recommendations for the program. In addition, for at least the past five years OGC has made recommendations for legislative change through the President's Budget request for VA and continues to recommend those proposals.

Finally, VA looks forward to working with Congress to adjust some details of this bill. As such, VA welcomes the opportunity to provide technical assistance on this bill, to include several minor edits that are not discussed here. VA roughly estimates costs of between \$4.8M and \$5.3M annually. If this legislation is passed without funding, VA would need to de-prioritize other Veteran-facing initiatives.

H.R. 6362 Protecting Benefits for Disabled Veterans Act

This bill would amend chapter 11 of 38 U.S.C. by codifying total disability due to individual unemployability (TDIU), a rating currently available in agency regulations, in a new section 1166. Much of what the bill does is consistent with what is currently established in agency regulations. While VA has no concerns with codifying the TDIU benefit in statute, VA has substantive concerns on several points of deviation between the current regulatory structure and the proposed bill. Where certain provisions currently in regulation are not included in new section 1166, it is unclear whether Congress intended to remove authority for those provisions or if the intent was to allow VA to further define terms and requirements in accordance with current regulation when the statute is silent.

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

Most potentially problematic is that the new section's primary criteria would authorize VA to assign TDIU when a Veteran is unable to secure or maintain gainful employment "as a result of, in part or in whole," a service-connected disability. This would seem to permit a TDIU rating for Veterans who are unemployable in part due to *non*-service-connected disabilities. VA is concerned that providing a total disability rating for VA compensation based in part on non-service-connected disabilities may conflict with statutes indicating that VA disability compensation is paid for service-connected disability. See 38 U.S.C. §§ 1110, 1114, 1153, 1154, and 1155.

Consistent with current regulation, the Veteran would have to have a service-connected disability rated at least 60 percent disabling, or two or more service-connected disabilities with at least one rated at least 40 percent disabling and others that when combined are rated at least 70 percent disabling. Also consistent with current regulations, the single 60 percent or 40 percent disability could be established based on disabilities of one or both upper or lower extremities, disabilities resulting from common etiology or a single accident, disabilities affecting a single body system, or multiple disabilities incurred as a prisoner of war. However, the bill leaves out an additional provision allowed in regulation, that the single 60 percent or 40 percent disability can also be established based on multiple injuries incurred in action.

The bill would also give the Secretary authority to assign a total disability rating to Veterans who do not meet the primary criteria if they are able to secure or maintain only marginal employment or, despite being able to secure or maintain substantially gainful employment the Secretary nonetheless determines that a total rating is appropriate considering the totality of circumstances, including total household medical expenses and the cost of living in the area in which the Veteran resides. The bill would therefore give broad discretion to the Secretary to award TDIU.

Currently, if a Veteran has a service-connected disability that meets the eligibility criteria and earns income that does not exceed the amount established by the Census Bureau of the U.S. Department of Commerce as the poverty threshold for one person, the Veteran is considered only marginally employed and may be entitled to TDIU. Veterans

may also be found to be marginally employed when their income exceeds the poverty threshold if their employment is in a protected environment such as a family business or sheltered workshop. In determining entitlement to TDIU, marginal employment does not qualify as substantially gainful employment. A recent decision of the U.S. Court of Appeals for Veterans Claims clarified that employment in a protected environment means employment in a lower-income position that, due to the Veteran's service-connected disability or disabilities, is shielded in some respect from competition in the employment market. While the draft bill's definition of marginal employment does not include this clarification, VA could further clarify the term in regulation.

VA is concerned with the provision that will allow TDIU to be granted if the Veteran maintains substantially gainful employment if VA determines appropriate after consideration of the totality of circumstances (including total household medical expenses and the cost of living in the area in which the veteran resides). This would require claims processors to take into consideration medical expenses and cost of living expenses for such determinations. While VA could define the parameters of this process via rulemaking to the extent necessary, the administration of these provisions will be unavoidably complex and resource intensive. Claims processors would be required to conduct a financial analysis with no assurance that records provided by the Veteran reflect a complete accounting. Further, Veterans that live in areas with a higher cost of living may disproportionately receive Individual Unemployability (IU). Many may see this outcome as inequitable. Thus, while VA acknowledges that this is a discretionary provision, VA has significant concerns and recommends this provision be removed from the bill.

The bill would also establish important prohibitions. It would preclude the Secretary from considering the age of the Veteran or the Veteran's eligibility for any retirement benefit, including Social Security. To clarify, VA does not preclude TDIU based on age or retirement status or receipt of Social Security. Per regulation, age cannot be considered as a factor in service-connected claims. Veterans who are 62 or older may therefore be eligible to receive Social Security and VA TDIU benefits. VA has no concerns with this provision in the bill as it reflects current practice.

Finally, this bill leaves out the current regulatory extra-schedular consideration for Veterans who are unemployable due to service-connected disabilities but fail to meet the required evaluation percentages for eligibility. Current regulation mandates that claims processors should submit to the Director, Compensation Service, for extra-schedular consideration all cases of Veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the requisite disability percentage standards for TDIU. It is unclear if it was the Congress's intent to remove this authority for such consideration. While, in general, VA could likely maintain TDIU on an extra-schedular basis absent it being explicitly mentioned in statute, this bill could be construed to effectively prohibit extra-schedular TDIU. Briefly, the increased discretion provided in subsection (c)(2)(B) is available only for disabilities described in subsection (a)(2). Subsection (a)(2) does not contain an extra-schedular route to TDIU, but instead requires the current schedular predicates be met. This bill, therefore, could be read to

have the perverse effect of allowing people who are currently able to maintain substantially gainful employment to receive TDIU because they live in a high cost of living area, but prohibit people not able to maintain substantially gainful employment from receiving TDIU if their disabilities do not meet schedular criteria.

VA is open to collaboration on this draft bill to clarify the Committee's intent and resolve points of deviation between the draft bill and the current regulatory structure.

Mandatory and discretionary costs are associated with H.R. 6362, but additional time would be needed to estimate costs.

H.R. 6507 Mark Our Place Act

This bill would eliminate the date limitation in 38 U.S.C. § 2306(d)(5)(C)(i), under which VA is currently authorized to provide a distinct headstone, marker, or medallion for the graves of Medal of Honor recipients buried in private cemeteries, or to replace a previously furnished headstone, marker, or medallion if the original does not signify the decedent's status as a Medal of Honor recipient, but only if those recipients served on or after April 6, 1917.

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

This bill would ensure that the gravesites of recipients of the Medal of Honor include an appropriate recognition. The Medal of Honor is the highest award for valor in action against an enemy force that can be bestowed upon an individual serving in the Armed Forces of the United States. The award is generally presented to its recipient by the President of the United States of America in the name of Congress. Since 1976, VA has provided distinctive Government-furnished headstones and markers for Medal of Honor recipients to recognize this prestigious honor. VA's current practice is to inscribe the headstone or marker with the term "Medal of Honor," accompanied by a graphic representation of the award based on the individual's unique branch of service design. If the headstone or marker is marble or granite, an application of gold Lithochrome paint is applied to the entire inscription. VA has also developed a medallion that signifies a Veteran's status as a Medal of Honor recipient. By removing the date of service restriction, VA would be able to ensure a visual reminder to visitors of the sacrifices made by all recipients of the Medal of Honor.

Costs to the mandatory compensation and pension account for this bill are estimated to be insignificant at \$54,000 in 2025, \$285,000 over five years, and \$605,000 over 10 years.

H.R. 7361 Flowers for Fallen Heroes Act of 2024

This bill would establish a flower ordering program for gravesites under the purview of the American Battle Monuments Commission (ABMC).

VA defers to ABMC.

Because VA has no authority over ABMC, we respectfully defer to that organization for views on this bill.

H.R. 7729 Dennis and Lois Krisfalusy Act

This bill would amend 38 U.S.C. § 2306(b)(2) to expand eligibility for memorial headstones and markers for certain family members of Veterans and active-duty Service members. Family members eligible under this paragraph are the spouse, surviving spouse, or eligible dependent child of a Veteran, and the spouse or eligible dependent child of a member of the Armed Forces serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's or child's death. Currently, these family members are eligible if their death occurs on or after November 11, 1998. Additionally, a family member of an active-duty Service member would be eligible for a memorial headstone or marker if such family member's death occurs before October 1, 2024.

This bill would remove from the statute the earliest date of death of November 11, 1998, for a family member of a Veteran or an active-duty Service member to be eligible for a memorial headstone or marker and would extend the existing date by which an eligible family member's death must occur, so that VA can continue to provide a memorial headstone or marker for the spouses and eligible dependent children who predecease active-duty Service members. The bill would extend the date by which an eligible family member's death must occur for 10 additional years to October 1, 2034.

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

VA supports amendments to the bill to also address the October 1, 2024, date in 38 U.S.C. § 2402(a)(5) by which an eligible family member's death must occur for VA to inter eligible family members of active-duty Service members in a VA national cemetery. Furthermore, rather than simply extending the date-of-death limitations in both sections 2306 and 2402 by 10 years, VA supports amendments to remove entirely the date-of-death limitations in both sections. Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation will retain the opportunity to obtain a government-furnished memorial headstone or marker or to choose to inter their loved ones in a VA national cemetery. We note that the Preserving Veterans' Legacies Act would remove the October 2, 2024, date limitation from section 2402(a)(5) and that section 101 of the Veterans' Burial Improvement Act of 2024 would remove that date limitation from both section 2306 and section 2402. Those bills are discussed separately in this testimony. VA would need additional time to estimate mandatory costs associated with this bill.

H.R. XXXX Dayton National Cemetery Expansion Act of 2024

This bill requires the Secretary of Veterans Affairs to enter into an agreement with the Montgomery County Land Bank for the transfer of certain land near Dayton National Cemetery to the Department of Veterans Affairs once such land is acquired by the Montgomery County Land Bank. VA would be required to use the land for expansion of the Dayton National Cemetery.

VA opposes this bill.

VA policy on expansion and establishment processes are found in NCA Directive 3001, Department of Veterans Affairs National Cemetery Establishment, Expansion, and Replacement ("Directive 3001"). This directive provides statutory references, establishes mandatory policy for the establishment, expansion, and replacement of VA national cemeteries, as well as detailed decision criteria for expanding, replacing, or closing an existing national cemetery.

VA has no need to acquire additional land for expansion of the Dayton National Cemetery at this time or in the foreseeable future. In addition to being unnecessary, acquisition of the land identified in this bill would raise several significant concerns. The National Cemetery Administration monitors the rates at which each cemetery will deplete capacity for each type of burial it provides (e.g., casketed burials in pre-placed crypts or in "traditional" burial sites (i.e., without a pre-placed crypt), in-ground burials of cremated remains, columbarium spaces for cremated remains, etc.). Dayton National Cemetery has burial space available for every burial option until at least 2051, at which time the cemetery could deplete its available space for traditional casketed burials; casketed burials in pre-placed crypt sites are estimated to be available until 2063. VA estimates depletion of other burial options extend even further in the future. In addition, NCA and VHA are discussing transfer of land from the medical center to the cemetery which could move the depletion dates out even further. This approach is a standard practice and established at numerous locations within VA.

VA has identified other concerns with this bill, including the speculative nature of the land acquisition by the Montgomery County Land Bank. The bill does not contain any time limits on the acquisition of the land by the Land Bank, yet VA is mandated to enter into an agreement with the Land Bank to take possession of the land, even if VA still has no need for the land by the time the Land Bank has acquired all the parcels. Although the Land Bank must transfer the land at no cost to VA, acquisition costs are not the only costs VA must consider. VA would have to clear the land of structures and subsurface infrastructure, which may not be necessary on other land that VA could consider. VA would be required to maintain the land once acquired, creating a financial burden on VA, especially if VA still had no need for the land or, more concerning, if VA did have need for land but this parcel was found to be unusable as cemetery land. Not all land is amenable to uses that involve burial of human remains. The land could have hidden hazards, such as chemicals from previous residential or commercial uses, that make the land unusable. The existing infrastructure, such as sewers and streets might need remediation. These costs could burden VA despite the "no cost" nature of the initial land transfer.

The parcel of land the bill describes includes occupied single-family homes and happens to be on the city's west side, which, according to Dayton's mayor, and supported by available demographic information, is home to much of the city's African American population. VA is concerned about the potential for this bill to be used to force families from their homes, especially if the message to those families is that VA "wants" their land. VA remains committed to the planned development of our currently owned land to meet local burial needs before investigating options for new acquisition.

H.R. XXXX Preserving Veterans' Legacies Act

Section 2 of this bill would authorize VA to inter spouses and dependent children who predecease active-duty Service members by removing the existing date-of-death limitation of October 1, 2024, currently in 38 U.S.C. § 2402(a)(5).

VA supports section 2 of this bill, if amended, and subject to the availability of appropriations.

VA supports section 2 of this bill, but only if it is amended to also eliminate the October 1, 2024, date-of-death limitations contained in 38 U.S.C. § 2306(b)(2)(B) and (C), thus allowing VA to provide memorial headstones and markers for the same individuals, regardless of their date of death. Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation will retain the opportunity to obtain a government-furnished memorial headstone or marker or to choose to bury their loved ones in a VA national cemetery. We note that H.R. 7729, discussed above, would extend but not remove the October 1, 2024, date limitation from section 2306(b)(2)(B) and (C) and that section 101 of the Veterans' Burial Improvement Act of 2024 would remove that date limitation from both section 2306 and section 2402. Those bills are discussed separately in this testimony.

Section 3 of the bill would amend 38 U.S.C. § 2306 to allow VA to provide a headstone or marker for group burials if each individual in the group is eligible for a headstone or marker.

VA supports section 3 of the bill, and subject to the availability of appropriations.

The primary mission of NCA is to provide eligible individuals with final resting places in national shrines, including provision of a headstone or marker, by maintaining a system of national cemeteries under 38 U.S.C. § 2400. In addition, VA provides headstones and markers for the graves of individuals listed in 38 U.S.C. § 2306. In some instances, individuals are buried in mass gravesites, such as trench burials that were used during the Civil War or gravesites in which remains (generally cremated remains) are commingled. NCA is also aware of locations that contain multiple individual graves, where it is impossible to determine who is buried in each particular grave. Often in these situations, the number of individuals in the common gravesite makes provision of individual headstones infeasible—there simply may not be room for dozens or even

hundreds of individual headstones. However, VA currently has no clear authority to furnish a group burial headstone or marker for these eligible decedents. Because VA is not authorized under current section 2306 to furnish a group burial headstone or marker, VA has been unable to fulfill our mission to those who have earned the benefit through service and sacrifice.

VA would need additional time to estimate mandatory costs associated with this bill.

H.R. XXXX Ensuring Veterans' Final Resting Place Act

This bill would amend the current authority under which VA provides, in lieu of burial and other memorialization, a plaque or urn to commemorate the memory of a Veteran whose remains are cremated and not interred. This bill would allow a family that received a plaque or urn to reimburse VA for the cost of the plaque or urn to reinstate VA's ability to provide burial or other memorialization benefits for the Veteran.

VA does not support this bill.

Although VA shares Congress' apparent view that this authority should be amended, we do not support this bill as the best way to do so. This bill would place VA in the position of selling urns and plaques, which is neither an appropriate role for VA nor a solution to the inequity posed by this statutory authority.

Congress is aware of the negative comments VA received when it published a notice of proposed rulemaking implementing the plaque-and-urn benefit. VA took specific steps in its regulatory documents to ensure members of the public would be aware that acceptance of the plaque or urn benefit would be in lieu of other memorialization or burial benefits. Most of the comments received on the rulemaking raised concerns regarding the waiver of future eligibility for burial or memorialization benefits through acceptance of a commemorative plaque or urn. We appreciate Congress' effort to introduce this bill to potentially address the concerns but note that it does not address all of them.

This bill could further exacerbate the original problems by allowing those who can afford to "reimburse" VA for the cost of the plaque or urn to retain the right to burial and memorialization benefits for their Veteran. Others, who could not afford that, would still receive only this limited benefit, which would create inequities based on the financial circumstance of surviving family members. Allowing for reimbursement would similarly not address some of the long-term issues of which VA became aware as regulatory implementation progressed, such as urns containing cremated remains being abandoned by future generations and yet the Veteran being ineligible for interment in a national cemetery or for a VA-furnished marker in any cemetery.

In addition, casting VA as a purveyor of plaques and urns places the Federal Government in competition with local funeral providers and with sellers of awards and signs, potentially causing financial harm to these typically local and small businesses as

families choose to “buy” an urn or plaque from VA. We note that VA’s provision of an urn to contain cremated remains is an inequitable benefit as VA does not provide a casket for remains that are not cremated. Underscoring all of this, VA is adamantly opposed to the unprecedented act of allowing someone to “buy” a VA benefit or forcing surviving family members to pay VA to reinstate a Veteran’s eligibility for burial and memorialization benefits.

Although VA testified in 2020 before this committee in opposition to the bill that introduced this benefit, we have done our best to implement the law that was enacted. VA understands the desire of some survivors to retain the cremated remains of a loved one, as well as their desire to feel VA has provided appropriate recognition of their loved one’s service. VA notes that two benefits are currently available to families, a burial flag, and a Presidential Memorial Certificate (PMC), neither of which would require families to forfeit other benefits. We support Congress’ efforts to provide a meaningful benefit for these survivors, even if it is not the existing burial flag or PMC, but we are concerned that this bill would not only fail to resolve the problems with the original legislation but would also create additional issues. VA would like to work with the Committee to determine an equitable solution.

H.R. XXXX. Modernizing All Veterans’ and Survivors’ Claims Processing Act

This bill would direct VA to submit a plan to both the House and Senate Committees on Veterans’ Affairs regarding the feasibility of expanding VBA’s Automated Decision Support (ADS) technology beyond disability compensation claims to all VA benefit programs and services, the Debt Management Center program, and VA’s appeals processes. The plan would be due to Congress within 180 days of the bill’s enactment with annual updates scheduled for two years following the initial report’s submission.

VA does not support this bill.

ADS technology was developed specifically in accordance with the applicable laws, regulations, policy, and procedures related to the processing of claims for disability compensation benefits and may not readily transfer to other VA benefit programs, services, debt collection activities, or appeals. VA has significant concerns with the bill as it creates redundancies and overlap with VA’s current efforts to modernize VBA informational technology systems as part of Public Law 117-168, § 701(b). The 701(b) plan can be located here: <https://www.govinfo.gov/content/pkg/CMR-VA1-00187554/pdf/CMR-VA1-00187554.pdf>. VA’s Office of Information and Technology (OIT), in partnership with VBA, has implemented a five-year IT Modernization Plan, covering Fiscal Years 2023 to 2027, which provides for an incremental approach to innovate and streamline the claims process and IT systems across VBA to include debt collections and appeals. Requiring VBA to review and analyze VA’s benefit programs, debt collection activities, and appeals process as well as all corresponding IT systems to determine whether ADS technology might be reconfigured would duplicate the efforts already underway.

H.R. XXX Veterans 2nd Amendment Restoration Act

This bill would provide 30 days for the Secretary to notify the Attorney General that VA's reporting to the National Instant Criminal Background Check System (NICS) under the Brady Handgun Violence Prevention Act of 1993 (Brady Act) was "improper" because individuals reported by VA were not adjudicated as mentally defective. The authority to update, correct, modify, or remove records from NICS is under 34 U.S.C.

§ 40901(e)(1)(D). Under this statute, VA reports all individuals previously reported to NICS if the criterion for reporting the individual no longer applies. To do so, VA weekly uploads a file to the FBI Law Enforcement Enterprise Portal to identify beneficiaries: whose prior ratings of incompetency have changed (by rating decision); who have died; and who successfully petitioned to have their firearm disability restored under the administrative process VA provides pursuant to the NICS Improvement Amendments Act of 2007.

VA opposes this bill.

VA reports individuals to NICS because of requirements imposed by the Brady Act, Public Law 103-159. Among other changes, the Brady Act imposed waiting periods and background records checks on the purchase of firearms from federal firearms licensees. These public safety measures help prevent persons prohibited from possessing firearms from accessing them and thereby help communities safe.

VA's reporting of individuals determined unable to manage their funds to NICS was required by the Brady Act and implementing regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) defining terms under 18 U.S.C. § 922(g). Beginning in March 2024, VA only reports individuals who have both been determined to lack the mental capacity to manage their own VA benefits, and who also have been determined by order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction to be a danger to self or others per the restrictions on VA's appropriation provided in Section 413 of Division A of the Consolidated Appropriations Act, 2024 (Public Law 118-42).

For background, NICS is a computer system established under the Brady Act used to query federal, state, local, tribal, and territorial criminal history record information and other records to determine an individual's eligibility to transfer, receive, or possess firearms and ammunition. The ATF regulations implementing the Brady Act provide the following definition for the term "adjudicated as a mental defective" under the Gun Control Act, 18 U.S.C. §§ 922(d)(4) and (g)(4): "[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease . . . lacks the mental capacity to contract or manage his own affairs." 27 C.F.R. § 478.11. In issuing this implementing regulation, ATF confirmed that "[VA] correctly interpreted the proposed definition of 'adjudicated as a mental defective' to mean that any person found incompetent by [VA] under 38 C.F.R. § 3.353 will be considered to have been adjudicated as a mental defective for purposes of [18 U.S.C. §§ 922(d)(4) and (g)(4)].

[38 C.F.R. § 3.353] provides that a mentally incompetent person is one who, because of injury or disease, lacks the mental capacity to contract or manage his or her own affairs." 62 Fed. Reg. 34,634, 34,637 (June 27, 1997). The Department of Justice confirmed that mentally incompetent beneficiaries have been adjudicated as a mental defective under the Gun Control Act and confirmed VA's obligation to report them to NICS remains binding.

Section 413 of Division A of the Consolidated Appropriations Act, 2024 (P.L. 118-42), prohibits VA from using appropriated funds to continue its prior practice of weekly reporting of every mentally incompetent beneficiary to NICS. Section 413 was an appropriation policy rider derived from H.R. 705 of the 118th Congress, 1st Session, the "Veterans 2nd Amendment Protection Act of 2023." That bill would have amended Chapter 55 of title 38, United States Code, by inserting a new section 5501B, by prohibiting the use of funds appropriated under the Act to report mentally incompetent beneficiaries, unless a judge, magistrate, or other judicial authority of competent jurisdiction finds that the beneficiary is a danger to himself, herself, or others. Pursuant to its practice to comply with applicable Federal law, VA complies with Section 413 of Division A of the Consolidated Appropriations Act, 2024.

This bill, the Veterans 2nd Amendment Restoration Act, would require the Secretary of Veterans Affairs to notify the Attorney General that VA's reporting of incompetent beneficiaries "was improper under the law because such individuals were not adjudicated as a mental defective under 18 U.S.C. 922(g)." VA's reporting was not improper. Mentally incompetent beneficiaries are prohibited persons under the Gun Control Act pursuant to the ATF's regulatory definition. Neither 18 U.S.C. 922(g) nor the ATF's implementing regulation impose any requirement that a judge, magistrate, or other judicial authority of competent jurisdiction find that the beneficiary is a danger to himself, herself, or others. That requirement exists solely within Section 413 of Division A of the Consolidated Appropriations Act, 2024, and serves only to prohibit the use of appropriated funds for VA to comply with its Brady Act reporting obligations.

This bill would thus require the Secretary of Veterans Affairs to erroneously notify the Attorney General that it erred by reporting incompetent beneficiaries to NICS. VA did not err; if this bill is passed into law, the Secretary of Veterans Affairs could not comply. VA understands that the sponsors of this legislation seek to restore the ability for persons VA has deemed incompetent to lawfully possess firearms. Pursuant to the NICS Improvement Amendments Act of 2007, VA already provides individuals an opportunity to petition for relief from that prohibition.

H.R. XXX Safeguarding Veterans 2nd Amendment Rights Act

This bill would prohibit any VA officer or employee, in the course of their duties, from taking part in proceedings relating to a state gun confiscation law. The bill broadly defines "gun confiscation law" to include any State law that provides the authority for the removal of firearms through a "risk-based, temporary, and preemptive protective order." This bill will hinder the ability of VA officers and employees, including mental health

providers and police officers, from discharging their duties and thereby risk the safety and security of Veterans, their families, and their communities. VA opposes this bill, which could prevent VA from providing appropriate care for some of our most vulnerable Veterans.

VA opposes this bill on the basis of Veteran safety.

With VA's top clinical priority being Veteran suicide prevention, VA continues a "whole of VA" approach to preventing Veteran suicide that integrates strategic planning, program operations and program evaluation across VA, including the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). This strategy focuses on the safety of America's Veterans with an emphasis on preventive measures. Increasing the time and distance between a person with thoughts of suicide and their access to lethal means reduces their suicide risk and saves lives. Scientific research has shown that mental health conditions are one clear risk factor for suicide and use of a firearm in a suicide attempt significantly reduces the chance of survival. Most Veterans who die by suicide die by firearm. Veteran firearm suicide mortality rates exceeded all other method-specific suicide rates in each year from 2001-2021. Firearm suicide death made up 72.2% of the overall Veteran suicides in 2021 compared to 52% of non-Veteran U.S. adult suicides. It is VA's mission to care for our Veterans and their families. This bill runs counter to VA's suicide prevention strategy and places Veterans, their families, and their communities at risk with by restricting VA officers and employees from using their professional judgment and experience to protect our most vulnerable.

VA interprets this bill as an effort to prevent VA officers and employees from participating in Extreme Risk Protection Order (ERPO) proceedings in the 21 states and the District of Columbia that have enacted such laws. ERPOs temporarily prohibit a person who is behaving dangerously or is believed to be at risk of committing violence from possessing or purchasing firearms and to provide a process for the removal of firearms already in the person's possession. ERPO laws have been enacted by state legislatures with broad bipartisan support, such as Indiana's Jake Laird Law, Ind. Code Ann. §§ 35-47-14-1, *et seq.*, which was enacted in 2005 with unanimous support in the Indiana House of Representatives. ERPO proceedings have been successfully initiated by law enforcement officers in communities throughout the country, including rural and non-rural jurisdictions, to maintain safe communities. The Bipartisan Safer Communities Act, Public Law 117-159, expanded eligibility for the Edward Byrne Memorial Justice Assistance Grant Program to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for qualifying ERPO programs.

Another example of an ERPO is Florida's Marjory Stoneman Douglas High School Public Safety Act. See Fla. Stat. § 790.401. Under its terms, only a law enforcement officer or a law enforcement agency, as defined in Florida law, may petition for a risk protection order against a person who "poses a significant danger of causing personal injury to himself or herself or others." This bill, if enacted, would prohibit VA police

officers from participating in any capacity in using Florida's law to initiate ERPO proceedings, even when faced with clear and convincing evidence that a person poses a significant danger based on recent threats or acts of violence toward self or others; serious mental illness; reckless firearm use, display, or brandishing; violations of domestic violence protective orders; prior violence arrests; alcohol or other substance use disorder; or the recent acquisition of firearms. Restricting VA police officers from participating in ERPO proceedings, when such proceedings are necessary in their professional judgment as law enforcement officers, is dangerous and risks tragedy to Veterans, their families, and the community.

Beyond prohibiting the *initiation* of ERPO proceedings by recognized petitioners, including law enforcement and healthcare professionals, this bill would restrict VA officers and employees, including police officers and mental health providers, from testifying or otherwise providing evidence in ERPO proceedings brought by others. Under Illinois' Firearm Restraining Order law, 430 Ill. Comp. Stat. Ann. 67/1 - 67/80, family members, people with minor children in common, people who reside together, and law enforcement officers and agencies may petition for an ERPO. This bill would prohibit VA officers and employees from participating in proceedings brought by worried family members, co-parents, cohabitants, or local law enforcement. Accordingly, VA clinicians would be unable to offer relevant medical evidence for the judicial authority's consideration. Compared to non-Veteran adults, Veterans are more likely to own firearms. Estimates derived from 2015 National Firearm Survey reports and VetPop data suggest that in 2015 firearm ownership was approximately 62% higher for Veteran men than for non-Veteran men, and it was approximately 107% higher for Veteran women than non-Veteran women. This restriction could thus leave some of our most vulnerable Veterans and their families at dangerous risk of suicide and violence.

Moreover, while VA interprets this bill as an effort to prevent VA officers and employees from participating in ERPO proceedings, it also encompasses other civil and criminal proceedings. ERPO laws are based on domestic violence protection order laws, which have been in place in all 50 states for decades and are a well-established tool for protecting people experiencing intimate partner violence. In fact, just last month, in *United States v. Rahimi*, Case No. 22-915, the Supreme Court upheld the constitutionality of disarming persons subject to domestic violence protection orders. Domestic violence protection order laws provide authority for the removal of a firearm through a risk-based, temporary, and preemptive protective order – and thus fall within this bill's categorical restriction.

Like its ERPO, Illinois' domestic violence protective order statutory scheme, created by the Domestic Violence Act of 1986, is instructive. Under it, a "person who has been abused by a family or household member" may petition for an order of protection. See 750 Ill. Comp. Stat. Ann. 60/201, 60/203. Among other remedies, a reviewing court can issue a risk-based, temporary, and preemptive order of protection prohibiting the respondent from "possessing any firearms during the duration of the order." If enacted, this bill would prohibit VA officers and employees, including police officers and clinicians, from testifying or otherwise offering evidence in domestic violence protection

order proceedings, which exist in some form in all 50 states and the District of Columbia.

Additionally, involuntary commitment standards and procedures are provided by state law. VA utilizes these state law procedures when it is necessary to initiate an involuntary commitment proceeding for an individual that is a danger to themselves or others. In Maryland, one of the possible outcomes of an involuntary commitment is that an individual must surrender firearms to law enforcement authorities. Md. Code. Ann, Health-Gen, § 10-632. The broad scope of this legislation would prevent VA from petitioning for clinically necessary medical care for Veterans in states like Maryland. This prohibition would have a significant impact on VA's ability to provide involuntary medical care and treatment on a locked inpatient mental health unit for those Veterans most in need of such care.

H.R. XXX Permanent Licensing Portability

This bill would amend title 38 by inserting after section 5103A new section 5103B, to make permanent and codify the pilot program for use of contract physicians for disability examinations, and for other purposes. VA appreciates the Committee's intent to make permanent and codify this pilot program.

VA supports this bill.

VA provides the following minor comments. Regarding the title in the new Section 5103B, *Use of contract physicians for disability examinations*, VA recommends replacing "physicians" with "health care professionals," as VA utilizes a wide range of qualified medical professionals to conduct disability examinations. Regarding subsection (d) of new Section 5103B, *Mechanism for transmittal of evidence introduced by applications during examinations*, VA recommends replacing the term "Applications" with "Applicants" in the title.

No mandatory or discretionary costs are associated with this draft bill.

H.R. XXX Improving VA Training for Military Sexual Trauma (MST) Claims Act

Section 2 of the bill would require the Secretary to create a plan to improve the sensitivity training for contracted disability compensation examiners who examine veterans who are claiming entitlement to service connection for posttraumatic stress disorder (PTSD) based on military sexual trauma (MST). The plan (as well as a report on the plan to the Committees on Veterans' Affairs of the Senate and House of Representatives) would be due no later than 90 days after the date of the enactment of the bill.

Section 3 of the bill would amend 38 U.S.C. § 5103A(c) to mandate that in claims for PTSD based on an in-service personal assault, VA must assist by obtaining the claimant's service medical and personnel records.

Section 4 of the bill would require the Secretary to create a plan to improve quality assurance of contracted disability compensation examiners who examine veterans who have a history of military sexual trauma, to ensure that such veterans are not retraumatized during the medical disability examination process. The plan (as well as a report on the plan to the Committees on Veterans' Affairs of the Senate and House of Representatives) would be due no later than 90 days after the date of the enactment. Section 5 of the bill would require the Secretary to create a plan to improve training and provide annual training for all Veterans Benefit Administration (VBA) employees that process and determine service connection for disabilities resulting from MST. Additionally, no later than 90 days from enactment, the bill would require the Secretary to submit a report on this plan to the Committees on Veterans' Affairs of the Senate and House of Representatives.

VA cites concerns with this bill.

VA supports the Committee's intent to improve sensitivity training for contracted disability examination providers and to improve quality assurance of contracted disability compensation examiners who examine Veterans who have a history of MST, to ensure that such Veterans are not retraumatized during the medical disability examination process; however, VA cites concerns with certain provisions of the bill. Under current law, VA is required to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate a claim. This assistance includes obtaining all *relevant* Federal records (38 U.S.C. § 5103A, 38 C.F.R. § 3.159(c)). These records include, but are not limited to, military personnel records, service treatment records and records from other Federal agencies. In addition, 38 C.F.R. § 3.304(f)(5) outlines VA's policy on adjudication of claims for PTSD based on personal assault, providing that evidence from sources other than the Veteran's service records may corroborate the Veteran's account of the stressor incident. This regulation also states that evidence of behavior changes following the claimed assault may constitute credible evidence of the stressor, including but not limited to a request for a transfer to another military duty assignment, deterioration in work performance, etc.

Section 3 of the bill would require VA to obtain service medical records and service personnel records for *all* claims for PTSD based on in-service personal assault, deviating from the requirements for all other claimed disabilities, where such records must only be requested when they are relevant. Service treatments records are always considered in claims for compensation, and personnel records are generally requested for PTSD claims based on personal assault as such records would be relevant to the consideration of behavioral changes following the claimed assault. However, in some cases, credible supporting evidence to corroborate the stressor may be submitted by the Veteran or identified prior to requesting service personnel records.

VA cites concerns with section 3 because in some cases, service personnel records would not be necessary to substantiate the allegation of an incident, resulting in an unnecessary delay adjudicating the decision for the Veteran. This is especially true

considering that section 3 is also broader than the other sections of the bill, as its requirement relates to “personal assaults” more generally rather than MST specifically.

For these reasons, VA recommends removing Section 3.

As for section 5, VA appreciates interest from Congress in ensuring that adequate training on claims related to MST is provided for claims processors, however, this requirement is duplicative. VA notes that a comprehensive training curriculum already exists and training on PTSD and personal assault is part of the annual training requirement for claims processors.

The current VBA training curriculum contains many training modules pertaining to PTSD and personal assault, including claims based on MST. These training modules cover areas such as general development and evidence gathering, submitting examination requests, applying guidance to sympathetic reading of mental disorders, development for stressors related to personal trauma, evaluating evidence, and deciding a claim for service connection for disabilities related to MST, and much more.

VBA has developed training curricula using dynamic and practical training experiences for claims processors. This form of training enables claims processors to distinguish indicators of PTSD stressors that result from MST, such as deterioration in duty performance, requests for transfer, or substance abuse. All training content stresses the importance of complete evidence development for signs of an in-service MST event and takes a comprehensive approach to identifying evidentiary markers that indicate the possibility of the MST event. Legal and policy considerations are also included as part of the curriculum.

All initial decisions made by Rating Veterans Service Representatives (RVSRs) for MST-related disabilities require approval by a more experienced Rating Quality Review Specialist (RQRS) specializing in MST-related claims processing until the claims processor demonstrates an accuracy rate of 90% or greater. The accuracy rate is calculated based on a review of cases in which a condition claimed due to MST was either granted service connection, denied service connection, or received an increased evaluation. Further, MST claims processors are required to have three Individual Quality Reviews (IQRs) each month. These reviews determine the employee’s individual quality level as part of their overall performance evaluation. All reviews are processed and conducted by an MST trained QRS. Additional training requirements may be added based on error trends and analysis following these IQR reviews. As such, VA suggests the requirements of Section 5 are unnecessary.

H.R. XXX Simplifying Forms for Veterans Claims Act

This bill would direct the Secretary to enter into an agreement with a federally funded research and development center (FFRDC) for an assessment of forms sent to claimants, and to do so no later than 30 days after the date of enactment. It would require the FFRDC to consult with the Secretary, an expert in laws administered by the

Secretary, a veterans service organization recognized under 38 U.S.C. § 5902, and a veterans' advocacy organization, and to prepare and submit a written assessment of such forms and the recommendations of the FFRDC regarding how the Secretary may make such forms clearer and better organized. No later than 90 days after the Secretary receives the assessment, the bill would require the Secretary to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of such assessment and implement the recommendations in the assessment that comply with the laws administered by the Secretary. Finally, the bill would require the Secretary to implement such recommendations within two years after the date on which the Secretary commences such implementation.

VA cites concerns with the bill.

While VA generally supports the intent of the bill, the deadlines it imposes will be difficult to meet. VA is concerned that the bill's requirement to enter into an agreement with an FFRDC within 30 days following enactment of the bill may hinder VA's ability to identify an FFRDC most appropriate for the task. Also, section 2(c) of the bill would require the Secretary, within 90 days of receiving the FFRDC's assessment, to "implement" the FFRDC's recommendations "that comply with the laws administered by the Secretary," while section 2(d) would require the Secretary to "complete the implementation" of such recommendations within two years of such receipt. VA's concern with the proposed language as written is that any recommendations proposed within the FFRDC report must be adopted without modification. If the intent is for VA to identify which recommendations comply with the laws administered by the Secretary within 90 days, VA recommends replacing "implement" in (c)(2) with "identify." If this is the intent, VA notes that this timeline is likely infeasible as the volume of recommendations is unknown. The infeasibility of this requirement will be more significant if the recommendations include making major changes to VA forms, which could take several months. Alternatively, if the intent is for VA to begin implementation within 90 days, VA recommends replacing "implement" in (c)(2) with "begin to implement." VA recommends the language in Section (d) then be revised to align with the updated (c)(2).

As noted, the volume of recommendations from the FFRDC is inestimable and VA is concerned that the bill's mandate to complete the implementation within two years may not allow sufficient time to put all the changes into effect considering Paperwork Reduction Act requirements, OMB requirements, and existing information technology (IT) priorities. Potentially dozens of forms may be impacted and the extent of changes for each one could be substantial. VA notes that making changes to forms is a thoughtful, considered, deliberative, time-consuming, and complicated process which requires updating existing IT systems. VA must exercise caution to ensure that its forms comply with existing statutes and controlling case law.

Although the bill directs the FFRDC to make recommendations in conformity with laws administered by the Secretary, VA is concerned that it could not adopt those recommendations on a wholesale basis without independently assuring that they did not put the Agency at risk for non-compliance with its legal duties to claimants. Doing so will

require detailed collaborative efforts involving multiple VA business lines that will certainly require more than 90 days, assuming the intent of (c)(2) is for VA to identify the recommendations that comply with laws administered by the Secretary within 90 days, as discussed above. VA is also concerned with the language defining covered entities.

The language also specifies that the FFRDC's report would be binding upon the Secretary. This provision leaves no room for VA to refine or improve upon the recommendations, should the need arise. While an FFRDC report could provide an unbiased third-party view, VA views research and development processes as being designed to create recommendations, not policy. Finally, it is unclear which VA entity would bear the cost or costs of the contract.

We also believe this legislation could be more clearly drafted to indicate congressional intent to have either paper or digital forms be reviewed. This legislation will require IT resources to both support the FFRDC's review and to implement its recommendations. The cost estimates for the Office of Information Technology front end are \$10.2 million total over ten years.¹ The cost estimates for the Office of Information Technology back end are \$7.65 million total over ten years.²

H.R. XXX The Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act.

This bill would amend 38 U.S.C. § 7101A to provide that the Chairman, Vice Chairman, and Members of the Board of Veterans' Appeals may employ non-supervisory staff attorneys to assist them in performing the work of the Board and requires such positions to be General Schedule (GS)-15 at the full performance level. Therefore, it would also establish pay up to GS-15 for non-supervisory Board of Veterans' Appeals staff attorneys to improve recruitment and retention. Specifically, the bill would require that "[t]he full performance level for [non-supervisory Board staff attorneys] shall be [GS-15]" without evaluation of the duties and responsibilities of position.

VA opposes this bill.

It is not in alignment with classification regulations and/or 5 U.S.C. § 5107, which states, "Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management." Consequently, it will be necessary to establish duties, responsibilities, and qualifications. The draft bill language in 38 U.S.C. § 7101A(b)(3), establishing the full performance level for non-supervisory Board staff attorneys at GS-15 would completely negate 5 U.S.C. § 5107.

¹ \$170,000 per year salary per federal hire times \$1.5 million for benefits & overhead times ten years product lifecycle times four hires (one product hire, two engineering hires, and one designer hire to support changes to letter downloads and Veteran notifications).

² \$170,000 per year salary per federal hire times \$1.5 million for benefits & overhead times ten years product lifecycle times 3 hires.

The Board's current recruitment and retention incentives have proven to be very effective in the past few years. Retention rates improved dramatically, with attrition rates dropping by 50% from FY 2018 through FY 2023. Responses to open attorney vacancy announcements during the past two years have been phenomenal, with roughly 1,700 applicants the first year and nearly 1,400 applicants last year during an even shorter recruiting window.

Budget impacts are also important. All attorney advisor positions are eligible for promotion to GS-14 and an ever-increasing number of the Board's roughly 1,000 attorneys are at that highest non-supervisory grade level. Over 60% are currently GS-14s and that number is growing because of increasing retention rates and regular upcoming promotions expected for the higher number of new attorney hires during the past two years. For example, payroll projections are expected to increase by nearly \$15 million from FY25 to FY26 even if the Board adds no new personnel during that same period.

H.R. XXX Veterans' Burial Improvement Act of 2024

Section 101

Section 101 of this bill is similar to H.R. 7729 and section 2 of the unnumbered bill "Preserving Veterans' Legacies Act," in that it would address the date-of-death limitations in 38 U.S.C. §§ 2306(b)(2) and 2402(a)(5). Currently, the law only allows VA to provide memorialization or burial to spouses and eligible dependent children of active-duty Service members if the spouse or dependent child dies prior to October 1, 2024. Section 101 of this bill would eliminate these date-of-death limitations in each provision.

VA supports section 101, subject to the availability of appropriations.

The language would allow VA to provide spouses and eligible dependent children of active-duty Service members with memorial headstones and markers under 38 U.S.C. § 2306(b) and bury such individuals in a national cemetery under 38 U.S.C. § 2402(a)(5). Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation would retain the opportunity to obtain a government-furnished memorial headstone or marker or to choose to bury their loved ones in a VA national cemetery. VA would need additional time to estimate costs associated with this bill.

Section 102

Section 102 of the bill would amend 38 U.S.C. § 2308 to authorize VA to pay a one-time, inflation-indexed, flat-rate benefit for the domestic transportation of a deceased Veteran to a covered Veterans' cemetery upon the qualifying death of a Veteran.

VA supports section 102, if amended and subject to the availability of appropriations.

In 2014, VA published final regulations pertaining to burial and plot allowances, which allowed for the payment of a flat rate for these benefits in some instances. The automation of burial claims allowed by the change in regulations has resulted in payment of these benefits to the eligible surviving spouse within six days of the notification of the Veteran's death, without the need for the surviving spouse to submit a claim. VA notes that this section was previously included as a proposal in the FY 2024 President's Budget Request

Although VA was able to make improvements in delivery of the burial and plot allowances through automation, the transportation costs could not be included, as the current statute only allows reimbursement of actual transportation costs. If the law is amended to authorize a one-time payment for the cost of domestic transportation, indexed for inflation, VA can automate adjudication and payment of these claims similar to the payment of the burial and plot allowances. This process would remove the burden on survivors to prove their actual expenses during a difficult and vulnerable period of transition. It would also ensure that survivors receive the benefit shortly after incurring the expense of a Veteran's burial.

VA notes concerns that this proposed change may result in disparate treatment of Veterans who are currently entitled to transportation benefits under 38 U.S.C. § 2303(a)(1)(B) but are not buried in a covered cemetery or who did not die while hospitalized by VA. This proposed change would no longer provide the transportation benefit to eligible Veterans as described in 38 U.S.C. §2303(a)(2) and limit payment of the transportation benefit to eligible Veterans who are buried in a covered cemetery or Veterans who died while hospitalized by VA. VA suggests revising this proposed bill to retain the eligibility for the transportation benefit that currently exists 38 U.S.C. 2303(a) for veterans not buried in "covered cemeteries."

Also, as a technical matter, the headings of 38 U.S.C. § 2308 and section 102 should refer to a "covered cemetery," not a "covered veterans' cemetery," to make them consistent with the new proposed terminology for section 2308. Relatedly, current section 2308(c) should be removed, not redesignated as section 2308(d), because the term "covered veterans' cemetery" would not be used in revised section 2308. Finally, VA recommends an implementation window of at least 24 months from the date of enactment to allow for adequate system development, testing, and implementation.

Section 103

Section 103 of this bill is virtually identical to H.R. 6507, the "Mark Our Place Act" discussed above, and would eliminate the date limitation in 38 U.S.C. § 2306(d)(5)(C)(i), ensuring that the gravesites of recipients of the Medal of Honor include an appropriate recognition. Additionally, VA notes section 103 is consistent with a VA legislative proposal in the FY 2025 President's Budget Request.

VA supports section 103, subject to the availability of appropriations, as discussed above regarding the Mark Our Place Act.

Section 104

Section 104 of the bill is similar to section 3 of the unnumbered bill "Preserving Veterans' Legacies Act" in that it would allow VA to provide a headstone or marker to mark the gravesite of individuals buried in a group interment.

VA supports section 104, subject to the availability of appropriations, for the same reasons as discussed above in regard to the "Preserving Veterans' Legacies Act."

Section 105

Section 105 of the bill would amend 38 U.S.C. § 2303(b)(1)(A) to add an additional group of individuals that a State, agency, political subdivision, or Tribal Organization may bury in a Veterans' cemetery and still be eligible for VA's plot allowance for eligible Veterans buried in the same cemetery. Specifically, the amendment would add Veterans who were discharged or released from service under conditions other than dishonorable but who do not meet the minimum active-duty service requirements under 38 U.S.C. § 5303A, as well as the spouses and dependent children of such Veterans. Such veterans are ineligible for certain VA benefits, including burial in a national cemetery. Consequently, under the current version of the statute, burial of these individuals in state or tribal cemeteries would disqualify those cemeteries from receiving a plot allowance for the burial of eligible Veterans.

VA supports section 105, subject to the availability of appropriations.

In 2022, Congress expanded the list of individuals who may be buried in a state or tribal cemetery while maintaining a cemetery's eligibility to receive the plot allowance for eligible Veterans buried in the same cemetery. Burial Equity for Guards and Reserves Act, Pub. L. No. 117-103, Div. CC, § 102, 136 Stat. 49, 1109 (2022). However, Veterans who do not meet the minimum active-duty service requirements under 38 U.S.C. § 5303A were not included in the list of individuals who may be buried in a state or tribal cemetery in that amendment.

While the change made by Public Law 117-103 did not change eligibility for the plot allowance itself—the benefit is only payable for the burial of a Veteran who is eligible to be buried in a national cemetery but instead is buried in a cemetery operated by a State, agency, political subdivision, or Tribal Organization—the intent of the amendment was to create some burial equity for certain military members whose service did not include active duty, as well as for the spouses and minor or unmarried adult children of such Service members. In other words, Public Law 117-103 allowed other individuals to be buried in a state or tribal cemetery without impacting the state or tribal organization's eligibility to receive the plot allowance for an eligible Veteran buried there. However, the law created an "unintended inequity" for Veterans who did not meet the minimum active-duty requirement in 5303A because, if any such Veteran were buried in the cemetery, the state or tribal organization would no longer be eligible for the plot allowance. VA supports section 105's proposed solution to this inequity through the expansion of the categories of individuals listed in 38 U.S.C. § 2303(b)(1)(A).

VA would need additional time to estimate mandatory costs associated with this bill.

H.R. XXX VA Insurance Improvement Act

Section 101

Section 101 of the bill would authorize eligibility for VALife coverage to all Veterans who apply before attaining 81 years of age without requiring a service-connected disability.

VA supports section 101 of this bill, subject to the availability of appropriations.

However, VA requests that the legislation propose a future effective date to allow time for VA to implement the changes. VA requests an effective date of one year after enactment to allow adequate time for implementation, including information technology, staffing, and policy and procedure changes, as well as development of a national communications campaign to all Veterans.

The current statute limits insurance eligibility coverage to Veterans with a service-connected disability, and there is no similar program available for Veterans without a service-connected disability rating. Elimination of the service-connected disability requirement would expand insurance eligibility under this program similar to other non-compensation benefit programs such as education or home loans.

Expanding the eligibility criteria for VALife to include all Veterans under age 81, regardless of whether they have a service-connected disability, would encourage greater participation of Veterans in the insurance program. VALife was designed to be self-supporting and is not authorized by statute to receive an annual subsidy to cover claims expenses that exceed the amount of premiums collected and investment income received during a policy year. This bill would potentially decrease the overall mortality experience, encourage wider participation among Veterans, and reduce upward premium pressure by putting the program in a stronger financial position while also expanding access to more Veterans in need of life insurance. VA notes that this bill was previously included as a proposal in the FY 2024 President's Budget Request.

Section 102

Section 102 of the bill would allow reimbursement of Veterans' Mortgage Life Insurance (VMLI) administrative expenses from VMLI program funds (premiums and appropriations in the mandatory Veterans Insurance and Indemnities (VI&I) account) to better align with the handling of expenses for other Government life insurance programs administered by VA.

VA supports section 102 of this bill.

However, VA recommends revising the bill language to clarify the source of reimbursement funds. VA recommends adding the following clause, "from amounts

available for "Veterans Insurance and Indemnities" at the end of the last sentence in proposed 38 U.S.C. § 2106(d)(1) to explain the source of the reimbursements.

Currently, under 38 U.S.C. § 2106(d), the United States Government bears the costs of administering VMLI and requests discretionary budget appropriations to fund the expense. However, other Government life insurance programs reimburse for administrative expenses out of life insurance program funds and are funded by mandatory appropriations.

By reimbursing VMLI administrative expenses from the VMLI program funds (premiums and appropriations in the Veterans Insurance and Indemnities account), this bill would ensure that all Veterans serviced by Government life insurance programs are treated the same in the event of a lapse in appropriations impacting the General Operating Expenses (GOE) and Information Technology Systems accounts.

Section 103

Section 103 would revise the definition of "uniformed services" in 38 U.S.C. § 1965 to include the Space Force.

VA supports section 103 of this bill.

VA supports the amending 38 U.S.C. § 1965(6) to define "uniformed services" as including the Space Force. However, VA recommends revising the bill language in section 1965(6) to instead adopt the definition of uniformed services in 10 U.S.C. § 101, which already includes the Space Force. This would ensure that not only is the Space Force treated as a separate uniformed service, but any future changes to the military components that comprise the uniformed services would automatically apply to the Servicemembers' Group Life Insurance (SGLI) program without the need for additional legislation.

The definition of "uniformed services" in current section 1965(6) does not list the Space Force separately from the Air Force, which creates an inconsistency in how the military services are defined. Because the SGLI program identifies the Marine Corps as a separate service from the Navy—even though the Marine Corps falls under the Department of the Navy—it follows that the Space Force should be identified as a separate service from the Air Force, even though the Space Force remains under the authority of the Department of the Air Force. This bill would create parity between all uniformed services for purposes of SGLI eligibility.

Therefore, VA recommends removing the existing text defining "uniformed services" in the bill and replacing it with a reference to the "uniformed services" definition in 10 U.S.C. § 101(5) to maintain conformity with the definition of uniformed services used by the Department of Defense.

There are no mandatory or discretionary costs associated with this bill.

H.R. XXX Survivor Benefits Update Act of 2024

This bill would amend 38 U.S.C. §§ 1541(f)(1)(E) and § 5101(b)(1) to extend the statutory marriage delimiting date for surviving spouses of Gulf War Veterans and streamline VA's processing of survivors' benefits claims.

VA supports this bill and offers recommendations for amendment.

Section 101 would prevent any potentially inconsistent results in Survivors Pension claims based on Gulf War service and would ensure that all Surviving Spouses receive the most favorable consideration for VA benefits. Furthermore, this amendment provides an established delimiting date based on any termination date established by the Presidential proclamation of the Persian Gulf War ending, and the language in this amendment ensures that a consistent 10-year qualifying period is afforded to all Surviving Spouses seeking Survivors Pension benefits based upon a Veteran's Gulf War service. Due to the ongoing Gulf War, VA proposes to replace the outdated prescribed delimiting date of January 1, 2001, with a date that is 10 years and 1 day following the future prescribed ending date of the Gulf War. VA notes that this section and section 102 were previously included as a proposal in the FY 2024 President's Budget Request.

Section 102 would remove the statutory requirement that VA must decide three separate survivor benefits upon receiving a claim for one in 38 U.S.C. § 5101(b)(1). This change would enable VA to streamline the pension adjudication process, deliver decisions on claimed benefits and services timelier to beneficiaries in need during a difficult time, and reduce the burden on claimants to submit additional information on a benefit they may not even be claiming. It would also give the Secretary an option as to how best to administer and adjudicate survivors' benefits claims and permit the Secretary to delve into the intent of the claimant. Finally, it would allow a claimant to make an election. This bill would not eliminate a Surviving Spouse or child's opportunity to claim more than one benefit on a single form. Furthermore, this bill would reduce the administrative burden for both VA and the claimant and will expedite the delivery of benefits to survivors as a decision on all three separate survivor benefits would not be required by law when all benefits are not specifically claimed upon receipt of a claim for benefits under 38 U.S.C. § 5101(b)(1).

VA notes that this proposed amendment does not include changes to 38 U.S.C. § 5101(b)(2). The bill as drafted would treat Surviving Spouses and children different from parents because VA would still be required by law to decide all benefits for a parent upon receipt of a claim for benefits listed in 38 U.S.C. § 5101(b)(2). VA suggests revising language to replace "shall" with "may" within 38 U.S.C. § 5101(b)(2) to align with the changes proposed to 38 U.S.C. § 5101(b)(1). Revised language is provided within the suggested redline below.

Furthermore, VA suggests revising language within 38 U.S.C § 5101(b). VA suggests replacing the term "death pension" with the term "Survivors' Pension" in each place it appears within 38 U.S.C. § 5101(b)(1). Also, VA suggests replacing the words "for compensation" with "for death compensation" each place they appear within 38 U.S.C. § 5101(b). These changes will ensure that statutory language aligns with current usage of language related to survivor benefits.

VA also notes that there is no effective date provided within the proposed language. VA highlights that necessary changes will be required to affected VA forms to allow a claimant to identify the specific benefit or benefits being claimed. This form change will ensure the intended effect of streamlined processing of survivor benefits and allow VA to adjudicate only the benefit or benefits being claimed. If enacted, VA estimates that enhancements will take approximately 12 months to be executed. VA provides that until these form updates are in effect VA would not be able to comply with this proposal.

No mandatory or discretionary costs are associated with this draft bill. This concludes my statement. We would be happy to answer any questions you or other members of the Subcommittee may have.

Prepared Statement of Charles Djou

Chairman Luttrell, Ranking Member Pappas, members of the Subcommittee, thank you for the invitation to testify this morning on behalf of the American Battle Monuments Commission (ABMC) regarding the Flowers for Fallen Heroes Act of 2024.

We have no objection to this initiative and appreciate Congressman Zinke allowing us to work with his staff on the language of the bill. The bill gives us the mission and the authority to renew a flower ordering process through our Commission, but also gives us the flexibility to determine how best to "... establish a modern and secure program and payment system for members of the public to order floral arrangements for gravesites under the Commission's purview ..."

I am pleased to report, however, that we can take action without additional legislation. The Administration has determined that ABMC has the legislative authority to restart the program and has encouraged us to do so. Accordingly, we will immediately begin the planning process to accomplish this mission. It will not happen overnight; we must develop an efficient and secure ordering and payment process to facilitate constituent floral orders for our 26 overseas cemeteries.

We will negotiate the most favorable pricing possible; we will market the program to encourage floral placements to honor the sacrifice of the war dead buried or memorialized within ABMC cemeteries; and we will keep the Administration and Congress informed of our progress as program implementation moves forward.

For the record, we have never prohibited the placement of flowers at ABMC gravesites. We closed the old Flower Fund program in 2015 because we believed it was no longer needed in an era of international commerce. Our website provided contact information for international florists and local florists near our cemeteries. And we continued to provide a form online for constituents to request a photo of flowers they ordered in place at the gravesite. We simply took ourselves out of a middleman role in that process.

Flowers can and always will be allowed to be placed at gravesites in ABMC cemeteries.

We understand the importance of remembering our Nation's heroes who died and remain interred overseas. That is our mission, and we will always honor that sacred trust. The care with which we maintain our overseas cemeteries, and the commemorative, educational, and visitor services programs we designed to ensure the service and sacrifice of those we honor is never forgotten attest to that commitment.

We consider it a privilege to have been given the honor of caring for our Nation's war heroes buried overseas, to be the guardian of their legacy, and we take that responsibility to heart.

Reintroduction of an ABMC flower program will further that mission.

Thank you.

Prepared Statement of Candace Wheeler



**STATEMENT OF
TRAGEDY ASSISTANCE PROGRAM FOR SURVIVORS (TAPS)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES**

**DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE
LEGISLATIVE HEARING**

**PRESENTED BY
CANDACE WHEELER
DIRECTOR, GOVERNMENT AND LEGISLATIVE AFFAIRS**

JULY 10, 2024

The Tragedy Assistance Program for Survivors (TAPS) is the national provider of comfort, care, and resources to all those grieving the death of a military or veteran loved one. TAPS was founded in 1994 as a 501(c)(3) nonprofit organization to provide 24/7 care to all military survivors, regardless of a service member's duty status at the time of death, a survivor's relationship to the deceased service member, or the circumstances or geography of a service member's death.

TAPS provides comprehensive support through services and programs that include peer-based emotional support, casework, assistance with education benefits, and community-based grief and trauma resources, all delivered at no cost to military survivors. TAPS offers additional programs including, but not limited to, the following: the 24/7 National Military Survivor Helpline; national, regional, and community programs to facilitate a healthy grief journey for survivors of all ages; and information and resources provided through the TAPS Institute for Hope and Healing. TAPS extends a significant service to military survivors by facilitating meaningful connections to peer survivors with shared loss experiences.

In 1994, Bonnie Carroll founded TAPS after the death of her husband, Brigadier General Tom Carroll, who was killed along with seven other soldiers in 1992 when their Army National Guard plane crashed in the mountains of Alaska. Since its founding, TAPS has provided care and support to more than 120,000 bereaved military survivors.

In 2023 alone, 9,611 newly bereaved military and veteran survivors connected with TAPS for care and services, the most in our 30-year history. This is an average of 26 new survivors coming to TAPS each and every day. Of the survivors seeking our care in 2023, 34 percent were grieving the death of a military loved one to illness, including illness as a result of exposure to toxins; 30 percent were grieving the death of a military loved one to suicide; and only 3 percent were grieving the death of a military loved one to hostile action.

As the leading nonprofit organization offering military grief support, TAPS builds a community of survivors helping survivors heal. TAPS provides connections to a network of peer-based emotional support and critical casework assistance, empowering survivors to grow with their grief. Engaging with TAPS programs and services has inspired many survivors to care for other, more newly bereaved survivors by working and volunteering for TAPS.

Chairman Luttrell and Ranking Member Pappas, and distinguished members of the House Committee on Veterans' Affairs, Disability and Memorial Affairs Subcommittee, the Tragedy Assistance Program for Survivors (TAPS) is grateful for the opportunity to provide a statement for the record on issues of importance to the 120,000-plus surviving family members of all ages, representing all services, and with losses from all causes who we are honored to serve.

The mission of TAPS is to provide comfort, care, and resources for all those grieving the death of a military loved one, regardless of the manner or location of death, the duty status at the time of death, the survivor's relationship to the deceased, or the survivor's phase in their grief journey. Part of that commitment includes advocating for improvements in programs and services provided by the U.S. federal government — the Department of Defense (DOD), Department of Veterans Affairs (VA), Department of Education (DoED), Department of Labor (DOL), and Department of Health and Human Services (HHS) — and state and local governments.

TAPS and the VA have mutually benefited from a long-standing, collaborative working relationship. In 2014, TAPS and the VA entered into a Memorandum of Agreement that formalized their partnership with the goal of providing earlier and expedited access to crucial survivor services. In 2023, TAPS and the VA renewed and expanded their formal partnership to better serve our survivor community. TAPS works with military and veteran survivors to identify, refer, and apply for resources available within the VA, including education, burial, benefits and entitlements, grief counseling, and survivor assistance.

TAPS also works collaboratively with the VA and DOD Survivors Forum, which serves as a clearinghouse for information on government and private-sector programs and policies affecting surviving families. Through its quarterly meetings, TAPS shares information on its programs and services and fulfills any referrals to support all those grieving the death of a military or veteran loved one.

TAPS President and Founder Bonnie Carroll served on the Department of Veterans Affairs Federal Advisory Committee on *Veterans' Families, Caregivers, and Survivors*, where she chaired the Subcommittee on Survivors. The committee advises the Secretary of the VA on matters related to veterans' families, caregivers, and survivors across all generations, relationships, and veteran statuses. Ms. Carroll is also a distinguished recipient of the Presidential Medal of Freedom, the nation's highest civilian honor.

VETERANS CLAIMS EDUCATION ACT OF 2023 (H.R. 2971)***TAPS Strongly Supports***

TAPS thanks Representative Scott Peters (D-CA-50) for introducing the ***Veterans Claims Education Act of 2023 (H.R. 2971)***, which would ensure that veterans and survivors are aware of the free resources that assist with filing a Department of Veterans Affairs (VA) claim. It would also reduce the chances of veterans and survivors being taken advantage of by predatory actors.

Since the *Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022* became law on Aug. 10, 2022, the VA and numerous Veteran Service Organizations (VSO) have noticed an influx of media advertisements and solicitations from predatory claims consultants. With the VA estimating that up to 382,000 potential survivors may be eligible for PACT Act benefits, increased regulatory oversight is crucial to ensuring that these survivors receive adequate care and representation throughout the VA benefits claim process.

Historically, surviving spouses have had a large target on their backs from predatory actors, and claim sharks are no different. TAPS wants to ensure that surviving spouses applying for benefits from the VA are not taken advantage of by predatory actors when there are so many free and low-cost options available.

Although veterans are considered a vulnerable population to predatory actors, we believe that surviving spouses are as well. When a disabled veteran dies, surviving spouses lose more than half of their financial benefits and are provided limited support in figuring out how to file for benefits as a surviving spouse. If you call the VA, they will provide you the form number for Dependency and Indemnity Compensation (DIC) or tell you to contact a VSO for free assistance in filing a claim. If you Google how to “file a DIC claim as a widow,” the first response takes you to the VA’s website. Seven of the next nine results are paid sponsorships from claim sharks. The 10th response takes you to the Disabled American Veterans (DAV) — the first true VSO result available.

This critical legislation would ensure that the VA informs all claimants of accredited assistance if an accredited representative did not help with the claim. Those representatives would be at no cost to the claimant. Additionally, it would create a tool similar to the GI Bill Comparison Tool that would provide the information of accredited VSOs that can assist with claims. It would also allow claimants to report any non-accredited representation they received that charged an illegal fee.

TAPS strongly supports these changes that will help create better-informed consumers, and reduce the risk of survivors being exploited by predatory actors or claim sharks.

PROTECTING BENEFITS FOR DISABLED VETERANS ACT OF 2023 (H.R. 6362)***TAPS Supports***

TAPS appreciates Representative Maxine Waters (D-CA-43) introducing the ***Protecting Benefits for Disabled Veterans Act of 2023 (H.R. 6362)***, which would provide authority for the Department of Veterans Affairs (VA) to assign a disability rating of “total” to a veteran who meets certain parameters and is unable to secure or maintain substantially gainful employment as a result of a service-connected disability.

This legislation would allow the VA to assign a disability rating of total to a veteran if the Secretary of Veterans Affairs determines the veteran has a service-connected disability rated at least 60 percent, or has two or more service-connected disabilities with one being at least 40 percent and a combined total of at least a 70 percent disability rating.

The VA would also be able to make a determination on a veteran’s disability rating in cases where a veteran’s employment income is less than the poverty threshold established by the United States Census Bureau. In cases where the veteran maintains substantially gainful employment, exceeding the poverty threshold, but — after factoring in total household and medical expenses and the cost of living where the veteran resides — the VA may also determine that the total rating is appropriate.

TAPS believes this legislation will strengthen disabled veterans and their families who struggle to maintain substantially gainful employment or experience financial hardship as a result of their disability and cumulative circumstances.

MARK OUR PLACE ACT (H.R. 6507)***TAPS Supports***

TAPS is grateful to Chairman Morgan Luttrell (R-TX-8) for introducing the ***Mark Our Place Act (H.R. 6507)***, which would authorize the Secretary of Veterans Affairs to furnish or replace a headstone, marker, or medallion for the grave of an eligible Medal of Honor recipient, regardless of the recipient’s dates of service in the Armed Forces.

Under current law, Medal of Honor recipients who served after 1917 are eligible, but veterans who served before that date are not eligible. This important bipartisan and bicameral legislation would eliminate the service era requirement. It would also authorize the VA to provide headstones with Medal of Honor markers for veterans buried in private cemeteries. The *Mark Our Place Act* will ensure all Medal of Honor recipients receive the recognition they deserve.

DENNIS AND LOIS KRISFALUSY ACT (H.R. 7729)***TAPS Strongly Supports***

TAPS thanks Representative Guy Reschenthaler (R-PA-14) for introducing the ***Dennis and Lois Krisfalusy Act (H.R. 7729)***, which would expand eligibility for memorial headstones, markers, and receptacles in national, state, or tribal veterans cemeteries to eligible spouses or dependent children of veterans regardless of their date of death.

Named in honor of Dennis and Lois Krisfalusy, who both died in the Mexico earthquake in 1985. Although Dennis was recognized with a memorial marker in 2023, his wife, Lois, is ineligible to be included on the memorial marker.

Current law restricts eligible spouses and dependent children who passed before Nov. 11, 1998, or who pass after Oct. 1, 2024, from being added to a memorial headstone or marker. This bipartisan legislation would extend the federal law for 10 years until Oct. 1, 2034.

TAPS strongly recommends we make this law permanent with no end date, to mirror the provision within the *Preserving Veterans Legacy Act of 2024*. We respectfully urge its swift passage before the current law expires.

Military spouses and dependent children serve and sacrifice for our country alongside their veterans. Thus, these eligible family members should be afforded the honor and dignity of burial with their veterans and service members, and the shared recognition they have earned.

FLOWERS FOR FALLEN HEROES ACT OF 2024 (H.R. 8792)***TAPS Strongly Supports***

TAPS greatly appreciates Representative Ryan Zinke (R-MT-1) introducing the ***Flowers for Fallen Heroes Act of 2024 (H.R. 8792)***, which would re-establish a secure program and payment system for family members and the general public to order floral arrangements for gravesites under the purview of the American Battle Monuments Commission (ABMC), without excess administrative fees or markup.

The ABMC was established by Congress in 1923 as an agency of the executive branch of the federal government. It administers, operates, and maintains 26 American military cemeteries located in 17 foreign countries, "most of which commemorate the service and sacrifice of Americans who served in World War I and World War II."

The ABMC created the Flower Fund Program in 1950 to assist surviving families and American citizens with a tangible way to commemorate and honor their loved ones who died in service to our country and were buried in American military cemeteries overseas. Family members and citizens paid for the flowers, but ABMC employees assisted in ordering them through local flower shops overseas for their placement at gravesites. The program operated for 65 years, but was discontinued by ABMC in 2015.

TAPS appreciates the American WWII Orphans Network (AWON) bringing this important issue to our attention.

Marilynn Rustand Lieurance, Surviving Daughter of 1LT Hanford “Rusty” James Rustand, AWON

“For many war orphans, the flower program was the single thread of connection we had to our dads who were buried so far from the home they loved and fought for. Many of us didn’t hear stories about our dad or see a picture of our dad until many years later when we were adults. All we had was that one connection through our government that enabled us to put flowers on our dad’s grave.”

TAPS is proud to stand with the American WWII Orphans Network in support of the *Flowers for Fallen Heroes Act of 2024* alongside the American Legion, Veterans of Foreign Wars, AMVETS, Paralyzed Veterans of America, Honor Flight Network, America’s Warrior Partnership, Navy SEAL Foundation, Blue Star Families, Gold Star Wives of America, Inc., Military Order of the Purple Heart, American Ex-Prisoners of War, Rolling Thunder®, Inc., The OSS Society, A Soldier’s Child Foundation, 8th Air Force Historical Society, Navy Nurse Corps Association, Buffalo Soldiers 9th & 10th Cavalry Association, Sons and Daughters In Touch, 91st Bomb Group Memorial Association, B-17 Alliance, and Gold Star Children.

In addition to reinstating the ABMC Flower Program, we respectfully ask Congress to protect this program in perpetuity, so that generations of Gold Star Families have a tangible way of honoring and commemorating their loved ones who served and sacrificed for our nation.

DAYTON NATIONAL CEMETERY EXPANSION ACT OF 2024 (H.R. 8910)

TAPS Supports Intent

TAPS thanks Representative Michael Turner (R-OH-10) for introducing the ***Dayton National Cemetery Expansion Act of 2024 (H.R. 8910)***. This legislation would authorize the Secretary of Veterans Affairs to enter into an agreement with the

Montgomery County Land Bank to transfer approximately 58 acres of land across from the Dayton National Cemetery to the Department of Veterans Affairs (VA) to be used for the expansion of the national cemetery.

Dayton National Cemetery is located in Montgomery County, Ohio. It was established as a permanent burial site in 1867 and transferred to the National Cemetery Administration (NCA) in 1973. The cemetery is one of eight National Cemeteries with the remains of veterans from every major United States conflict dating back to the American Revolutionary War. The national cemetery was designated a National Historic Landmark in 2012.

We defer to the VA to determine if expanding the Dayton National Cemetery will ensure it continues to commemorate and honor the next generation of veterans who serve and sacrifice for our country.

PRESERVING VETERANS' LEGACY ACT OF 2024 (Discussion Draft)

TAPS Strongly Supports and Urges Swift Passage

TAPS greatly appreciates Representative John James (R-MI-10) introducing the ***Preserving Veterans' Legacy Act of 2024***. This legislation would provide permanent authority to the National Cemetery Administration (NCA) to bury eligible spouses and dependent children, who predecease their veteran and active duty service members. The current law will sunset on Oct. 1, 2024.

This critical bipartisan legislation is co-sponsored by Chairman Morgan Luttrell (R-TX-8), and Representatives Jack Bergman (R-MI-10), Chris Deluzio (D-PA-17), and Don Davis (D-NC-1), all of whom are veterans. This bill would also provide headstones and markers for groups of individuals buried in group interments if each individual in the group is eligible for a headstone or marker.

TAPS has provided care and support to more than 120,000 bereaved military survivors since our founding in 1994. We have heard from many of them firsthand how important it is to their families to be assured that their final resting place will be together.

Our military and veteran families have served and sacrificed for our nation and should be afforded the permanent honor of being buried with their loved ones in a VA National Cemetery.

TAPS respectfully calls on Congress to swiftly pass this urgent legislation before the current law expires!

ENSURING VETERANS' FINAL RESTING PLACE ACT OF 2024 (Discussion Draft)***TAPS Strongly Supports***

TAPS is grateful to Representative Rudy Yakym (R-IN-2) for introducing the ***Ensuring Veterans' Final Resting Place Act of 2024***. This important legislation would authorize the provision of certain additional burial benefits for individuals for whom an urn or plaque is furnished, if the cost of the urn or plaque is reimbursed by a non-Department entity.

We have been hearing from surviving families who initially elected to receive an urn or plaque in honor of their deceased veteran that they were unaware this election would forfeit burial benefits going forward.

This legislation would allow surviving families to reimburse the Department of Veterans Affairs (VA) for the cost of the urn or plaque if they also elect to inter their veteran in a VA National Cemetery. Under current law, families are not allowed to elect both. Unfortunately, this has caused additional emotional and financial burdens on military and veteran surviving families.

MODERNIZING ALL VETERANS AND SURVIVORS CLAIMS PROCESSING ACT (Discussion Draft)***TAPS Supports***

TAPS thanks Representative David Valadao (R-CA-22) for introducing the ***Modernizing All Veterans and Survivors Claims Processing Act***, which would direct the Secretary of Veterans Affairs to report on efforts to expand the use of automation tools to process veterans' and survivors' claims.

Expanding access to automation tools for other subdivisions of the Department of Veterans Affairs (VA) would help decrease processing times and improve accuracy. The current wait times for Dependency and Indemnity Compensation (DIC) for surviving families have increased substantially due to the passage and implementation of the *Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022*.

The VA's Disability Compensation Service has access to more automation tools than Pension and Fiduciary Service, which has proven to help lower processing times for veteran claimants. We are optimistic that the report will emphasize the urgent need for the Pension and Fiduciary Service and other subdivisions to access and utilize those same essential tools.

RURAL VETERANS' IMPROVED ACCESS TO BENEFITS ACT OF 2024 (Discussion Draft)***TAPS Supports***

TAPS supports the ***Rural Veterans' Improved Access to Benefits Act of 2024***, which would provide permanent authority for contract physicians to perform Department of Veterans Affairs (VA) disability examinations. While this bill primarily codifies current VA policy, formalizing it is important to ensure that future administrations also contract physicians to assist with disability exams.

TAPS believes that providing this permanent authority is especially important in rural communities, where veterans may lack the same access to disability exams as those in urban areas. Additionally, this legislation would provide parity for rural veterans, who may not have access to the same level of care from the VA as those living near a VA medical center.

IMPROVING VA TRAINING FOR MILITARY SEXUAL TRAUMA CLAIMS ACT (Discussion Draft)***TAPS Strongly Supports***

TAPS greatly appreciates the ***Improving VA Training for Military Sexual Trauma Claims Act***, which would improve claims based on military sexual trauma (MST) under laws administered by the Secretary of Veterans Affairs.

This important legislation would establish sensitivity training for Department of Veterans Affairs (VA) employees who process or decide MST claims, or communicate with claimants regarding evidence supporting such claims. It would also require the Secretary to update MST training annually to ensure the VA is exceeding its quality of care standards.

In addition, this bill would improve sensitivity training to ensure that a veteran who makes an MST claim is not retraumatized during an examination by a contracted health care professional.

Improving MST sensitivity training for VA employees and contracted health care professionals is critically important to safeguarding the physical and mental health of MST survivors during the VA claims process, and is paramount to their continued recovery and well-being. TAPS strongly supports this critical legislation and looks forward to its passage and implementation.

SIMPLIFYING FORMS FOR VETERANS CLAIMS ACT (Discussion Draft)***TAPS Supports***

TAPS thanks Representative John Duarte (R-CA-13) for introducing the ***Simplifying Forms for Veterans Claims Act***, which would direct the Secretary of Veterans Affairs to seek an agreement with a Federally Funded Research and Development Center (FFRDC) for an independent assessment of claimant forms.

We understand that the term “claimant,” as defined under Section 5100 of Title 38, United States Code, “means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary,” would include both veterans and survivors.

We appreciate that Section D under Definitions of this bill incorporates language that represents survivors, “an entity that advocates for veterans and survivors of veterans.”

TAPS believes it is important to clearly represent survivors in legislative text to clarify the intent and coverage. The exclusion of “survivors” within legislative text can have unintended consequences, which we have seen in the past.

BOARD OF VETERANS APPEALS’ ATTORNEY RETENTION AND BACKLOG REDUCTION ACT (Discussion Draft)***TAPS Supports***

TAPS thanks Representative Morgan McGarvey (D-KY-3) for introducing the ***Board of Veterans’ Appeals Attorney Retention and Backlog Reduction Act***, which would amend Title 38, United States Code, to reform and enhance the pay of Board of Veterans’ Appeals attorneys to improve recruitment and retention, and increase the decision quality and claims processing speed of the board.

TAPS believes this legislation will help recruit and retain high-performing attorneys to the Board of Veterans’ Appeals, reduce the claims backlog, and improve decision outcomes for our veterans and their survivors. The Department of Veterans Affairs (VA) faces recruitment challenges for attorneys, largely due to the higher pay in the private sector. Offering competitive pay will attract attorneys who are genuinely motivated to work for the VA.

Given the consistent backlog TAPS is seeing with claims and appeals, this critical legislation would significantly improve hiring and retention at the VA Board of Veterans Appeals.

VETERANS' BURIAL IMPROVEMENT ACT (Discussion Draft)**TAPS Supports**

TAPS thanks Ranking Member Chris Pappas (D-NH-1) for introducing the **Veterans' Burial Improvement Act**, which would amend Title 38, United States Code, to improve the laws administered by the Secretary of Veterans Affairs relating to memorial affairs.

The *Veterans' Burial Improvement Act of 2024* seeks to enhance various laws related to memorial affairs administered by the Secretary of Veterans Affairs. Key provisions of this legislation include:

1. **Permanent Authority for Burial Benefits:** Removes the Oct. 1, 2024, deadline for providing headstones and interment in national cemeteries for spouses and children who predecease active-duty service members. As demonstrated in the *Preserving Veterans' Legacy Act of 2024*, TAPS supports this change and believes its impact on our veterans, service members, and their families is invaluable.
2. **Transportation of Deceased Veterans:** Authorizes the Secretary to pay for the transportation of deceased veterans (not to exceed \$700) to burial sites, including a transportation allowance and adjustments based on the Consumer Price Index. It also covers actual transportation costs for veterans who die in VA facilities or while receiving certain types of care. TAPS supports this section due to the drastic change in a survivor's household income following a veteran's death. It will not only ease the logistical burden of organizing transportation, but also alleviate the associated financial strain.
3. **Elimination of Time Limitation for Medal of Honor Recipients:** Removes specific time limitations on burial benefits for Medal of Honor recipients, also referenced under the *Mark Our Place Act* (H.R. 6507). TAPS supports this provision. According to the Congressional Medal of Honor Society, nearly 300 service members received the Medal of Honor before 1917. The previous law omits six out of the 13 wars recognized by the VA, ranging from the American Revolution to the Global War on Terror. These service members deserve proper recognition if their graves are not currently marked.
4. **Provision of Group Burial Markers:** Allows the Secretary to furnish group headstones or markers for burial sites containing the remains of multiple veterans, subject to certain conditions and approvals. As referenced under the *Preserving Veterans' Legacy Act of 2024*, TAPS supports this provision. We recognize that there are situations where the remains of multiple service

members cannot be separated and identified. We also understand the strong bonds formed within the military, and thus, it is important to honor the wishes of service members who choose to be laid to rest together.

5. **Burial or Interment of Additional Persons:** Expands eligibility for burial in cemeteries accepting VA plot or interment allowances to include certain veterans discharged under conditions other than dishonorable and their dependents, even if they don't meet the minimum active-duty service requirement of 24 months. TAPS supports this provision, recognizing the importance of honoring a service member's initial willingness to serve and their subsequent service. We believe that the service and sacrifice of our veterans and their families begin the day they commit to serve, and this provision would appropriately honor that commitment.

In conclusion, TAPS values this legislation for its acknowledgment of our veterans, service members, and their families, recognizing their steadfast loyalty and dedication to our nation and the significance of their final place of rest. It emphasizes honoring not just how or when they died, but how they lived.

VA INSURANCE IMPROVEMENT ACT (Discussion Draft)

TAPS Supports

TAPS appreciates Ranking Member Chris Pappas (D-NH-1) introducing the **VA Insurance Improvement Act**, which would amend Title 38, United States Code, to make certain improvements to the laws administered by the Secretary of Veterans Affairs relating to insurance for veterans.

Expanding Veterans Group Life Insurance (VGLI) eligibility will provide security to veterans who need it the most. Veterans often have a harder time getting approval for private life insurance policies due to service-connected injuries or illnesses being viewed as pre-existing conditions, especially when they are already service-connected.

Life insurance is an essential financial benefit for the surviving dependents of veterans. Following the death of a veteran, the financial responsibility of their survivors increases while their household income decreases drastically, for some as much as 70 percent. This important legislation will bring peace of mind to our veterans and ensure their legacy will bring financial stability to their families.

Additionally, the inclusion of the Space Force in the Traumatic Injury Servicemembers' Group Life Insurance (TSGLI) will provide parity of benefits for those who are serving in our newest military branch.

SURVIVOR BENEFITS UPDATE ACT OF 2024 (Discussion Draft)***TAPS Supports Section 2 and Opposes Section 3***

TAPS thanks Ranking Member Chris Pappas (D-NH-1) for introducing the ***Survivor Benefits Update Act of 2024***, which would extend the Department of Veterans Affairs (VA) delimiting date for benefits for surviving spouses of Persian Gulf War veterans.

Extending the timeline for Dependency and Indemnity Compensation (DIC) and Survivors Pension for surviving spouses of Persian Gulf War veterans will allow them a longer window to apply for benefits. It would also allow surviving spouses who missed the time frame due to the current delimiting date to apply for benefits. We strongly support and appreciate this provision!

However, TAPS opposes Section 3 regarding the processing of Survivor Benefit Claims:

In Section 3, the proposed legislative language uses the phrasing “may be considered” instead of the current “shall be considered.” This change would require survivors to first determine which benefits they qualify for and then file a separate claim for each benefit. The current system under the Veterans Benefits Administration (VBA) allows survivors to file a single claim for all benefits.

One of our major concerns with this change is if survivors apply for only one benefit, most survivors would naturally be drawn to the Survivors Pension because of its straightforward name. The term Dependency and Indemnity Compensation (DIC) does not stand out as clearly. In such cases, would the VA proactively advise survivors, after reviewing only one application, to consider applying for other survivor benefits they have not yet applied for?

While TAPS appreciates the intent to streamline the survivor claims process, we believe it should not shift the burden to our survivors. This legislative proposal would increase the number of claim forms, exacerbate survivors’ confusion and frustration, and potentially fail to provide the best benefits and entitlements available to them. The current provision in Title 38, United States Code, Section 5101(b)(1) protects survivors by ensuring they are reviewed for all survivor benefits.

This change to the survivor benefit claims process would be a disservice to our survivors when they are turning to the VA and other organizations for support during their time of grief and loss.

TAPS appreciates the intent of this legislation and supports Section 2, but we oppose Section 3 and respectfully request it be removed from consideration.

CONCLUSION

TAPS extends gratitude to the leadership of the House Committee on Veterans' Affairs, its distinguished members, and professional staff for holding this important hearing on veteran and survivor issues. TAPS is honored to testify on behalf of the thousands of military and veteran surviving families we serve.

Prepared Statement of Lesley Witter

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee, Thank you for the opportunity to testify today on behalf of the National Funeral Directors Association (NFDA) regarding legislation vital to our Nation's veterans.

I am Lesley Witter, Senior Vice President of Advocacy for NFDA, representing nearly 20,000 licensed funeral directors and embalmers across the Nation. It is a profound privilege for funeral directors to serve veterans and their families with utmost care and respect. NFDA, with its extensive national network of over 10,000 funeral homes, remains steadfast in our commitment to ensuring that every veteran receives a dignified final tribute, honoring their dedicated service to our country.

As the leading funeral service organization in the United States and globally, NFDA advocates tirelessly for veterans and their families, collaborating closely with Congress, the Department of Veterans Affairs (VA), Veteran Service Organizations (VSOs), and others. We strive to uphold the solemn promise of providing every deceased veteran the care, honor, and dignity they rightfully deserve.

Mr. Chairman, NFDA extends gratitude to you and your fellow veterans in Congress for your service to our Nation, both on Capitol Hill and in the armed forces. We commend the Committee for its ongoing efforts to ensure veterans receive the benefits they have earned through their service and sacrifice. Today, as the Committee deliberates on 18 bills addressing critical issues affecting veterans, NFDA appreciates the opportunity to provide our perspective on matters related to funeral and burial benefits.

Thank you once again for this opportunity to testify and for your dedication to our veterans. We look forward to continuing our collaborative efforts to honor those who have served our country so bravely.

We enthusiastically support your legislation, H.R. 6507, known as the "Mark Our Place Act," which authorizes the Secretary of Veterans Affairs to furnish or replace a headstone, marker, or medallion for the grave of any eligible Medal of Honor recipient, regardless of their dates of service in the Armed Forces. This legislation is crucial to ensuring that every veteran receives the proper memorialization they deserve.

Similarly, NFDA supports Representative Reschenthaler's H.R. 7729, the "Dennis and Lois Krisfalusy Act," which seeks to amend Title 38, United States Code to expand eligibility for headstones, markers, and burial receptacles under the purview of the Secretary of Veterans Affairs to include certain individuals who passed away before November 11, 1998.

Furthermore, NFDA endorses Representative Zinke's H.R. 8792, the "Flowers for Fallen Heroes Act of 2024," designed to establish a program for ordering flowers at gravesites overseen by the American Battle Monuments Commission. This legislation aims to ensure that over 200,000 Americans who perished in WWI or WWII are respectfully memorialized at an ABMC site in perpetuity.

Additionally, NFDA supports the "Veterans' Burial Improvement Act of 2024," particularly its provisions making certain burial benefits permanent for spouses and children of armed forces members who die while on active duty. We also endorse the provision enabling the Secretary to cover additional costs, exceeding the standard transportation allowance, for transporting a veteran from the place of death to a designated cemetery.

These legislative initiatives are crucial steps toward ensuring that our veterans and their families receive the utmost respect and recognition for their sacrifices to our Nation. NFDA is proud to support these efforts and remains committed to advocating for the dignified treatment of our Nation's heroes.

Mr. Chairman, NFDA wholeheartedly supports the "Preserving Veterans' Legacy Act of 2024." We extend our gratitude to Representatives John James, Chris Deluzio, Morgan Luttrell, Jack Bergman, and Don Davis—all veterans themselves—for introducing this critical legislation. The Act addresses a current limitation that restricts the Department of Veterans Affairs' National Cemetery Administration (NCA) from burying families together beyond October 1, 2024. This sunset provision is particularly burdensome for families who wish to honor their loved ones' service by being interred together.

Furthermore, this legislation grants permanent authority to the NCA to inter eligible spouses and dependent children in VA National Cemeteries. Importantly, it also allows the NCA to provide a group burial marker for veterans buried in mass graves, instead of individual headstones. We recognize the necessity of this provision, as it grants the VA discretion in appropriately memorializing individuals in such situations.

It is a sad truth that funeral homes nationwide confront a surprising challenge: many are currently holding the cremated remains of unclaimed individuals, includ-

ing veterans. Funeral directors advocate passionately for every unclaimed individual to receive a dignified funeral and burial. We commend the ongoing efforts of the VA and VSOs in this regard and stand ready to collaborate closely with them to identify veterans' remains that remain unclaimed, ensuring they receive the full honors they deserve.

Having collaborated closely with the VA and NCA, we understand the challenges posed by gravesites containing commingled remains or multiple individual graves. The current limitations prevent the provision of a single headstone for each individual in these circumstances. We firmly support this legislation, which empowers the VA to furnish a group burial headstone or marker for eligible decedents, while ensuring that every effort is made to acknowledge each individual by name whenever feasible.

NFDA stands committed to advocating for the dignified treatment of our veterans and their families, and we urge the Committee's support for the "Preserving Veterans' Legacy Act of 2024." Thank you for considering our perspective on this crucial matter.

In preparation for this Hearing, I had the privilege of speaking with NFDA President, Douglas R. "Dutch" Nie II, CFSP, CCO, CMFP, Owner, President/CEO of Nie Family Funeral Home and Cremation Service in Ann Arbor, Michigan, who shared his remarkable journey. Dutch grew up above the family funeral home, where he began working after school and during summers, handling tasks like lawn mowing, car washing, assisting with funeral processions, and attending visitations. After graduating from high school, Dutch enlisted in the Air Force, serving as a military policeman for 8 years before returning to the funeral service profession.

Reflecting on his dual roles as a funeral director and a veteran, Dutch expressed the profound impact of overseeing burials, which deeply affects both him and the families of the deceased. His experience is heightened when entering National Cemeteries, where flag-lined entrances prompt reflection on the service of those being laid to rest. Witnessing military honors serves as a poignant reminder of the earned burial rights that should forever be honored.

Mr. Chairman, funeral directors nationwide firmly uphold the principle that decisions made by grieving families should not compromise a veteran's rightful entitlement to burial in a veteran's cemetery. While we commend the VA's efforts to offer burial options through commemorative plaques and urns for veterans whose cremated remains are not interred, NFDA has raised concerns about a provision in section 2207 of P.L. 116-315. This provision risks confusing the purchase of merchandise with a veteran's fundamental right to burial in a national cemetery. NFDA has underscored to the VA our concern that a grieving spouse might unintentionally jeopardize the veteran's eligibility for ground burial by opting for an urn benefit from the VA. This contrasts starkly with privately purchasing an urn, which does not impact burial rights.

As Chairman Mike Bost of the House Veterans' Affairs Committee aptly stated, "Our nation owes our veterans a debt that can never fully be repaid, and ensuring they have the dignified final resting place they have earned is a fundamental duty." In line with this principle, NFDA supports legislative adjustments that allow families to reimburse the VA for an urn provided by them, thereby safeguarding continued eligibility for interment alongside their spouse in a VA or national cemetery.

Mr. Chairman and members of the committee, on behalf of the National Funeral Directors Association, I want to reaffirm our unwavering commitment to honoring our Nation's veterans and their families. Funeral directors across the country are dedicated to fulfilling this solemn duty with respect and compassion.

In closing, I would like to express my sincere gratitude for the opportunity to testify before you today on behalf of the National Funeral Directors Association and our membership of 20,000 funeral directors and embalmers. I hope that my testimony has provided valuable insights, and I am happy to address any questions you may have.

Thank you.

Prepared Statement of Bob Carey

**National
Defense
Committee**

**Testimony Before the House Veterans Affairs Subcommittee on Disability
Assistance and Memorial Affairs**

by

**Captain Bob “Shoebob” Carey, U.S. Navy (Ret.)
Chairman and Chief Bottle Washer
National Defense Committee**

July 10, 2024

Introduction

Chair Lutrell, Representative Pappas, and members of the Subcommittee, the National Defense Committee is honored to be with the Committee here today and thank you for holding this incredibly important hearing. The fact is the Department of Veterans Affairs (VA) has indiscriminately abrogated veterans’ inalienable rights for decades, not only the right to keep and possess arms (as is supposed to be protected from such federal government overreach by the Second Amendment), but those veterans’ due process rights which are similarly supposed to be protected from such government overreach by the Fifth and Fourteenth Amendments.

The National Defense Committee was founded in 2003 to protect military and veteran civil and legal rights. The National Defense Committee is proud of the leadership role it took from its inception to 2010 in:

- Highlighting the wholesale disenfranchisement of military personnel’s votes in federal elections, in the founding of the Alliance of Military and Overseas Voting Rights (AMOVR), in the drafting and adoption of the of the Uniform Military and Overseas Voters Act (UMOVA) by the Uniform Law Commission;¹
- The drafting and enactment of the *Uniform Services Employment and Reemployment Rights Act* (USERRA);
- The treatment of veterans benefits as that veteran’s earned benefits and personal property not subject to arbitrary and capricious bureaucratic oversight; and
- Protecting the Freedom of Speech, Freedom of Worship, and Freedom of Conscience for military personnel, especially military chaplains.

I’m also proud to represent the National Defense Committee’s as Co-Chair of the National Military & Veterans Alliance (NMVA), with 45 member organizations, many of whom have supported National Defense Committee’s efforts on protecting veteran gun rights.

¹ National Conference of Commissioners on Uniform State Laws, 2010, “Uniform Military and Overseas Voters Act, Chicago: National Conference of Commissioners on Uniform State Laws.
<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=992b50ec-a36d-a539-6870-bb89b9d38098&forceDialog=0>.

Summary

While numerous bills are before the Subcommittee today, and all of them are important, the National Defense Committee will limit its testimony to five of them:

- The Safeguarding Veterans 2nd Amendment Rights Act of 2024;
- The Veterans 2nd Amendment Restoration Act of 2024;
- The Modernizing All Veterans and Survivors Claims Processing Act;
- The Board of Veterans Appeals' Attorney Retention and Backlog Reduction Act; and
- The Veterans Claims Education Act of 2023.

Specifically, the first two bills are crucially important in addressing the issue of the Department of Veterans Affairs taking it upon itself to determine whether or not a veteran is capable of possessing firearms by whether or not the veteran may have bounced a check or gotten into debt. But **while the National Defense Committee joins the potential sponsors of the first two bills in decrying the VA's reporting of veterans to the NICS database, we strongly recommend this Subcommittee also look to reform the Fiduciary adjudication process itself, long before it ever gets to point where the VA tattles on the veteran to the Department of Justice; America's veterans need Congress to reign in the abusive and unconstitutional practices of the VA in forcing veterans into the Fiduciary program.** Therefore, **National Defense Committee strongly recommends Congress reform the underlying and initial process by which the VA determines the veteran is financially incompetent**, as this process is a gross violation of due process even without the VA's subsequent prattling to the Department of Justice of, "Oh, by the way – we've taken away this veteran's check book – you should also take away her guns."

Furthermore, rather than repeat many of the arguments the National Defense Committee made last July before the full Committee during consideration of H.R. 705, we have attached our testimony from that hearing to provide the Subcommittee with that evidence. Furthermore, we've attached a copy of the Petition for Rulemaking National Defense Committee made in 2020 with many other veteran gun right advocacy organizations to further back-up the arguments made here today.

Legislative Discussion – Veterans Gun Rights

Before we get into the specifics of the legislation before the Subcommittee today, please allow National Defense Committee to discuss the collective clutching of pearls by gun control advocates by the recently passed amendments offered by Chair Bost and Senator Kennedy, which eventually became Section 413 of the *Fiscal Year 2024 Military Construction, Department of Veterans Affairs, and Related Agencies Appropriations Act* which prohibit the VA from expending funds to report veterans assigned fiduciaries to the Department of Justice's National Instant Criminal Background Check System (NICS) database. These commentaries, both from Members of Congress and from non-governmental advocacy organizations, make specious jumps in logic, presuming that any veteran who some non-judicial VA bureaucrat believes can't balance their checkbook is therefore a clear and present risk of being a gunfire risk

to themselves and others, is both incredibly disrespectful of all veterans (feeding the common trope that all veterans are, by nature of their military service, “broken” and not to be trusted), and is grossly illogical.

Unsubstantiated Responses to the Bost-Kennedy Fiduciary Amendments

House of Representatives Gun Violence Protection Task Force

First of those letters is the March 13, 2024 letter to Secretary McDonough from the House of Representatives’ Gun Violence Prevention Task Force² and claims Section 413 of that Act “rolls back 30 years of common-sense precedent and practice”, claiming that simply because the VA assigns them a fiduciary for the management of their VA benefits (something which National Defense Committee detailed in its July 2023 testimony as being, in and of itself, an unconstitutional denial of due process), they are somehow therefore clearly, “a danger to themselves or others” and should be placed in the National Instant Criminal Background Check System (NICS).

The 136 signatory Members of the House Gun Violence Prevention Task Force, including five Members of this Committee,³ then proceed to encourage the Secretary to automatically have the Department of Veterans Affairs, a federal agency, seek judicial orders in State courts for all veterans assigned a fiduciary so that the State court will therein report them to the NICS database. Those 136 Members, again, including five Members of this Committee, also encourage the Department of Veterans Affairs to intervene in State-level Extreme Risk Protection Orders (ERPOs, or “Red-Flag Laws”), to “flag concerning behavior from veterans”, where in this case, the only concerning behavior is that a non-judicial federal employee within the Veterans Benefit Administration believes a veteran is not good at balancing their checkbook. By that standard about every junior military member I’ve ever known should probably also be assigned a fiduciary and reported to the NICS database. Obviously, such a claim would be preposterous, but then, so is the argumentation of the Members of the Gun Violence Protection Task Force who make such hollow claims.

In the press release heralding the release of this letter, signatories to the letter make additional unsubstantiated claims, such as Representative Mike Thompson automatically claiming that all veterans assigned a fiduciary by the VA are “veterans who are a danger to themselves or others”, or Representative Mark Takano stating “There are very serious reasons why a veteran is deemed mentally incompetent...”⁴

Gun Control Advocacy Groups

Similarly, while the National Defense Committee has not been able to find a copy of the full letter (nor have any staff members of this Committee whom the National Defense Committee has asked for assistance in finding it), press reports indicate a number of gun control groups,

² The Honorable Mike Thompson, et. al., House of Representatives Gun Violence Protection Task Force, Letter to the Honorable Denis McDonough, March 13, 2024. <https://mikethompsonforms.house.gov/components/redirect/r.aspx?ID=4899-1855982>.

³ The Honorable Mark Takano, Julia Brownley, Frank Mrva, , Moran McGarvey, and Delia Ramirez.

⁴ The Honorable Mike Thompson. “Thompson, Takano, Kelly, McBath, Frost Urge VA to Protect Veterans After Misguided Inclusion of the Kennedy Amendment in Government Funding.” Press Release (March 13, 2024). <https://mikethompson.house.gov/newsroom/press-releases/thompson-takano-kelly-mcbath-frost-urge-va-protect-veterans-after-misguided>.

including Brady United Against Gun Violence, Everytown for Gun Safety, Giffords, March for Our Lives, and other groups, wrote to appropriators in the House and Senate claiming that veterans assigned a fiduciary are veterans “who may be in crisis”, and that the not reporting these veterans to the NICS database “is an enormous threat to the safety and well-being of veterans and their beneficiaries who are at a heightened risk of harm to themselves or others...” In response to this letter, one news article proceeds to quote VA Press Secretary Terrence Hays as saying, “The Consolidated Appropriations Act of 2024 now restricts VA from using appropriated funds to report a beneficiary unless there is an order or finding from a judicial authority that the beneficiary is a danger to themselves or others.”⁵

Overall Analysis

What is remarkable in both these set of statements is the complete lack of substantiation for these claims, and the rapidity with which both set of claims jump from someone not balancing their checkbook to their being the next mass murderer. What the National Defense Committee fails to see, as we detailed in our July 2023 testimony and elsewhere in this testimony, is, what exactly is the part of the Fiduciary administrative determination process where the specific determination is made the veteran in question is, in fact, a threat to themselves or others? There are none, because that is never discussed in the VA’s fiduciary process. The only factor that is considered in the fiduciary decision process is whether the veteran “may be capable of administering the funds payable without limitation...”⁶ Period.

Nowhere in the fiduciary process is a veteran evaluated for their threat to themselves or others, and certainly there is no discussion of whether the veteran is competent to possess a firearm. Furthermore, nowhere in the fiduciary determination process is the “mental defectiveness” of a veteran considered or determined. Such “determinations” are simply a post fiduciary determination assumption by the VA, that the veteran is a “mental defective” under the *Brady Gun Violence Prevention Act*, and therefore needs to be reported to the NICS database. The veteran is never given a chance to discuss the mental defective determination in the fiduciary determination process, nor are they given the chance to argue why they are capable of possessing a firearm. It is all done after the fiduciary determination process, without the veteran’s input or knowledge.

Furthermore, the VA fiduciary assignment process predates the establishment of the NICS database by the *Brady Gun Violence Prevention Act*, and it was only after the establishment of the NICS database that the VA and Department of Justice decided a veteran so assigned a fiduciary was, in their opinion, a “mental defective” worthy of reporting them to the NICS database. As National Defense Committee and others detailed in their Petition for Rulemaking of October 2020,⁷ that is a stretch of the imagination that defies credulity, and as detailed in the

⁵ Clayton Vickers, “Gun Control Groups Call on Congress to Undo Background Check Change for Veterans.” *The Hill* (May 1, 2024). <https://thehill.com/homenews/senate/4635865-gun-control-groups-congress-background-check-veterans/>.

⁶ 38 CFR § 3.353(b)(3). <https://www.law.cornell.edu/cfr/text/38/3.353>.

⁷ Gun Owners of America, Inc., Gun Owners Foundation, The Independence Fund, and National Defense Committee. “Petition For Rulemaking to Promulgate Regulations to Prohibit Transmittal of Certain Miscategorized Information to the Department of Justice for Improper Use in the National Instant Criminal Background Check System.” (October 7, 2020). <https://u3s301.p3cdn1.secureserver.net/wp-content/uploads/2023/08/Petition-to-the-United-States-Department-of-Veterans-Affairs-Oct.-7-2020.pdf>.

various veteran organizational letters supporting the Bost and Kennedy amendments to the FY24 MILCON-VA Appropriations Act (also attached), it is without constitutional justification or enumerated authorization.

The Safeguarding Veterans 2nd Amendment Rights Act of 2024 and The Veterans 2nd Amendment Restoration Act of 2024 and VA “End-Running” the Intent by Releasing VA Mental Health Information

The National Defense Committee supports Subcommittee passage of both the *Safeguarding Veterans 2nd Amendment Rights Act of 2024* and *The Veterans 2nd Amendment Restoration Act of 2024*. However, the National Defense Committee does have two concerns regarding the Veterans 2nd Amendment Restoration Act that it believes may profit from additional prohibitions on potential VA actions. First, as described above, opponents of these bills, of the Bost and Kennedy amendments, and the VA itself, have already stated they believe being assigned a fiduciary is clear evidence of a veteran being a gun-violence risk to themselves and others. They’ve said it outright, they’ve practiced it for decades, and this Subcommittee cannot trust the VA will attempt to find every legal method to still effectively report veterans as gun-violence risks to local law enforcement.

Of greatest concern is the VA’s Notice of Privacy Practices, of September 30, 2022.⁸ First, “This Notice outlines the ways in which VHA may use and disclose your health information without your permission as required or permitted by law.”⁹ Not just required by law, but “permitted” allowing VA to do this without LE request. Furthermore, the VA warns, “We may disclose your health information without your authorization for judicial or administrative proceedings, such as when we receive an order of a court, such as a subpoena signed by a judge, or administrative tribunal, requiring the disclosure.”¹⁰ Again, this involuntary release of information is not just for judicial proceedings, but administrative proceedings as well.

The VA has shown itself untrustworthy with veterans cognitive and mental health information when the possibility exists for the VA to effectuate the veteran losing their gun rights, and that is why, as the National Defense Committee detailed in its July 2023 testimony, the National Academy of Sciences found that 35 percent of veterans identify “the potential of having their personal firearms taken away as an obstacle to use VA mental health services.”¹¹ The concern, therefore, is the VA will use these discretionary authorities to release mental health information to local law enforcement or State or local administrative agencies, without actively initiating any Emergency Response Protective Order actions themselves, but fully cognizant doing so will likely initiate such actions by State or local authorities.

⁸ Department of Veterans Affairs. “Notice of Privacy Practices.” Veterans Health Administration: Washington, DC (September 30, 2022). https://www.va.gov/files/2022-10/10-163p_%28004%29_-_Notices_of_Privacy_Practices-PRINT_ONLY.pdf.

⁹ *Ibid.*, 1.

¹⁰ *Ibid.*, 5.

¹¹ National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Care Services; Committee to Evaluate the Department of Veterans Affairs Mental Health Services. 2018. *Evaluation of the Department of Veterans Affairs Mental Health Services Chapter 6*, : Department of Veterans Affairs Mental Health Services: Need, Usage, and Access and Barriers to Care,” Washington, DC: National Academies Press; (January 31): 178. <https://www.ncbi.nlm.nih.gov/books/NBK499497/>.

Furthermore, the current construction of the operative sections of *Veterans 2nd Amendment Restoration Act of 2024* do not prohibit the VA from initiating the release of veterans fiduciary status, mental health evaluation, or cognitive ability evaluation information to a third government agency, whether federal or State and local, who then would make their own determination the veteran is therefore a “mental defective” under the Brady Gun Violence Protection Act, and then report such veterans to the NICS database themselves.

Therefore, the National Defense Committee recommend the Subcommittee add additional protections to the *Veterans 2nd Amendment Restoration Act of 2024* to also prohibit the release of otherwise protected privacy information via this Notice of Privacy Practices to effectively circumvent the intent of this legislation. Again, the VA has, by word and deed, consistently shown itself determined to use whatever means necessary to impinge upon veteran gun ownership rights. It cannot be trusted.

Reform the VA Fiduciary Program Itself

While the National Defense Committee hails the discussion of these two pieces of legislation, more still needs to be done. Specifically, the Fiduciary Program itself, long before any report is made to the NICS database, must be reformed itself. The denial of a veteran the opportunity to determine the use of their VA benefits as they see fit, without VA appointed fiduciaries intervening, is a clear denial of due process for the veteran, and an effective taking of their property. The VA hiding behind the concept that since these are benefits to the veteran, there is no due process rights is specious and not supported by case law or general administrative law principles.

Specifically, in the U.S. Supreme Court case of *Goldberg v. Kelly* of 1970, the Court determined in a similar situation to that faced by recipients of VA benefits, “that welfare recipients are at the mercy of a vast bureaucracy and, without procedural protections, could be harmed by an arbitrary decision-maker. In other words, instead of presuming that the administrators were acting in the public interest, the Court shifted to presuming that individuals needed to be protected from the bureaucracy,” and that “there was no difference between a traditional right and positive rights bestowed upon individuals by government programs, such as welfare... Second, the Court assumed that there was no difference between a traditional right and positive rights bestowed upon individuals by government programs, such as welfare. Both categories of rights, the Court argued, were protected by the Due Process Clause,”¹² with Justice Brennan specifically stating in the majority opinion, “The Constitutional challenge cannot be answered by an argument that public assistance benefits are a privilege and not a right.”¹³

Such constitutionally protected property rights have been repeatedly upheld in VA appeal case law, such as in the case of *Cushman v. Shinseki*¹⁴ the court found that “disability benefits are a protected property interest and may not be discontinued without due process of law” and, in

¹² Joseph Postell. *Bureaucracy in America: The Administrative State's Challenge to Constitutional Government*. University of Missouri Press (2017): 254f.

¹³ *Goldberg v. Kelly*, 397 U.S. 254 (1970). <https://supreme.justia.com/cases/federal/us/397/254/>.

¹⁴ *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009). <https://casetext.com/case/cushman-v-shinseki>.

citing the case of *Nat'l Ass'n of Radiation Survivors v. Derwinski*,¹⁵ that “both applicants for and recipients of [service-connected death and disability] benefits possess a constitutionally protected property interest in those benefits.”

The current VA Fiduciary adjudication program does not meet the due process requirements of a government action which effectively takes away these veterans’ property rights by denying them the ability to determine those benefits best use, instead, transferring it to a fiduciary. It denies them the opportunity to be heard before a competent judicial authority and places the burden of proof on the veteran to prove their competence, not upon the VA to prove the veteran’s incompetence. Under the VA fiduciary program, the veteran is presumed guilty of being a mental defective until the veteran proves they are not. Therefore, the National Defense Committee recommends the Committee pass legislation which will legislatively modify the execution of the VA’s Fiduciary program under 38 C.F.R. § 3.353 so that the VA is required to petition a competent judicial authority to find a veteran incompetent to handling his or her VA benefits, and similarly to require the judicial authority to make a determination of mental incompetency.

The current program, however, clearly violates a veteran’s due process rights and is an abrogation of the proscriptions of federal government actions under the Fifth and Fourteenth Amendments to the Constitution. Hopefully, with the recent *Loper v. Raimondo* decision¹⁶ of the Supreme Court, the VA will no longer be able to hide behind the “protection” of the Chevron Deference principle and such unconstitutional abrogation of due process and “takings” will more easily be overturned in court. But this Committee can prevent the need for veterans to expend huge sums of money to protect their due process rights by simply legislatively reforming this program to bring it in line with such due process and property protection rights.

Legislative Discussion – Veterans Disability Benefits

The Simplifying Forms for Veterans Claims Act.

The National Defense Committee strongly supports this legislation. Let me start by saying the online system we have today is far better than the pen and paper system we only had back in 2005 when I submitted my first claim. But that is a low bar by which to declare an improvement. The current system is still unintuitive, unable to process more than one claim in development at a time, and denies the veteran access to many of the forms submitted by the examiners and raters in their case, requiring the veteran to make Freedom of Information Act requests which will likely end up costing them for the privilege of asking for the forms used in the determination of their own claim. Therefore, National Defense Committee recommends the Subcommittee modify this legislation to also direct the Secretary and the FFRDC to include the online disability claim system in this review, and to also examine the impact of not having access

¹⁵ *Natl Ass'n of Radiation Survivors v. Derwinski*, 994 F.2d 583 (9th Cir. 1992).

<https://casetext.com/case/natl-assn-of-radiation-survivors-v-derwinski#p588>.

¹⁶ *Loper v. Raimondo* 451 U.S. 22 (2024). https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

to all the forms included in the claim determination, such as rating official checklists and Defined Benefit Questionnaires.

H.R. 2971, *The Veterans Claims Education Act of 2023*.

The National Defense Committee is opposed to this legislation, and believes it misses the fundamental point. This issue is not that veterans don't realize there are Veteran Service Officers at County and State governments and at Veteran Service Organizations who will help and submit claims for the veterans for free. The veterans do know about the availability of such VSO services. The problem is that many, if not most, of these VSOs are not good at their job. They suck, to put it plainly. My personal experience is they are overwhelmed, underpaid, and don't know how to do their job.

It is remarkable that the VA disability system is the only federal disability system that prohibits a claimant from paying a lawyer to help them with their initial claim. In every other disability claim system, the lawyer is the first place you go. While the VA and VSOs will attempt to claim the VA disability compensation system is non-adversarial, the truth is it is very adversarial, at least in practice, and no amount of cajoling from Congress will ever change that. Every disability claim costs VA money, the Office of Management and Budget is on VA every day about spending too much on new disability presumptive conditions, and the experience of most veterans with disability claims is a combination of "deny until they die" and "find reasons to deny the nexus to military service." That is why Congress must repeatedly step in and declare the very presumptive conditions the Secretary already has the authority to approve.

What this Congress should be doing is reforming the VA disability claim process so that veterans can hire lawyers to assist with the initial claim, pay outside consultants to assist with their claims, and give the veterans access to all the forms used in the determination of the veteran's claim, like the Defined Benefit Questionnaires.

The Modernizing All Veterans and Survivors Claims Processing Act

The National Defense Committee supports this legislation.



**National
Defense
Committee**

**Testimony Before the House Committee on Veterans Affairs
by
Captain Bob “Shoebob” Carey, U.S. Navy (Ret.)
Chairman and Chief Bottle Washer
National Defense Committee
July 18, 2023**

Introduction

Chairman Bost, Representative Takano, and members of the Committee, the National Defense Committee is honored to be with the Committee here today and thank you for holding this incredibly important hearing. The fact is the Department of Veterans Affairs (VA) has indiscriminately abrogated veterans’ inalienable rights for decades, not only the right to keep and possess arms (as is supposed to be protected from such federal government overreach by the Second Amendment), but those veterans’ due process rights which are similarly supposed to be protected from such government overreach by the Fifth and Fourteenth Amendments.

The National Defense Committee was founded in 2003 to protect military and veteran civil and legal rights. The National Defense Committee is proud of the leadership role it took from its inception to 2010 in:

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- The drafting and enactment of the *Uniform Services Employment and Reemployment Rights Act* (USERRA);
- The treatment of veterans benefits as that veteran’s earned benefits and personal property not subject to arbitrary and capricious bureaucratic oversight; and
- Protecting the Freedom of Speech, Freedom of Worship, and Freedom of Conscience for military personnel, especially military chaplains.

I’m also proud to represent the National Defense Committee’s as Co-Chair of the National Military & Veterans Alliance (NMVA), of which we are proud to be members along with Mission Roll Call and America’s Warrior Partnership, also testifying today, and who have done such crucial work on Operation DEEP DIVE.

¹ National Conference of Commissioners on Uniform State Laws, 2010, “Uniform Military and Overseas Voters Act, Chicago: National Conference of Commissioners on Uniform State Laws.
<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=992b50ee-a36d-a539-6870-bb89b9d38098&forceDialog=0>.

Summary

In 2020, the National Defense Committee joined three other groups in submitting a Petition for Rulemaking to the United States Department of Veterans Affairs (a copy of which is attached to this testimony) to rectify the gross regulatory overreach by the VA for the improper use of mischaracterized mental illness information in the National Instant Criminal Background Check System (NICS) operated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE). To date, none of the submitting organizations received any response from the VA other than an acknowledgement of receipt. It is clear to the National Defense Committee the VA never had any intention of responding to this Petition, nor did it have any intention to reform the Fiduciary program. **Just as the VA consistently and repeatedly ignores public comments critical of proposed rules it may publish, so too it appears hellbent on using the Fiduciary rule, and any other tools at the VA's disposal, to restrict veterans' access to firearms. Because of that, Congress must expect the VA will continue this abuse of its regulatory authority and disregard the Constitution's protections against such Executive Branch overreach, and that the only way to protect veterans' due process and firearm rights is for Congress to legislatively proscribe VA from this activity.**

Discussion

The legislation before the Committee today is crucially important in addressing the issue of the Department of Veterans Affairs taking it upon itself to determine whether or not a veteran is capable of possessing firearms by whether or not the veteran may have bounced a check or gotten into debt. But **while the National Defense Committee joins the sponsors of H.R. 705 in decrying the VA's reporting of veterans to the NICS database, we strongly recommend this Committee look to reform the Fiduciary adjudication process itself, long before it ever gets to point where the VA tattles on the veteran to the Department of Justice; America's veterans need Congress to reign in the abusive and unconstitutional practices of the VA in forcing veterans into the Fiduciary program.** Therefore, **National Defense Committee strongly recommends Congress reform the underlying and initial process by which the VA determines the veteran is financially incompetent**, as this process is a gross violation of due process even without the VA's subsequent prattling to the Department of Justice of, "Oh, by the way – we've taken away this veteran's check book – you should also take away her guns."

Veterans Benefits Have the Legal Standing of Personal Property, Only Subject to Judicial Due Process

Federal case law is replete with determinations that veterans benefits are personal property protected under the Fifth and Fourteenth Amendments of the Constitution, of which a veteran can only be deprived by the due process of a court of law. Regarding the groundbreaking *Cushman v Shinseki* (576 F.3d 1290, 1293 (Fed. Cir. 2009)) federal court decision of 2009, even the VA admitted:

There is little dispute that this thesis [that Due Process applies to VA benefits because they are non-discretionary, statutorily mandated benefits] holds true once

a claimant for VA benefits shows that he or she meets the eligibility requirements for VA benefits and, thus, acquires a property interest in those benefits.²

Further, in a subsequent appeal by this same appellant, the court found “The Federal Circuit found persuasive other circuit court holdings that “both applicants for and recipients of [service-connected death and disability] benefits possess a constitutionally protected property interest in those benefits.”³

The VA’s own analysis of the subsequent *Gambill v. Shinseki* (576 F.3d 1307 (Fed. Cir. 2009)) case found specifically that adequate due process was only provided in cases where,

confrontation of medical opinion evidence, including through interrogatories, was an essential component of due process with respect to the Veteran’s claims. As a rationale for this view, Judge Moore asserted that such means of confrontation were “necessary to help [VA] understand the limitations of the opinions before it, and may be the veteran’s only route to undermine what could otherwise be unassailable evidence in favor of denying benefits.”⁴

This is in line with a similar Supreme Court decision regarding welfare benefits in *Goldberg v. Kelly* (397 U.S. 254 (1970)) that found the due process clause of the Fourteenth Amendment requires an evidentiary hearing before someone could be deprived of benefits. Specifically, in that opinion,

... the Court noted that welfare recipients are at the mercy of a vast bureaucracy and, without procedural protections, could be harmed by an arbitrary decision-maker. In other words, instead of presuming that the administrators were acting in the public interest, the Court shifted to presuming that individuals needed to be protected from the bureaucracy.⁵

Significantly, the court also found there was no due process difference between a traditional right guaranteed by natural law and protected by the Constitution, and positive rights bestowed to individuals by some government program. “The constitutional challenge,” Justice Brennan explained in the majority opinion, “cannot be answered by an argument that public assistance benefits are a privilege and not a right.”⁶

As for what adequately protects due process, the National Defense Committee argues that since the VA’s fiduciary program effects both a veteran’s personal property and their right to possess firearms, that such represents an “individualized loss through the summary administrative process insensitive to his interest or where the legislature has shown some

² Deutsch, Emily Woodward and Robert James Burriesci, 2011, “Due Process in the Wake of Cushman v. Shinseki: The Inconsistency of Extending a Constitutionally-Protected Property Interest to Applicants for Veterans’ Benefits,” *Veterans Law Review*, 3: 221. https://www.bva.va.gov/docs/VLR_VOL3/4-DeutschAndBurriesci-DueProcessInTheWakePages220-262.pdf.

³ *Ibid.*, 225.

⁴ *Ibid.*, 233f.

⁵ Postell, Joseph. 2017. *Bureaucracy in America: The Administrative State’s Challenge to Constitutional Government*. St. Louis: University of Missouri Press: 254.

⁶ *Goldberg v. Kelly*, 397 U.S. 254 (1970). <https://supreme.justia.com/cases/federal/us/397/254/>.

relatively clear intent to single out certain individuals to receive these public benefits.”⁷ As the *Wright v Califano*⁸ decision used in this quoted article states, simply because the provision of due process is costly or difficult is not a defense against providing adequate due process. And given the Fiduciary process has the additional effect of stripping a veteran of their rights to possess and purchase firearms, this rises to the level of individualized loss that requires judicial review to provide adequate due process to the veteran.

The VA’s Fiduciary Adjudication Process Fails to Provide Adequate Due Process Protections

While the National Defense Committee understands federal law prohibits the receipt or possession of a firearm or ammunition by anyone who, “has been adjudicated as a mental defective or who has been committed to a mental institution”⁹ the VA’s process does not meet that requirement. Specifically, the federal agency charged with enforcing that prohibition, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) defines such adjudication as, “[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs.”¹⁰

But as we said before, the VA’s Fiduciary adjudication process does not meet the legal standard for adjudicating an individual as a “mental defective” under the *Brady Handgun Violence Protection Act of 1993* (from which the requirement to report to the NICS database arises), and because of that, the veterans placed in the Fiduciary program should never be reported to the NICS database. It’s all done outside any court system, with the burden of proof falling on the veteran to prove they are competent to handle their VA benefits, not upon the VA to prove they are incompetent. Further, appointment of a fiduciary does not come near the legal standard used by the government elsewhere for adjudicating someone as a “mental defective.” Indeed, as the attached Petition for Rulemaking points out, the VA fiduciary determinations were explicitly designed only for the purpose of managing VA benefits, nothing else.

The VA’s Fiduciary assignment adjudication process fails to meet that standard. First, there is no independent oversight of this process. The VA initiates the process, the VA adjudicates its own determination without judicial oversight, and then the VA executes that process. The VA’s made itself the legislator, the judicial review authority, and the executive agent, all by itself. Second, the

The VA’s Fiduciary Adjudication Standard Does Not Meet the Standard BATFE Proscribes for a “Mental Defective” Determination under the *Brady Handgun Violence Prevention Act*

⁷ Tarlock, A. Dan, 1980. “Administrative Law: Procedural Due Process and Other Issues Administrative Law: Procedural Due Process and Other Issues,” *Chicago-Kent Law Review* 56, Iss. 4 (April): 22. <https://scholarship.kentlaw.iit.edu/cklawreview/vol56/iss1/4>.

⁸ *Wright v Califano*, 587 F.2d 345 (7th Cir. (1978)). <https://casetext.com/case/wright-v-califano-2>.

⁹ 18 U.S.C. § 922(g)(4)

¹⁰ U.S. Bureau of Alcohol, Tobacco and Firearms, 1997, “Definitions for the Categories of Persons Prohibited from Receiving Firearms (95R-051P),” *Federal Register* 62, No. 124 (June 27): 34634. <https://www.govinfo.gov/content/pkg/FR-1997-06-27/html/97-16900.htm>.

The Brady Handgun Violence Prevention Act of 1993 set a high standard by which an individual could be barred from purchasing or possessing a firearm as a “mental defective”, directly correlating the term “mental defective” to someone who is involuntarily committed to a mental institution.¹¹ The BATFE went even further in this definition in its Final Rule defining a “mental defective” as someone who because of that mental illness, “(1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs.” Examples from BATFE’s Final Rule include, “a finding of insanity by a court” or someone found incompetent to stand trial.¹² These are incredibly high legal standards, and most importantly, involve explicit and substantial judicial review.

The VA’s standard for determining a veteran incompetent for purposes of the Fiduciary program, in contrast, does not approach the level of serious mental instability detailed in the BATFE Final Rule. While BATFE’s definition of being a “mental defective” involves judicial determinations of incompetency, presenting a danger to others, or the involuntary commitment to mental institutions, the VA’s standard is simply a bureaucratic determination by VA disability rating officials the the veteran lacks “the mental capacity to contract or to manage his or her own affairs, including disbursement of funds”,¹³ and then limited only to VA provided insurance and the disbursement of benefits in light of the “the beneficiary’s social, economic and industrial adjustment”.¹⁴ Further, VA rendered the Judicial Branch impotent in these cases by writing its own regulation where its “rating agencies have sole authority to make official determinations of competency and incompetency”¹⁵; an exceptionally low bar, especially in comparison to the higher and near criminal standard for BATFE’s determinations.

To apply the criminal penalties of the BATFE’s gun control regulations to the bureaucratic civil procedures of the VA’s Fiduciary program is a gross miscarriage of Executive Branch authority bordering on unconstitutionally usurping the legislative authority of Congress to redefine how far back the prohibitions of the *Brady Handgun Violence Prevention Act* can reach, while also unconstitutionally extending the impact of the Executive Branch’s bureaucratic determinations with Fiduciary adjudications to effectively deny veterans both liberty and property without due process of law as would normally be sole purview of the Judicial Branch. In essence, the VA joined with the Department of Justice to unilaterally rewrite the law, then assumed the powers of a court to adjudicate that rewritten law, and then finally resumed its Executive Branch functions to execute the penalties under that law.

The fact is, the VA’s Fiduciary adjudication standard does not approach that of BATFE’s standard of someone with subnormal intelligence, is incompetent, or a danger to themselves or others. It simply determines whether or not the veteran is capable of managing their VA benefits. Under this standard, the VA could determine that since the veteran does not understand the

¹¹ Public Law 103-159, November 30, 1993, “Brady Handgun Violence Prevention Act” 107 STAT. 1528. <https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg1536.pdf>.

¹² U.S. Bureau of Alcohol, Tobacco, and Firearms, 1997, “Definitions for the Categories of Persons Prohibited from Receiving Firearms (95R-051P),” *Federal Register* 62, No. 124 (June 27): 34638f. <https://www.govinfo.gov/content/pkg/FR-1997-06-27/html/97-16900.htm>.

¹³ 38 C.F.R. §3.353(a)

¹⁴ 38 C.F.R. §3.353(b)(2)

¹⁵ 38 C.F.R. §3.353(b)(1)

difference between VA's disability compensation benefit and the needs-based pension benefit (a differentiation which even I have difficulty navigating), the veteran is unable to properly handle their benefits, and therefore incompetent under the VA's test. Specifically, while the criminal statute and BATFE implementing regulations regarding "mental defective" status for prohibiting the purchase or possession of firearms set a significantly higher bar than does that of the VA's definition, the VA's weaker adjudication requirements still have the same effect on a veteran's gun rights as does the BATFE's by placing the non-criminal veteran under the same prohibition as the criminals under the BATFE process.

The VA's process of adjudicating a veteran to be placed into the Fiduciary program, and the process by which the VA then decides to report that veteran to the Department of Justice as a "mental defective" are both gross and unwarranted usurpations of Congress' legislative authority by the VA, all because a veteran has trouble balancing a checkbook.

Severing the Relationship Between the Fiduciary Rule and Gun Control Will Not Increase Veteran Suicide Risk nor Increase the Risk of Violent Gun Behavior

"Red Flag Laws" (Extreme Risk Protection Orders) and the notifications to the NICS database under the *Brady Handgun Violence Prevention Act* through the VA Fiduciary Program are essentially attempting to predict future suicidal and violent behavior. In the case of the VA Fiduciary Program, the VA is using the veteran's cognitive disability as a proxy for predicting violent or suicidal behavior to justify taking away their gun rights. With Extreme Risk Protective Orders, we are asking the Courts to predict whether a person is likely to commit a violent act (whether it be suicide or a crime against another) with a firearm.

But the science shows the best medical research is wildly inaccurate in predicting suicidal behavior or violent behavior, and in today's environment, most advocates of Red Flag Laws focus on its probative value in preventing mass shootings.¹⁶ One of the more comprehensive studies to date was conducted by the RAND Corporation and was last updated in January of this year. That review looked at 152 studies to synthesize the plethora of academic studies of the effectiveness of gun policies on a wide range of violent gun acts, including suicide and mass shootings. The RAND Corporation found no conclusive evidence that any policy regulating who may legally own, purchase, or possess firearms had any significant effect on mass shootings or suicide (including both total suicides and firearm suicides), specifically for Extreme Risk Protection Orders and prohibitions on gun possession by those associated with mental illness to prevent suicide.¹⁷

¹⁶ Everytown for Gun Safety Support Fund, May 31, 2023, *Extreme Risk Laws Save Lives*. <https://everytownresearch.org/report/extreme-risk-laws-save-lives/>.

¹⁷ Smart, Rosanna, Andrew R. Morral, Rajeev Ramchand, Amanda Charbonneau, Jhacova Williams, Sierra Smucker, Samantha Cherney, and Lea Xenakis, 2023, *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States*, Third Edition. Santa Monica, CA: RAND Corporation: Table S-1. https://www.rand.org/pubs/research_reports/RRA243-4.html.

No Statistical Linkage Between Mental Health and Firearm Suicide

Specifically, looking at the efficacy of gun control programs to reduce suicide, the RAND Corporation report specifically states that many of the academic reports which argue such policies do reduce gun violence or suicide have,

only weak correlational evidence for a possible causal effect of the law, such as showing that states with a specific law had lower firearm suicides at a single point in time than states without such a law. Correlations like these can occur for many reasons other than the effects of a single law, so this kind of evidence provides little information about the effects attributable to specific laws.¹⁸

And the VA's own research shows gun control measures are based upon specious evidence at best that they will reduce suicide. At the 2019 VA-DoD Suicide Prevention Conference, and subsequently printed in the *JAMA Psychiatry* journal, VA researchers presented their meta-analysis of 7,306 suicide risk studies evaluating 64 different suicide prediction models, that the best algorithms for predicting suicidal behavior was less than 1% accurate in correctly predicting a suicide, meaning there would "more than 100 false-positive [suicide predictions] for every true positive" and that even with a suicide rate of 20 suicides per 100,000 people, a model that was 95 percent accurate would still only yield, "58 true-positive cases and 49,942 false-positive cases"; in other words, the very best algorithms were 862 times more likely to falsely predict someone as suicidal than to correctly predict a suicide.¹⁹ The researchers concluded "efforts to build Predictive Analytic Programs end up with very low positive predictive validity."²⁰

No Statistical Linkage Between Mental Health and Firearm Mass Shootings

As for the use of gun control programs like the Fiduciary program to prevent mass shootings, in 2013, the American Psychological Association stated, "In making predictions about the risk for mass shootings, there is no consistent psychological profile or set of warning signs that can be used reliably to identify such individuals in the general population."²¹ The APA reconfirmed this position August in 2019, "As we psychological scientists have said repeatedly, the overwhelming majority of people with mental illness are not violent. And there is no single personality profile that can reliably predict who will resort to gun violence. Based on the research, we know only that a history of violence is the single best predictor of who will commit future violence."²² But the Fiduciary program does not adjudicate on a veteran's history of violence, only on a veteran's cognitive ability to handle financial matters.

¹⁸ *Ibid.*, vii.

¹⁹ Belsher, Bradley E., Derek J. Smolenski, Larry D. Pruitt, Nigel E. Bush, Erin H. Beech, Don E. Workman, Rebecca L. Morgan, Daniel P. Evatt, Jennifer Tucker, and Nancy A. Skopp, 2019, "Prediction Models for Suicide Attempts and Deaths: A Systematic Review and Simulation," *JAMA Psychiatry*, 76, Iss. 6: 642-651. <https://pubmed.ncbi.nlm.nih.gov/30865249/>.

²⁰ *Ibid.*

²¹ American Psychological Association, 2013, *Gun Violence: Prediction, Prevention, and Policy: APA Panel of Experts Report*, <https://www.apa.org/pubs/info/reports/gun-violence-report.pdf>

²² American Psychological Association, August 5, 2019, *Statement on Gun Violence and Mental Health by CEO of the American Psychological Association*. <https://www.apa.org/news/press/releases/2019/08/gun-violence-mental-health>.

The Mental Health Care Disincentives Established by the Fiduciary Program and Other VA Gun Control Programs Increase the Suicide Risk for Veterans

Because any veteran receiving VA benefits can be referred to the Fiduciary program by any VA rating official and any VA health care assessor or provider, the VA establishes huge disincentives for veterans to seek mental health care from the VA, which by the VA's Fiduciary program initiatives, seem to be the very veterans the VA believe need mental health treatment. Because of the fear of losing their firearms, which 45% of veterans own,²³ many veterans do not seek the mental health care they need.

The National Academies of Science, Engineering, and Medicine found 55 percent of those Iraq and Afghanistan veterans needing mental health services did not seek VA care.²⁴ The National Academies further stated a significant reason these veterans are not seeking these mental health care services is because of the fear they will lose their firearms, or other legal or administrative actions will be taken against them for seeking mental health care such as loss of security clearance, loss of child custody, and with 35 percent of those interviewed by the National Academy saying "the potential of having their personal firearms taken away as an obstacle to use VA mental health services."²⁵ And given the rate of increase in veteran suicides over the last 20 years is almost 240% higher for those veterans NOT in the VA's mental health care programs than those in it, such disincentives to seek VA mental health care, such as the Fiduciary Rule, appear to be increasing veteran suicide, not decreasing it.

Recommendations

First and foremost, **the National Defense Committee wholeheartedly endorses H.R. 705, *The Veterans 2nd Amendment Protection Act***. As I hope our testimony has shown today, VA's reporting to the Department of Justice of those veterans it places in the Fiduciary program to the NICS database does not comport with the legal requirements of the gun control provisions of the *Brady Handgun Violence Prevention Act*, is a gross overreach of the VA's Executive Branch authority, does not provide adequate due process protections to the affected veterans, and is a clear disincentive to veterans using VA mental health services, possibly, and ironically, leading to an increase in veteran suicide rates.

But second, and possibly more importantly, the VA's Fiduciary program itself must be reformed. While such reforms are not covered by the legislation being considered in today's hearing, even if H.R. 705 is enacted into law, it still will not address the significant civil and legal right abuses the Fiduciary program itself represents for America's veterans. And without those additional reforms, stopping the reporting to the Department of Justice's NICS database will not stop the fundamental violation of civil and legal rights the underlying Fiduciary program

²³ Cleveland, Emily C., Deborah Azrael, Joseph A. Simonetti, and Matthew Miller, M. 2017. "Firearm Ownership Among American Veterans: Findings from the 2015 National Firearm Survey," *Injury Epidemiology* 4, no. 1 (December): 33. <https://doi.org/10.1186/s40621-017-0130-y>.

²⁴ National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Care Services; Committee to Evaluate the Department of Veterans Affairs Mental Health Services. 2018. *Evaluation of the Department of Veterans Affairs Mental Health Services* Chapter 6, : Department of Veterans Affairs Mental Health Services: Need, Usage, and Access and Barriers to Care," Washington, DC: National Academies Press; (January 31): <https://www.ncbi.nlm.nih.gov/books/NBK499497/>.

²⁵ Ibid., p. 178. <https://doi.org/10.17226/24915>.

represents, even WITHOUT the VA reporting to the NICS database. And until those reforms are in place, **the National Defense Committee recommends the Fiscal Year 2024 Military Construction and Veterans Affairs Appropriations Act contain a prohibition on any funds being expended by the VA to involuntarily place any veteran into the Fiduciary program.**

No veteran should lose control over the management of their VA benefits, which federal case law has repeatedly determined to be the equivalent of the veteran's "property", without proper due process protections for the veteran. And the VA's current Fiduciary adjudication process completely fails to meet that standard.

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**TO THE
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS**

**PETITION FOR RULEMAKING
TO PROMULGATE REGULATIONS TO PROHIBIT
TRANSMITTAL OF CERTAIN MISCATEGORIZED INFORMATION TO
THE DEPARTMENT OF JUSTICE FOR IMPROPER USE IN THE
NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM**

SUBMITTED BY

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AND

GUN OWNERS FOUNDATION

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October 7, 2020

PETITION FOR RULEMAKING

Pursuant to 5 U.S.C. § 553(e) and 38 U.S.C. § 501(a), Gun Owners of America, Inc., Gun Owners Foundation, The Independence Fund, and National Defense Committee (collectively “Petitioners”) hereby petition the Secretary of Veterans Affairs (“Secretary”) to initiate a rulemaking process to promulgate regulations to stop and prohibit the U.S. Department of Veterans Affairs (“VA”) from continuing to engage in the widespread and arbitrary disarmament of law-abiding veterans across the nation, a presumptively unconstitutional policy which has no statutory basis. The proposed rule would prohibit the VA from transmitting information about a VA beneficiary to law enforcement agencies, and specifically the National Instant Background Check System (“NICS”) run by the Federal Bureau of Investigation, solely and simply due to an appointment of a fiduciary to manage the finances of a beneficiary, without a judicial order in accordance with 18 U.S.C. § 922(g)(4).

STATEMENT

In 2008, Congress passed the NICS Improvements Amendments Act of 2007 (“NIAA”). The NIAA was touted as a boon for gun owners, because it required states to establish a “relief from disabilities program” so that individuals could be removed from FBI’s National Instant Background Check System (“NICS”) after they had been improperly added. However the NIAA adopted, without clear analysis, past erroneous interpretations of federal law by the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), and offered federal money to entice states to report as many persons as possible to the NICS system as “prohibited persons” — focusing mainly on those allegedly “adjudicated as a mental defective” or “committed to a mental

institution.”¹ Now, Americans are continually being added to NICS even though they are not prohibited persons under federal law, with very little of the promised relief for those who should not be on the prohibited list.

In December of 2016, during the transition period between presidential administrations, the Social Security Administration (“SSA”) published a final rulemaking² to “implement provisions of the” NIAA. This rulemaking, had it gone into effect, reportedly would have added at least 75,000 persons receiving SSA disability payments to the NICS system as prohibited persons, based on nothing more than their having been designated a representative payee to handle their finances.³

Thankfully, the incoming administration reconsidered this rushed final proposal and acted to stop SSA’s misguided rulemaking. The eventual result was P.L. 115-8,⁴ a congressional joint resolution of disapproval (passed by the House 235-180, by the Senate 57-43, and signed by President Trump on February 28, 2017⁵) which effectively nullified the SSA rulemaking, meaning recipients of disability insurance and supplemental security income benefits should not be reported to NICS simply on the basis of their having been assigned a “representative payee.”

¹ See 18 U.S.C. § 922(d)(4) and 18 U.S.C. § 922 (g)(4)

² See <https://www.federalregister.gov/documents/2016/12/19/2016-30407/implementation-of-the-nics-improvement-amendments-act-of-2007>.

³ SSA proposed to “identify, on a prospective basis, individuals who receive Disability Insurance benefits ... or Supplemental Security Income ... and who also meet certain other criteria, including an award of benefits based on a finding that the individual’s mental impairment meets or medically equals the requirements of section 12.00 of the Listing of Impairments (Listings) and receipt of benefits through a representative payee.” SSA then proposed to “at the commencement of the adjudication process ... notify individuals, both orally and in writing, of their possible Federal prohibition on possessing or receiving firearms....”

⁴ See <https://www.govinfo.gov/content/pkg/PLAW-115publ8/pdf/PLAW-115publ8.pdf>.

Many of the same flaws in the SSA's rejected rule, are present in the VA's current policy. Commenters regarding the SSA's proposed rule noted that it unfairly stigmatized those with non-violent mental health disorders, thereby creating a tremendous disincentive to those who would seek psychological assistance; that the regulation failed to distinguish between being a physical danger to one's self or others, and lacking the capacity to contract or manage one's financial affairs; and the practical difficulties an individual faced in being removed from improper inclusion in NICS. The SSA's tone-deaf responses, including equating those suffering from mental illness with felons, and suggesting that those wrongfully included in NICS could (expensively) file suit in federal court, were obviously unpersuasive to Congress.

However, even though the SSA's flawed rulemaking was stopped by Congress and the Trump Administration, the Veterans Administration has reported and continues to report veterans to NICS as prohibited persons, based on essentially the same criteria of which Congress disapproved in P.L. 115-8.

BACKGROUND

Federal law prohibits the receipt or possession of a firearm or ammunition by anyone "who has been adjudicated as a mental defective or who has been committed to a mental institution." 18 U.S.C. § 922(g)(4).

Federal law prohibits the receipt or possession of firearms or ammunition by anyone "who has been adjudicated as a mental defective or who has been committed to a mental

⁵ See <https://www.congress.gov/bill/115th-congress/house-joint-resolution/40/actions>.

institution” in 18 U.S.C. § 922(g)(4). In 1997⁶ and later in 2014,⁷ the BATFE expanded the definition of “adjudicated as a mental defective” to also include

“[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs.”

In contrast, however, the VA process for adjudicating a veteran for the fiduciary program is limited to the purpose of determining whether to appoint someone else manage a veteran’s VA benefits. Further, the VA’s fiduciary determination process is initiated by VA officials, and then places the burden of proof on the veteran to prove they are competent to handle their own VA benefits—all without judicial review.

This low standard, based upon a bureaucratic determination, is not commensurate with the BATFE’s higher standard of a determination by an authority such as a court that a person is for example of subnormal intelligence or a danger to others. The VA’s seriously flawed interpretive guidance sweeps up for reporting to NICS a host of persons who Congress never intended to disarm. Commitments and adjudications are done by the judicial system, not by VA bureaucrats. And the terms “mental defective” and “committed” apply to persons who, as a result of a marked subnormal intelligence or capacity, are permanently unable to function in society and historically were often institutionalized. Those concepts do not apply and should not

⁶ See ATF final rule promulgation in Federal Register, vol. 62, no. 124, June 27, 1997, p. 34634

⁷ See <https://www.regulations.gov/docket?D=ATF-2014-0002> and <http://www.lawandfreedom.com/wordpress/goagof-comments-to-atf-on-proposed-changes-to-form-4473/>

be applied far more broadly, such as to veterans temporarily suffering from mild post-traumatic stress who merely rely on a family member to balance their checkbooks.⁸

Yet, since 1998, at the demand of the Department of Justice, the VA has reported to the FBI for addition in the NICS index those beneficiaries who have had a fiduciary appointed for them by the VA based on a determination that the beneficiary requires a fiduciary to manage their VA benefits, under VA's regulations.⁹ In 2016, in response to public concern regarding inadequate procedures to protect the rights of beneficiaries, Congress included provisions in the 21st Century Cures Act to protect, to a small degree, the rights of VA beneficiaries. That provision states:

The Secretary may not make an adverse determination concerning the mental capacity of a beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary under this title **unless such beneficiary has been provided all of the following**, subject to the procedures and timelines prescribed by the Secretary for determinations of incompetency:

- (1) Notice of the proposed adverse determination and the supporting evidence.
- (2) An opportunity to request a hearing.
- (3) An opportunity to present evidence, including an opinion from a medical professional or other person, on the capacity of the beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary under this title.
- (4) An opportunity to be represented at no expense to the Government (including by counsel) at any such hearing and to bring a medical professional or other person to provide relevant testimony at any such hearing. [38 U.S.C. § 5501A (emphasis added).]

Nevertheless, even these additional protections fall far short of the legal standards necessary to qualify as a mental defective for reporting to the NICS database, and deprives veterans of their

⁸ See Gun Owners of America, Inc. and Gun Owners Foundation Comments in Docket No. ATF 51P, pp. 3-7.

⁹ The VA's website states that "VA reports the names of incompetent beneficiaries to the Federal Bureau of Investigations [sic] (FBI), which then adds the names to a database called the National Instant Criminal Background Check System (NICS)." <https://www.benefits.va.gov/fiduciary/beneficiary.asp>.

Second Amendment rights, based solely on the non-judicial appointment of a fiduciary to assist with management of monetary benefits. This VA determination was never meant to be used beyond the very narrowly prescribed purposes of managing veterans' benefits, and it is not based on an appropriate adjudication as required by 18 U.S.C. § 922(g)(4).

In contrast to Section 922, which pertains to disarming those “adjudicated as a mental defective or who ha[ve] been committed to a mental institution, 38 C.F.R. § 3.353’s determinations of incompetency pertain to the capacity of a veteran “to contract or to manage his or her own affairs, including disbursement of funds without limitation,”¹⁰ for the specific purposes of insurance and disbursement of benefits, and are made according to “the beneficiary's social, economic and industrial adjustment.”¹¹ Not only the standard, but the intention and scope of the criminal statute, used to justify reporting veterans in the fiduciary program to the NICS database, differ from those of the VA regulation so substantially as to make clear the inapplicability of the VA fiduciary process as a reasonable determination of “mentally defective” requiring reporting to the NICS database.

Proposals are pending in Congress designed to prohibit the VA from reporting beneficiaries to NICS without an adjudication in compliance with 18 U.S.C. § 922(g)(4). For example, H.R. 3826, the “*Veterans 2nd Amendment Protection Act*” would, if enacted, add the following prohibition:

The Secretary may not transmit to any entity in the Department of Justice, for use by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act, personally identifiable information of a beneficiary, solely on the basis of a determination by the Secretary to pay benefits to a fiduciary for the use and benefit of the beneficiary under section 5502 of this title, without the order or finding of a

¹⁰ See 38 C.F.R. § 3.353(a)

¹¹ See 38 C.F.R. § 3.353(b)

judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary is a danger to themselves or others.¹²

REASONS FOR GRANTING THE PETITION

The VA's current practice of reporting veterans who have financial fiduciaries to NICS penalizes those veterans for seeking mental health care and deters many veterans from seeking needed mental health care. The practice also conflicts with the plain text of 18 U.S.C. § 922(g)(4), as the standard employed in the VA regulation is a gross and unwarranted expansion of the statutory term "adjudicated a mental defective."

Significantly, the United States Court of Appeals for the First Circuit observed that the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), adds a "constitutional component" to every effort by the federal government to regulate the possession and use of firearms.¹³ The *Rehlander* Court observed that "the right to possess arms ... is no longer something that can be withdrawn by government on a permanent and irrevocable basis without due process." *Id.* at 48. Still less should any deprivation of rights be based upon the automatic misapplication of an administrative regulation, one with a low standard of proof, to criminal statute that contemplates a much higher standard of due process in evaluating more serious, permanent disabilities. Yet BATFE has continued to perpetuate the deprivation of the Second Amendment rights of this nation's veterans, based on nothing more than an inapplicable determination by the VA that the veteran may need help handling their finances.

PROPOSED REGULATION

Accordingly, Petitioners request the VA undertake a rulemaking to promulgate a rule to correct the VA's practice of submitting the name of a beneficiary to the NICS system solely

¹² See H.R. 3826, Sec. 2 (116th Congress)

based on a determination that the beneficiary is unable to manage his or her own benefits.

Petitioners offer the following text as a proposed rule:

No personally identifiable information of a beneficiary may be transmitted to any law enforcement entity, or for use by the National Instant Criminal Background Check System, as a basis for prohibiting the possession of firearms, solely on the basis of a determination to pay benefits to a fiduciary for the use and benefit of the beneficiary, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary has been adjudicated as a mental defective or has been committed to any mental institution.

Gun Owners of America, Inc., Gun Owners Foundation, The Independence Fund, and National Defense Committee respectfully request that a rulemaking be commenced to implement a regulation with this effect, to avoid the continued illegal and unconstitutional deprivation of the right to keep and bear arms of many veterans, based on the application of a vague standard that appears in no federal statute.

Respectfully submitted,

Gun Owners of America, Inc.
Gun Owners Foundation
The Independence Fund
National Defense Committee

¹³ See *United States v. Rehlander*, 666 F.3d 45, 50 (1st Cir. 2012)



March 6, 2024

The Honorable Mike Johnson
Speaker of the House of Representatives

The Honorable Hakeem Jeffries
Minority Leader, House of Representatives


The Honorable Steve Scalise
Majority Leader, House of Representatives

Dear Speaker Johnson and Leaders Jeffries and Scalise,

Thank you very much for listening to the concerns the National Defense Committee raised in the attached letter, also signed by the Military Order of the Purple Heart, Vets 4 Vet Leadership, the Armed Forces Retirees Association, the Ranger Leadership Policy Center, Arizona Veterans, the Association of the United States Navy, TREA: The Enlisted Association, and the Catholic War Veterans of the United States of America, regarding the unconstitutional and unconscionable the unchecked regulatory powers of the Department of Veterans Affairs exercises with the Fiduciary program, and the resultant reporting of those veterans placed into the Fiduciary program to the Department of Justice, resulting in over 250,000 disabled veterans being placed in the National Instant Criminal Background Check System (NICS), and thereafter prohibited from possessing or purchasing firearms, all without any judicial action or review.

That is why we are pleased to see the final version of the FY24 Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill contain in Section 413 the prohibitions of the VA reporting such veterans to the NICS system. **This is a important and crucial first step in reforming the unconstitutional Fiduciary program, and for that reason, the National Defense Committee implores all Members of the House of Representatives to vote for final passage of the Military Construction, Veterans Affairs, and Related Agencies FY24 Appropriations Bill.**

Very Respectfully,



Bob "Shoebob" Carey
CAPT, USN (Ret)
Executive Director

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July 26, 2023

The Honorable Kevin McCarthy
Speaker of the House

The Honorable Hakeem Jeffries
Minority Leader of the House

The Honorable Steve Scalise
Majority Leader of the House

The Honorable Tom Cole
Chair, House Committee on Rules

The Honorable Jim McGovern
Ranking Member, House Committee on
Rules

Dear Speaker McCarthy, Leaders Jeffries and Scalise, Chair Cole, and Representative McGovern:

We, the undersigned veteran and military serving organizations, endorse the inclusion in the House Committee on Rules’ reported Rule on H.R. 4366, the *Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2024*, of the Rules Committee Amendment 23, Version 2 – sponsored by Representative Bost of Illinois – to prohibit “the VA from using funds to submit a beneficiary’s name to the NICS list based on VA’s appointment of a fiduciary.” We also endorse the amendment’s adoption by the House into the final House-passed version of the bill.

The Department of Veterans Affairs (VA’s) Fiduciary program is a testament to the threat the unchecked regulatory powers of the Executive Branch can pose to the inalienable rights of the People, in this case, to the rights of disabled veterans to due process under the law, and to keep and bear arms. From the Fiduciary program’s placing the burden of proof on the veteran to prove they are competent (and not on the VA to prove the veteran is incompetent), to the lack of judicial oversight to the process (as is provided in similar incompetency determinations by the Social Security Administration), to the then Orwellian process by which the VA tattles to the Department of Justice that the veteran has problems balancing their checkbook, and therefore now somehow qualifies as a “mental defective” under the *Brady Handgun Violence Prevention Act of 1993* and loses their right to keep and bear arms, all without any judicial action, this program is rife with threats to the liberty and property of the very men and women who sacrificed their physical well being in the defense of this country.

Furthermore, the National Academies of Science, Engineering, and Medicine found 55 percent of those Iraq and Afghanistan veterans needing mental health services did not seek VA care.ⁱ The National Academies further stated a significant reason these veterans are not seeking these mental health care services is because of the fear they will lose their firearms, or other legal or administrative actions will be taken against them for seeking mental health care such as loss of security clearance, loss of child custody, and with 35 percent of those interviewed by the National Academy saying “the potential of having their personal firearms taken away as an obstacle to use VA mental health services.”ⁱⁱⁱ And given the rate of increase in veteran suicides over the last 20 years is almost 240% higher for those veterans NOT in the VA’s mental health care programs than those in it,ⁱⁱⁱ such disincentives to seek VA mental health care, such as the Fiduciary Rule, appear to be increasing veteran suicide, not decreasing it.

While we believe the entire VA Fiduciary program must be fundamentally reformed to address the significant civil and legal right abuses the Fiduciary program itself represents for America’s veterans, given the legislative process that will require, we believe the Fiscal Year 2024 Military

Construction and Veterans Affairs Appropriations Act should contain this prohibition on any funds being expended by the VA to involuntarily place any veteran into the Fiduciary program.

Very Respectfully,

National Defense Committee
Vets 4 Vet Leadership
Veteran Warriors
Catholic War Veterans

ⁱ National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Care Services; Committee to Evaluate the Department of Veterans Affairs Mental Health Services. 2018. *Evaluation of the Department of Veterans Affairs Mental Health Services* Chapter 6: "Department of Veterans Affairs Mental Health Services: Need, Usage, and Access and Barriers to Care," Washington, DC: National Academies Press; (January 31): <https://www.ncbi.nlm.nih.gov/books/NBK499497/>.

ⁱⁱ Ibid., p. 178. <https://doi.org/10.17226/24915>.

ⁱⁱⁱ Office of Mental Health and Suicide Prevention, 2022, *National Veteran Suicide Prevention Annual Report* Washington, DC: Department of Veterans Affairs (September): Table 3. <https://www.mentalhealth.va.gov/docs/data-sheets/2022/2022-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-508.pdf>.

February 27, 2024

The Honorable Mike Johnson
Speaker of the House

The Honorable Hakeem Jeffries
Minority Leader of the House

The Honorable Steve Scalise
Majority Leader of the House

The Honorable Kay Granger
Chair, House Appropriations Committee

The Honorable Rose DeLauro
Ranking Member, House Appropriations
Committee

The Honorable John Carter
Chair, House Appropriations Military Construction,
Veterans Affairs, and Related Agencies
Subcommittee

The Honorable Debbie Wasserman-Schultz
Ranking Member, House Appropriations
Military Construction, Veterans
Affairs, and Related Agencies
Subcommittee

Dear Speaker Johnson, Leaders Jeffries and Scalise, Chairs Granger and Carter, and Representatives
DeLauro and Wasserman-Schultz:

In July of this year, many of the below organizations wrote to endorse the inclusion in the House Committee on Rules' reported Rule on H.R. 4366, the *Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2024*, of the Rules Committee Amendment 23, Version 2 – sponsored by Representative Bost of Illinois – to prohibit “the VA from using funds to submit a beneficiary’s name to the NICS list based on VA’s appointment of a fiduciary.” We also endorsed the amendment’s adoption by the House into the final House-passed version of the bill.

As we detailed back then, the Department of Veterans Affairs (VA’s) Fiduciary program is a testament to the threat the unchecked regulatory powers of the Executive Branch can pose to the inalienable rights of the People, in this case, to the rights of disabled veterans to due process under the law, and to keep and bear arms. A copy of that original letter is attached here, but we were pleased the House adopted the amendment to prevent the VA from continuing to unjustly and unconstitutionally abrogate American veterans’ right to keep and bear arms, all without any judicial action.

We repeat the belief the entire VA Fiduciary program must be fundamentally reformed to address the significant civil and legal right abuses the Fiduciary program itself represents for America’s veterans, but given this amendment, and an almost identical one in the Senate, were both adopted to their respective Chamber’s version of the *Fiscal Year 2024 Military Construction and Veterans Affairs Appropriations Act*, any attempt to remove those provisions from the final version to be passed into law, or to add additional provisions such as “Red Flag Law” or other new gun control provisions, would be a gross breach of trust with the majority of the Members of the House who adopted this legislation, and would constitute a gross abuse of legislative power by the House. We implore you to keep this provision in the VA’s final FY25 appropriations act.

Very Respectfully,

National Defense Committee
Military Order of the Purple Heart
Vets 4 Vet Leadership
Armed Forces Retirees Association
Ranger Leadership Policy Center
Arizona Veterans
Association of the United States Navy
TREA: The Enlisted Association
Catholic War Veterans of the United States of America

February 27, 2024

The Honorable Chuck Schumer
U.S. Senate Majority Leader

The Honorable Mitch McConnell
U.S. Senate Minority Leader

The Honorable Patty Murray
Chair, U.S. Senate Committee on
Appropriations and Subcommittee on
Military Construction, Veterans
Affairs, and Related Agencies

The Honorable Susan Collins
Vice Chair, U.S. Senate Committee on Appropriations

The Honorable John Boozman
Ranking Member, U.S. Senate Appropriations
Subcommittee on Military
Construction, Veterans Affairs, and
Related Agencies

Dear Leaders Schumer and McConnell, Chair Murray, and Senators Collins and Boozman:

In July of this year, many of the below organizations wrote to endorse the inclusion in the House Committee on Rules' reported Rule on H.R. 4366, the *Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2024*, of the Rules Committee Amendment 23, Version 2 – sponsored by Representative Bost of Illinois – to prohibit “the VA from using funds to submit a beneficiary’s name to the NICS list based on VA’s appointment of a fiduciary.” We also endorsed the amendment’s adoption by the House into the final House-passed version of the bill. We were truly heartened by the Senate including an almost identical provision in its version of the FY24 MILCON-VA Appropriations Bill.

As we detailed back then, the Department of Veterans Affairs (VA’s) Fiduciary program is a testament to the threat the unchecked regulatory powers of the Executive Branch can pose to the inalienable rights of the People, in this case, to the rights of disabled veterans to due process under the law, and to keep and bear arms. A copy of that original letter is attached here, but we were pleased both the House and Senate adopted amendments to prevent the VA from continuing to unjustly and unconstitutionally abrogate American veterans’ right to keep and bear arms, all without any judicial action.

We repeat the belief the entire VA Fiduciary program must be fundamentally reformed to address the significant civil and legal right abuses the Fiduciary program itself represents for America’s veterans, but given this amendment, and an almost identical one in the Senate, were both adopted to their respective Chamber’s version of the *Fiscal Year 2024 Military Construction and Veterans Affairs Appropriations Act*, any attempt to remove those provisions from the final version to be passed into law, or to add additional provisions such as “Red Flag Law” or other new gun control provisions, would be a gross breach of trust with the majority of the Members of the Senate who adopted this legislation, and would indicate a gross abuse of legislative power by the Senate. We implore you to keep this provision in the VA’s final FY25 appropriations act.

Very Respectfully,

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Catholic War Veterans of the United States of
America

Prepared Statement of Robert Holliday

H.R. 7361, Flowers for Fallen Heroes Act. 118 Congress. Submitted by: Robert M. "Bob" Holliday, Rondy Elliott, Rik Peirson Marilyn Rustand Lieurance, and General (R) John H. Kelly, (USMC). All Gold Star family members. Verbal presentation by Bob Holliday

While no one in our country truly wants a War, unfortunately War has been a major historical fact for our country. Yet, our wars have not been fought to take over other countries, nor to enforce our way of life on others. Instead, our wars have been fought to protect our freedoms, and the freedoms of other freedom loving people in the world. As Americans, we are blessed to live in the freest country in the history of the **world**, but freedom comes with a price. **With few exceptions, WWI and WWII are the ONLY wars we have found ourselves in where not all the bodies were returned home for burial here in American soil. This is extremely important when considering the passage of the pending Bill. H.R. 7361 Flowers for Fallen Heroes.**

In 1923, Congress created the American Battle Monuments Commission (ABMC), directing that entity of our Executive branch to build and maintain overseas American military cemeteries. There are 26 ABMC cemeteries in 17 countries throughout the world. WWI saw approximately 116,700 Americans lost. More than 407,000 American soldiers were lost in WWII alone. This averages 220 Americans per day lost in that War, with many of them in their teens and early twenties. According to the ABMC website there are more than 200,000 Americans honored at ABMC sites spread around the world. **Any American who visits such a cemetery and leaves without a lump in their throat fails to understand why we live as free as we do in this great country of ours.**

Approximately 183,000 American kids lost their fathers in WWII. I happen to be one of them. My Father, **Captain Karl O. "Hap" Holliday**, was killed by gun fire in an ambush by German Infantry on April 13, 1945. My Dad was 26 years old when he was KIA; I wasn't quite 2 years of age. He is buried in the ABMC American Cemetery in Margraten Holland. Most Americans KIA in WWII were first buried in temporary cemeteries with the body encased in a mattress cover. Beginning in 1947 the bodies were exhumed where positive identification and, as best as could be done, a cause of death was given with a permanent burial following.

In 1950, those in charge of the ABMC, realizing families of soldiers buried in ABMC cemeteries couldn't just hop into the family car to visit an overseas cemetery, thus those themselves who administered the ABMC gave birth to the Flower Program. It was a simple process to use, with the ABMC providing a one-page form the person ordering the flowers completed. Information called for identified the fallen soldier, rank, together with the cemetery and grave location. Gold Star families and friends filled-in the date flowers were to be delivered mailing this back to the ABMC together with a check to pay for their flowers. **Those ordering flowers have always paid for them. The Government has not.** The ABMC assisted those ordering flowers by placing the floral orders, in the language of the country, with florists near the cemeteries. A photo of the flowers in front of the grave was taken and mailed to the Gold Star family or friend who had placed the order.

In later years, the ABMC suggested, thus allowed, those ordering flowers to include a personal note to their fallen soldier. It was printed and set beside the flowers and included in the returned photo. If

flowers were to be delivered for Memorial Day, the hand-out at the respective ceremony for the Memorial Day services was also included with the returned photo.

Just prior to Memorial Day, in 2015, and **without any involvement or input from Gold Star families**, the ABMC announced it was no longer going to provide a Flower Program. A group of WWII adult war orphans quickly formed, coming together from different parts of our country to meet with the ABMC. Our pleas to reinstate the Flower Program were shared with the ABMC. To date all of that has fallen on deaf ears. Our committee has quietly worked over nine years toward reinstating the Flower Program. It's been almost 10 years since Gold Star families, **with our government's assistance**, have been able to place flowers of Honor, Respect, and Remembrance on the graves of our fallen American Heroes no matter in which ABMC cemetery they are buried. **There is nothing right about this, no matter how you look at it.** The ABMC told us they do NOT want to be in the Flower Business anymore. The ABMC has never been in the flower business. Their business is to assist Gold Star families with the ordering of flowers for their loved one from florists who neither speak English nor accept our form of money. The ABMC has turned over Gold Star families and friends of our fallen who want to remember and honor their loved one, to FTD, the internet and, or the telephone. **In other words, the ABMC simply walked out of the room holding Gold Star family and friends, closing the door behind them.**

Our group of Gold Star family members has been joined by 3 Four-Star American Generals, John Kelly, US Marines, Chuck Horner, US Air Force, and Tommy Franks, US Army all of whom bristled when they heard about this problem, with all offering to help. We also have been joined by the Society of Former Guards of the Tomb of the Unknown Soldier, together with many other patriotic groups, and finally by many American Gold Star family members. Even with that, the ABMC's interest proved to be in a different direction, thus turning away from Gold Star families, **focusing on increasing the visitors experience**, telling the stories of the soldiers buried in their cemeteries, and educating about war. This is all well and good and should be done. However, doing so should not be accomplished by dropping support for Gold Star families. Over nine years those that administer the ABMC made it clear they have no intention of reinstating the Flower Program.

So, what has happened in the almost 10 years since the ABMC announced it would no longer assist with the ordering of flowers for American overseas graves? Gold Star family and friends of our Fallen have found that without the ABMC's assistance, there is a language barrier that, in most all cases, makes it virtually impossible for American Gold Star families and friends to place a floral order in foreign countries. Unlike the Flower Program, there was nothing simple or easy about it. The ABMC pushed Gold Star families to place their flower orders locally here in America with FTD, however the result of that decision was disastrous. A strong language barrier still existed. **Simple things like Red was interpreted as rosy or pink. Many florists in foreign countries don't take credit cards.** There's a currency exchange between countries that most of us don't understand, and the rates are flexible, changing with the value of the U.S. dollar. In addition, there's a **significantly higher cost to families ordering flowers locally from America.** International fees, taxes, and delivery fees, **doubling and even tripling the cost to families** and friends wanting to Honor and Remember, their fallen American soldiers with flowers. One American military alumni group (the 34th Infantry Division Association) is particularly upset as due to cost increases it can no longer afford Memorial Day wreaths to be placed in ABMC cemeteries in honor of their comrades in ABMC cemeteries in Italy and North Africa. The 34th ID had more continual days in combat in WWII than any other American Division.

The few who managed to order *direct from a florist in a foreign country*, had no way of knowing if their flowers were delivered on the day requested (Memorial Day, Birthday, Anniversary of the death, Christmas, etcetera), or delivered at all.

A war orphan, Marilyn Rustand Lieurance, who will be attending the hearing this July 10th was planning on visiting her father's grave in Luxembourg. Preparatory to traveling, Marilyn called every florist in that country. She found none that spoke English. She sent a picture of what she wanted, and waited to learn the cost, but instead learned the florists couldn't understand that all she wanted was a wreath of white flowers, and nine red roses. The language barrier prevented it. It was Marilyn's first visit to her dad's grave, and she arrived in the country a day early to take care of her flowers. Upon her return home, an email from the florist who couldn't create a white wreath was now requesting her credit card numbers for flowers that were never ordered thus obviously not delivered. This is just one of many such problems our committee of Gold Star WWII, now adult, kids have heard about since the ABMC did away with the Flower Program. Marilyn's is but one of many such instances of failure for an American Gold Star family to be able to order flowers through the ABMC.

Included in the evidence attached hereto are several letters and recognition of support we would suggest you should read. You're sure to recognize the names of organizations like **A Soldiers Child Foundation, American Ex-Prisoners of War, Buffalo Soldiers 9th and 10th (Horse) Cavalry Association, The Eighth Air Force Historical Society, Gold Star Children, Military Order of the Purple Heart, 91st Bomb Group Memorial Association, Society of Former Guards of The Tomb of the Unknown Soldier, the Sons and Daughters in Touch**. The important thing here is to read *their words*, why they're in support of reinstating a Flower Program, for the families and friends of our fallen--too far for most families to EVER visit. For your convenience, please see the attached list of Co-sponsors, and a few of many letters from members of the American WWII Orphans Network (AWON), who are affected by the ending of the Flower Program.

You might like knowing that the Buffalo Soldiers, mentioned above, were under the command of **General John Pershing, who Congress commissioned to build the ABMC cemeteries. As you'll see in their letter of support, the Buffalo Soldiers are looking at the original intent of the ABMC Flower Program.**

To come to grips with this problem, we began networking and moving forward with major help from General John F. Kelly, former White House Chief of Staff, US Marines (Retired). General Kelly has helped in areas we were not able to reach. General Kelly himself is a Gold Star parent having lost his son, Marine 1Lt Robert Kelly on November 9, 2010, in Afghanistan. Montana Congressman Ryan Zinke drafted and filed the **Flowers for Fallen Heroes Act, 2024 H.R. 7361** legislation and introduced it into Congress: Kyle Egan, Military Legislative Assistant to Congressman Zinke has worked tirelessly to move us forward and helped us understand the process.

The original Flower Program was named the Flower Fund Program, however the name is a bit deceiving, as the families or friends of the Fallen always paid for their flowers, our Government, the ABMC, never did. Annually, the ABMC furnished a sheet giving the price of flowers per cemetery respectively. Ordering flowers for our Fallen was quite simple. This was a very much appreciated program that worked as smooth as glass for 65 plus years.

As we look at all of this, let's remember that our soldiers put America first, (before self, family, friends, careers and generations to come). All their hopes and dreams of a future together with their loved ones

were gone forever. **America also needs to know that when our United States asked the families of these fallen soldiers for help, they too met the needs of the America they love**, as our country desired to avoid the expense of bringing thousands of dead soldiers home for burial. **EVERY SINGLE FAMILY** of an American Soldier buried in an overseas ABMC cemetery **answered the call of the United States of America**, giving our government permission to bury their loved one overseas. A terrible separation that comes with no real closure for these families. Losing one's loved one, or friend, to a sudden violent death met while protecting our freedoms and very way of life produces a hole in one's heart that simply never closes. Not easily, if at all, being able to visit a loved one or friend's grave overseas simply adds to the misery of America's Gold Star families and friends.

Today, when a soldier is KIA, **seven soldiers accompany the ride home with the soldier's remains**. Government officials, together with the soldier's family are at the airport to receive the remains. A parade of cars travels to the cemetery. Fellow Americans line the streets and bridges waving American Flags. A military memorial service takes place. Patriotic speeches are given. **All these things are well deserved**, and both honor and show respect to **an American Soldier who gave all he/she had to give for their country**. The grieving family is also recognized for the loss of their soldier. America understands the loss to these families and lifts them up with a distinction of being Gold Star families, those who lost a loved one to war. This is the way such a tragedy should be handled by an understanding country such as ours. Not the case in prior wars. In WW II, the family was notified by a knock on the door with a telegram handed over announcing the death. The telegram was one sentence which stated:

**"The Secretary of war desires me to express his deep regret that your (husband, son, brother) (name) was killed in action in (location given) on (date) confirming letter follows
Signed, by the Adjutant General"**

The family was left to deal with it themselves. Our country has come a long way since then, starting with the Flower Program. One needs to consider those buried in ABMC cemeteries served our government and our people, protecting our freedoms and very way of life. As stated, **the Flower Program was the one thread of connection through our Government that Gold Star families had with their soldiers buried in faraway lands**. The ABMC, as an entity of the Executive Branch of our Federal Government, **providing their personal assistance** meant more to Gold Star families and friends than others might have ever realized. It gave Gold Star families the feeling that our own Government understood their loss and stood beside them. **The Flower Program sent a strong message that although a Gold Star family's soldier was buried across an ocean, our government hasn't forgotten that soldier, nor the family and friends left behind**, and always will appreciate their sacrifice for all people fortunate to be citizens of this great country. Ending the Flower Program felt like a slap in the face to Gold Star families. Particularly the manner it was ended. Maybe it wasn't meant that way, but somebody needs to know that's how it feels. **Ending the Flower Program, told those left behind that those sudden violent deaths met while defending our freedoms and basic way of life no longer hold the same meaning to our own Government they have held since the death occurred. This certainly is not a legacy in which our country can be proud.**

If the ABMC had brought Gold Star families into discussions regarding the idea of ending the Flower Program, **they, the ABMC, would have understood the damage ending the flower program would do to American's Gold Star families, those being the most important segment in our society the ABMC was formed to serve in the first place**. We're not the enemy of the ABMC, but we're the voices of our Fathers, and the voices representing all the Gold Star families and friends of our war dead, who are buried across the seas. Ending the Flower Program should never have happened, and we're here today

working through the process of getting it reinstated and helping all of you to understand what it feels like to walk in our shoes. The loss is hard to define at times.

We understand one of the main reasons the ABMC dropped the Flower Program was so it (the ABMC) could then concentrate on building more contemporary visitors centers at the cemeteries. Welcome Centers are a great addition to ABMC cemeteries but should not be built in place of the recognition of individual soldiers or their Gold Star families. There's no real reason both programs can't be done. One or two Gold Star family members, those who used the Flower Program, should be included in reinstating the Flower Program. The Flower Program should never have been looked at or felt as a burden, but instead a simple assistance of service to be proud of, and at least twice per year advertised across the nation as a show of respect to the soldiers and their families left behind. Ending the Flower Program says little about the heritage and freedoms of our country, as well as the price paid for those freedoms.

Sometimes when a person focuses on only one or two things, other things of equal or more importance fall by the wayside, and no longer seem important. This may be the case of focusing so totally on new Welcome Centers, and etc., what a cemetery is was lost in the shuffle. Particularly overseas cemeteries holding the remains of fellow Americans who paid with their lives for our freedoms. While planning and details can create the world's best cemetery, it should be done on its own merit, and not on the backs of Gold Star families. In 1950, a precedent was set when the Flower Program was created. A favor to our government by the families who gave permission to bury their soldiers so far from their home.

While America's fallen should always be the focus at an ABMC cemetery, such a cemetery is NEVER ONLY about those buried there. When a person visits the grave of a loved one, it's a time of remembrance, grieving, and a form of comfort being close; and this should never be forgotten. Yet not everyone with a loved one or friend buried in an ABMC cemetery has the wherewithal to visit a cemetery located overseas. As stated above, the Flower Program stood as the sole thread of connection through our government a Gold Star American family or friend had to their soldier buried so far from home.

While Welcome Centers enhance the visitors experience it should be remembered that visitors and education are **an important addition** to ABMC cemeteries, we should never lose sight of the fact that these are American Military Cemeteries, American soldiers are buried there, and there is a grieving American family connected to **every Soldier buried in an American AMBC cemetery. This will always be true.**

Furthermore, while stories about American soldiers buried in ABMC cemeteries and providing education about war geared to future generations, are additions to such cemeteries, it should never be done at the expense of turning away from our American Heroes and their families. **This honors no one** and should NOT be any part of America's Legacy.

Anybody can recognize the design and plan of every detail at an ABMC cemetery has resulted in wonderful accomplishments and magnificent beauty. The ABMC boasts of having the World's Best cemeteries and this may very well be true. The ABMC is **deservedly proud** of the cemeteries they've created, and the care of these cemeteries reflects the greatness of the America we all love.

The ABMC's Flower Program always provided needed assistance to Gold Star families and friends with a basic traditional privilege of decorating the graves of their soldiers. It worked well for over 65 years and sent a further message that our government has not forgotten the American soldiers, who are buried in

foreign countries, nor their families or friends. The very idea of farming out the Flower Program to an outside source would be viewed as one of total disrespect by Gold Star families. Simply put, the ABMC's Flower Program needs to start and fully operate in-house at the ABMC. It did so with great success for 65+ years. Handing it off to an outside source defeats the very purpose the ABMC was created in the first place. Furthermore, such would leave a terrible feeling of disgust with Gold Star families and friends if this were allowed to occur. Following the ending of the Flower Program by the ABMC in 2015, trying to accomplish the ordering of flowers outside the ABMC's assistance proved to be a disaster with language barriers, currency exchanges, and a significant rise in costs to the families and friends of our fallen.

The ABMC now says it wants to get out of the flower business. The ABMC has never been in the flower business. What the Flower Program accomplished was assisting Gold Star families wading through a foreign process of ordering flowers from overseas florists to put flowers on their soldier's grave. No matter what the ABMC now says, leaving American's Gold Star families to fend for themselves here simply is not working. The ABMC never sold nor offered to sell flowers. Prior to making the decision to end the Flower Program, the ABMC understood what that program meant to those Americans whose soldiers are buried overseas.

On the other hand, reinstating the Flower Program within the ABMC (our government) also sends a message to Gold Star families and friends, and the population of our country, that our government still gives thanks for the sacrifice and loss of hundreds of thousands of soldiers, who laid their lives down for you, me, and all of us. It truly speaks as to the goodness of our country. We're seniors, and after we're gone, we'd like to think our grandchildren and great-grandchildren will want to continue remembering the family member(s) who paid for the freedoms we all enjoy every day. As stated, it was the ABMC itself that started the Flower Program, running it with great success for many years. Surely, with such a record restarting and operating it in a similar vein would present little problem for the administration of the ABMC. Considering what the Flower Program stood for, what it represented, the service it provided to America's Gold Star families and friends from both World Wars, it never should have ended. The Program should be reestablished to operate in perpetuity to ensure it continues.

It is important to restate that with a few exceptions, both world wars are the only wars our country found itself in where not all the bodies were returned home for burial. With the ABMC itself coming up with the idea to start the Flower Program, followed by operating it flawlessly for 65 + years, then suddenly killing it begs the question: what happened to the reverence to be shown by our own government to our fallen and their families?

Thank you for taking your time to read this piece, along with the accompanying documents. The hearing on July 10th offers an opportunity to embrace the service of the ABMC's Flower Program to Gold Star families and friends, which **both honored and reflected respect to the soldiers for their service and sacrifice, and the American Gold Star families and friends grieving their loss.**

All things considered here, H.R. 7361, Flowers for Fallen Heroes is perhaps as non-political and as patriotic a piece of legislation as most of us will see in our lifetimes. It is respectfully requested this bill become law. Thank you.

In Their Memory and not forgotten,

By /S/ Robert M. Holliday, signed electronically

Date:

OUR LEAD GROUP

Bob Holliday, Proud son of Captain Karl O "Hap" Holliday, Headquarters Battery Commander, 561st Field Artillery Battalion, KIA 4/13/1945 Germany, KIA by gun fire in an ambush by German Infantry. Buried ABMC Cemetery, Margraten Holland

Susan Hadler, Deceased, Proud daughter of 2Lt David Selby Johnson, Jr. KIA 4/12/1945 when stepped on a mine in Germany, his body disintegrated, he is noted on the Wall of the Missing, ABMC American Cemetery, Luxembourg

Rondy Elliott, Proud daughter of CPL Frank M. "Bud" Elliott, 741st Tank Battalion, KIA 6/6/1944, CPL. Elliott was KIA when stepped on a mine on Omaha Beach France, buried Normandy ABMC American Cemetery, Omaha Beach France

Marilynn Rustand Lieurance, Proud daughter of 1LT Hanford "Rusty" James Rustand, 323rd Bomber Squadron, 91st Bomber Group, Heavy, pilot, B17 on one of the largest air raids in WW II, was KIA 11/2/1944 when his B17 was shot down. Buried ABMC American Cemetery, Luxembourg

Rik Peirson, Proud son of 1LT John Silas Sheffield Peirson, 75th Infantry Division, KIA on Christmas Day 1944 by a German 88 on the Northern Shoulder of the Battle of the Bulge. Buried American ABMC Cemetery Henri-Chappelle, Belgium

General John Kelly, Proud Father of 1LT Robert Kelly, USMC, KIA November 9, 2010, War on Terror, stepped on an IED. buried in Arlington National Cemetery

Prepared Statement of Nicholas Keogh

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee: Thank you for inviting the American Federation of Government Employees (AFGE) and its National Veterans Affairs Council (NVAC) to participate in today's Subcommittee Hearing on "Pending Legislation." My name is Nicholas Keogh, and I currently serve as the Second Vice President for AFGE Local 17 which represents employees at the Board of Veterans Appeals (the Board), and as a National Representative for the NVAC. I have also proudly served as an attorney at the VA's Board of Veterans Appeals for 7 years.

On behalf of AFGE and the NVAC, representing over 750,000 Federal and District of Columbia Government workers, including 304,000 employees at the Department of Veterans Affairs, it is a privilege to offer insights to the Disability Assistance and Memorial Affairs (DAMA) Subcommittee on several of the bills it is considering today with a focus on draft legislation, the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act," and several other bills that directly affect the VA workforce.

H.R. X, the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act"

The primary reason I come before the committee today is to express AFGE's strong endorsement of draft legislation known as the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act." This legislation, authored by Rep. Morgan McGarvey (D-KY) will help the Board with retention of its attorney workforce, by making the full performance level for non-supervisory Board staff attorneys Grade 15 on the General Schedule (GS-15).

As AFGE Local President Doug Massey testified to the DAMA Subcommittee in November 2023, for many decades, the Board has had a GS-14 career path for attorneys. However, in November 2021, Board leadership downgraded the career path to GS-13, which is counterintuitive from a management perspective and does not help the VA's and this subcommittee's goal of recruitment and retention of talent. Any competent executive understands the importance of competitively remunerating the highest qualified candidates for any job based on their work and abilities. Eliminating this level of growth and compensation for attorneys dissuades qualified applicants from joining the Board or from choosing to stay long-term. Instead of attempting to remain minimally competitive with the private sector, Board management has effectively lowered the career path salary for attorneys, widening the pay gap faced by public employees. AFGE firmly believes that this Committee shares our commitment to ensuring that disability claims for veterans and their families receive the highest level of attention, and that this policy change is contrary to that goal.

At the same hearing, Mr. Massey provided additional testimony outlining the extraordinary and uncredited work that senior non-supervisory Board Attorneys take upon themselves to train newer attorneys in the absence of suitable training from Board leadership, which has helped dozens of employees improve and now thrive at the Board.

From this testimony and additional conversations with subcommittee members and staff, it is clear that members of the subcommittee do not agree with Board Leadership's penny-wise and pound-foolish treatment of board attorneys, especially considering the critical role the Board plays for veterans, the relatively small size of the Board, and the nuanced expertise required of Board attorneys. To help reverse this trend, AFGE applauds Rep. McGarvey for drafting the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act." If enacted this bill will authorize the Board to promote non-supervisory attorneys to the GS-15 level, when appropriate. With this authority, the Board can fulfill the committee's goal of retaining senior attorneys at the Board who have institutional knowledge of the Board and expertise in veterans law. This will encourage senior attorneys to stay at the Board and not look for other GS-15 jobs elsewhere within the government, including within the VA Office of General Counsel where these jobs do exist, and potentially delay retirement. Furthermore, by making the full performance level for Board attorneys GS-15, it will also undo the Board's promotional cap on new attorneys at GS-13 and allow attorneys who meet qualifications to be eligible for promotion to GS-14. This increased retention will also benefit the Board financially by reducing expenditures on recruitment of new attorneys by reducing turnover. Most importantly, this will help keep the most experienced and productive Board Attorneys at the Board to continue serving veterans.

In 1994, Congress took legislative action to place Board Members/Veterans Law Judges on the Administrative Law Judge pay scale. By enhancing the compensation

levels of the adjudicators signing Board decisions, retention levels for Board Members significantly increased and the issue was resolved. Today, this legislation could also resolve the retention issues caused by highly qualified decision writing attorneys leaving the Board for the VA Office of General Counsel and to other agencies for greater compensation and a better work environment. The latest Best Places to Work in the Federal Government rankings issued by the Partnership for Public Service and Boston Consulting Group, released in May 2024, have the Board of Veterans' Appeals ranked at 444 out of 459 Federal agency subcomponents. The Board is by far the worst rated component at all of VA. No other agency subcomponent of VA is ranked worse than 256. The VA Office of General Counsel is rated at 81. The dismal ranking at the Board reflects rock-bottom morale for Board attorneys due to unreasonable workloads, pay that is not commensurate with the complexity of veterans' law, and a disengaged and incompetent senior management team. Indeed, while the Board's ranking is 444, the effectiveness of Board senior leadership was ranked an abysmal 447 out of 458 subcomponents.

This legislation, by establishing a career path to GS 15, will fix the compensation issues which have made recruitment and retention such a challenge at the Board and will accordingly help reduce the more than 200,000 case backlog by incentivizing highly proficient and productive attorneys to stay at Board rather than leave for better opportunities.

H.R. 2971, the “Veterans Claims Education Act of 2023”

H.R. 2971, the “Veterans Claims Education Act of 2023” is legislation introduced by Rep. Peters (D-CA) that will raise awareness among veterans of the resources available to them to assist in the preparation of their claims. In particular, the bill will highlight Veteran Service Organizations which may represent claimants at no charge to help navigate the complex veterans claims process. AFGE supports this bill and wants to highlight that the assistance VSOs provide helps veterans receive the benefits they have earned and assists VBA claims processors and Board of Veterans Appeals attorneys to be more efficient in their work. Simply put, more complete and accurate claims mean fewer deferrals, appeals, and remands.

H.R. 8874, the “Modernizing All Veterans and Survivors’ Claims Processing Act”

H.R. 8874, the “Modernizing All Veterans and Survivors’ Claims Processing Act” introduced by Rep. Valadao (R-CA) is legislation designed to expand the use of automation tools used at the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals. AFGE is proud to represent employees at VBA and the Board who dedicate their careers to serving veterans and ensuring they receive the benefits they have earned. AFGE also understands the critical role that technology plays in allowing VA employees, including those at VBA and the Board of Veterans Appeals, to more accurately and efficiently serve veterans, and the technologies discussed in this bill can help achieve this goal. As this committee has over the last several years authorized the expanded use of automation tools at VBA, AFGE has urged guardrails to protect the integrity of VA's work. Specifically, AFGE agrees with the “Sense of Congress” adopted by the whole House in H.R. 7153 of the 117th Congress, the “Department of Veterans Affairs Principles of Benefits Automation Act” introduced by then-Ranking Member Bost, stating that “Automation of claims processing should not eliminate or reduce the Veterans Benefits Administration workforce.” In turn, as the subcommittee considers this legislation today, AFGE urges that the subcommittee ensures that this technology continues to supplement and not supplant the critical VA workforce and that frontline workers receive sufficient training to learn how to use any new technological tools.

H.R. 8879, the “Improving VA Training for Military Sexual Trauma Claims Act”

H.R. 8879, the “Improving VA Training for Military Sexual Trauma Claims Act” is legislation introduced by Rep. Kim (R-CA) that will improve training to VA Claims Processors and Contract Compensation and Pension Examiners related to Military Sexual Trauma (MST). AFGE supports the intent of this legislation and has suggestions and comments that we hope are considered by the committee.

AFGE strongly supports Section 5 of the bill, which requires training for claims processors working on MST claims. MST claims are nuanced and highly sensitive and require the utmost care and understanding of both the veterans' needs and VBA's internal processes. However, as AFGE has previously noted to the subcommittee, VBA seldom if ever considers frontline claims processors' input when designing such training. AFGE hopes that the subcommittee uses this legislation as an opportunity to mandate that VBA consult with AFGE, as the union representa-

tive of claims processors, to identify common problems that workers have encountered while working MST claims, how to address these issues, and to recommend best practices for claims processors who get assigned to the MST Special Operations Center. Absent that, AFGE believes that VBA will again create training that meets its bare legal obligations but does not meet the intent of Rep. Kim and the subcommittee.

AFGE also understands the intent of Sections 2 and 4 to train contract disability examiners conducting MST examinations to improve sensitivity and quality and prevent additional trauma. If contractors are going to perform these exams, veterans will benefit from this training. Over 90 percent of disability exams are currently performed by contractors. Exams performed by contractors cost more than exams performed by VA employees, and the contractors, irrespective of additional training, do not have the same familiarity and understanding of veterans and their specific needs as do VA employees. Considering the sensitive nature of MST claims and exams, AFGE would urge the committee that disability exams, particularly specialty exams such as MST exams, should be performed exclusively by VA examiners, which will also reduce the number of remands due to inadequate medical opinions provided by contracted examiners.

H.R. X, the “Rural Veterans” Improved Access to Benefits Act of 2024”

The “Rural Veterans Improved Access to Benefits Act of 2024” is draft legislation that proposes several changes to the VA’s authorities related to contracted disability exams. AFGE is proud to represent the VA’s inhouse disability examiners and has comments on several of the provisions in this legislation.

Sections 2 and 3 of the bill make permanent the pilot program that has authorized contract disability exams. As this pilot program has been in existence since 1996, and been unrestrained since 2017, officially ending the pilot program and making this authority permanent appears as a pro forma move, notwithstanding any budgetary effects. Regardless of whether this program continues as a pilot or is made permanent, AFGE opposes the VA’s continual shifting of disability exams away from VA employees to more expensive and less qualified contract examiners. Furthermore, in this bill, the cost of funding contract examiners continues to come from the VBA’s budget (as it does under the current pilot program). AFGE feels this structure undermines VA’s internal exam capacity, by cynically encouraging VHA to stop investing in inhouse employee examiners. Under current law, when a veteran needs an exam, VBA first checks if VHA has an examiner available. If VHA does not have an available examiner, VBA uses a contractor. However, as VHA pays for the in-house examiners and VBA pays for the contractors, VHA has little incentive to use its budget to hire examiners if it knows that VBA will pick up the cost of the contract exam. This structure promotes outsourcing and ends up costing the taxpayers far more than simply investing in VHA’s inhouse exam capacity. AFGE recommends that this bill be coordinated with Section 3 of the Tester-Tillis-King “Medical Disability Exams Improvement Act” (S. 2718). Specifically, Section 3 of the bill moves the funding of VHA inhouse examiners to VBA’s budget. By making this change, VBA would then have the incentive to hire more internal disability examiners, lessening VBA’s reliance and expenditures on more costly contract examiners. AFGE believes the draft bill should not advance without this additional language.

Section 2 of the legislation also addresses the eligibility of personnel who may perform contract disability exams for veterans. AFGE is concerned that the bill uses an expanded definition of the medical that could be used beyond the bill’s intent of allowing specific professionals who are currently ineligible to perform exams eligible in the future. AFGE urges that the committee ensure that appropriate oversight is used on these contractors to ensure that contractors meet these obligations and have the correct medical professionals performing the exams veterans require, and clearly report this information to the committee as the bill requires.

Thank you for the opportunity to testify today and present AFGE’s views on these bills. I look forward to answering your questions.

STATEMENTS FOR THE RECORD

Prepared Statement of Disabled American Veterans



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**STATEMENT OF
MARQUIS D. BAREFIELD
DAV ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
FOR THE RECORD OF THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 10, 2024**

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee:

DAV (Disabled American Veterans) appreciates the opportunity to provide testimony for the record for this legislative hearing concerning 18 pieces of legislation. DAV is a congressionally chartered and Department of Veterans Affairs (VA) accredited veterans service organization (VSO). We provide meaningful claims support free of charge to more than 1 million veterans, family members, caregivers and survivors.

To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at VA regional offices (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

We are pleased to provide our views on the bills impacting service-disabled veterans, their families and the programs administered by the VA that are under consideration by the Subcommittee.

H.R. 2971, Veterans Claims Education Act of 2023

When separating from military service, veterans may file a claim for disability compensation with the VA on their own or by using VA-supported services, such as an accredited attorney, a claims agent, or a veterans service officer.

The Veterans Claims Education Act would require the VA notify claimants not currently represented by a representative about the availability of accredited representation, including free services from recognized veterans service organizations.

Unfortunately, groups of non-accredited for-profit entities have emerged that prey upon veterans' frustrations with VA's claims process. These companies provide "consulting" services to help veterans prepare and present relevant paperwork needed

to file a claim with VA in exchange for lump sum payments, a percentage of the total dollar amount awarded for a successful claim, or some other payment mechanism.

This legislation would also require the VA to maintain and update an online tool for claimants to search for accredited representatives and to include warnings about potential fees on VA web portals where claims can be filed. Lastly, the bill would instruct the VA to submit a report on its procedures for recognizing representatives and to recommend improvements.

DAV strongly supports H.R. 2971, in accordance with DAV Resolution No. 220 which calls for legislation to ensure ill and injured veterans receive information about VA-accredited representation while deterring predatory claims practices that seek to bilk our nation's heroes of their earned benefits.

H.R. 6362, Protecting Benefits for Disabled Veterans Act of 2023

The Protecting Benefits for Disabled Veterans Act would codify in statute the ability for the VA to assign a total disability rating to veterans who are unable to secure or maintain substantially gainful employment due to service-connected disabilities.

This legislation specifies that a veteran can be considered for a total disability rating if they have a single disability rated at least 60% or multiple disabilities with at least one rated at 40% and a combined rating of 70% or more. It also outlines considerations for disabilities related to extremities, common etiology, single accidents, single body systems, or conditions incurred as a prisoner of war.

Additionally, the bill allows for total disability ratings under certain conditions of marginal or substantially gainful employment, while explicitly prohibiting the consideration of a veteran's age or eligibility for retirement benefits in these determinations. This legislation would require the VA to establish necessary regulations within 180 days of its enactment.

In recent years, reducing or limiting TDIU has been the focus of many Congressional Budget Office (CBO) reports and proposed as a deficit reduction measure. In December 2018, it was suggested to terminate and cutoff TDIU benefits at the age of 65, and in reports in December 2020 and December 2022, CBO recommended to restrict TDIU once a veteran reaches the age of 67.

H.R. 6362, the Protecting Benefits for Disabled Veterans Act, would provide additional protections for TDIU and prohibit the VA from considering the age of the veteran or their eligibility to any retirement benefit, including Social Security, in making such determinations.

DAV strongly supports H.R. 6362, as it would ensure the availability of TDIU for all veterans regardless of age or receipt of any other earned federal benefits. Consistent

with DAV Resolution No. 445, DAV supports the protection of TDIU as it is not a retirement or pension program.

H.R. 6507, Mark Our Place Act

H.R. 6507, the Mark Our Place Act, would allow the VA to furnish or replace a headstone, marker, or medallion for the grave of an eligible Medal of Honor recipient regardless of the recipient's dates of service in the Armed Forces.

This legislation would allow family members, veterans service organizations, or cemetery administrators to request the VA provide a headstone for Medal of Honor recipients, regardless of their date of death. This authorization is currently limited to Medal of Honor recipients who served after 1917.

DAV does not have a specific resolution that allows us to support H.R. 6507, the Mark Our Place Act however, we have no objection to its passage given the esteemed status of these most valiant and brave veterans—our Medal of Honor recipients. The Mark Our Place Act will give VA the authority to provide headstones with Medal of Honor markers to veterans buried in private cemeteries to honor their sacrifice during military service.

H.R. 7729, Dennis and Lois Krisfalusy Act

H.R. 7729, the Dennis and Lois Krisfalusy Act, would expand eligibility for headstones, markers, and burial receptacles under the laws administered by the VA to certain individuals who died before November 11, 1998.

Despite the date of death, this legislation would ensure that an eligible spouse or dependent child of a veteran will receive a memorial headstone or marker through the VA in a national cemetery or state or tribal veterans' cemetery. As per current law, it is not possible to add eligible spouses and dependent children who passed before November 11, 1998, or after October 1, 2024, to a memorial headstone or marker. This legislation would update federal law to extend this important veteran benefit beyond 2024 for an additional 10 years.

Although DAV does not have a specific resolution on expanding eligibility for headstones, markers, and burial receptacles, DAV has no concerns with the passage of this act to honor the memory of those interred or memorialized with memorial headstone or marker, in recognition of their dedication of support and comfort they provided to their veteran.

H.R. 8792, Flowers for Fallen Heroes Act of 2024

H.R. 8792, the Flowers for Fallen Heroes Act of 2024, would establish a flower ordering program for gravesites under the purview of the American Battle Monuments Commission.

This legislation would allow those wishing to lay flowers on the graves of fallen heroes who are interred at American military cemeteries overseas to do so through the American Battle Monuments Commission (ABMC) jurisdiction. The bill mandates the creation of a user-friendly website and payment system that accepts credit cards for payment, finds reasonably priced vendors in proximity to the gravesites, urges the ABMC to market the program, and requires the ABMC to submit a yearly report to Congress on the programs progress.

The ABMC was established by an Act of Congress in 1928. Its mission is to be a guardian of America's overseas commemorative cemeteries and memorials and honor the service, achievements, and sacrifices of U.S. Armed Forces who fought on foreign soil; however, a recent decision was made by the ABMC, a federal commission, to end that service. This bill would formally create the gravesite flower program and ensure the long-term availability of the service to loved ones and those who honor our veterans.

Even though DAV does not have a specific resolution to address the management of overseas commemorative cemetery and memorial programs, DAV has no objection to the passage of the Flowers for Fallen Heroes Act of 2024 to honor the service, achievements, and sacrifices of U.S. Armed Forces who fought on foreign soil.

H.R. 8854, Ensuring Veterans' Final Resting Place Act of 2024

H.R. 8854, the Ensuring Veterans' Final Resting Place Act of 2024, would allow the provision of certain additional burial benefits for individuals for whom an urn or plaque is furnished. This bill would ensure that the families of deceased veterans are not constrained when deciding the manner in which their loved one is laid to rest.

This legislation, specifically, allows a veteran's survivor to have their loved one interred at a VA National Cemetery at a later date if they cover the costs of the urn or plaque, as initially received from the VA.

DAV does not have a specific resolution to provide additional burial benefit options however, we appreciate the intent of the Ensuring Veterans' Final Resting Place Act of 2024, which would allow a veteran's family to inter their loved one in a VA National Cemetery, even if they previously opted for an urn or plaque. This bill gives veteran families the flexibility to make the best burial decision for their loved one's final resting place. DAV would not object to its passage.

H.R. 8879, Improving VA Training for Military Sexual Trauma Claims Act

This legislation would require VA to provide employees who process claims related to military sexual trauma additional sensitivity training. It would also require added training for contracted health care professionals who conduct compensation and pension exams for claimed conditions due to military sexual trauma. Currently, there is

no requirement for such training which increases the likelihood the veteran may be retraumatized as a result of the process.

This legislation would also expand the duty to assist in obtaining the service personnel record and service medical record of the claimant. Currently, VA is only obligated to make such efforts for private medical records.

In accordance with DAV Resolution No.228, DAV supports this legislation to improve the claims process and require all VA and community care network providers offering MST-related treatment offering such care, to receive specialized training in addressing the needs of individuals who have experienced sexual assault.

H.R. 8880, Simplifying Forms for Veterans Claims Act

Far too often, veterans, dependents and survivors struggle with navigating the confusing mountain of forms that need to be completed in order to file and receive benefits from the VA. DAV's national benefits advocates have heard from clients on how difficult it is to complete some of the required forms for earned benefits.

H.R. 8880 would require the VA to enter into an agreement with a federally funded research and development center (FFRDC) for an assessment of the forms that VA sends to claimants. The FFRDC that enters into an agreement with the VA would be required to provide a written assessment of their findings concerning the forms released to claimants. The VA would be required to report to Congress concerning the findings from the FFRDC assessment and would have two years to implement the recommendations.

The number of claims and appeals filed each year is growing and the complexity of these claims and appeals is increasing. The Veterans Benefits Administration (VBA) has reached out to veterans service organizations accredited to represent veterans in the claims process for assistance in reforming its claims processing system and the letters it send to claimants.

In accordance with DAV Resolution No. 220, DAV fully supports H.R. 8880, as it will strengthen testing and quality control to ensure that veterans, dependents and survivors get the assistance they require when completing VA forms for earned benefits.

H.R. 8881, Rural Veterans' Improved Access to Benefits Act of 2024

H.R. 8881, the Rural Veterans' Improved Access to Benefits Act of 2024, would allow VA disability examinations to be conducted by non-Department physicians under contracts and expand the categories of providers who can perform cross-state disability exams. The bill would also require the VA to establish a mechanism for providers to submit evidence that a veteran brings with them to the examination to the VA.

VA often relies on disability medical examinations to determine whether veterans are eligible for disability compensation. Two groups of disability medical examiners conduct these exams: examiners employed by the Veterans Health Administration (VHA) and examiners working for vendors contracted by the Veterans Benefits Administration (VBA). These examiners, collectively, conduct more than 1 million disability exams annually.

Under license portability, a VBA-contracted examiner licensed in one state may legally conduct an exam in another state in which they are not licensed. The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law 116-315) granted temporary license portability for VBA-contracted nurse practitioners, physician assistants, audiologists, and psychologists conducting veteran's disability exams. VBA contracted examiners who are physicians have had permanent license portability since 2016. All VHA examiners were granted permanent license portability specifically for telehealth exams in 2018, according to VHA officials.

Leveraging the temporary expansion of license portability increased VA's capacity to provide exams across state lines through telehealth and in-person exams with the use of mobile clinics to conduct disability exams. The Government Accountability Office, GAO-23-105787, VA noted vendors could temporarily station individual examiners in states other than where they were licensed. VBA and vendors reported that the temporary expansion of license portability helped expand their exam reach and increased veterans' access to specialists and experienced examiners.

Vendors used expanded license portability to send examiners to rural and high-need areas that did not have enough examiners to meet local demand for disability exams, according to Government Accountability Office interviews, conducted in GAO - 23-105787 report. License portability allowed them to continue serving veterans when natural disasters disrupted the availability of examiners in the affected states. Expanded license portability also allowed vendors to help serve incarcerated veterans. Reaching these veterans historically posed a challenge because not all examiners are willing to physically enter a prison, and license portability allowed them to use examiners willing to do so.

The temporary expansion of license portability increased access to specialists needed to perform certain types of disability exams, which allowed contracted psychologists to conduct exams for veterans living in other states, expanding access to mental health exams. Contract psychologists took on more mental health exams because of the temporary expansion so that contracted psychiatrists could focus on exams related to traumatic brain injuries, for which there is typically less specialty capacity nationwide.

Expansion of license portability has proven to be useful in not only providing health care but has also be beneficial in assisting veterans in obtaining timely disability examinations for their pending disability claims. License portability must continue to be leveraged and utilized when needed for both examination and treatment purposes.

The VA is required to exercise its “duty to assist” in the development of a claimant’s claim for VA benefits. VA must make reasonable effort to assist to obtain VA medical records, military service records, other types of federal records and private medical records, like reports from a non-VA hospital or from private health care providers, which should also include additional records, documents and/or lay statements the claimant may provide the VA contractor. VA must ensure that VA contractors can forward those records, documents and/or lay statements to the veterans claims folder. DAV recommends that VA provide contractors the guidance to accept and upload additional records claimants may present in support of their claims using Veterans Benefits Management System (VBMS) or through the Quick Submit Benefits Upload Service.

DAV supports H.R. 8881, the Rural Veterans’ Improved Access to Benefits Act of 2024 as it would address the need to provide timely disability examinations for veterans claims and the ability to submit records through the compensation and pension examination process to include documents and/or lay statements from the veteran to the VA contractor to be forwarded to VA in support of their claim.

H.R. 8910, Dayton National Cemetery Expansion Act of 2024

H.R. 8910, the Dayton National Cemetery Expansion Act of 2024, would require the VA to enter into an agreement with the Montgomery County Land Bank to carry out the transfer of land near Dayton National Cemetery to the VA.

Despite not having a resolution that calls for specific locations for land acquisition to expand National Cemeteries, DAV has no objection for NCA to expand and acquire needed land to offer reasonable access to burial options for our nation’s veterans, whether it be in a national cemetery or a VA-grant funded state or tribal veterans’ cemetery.

Draft bill, Modernizing All Veterans and Survivors Claims Processing Act

This draft legislation would allow VBA the ability to use an automation tool to assist with claims development, to include retrieval of service or health records, evidence relevant to the claim, automated decision support, information sharing between federal agencies and assist in generating correspondence for claims.

This legislation would also require the VA to furnish a report concerning the use of the automation tools to other subdivisions of the VA, to include the Pension and Fiduciary Service of VBA, Education Service, Program Offices, Debt Management and the Board of Veterans’ Appeals.

DAV fully supports this draft legislation in accordance with DAV Resolution No. 220, which calls for Congress and VBA ensure that all proposals to streamline and automate the claims development and rating process fully protect veterans’ rights and

that automated rating processes, such as automated decision letters, provide sufficient and specific information to inform veterans and their advocates about the reasons and bases for rating decisions.

Draft bill, Board of Veterans Appeals' Attorney Restoration and Backlog Reduction Act

This draft legislation, the Board of Veterans Appeals' Attorney Restoration and Backlog Reduction Act, would reform and enhance the pay of Board of Veterans' Appeals (BVA) attorneys for recruitment and retention and to increase the decision quality and claims processing speed of the Board. The Chairman, Vice Chairman, and members of the Board would be permitted, specifically, to hire non-supervisory staff attorneys as necessary to assist with the work of the BVA. The full performance level for such non-supervisory board staff attorneys would be paid at Grade 15 of the General Schedule.

DAV has long called on Congress and the VA to support significant and meaningful reforms aimed at addressing the growing backlog of VA claims and appeal processing. A key measure in modernizing these processes is providing the BVA with adequate resources to better support its judges. By establishing an internship program and allowing the hiring of entry-level attorneys, the Board of Veterans Appeals' Attorney Restoration and Backlog Reduction Act, could potentially improve the Board's ability to hire and retain qualified attorneys to help address the backlog of appeals, which DAV continues to support.

DAV has no specific resolution to address pay and benefits for newly hired BVA attorneys and therefore takes no position on this bill; however, we note that qualifications along with performance and quality measures should drive what pay, benefits or incentives would be afforded to an individual for recruitment and retention purposes.

Draft bill, VA Insurance Improvement Act

This legislation would expand the current Service-Disabled Veterans Insurance (S-DVLI) program furnished by VA. Currently, the program issues whole-life policies in increments of \$10,000, not to exceed \$40,000 to service-disabled veterans who applied prior to turning 81 years old. To be eligible for the insurance policy, the veteran must have been granted a service-connected disability within the preceding two years. Totally disabled veterans receive a premium waiver for the first \$10,000 of coverage.

The VA Insurance Improvement Act would remove the service-disabled requirement and expand the life insurance program to include all veterans. It would also change the name of the program to "Veterans Affairs life insurance." This bill would also make some changes to the reimbursement of administrative costs for the Veterans' Mortgage Life Insurance program. It would also include Space Force members to be eligible for the Traumatic Service Group Life Insurance.

First, we have concern that striking the service-disabled requirement for life insurance is that the amount of resources needed to include all veterans could potentially cripple this program. Service-disabled veterans have an increased risk of mortality and are more likely to need this beneficial program. While we are not opposed to all veterans having access to life insurance, we want to ensure the already existing benefit continues to be accessible for our membership of wartime service-disabled veterans. Second, DAV has a resolution that supports legislation to reform and improve S-DVLI by providing a waiver for all premiums to totally disabled veterans and increase the maximum amount of coverage allowed.

Lastly, DAV supports the inclusion of Space Force Guardians to be eligible for Traumatic Servicemembers Group Life Insurance (TSGLI).

Draft bill, Veterans' Burial Improvement Act

This draft legislation, the Veterans' Burial Improvement Act would make certain improvements in the laws administered by the VA relating to memorial affairs. Specifically, this bill would allow for certain burial benefits for spouses and children who predecease members of the armed forces serving on active duty; pay for transportation for deceased veterans, eliminate time limitation on certain burial benefits for medal of honor recipients, provide group burial markers, and burial or interment of the spouses and dependent children of such veterans.

DAV has no resolution that addresses these specific issues; however, we would not object to the passage of the Veterans' Burial Improvement Act.

Draft bill, Veterans 2nd Amendment Restoration Act

This draft legislation, the Veterans 2nd Amendment Restoration Act would restrict the VA from transmitting to any entity in the DOJ, for use by the NICS, solely because of a determination by VA to pay benefits to a fiduciary, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary is a danger to themselves or others.

In 1998, the Bureau of Alcohol, Tobacco and Firearms adopted a new regulation that defined "mental defective" to include someone who "lacks the mental capacity to contract or manage their own affairs due to injury or disease."

For disabled veterans, this means that if the VA decides a veteran is mentally incompetent for financial reasons and appoints a fiduciary, a prohibiting record is created and sent to the Federal Bureau of Investigation, who enters the veteran's record in NICS, which contains names of people flagged and their access to firearms restricted.

VA had assumed that a decision by the VBA to find a veteran incompetent to manage their funds is equivalent to adjudication, as noted in the statute. According to the definition provided by the Legal Information Institute at Cornell Law School, “adjudication” is described as a “judicial ruling or decision” and “judicial proceeding.” The legal dictionary defines it as “the formal giving or pronouncing of a judgment or decree in a court proceeding.”

VA stopped its weekly reporting to the NICS in March 2024. The purpose of this interruption was to ensure that all reporting aligned fully with new legislative requirements outlined in the Consolidated Appropriations Act of 2024, which became Public Law (Public Law No: 118-42) on March 8th, 2024. This Act restricts VA from using appropriated funds to report a beneficiary unless there is an order or finding from a judicial authority that the beneficiary is a danger to themselves or others.

As of May 6, 2024, VA resumed this reporting in compliance with the new provisions contained in the Consolidated Appropriations Act of 2024. Under the law, reporting will be now limited to cases where the beneficiary is determined to be incompetent and where there is a court order or finding by a judicial authority that the individual is a threat to themselves or others. VA will also resume reporting for removal from the NICS database of individuals who have been determined to be competent and those who are deceased.

When a veteran is determined to be mentally incompetent, VA is required by law (the Brady Act) to notify the NICS. In passing the Consolidated Appropriations Act of 2024, Congress did not amend federal law prohibiting these veterans from possessing firearms or ammunition; however, it limited the VA’s ability to continue reporting to NICS in certain cases.

DAV does not have a resolution specific to support or oppose this draft legislation and takes no formal position on the bill. However, we remain steadfast in our belief in the protection of all veterans’ due process rights guaranteed by statute.

Draft bill, Safeguarding Veterans 2nd Amendment Rights Act

This draft legislation, the Safeguarding Veterans 2nd Amendment Rights Act, would prevent the use of unconstitutional gun confiscation laws against veterans by an officer or employee of the VA, in the course of their duties. Specifically, the employee could not initiate, participate in, or advocate for the removal of a firearm in any proceedings relating to a state gun confiscation law.

DAV has no resolution that addresses VA and gun confiscation laws and takes no position on this draft bill.

Draft bill, Preserving Veterans' Legacy Act of 2024

This draft legislation, the Preserving Veterans' Legacy Act of 2024, would make certain improvements in the laws administered by the VA Secretary relating to burials.

This bill would extend authority for burial of spouses and dependent children who predecease veterans and active-duty members of the armed forces, provide permanent authority to the National Cemetery Administration (NCA) to inter eligible spouses and dependent children into VA National Cemeteries and allow NCA to provide a group burial marker for veterans buried in a group interment in lieu of individual headstones for each eligible individual.

DAV understands that the ability of veterans and military spouses to be interred together represents the ultimate honor of both the service of the individual, and the sacrifice and support of their spouse and children in life. DAV has no specific resolution on this issue however, we have no objection to honoring our veterans, their spouses and/or eligible dependent children to be laid to rest together.

Draft Bill, Survivor Benefits Update Act

This draft legislation would extend the delimiting date for benefits for surviving spouses of Persian Gulf War veterans by ten years and one day after the termination date of the war. Currently, the surviving spouse must have been married to the veteran before January 1, 2001 for one year or more, or for any for any period of time if a child was born of the marriage, or was born to them before the marriage.

In accordance with DAV Resolution No. 241, DAV supports this provision to improve and reform dependent indemnity compensation (DIC) benefits.

This draft bill would also modify the processing of Survivor Benefits Claims by removing the requirement (from shall to may) for VBA to consider a claim for death pension, accrued benefits and DIC. Currently, all three benefits must be considered when a surviving family member submits a claim for DIC.

DAV opposes this provision in the bill and urges the Subcommittee to reconsider the proposed change.

Mr. Chairman, this concludes my testimony.

Prepared Statement of Healthcare Leadership Council

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee: The Healthcare Leadership Council supports H.R. 8881 – a bill to amend title 38, United States Code, to permanently authorize the performance of Department of Veterans Affairs disability examinations by non-Department physicians pursuant to contracts, and for other purposes.

HLC is an association of CEOs and C-suite executives from all sectors of healthcare working to shape the future of the U.S. healthcare system. HLC is the exclusive forum for the Nation’s healthcare industry leaders to lead on major, sector-wide issues, generate innovative solutions to unleash private sector ingenuity, and advocate for policies to improve our Nation’s healthcare delivery system. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors/wholesalers, post-acute care providers, homecare providers, group purchasing organizations, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach.

The shortage of healthcare providers is a longstanding issue nationwide. This challenge is often more pronounced for service members and military families residing in remote areas. Therefore, one of the first major expansions of provider licensure occurred when Congress passed the Veterans E-Health and Telemedicine Support (VETS) Act of 2017, which allowed licensed health care professionals of the Department of Veterans Affairs (VA) to practice using telemedicine at any location in any State regardless of where the professional or patient is located if the covered health care professional is using telemedicine to provide VA medical or health services. By removing State medical licensure requirements for U.S. Department of Veterans Affairs (VA) physicians, VA policies allow a Federal employee to hold a license in one State and practice in any jurisdiction. In the first year under VETS, more than 900,000 veterans used telehealth to access services, a 17 percent increase. Two-thirds of services were for tele-mental health visits. In November 2020, the VA issued an interim final rule further confirming its authority under the VETS Act to allow VA health care professionals to practice their professions “consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification, or other requirements that unduly interfere with their practice.”

Nearly 4 years after the VETS Act was implemented, workforce shortages and access challenges persist. HLC urges the Subcommittee here and Congress subsequently to enact H.R. 8881 to build on the improvements made and extend these same flexibilities and practice privileges to all health and medical service providers, but especially to those contractors who serve Veterans and Servicemembers. Our nation’s veterans have benefited from the flexibilities afforded to them under the VETS Act in accessing VA physicians through telehealth; however we urge the Subcommittee and Congress to leverage additional opportunities to alleviate the barriers that healthcare workforce shortages and underserved geographic locations continue to pose.

This issue of license portability has also been addressed in statute for uniformed personnel, government employees, the Department of Defense’s Military & Family Life Counselors, and the Department of Homeland Security contract healthcare providers. Unfortunately, many healthcare professionals involved in the VA’s medical disability exam program are currently restricted from providing medical services in states where they are not specifically licensed. This restriction can exacerbate the backlog of medical exams, thereby delaying Veterans’ access to their disability benefits.

We know that Congress expanding license portability to more healthcare providers would bring several significant benefits including:

1. **Increased Access to Healthcare:** License portability reduces barriers to providing care in underserved or rural areas where there might be a shortage of healthcare professionals.
2. **Faster Response to Emergencies and Disasters:** During emergencies, such as natural disasters or public health crises, healthcare providers from other states can quickly and efficiently help without delays in license approval processes.
3. **Efficiency and Cost-Effectiveness:** Currently, healthcare providers face administrative burdens and costs associated with obtaining multiple licenses if they want to practice in more than one State. License portability drives down costs by streamlining this process.

4. **Facilitation of Telehealth:** License portability enables healthcare providers to offer services across State lines without the need for multiple licenses, thereby expanding access to telehealth services.

5. **Professional Mobility and Flexibility:** Healthcare professionals often move for personal or professional reasons. License portability supports their mobility by allowing them to continue practicing without interruption or delay due to the need to obtain a new license.

6. **Uniform Standards:** While states maintain the authority to set their own scopes of practice, efforts toward license portability can encourage greater alignment and standardization of licensing requirements across states, which can enhance consistency and quality of care.

7. **Workforce Flexibility:** License portability enables healthcare organizations to recruit and retain qualified professionals from other states, enhancing workforce flexibility and addressing local healthcare needs more effectively and easily.

As the Nation moves toward enhancing the mobility of healthcare professionals, it is essential to address barriers that hinder our ability to manage public health crises and the Veterans disability claims backlog. The VA needs a system that facilitates the mobility of healthcare professionals to respond to Veterans needs wherever they arise. This will ensure that Veterans receive timely access to their benefits and healthcare.

Prepared Statement of National Association of Counties



**STATEMENT FOR THE RECORD
ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES**

**IN RESPONSE TO "SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL
AFFAIRS LEGISLATIVE HEARING"**

**DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

**JULY 10, 2024
WASHINGTON, D.C.**



Dear Chairman Luttrell and Ranking Member Pappas:

On behalf of the National Association of Counties (NACo), the only organization representing the nation's 3,069 counties, parishes, and boroughs, I write to thank you for the opportunity to submit comments in support of the bipartisan *Simplifying Forms for Veterans Claims Act (H.R. 8880)* and the *Improving VA Training for Military Sexual Trauma Claims Act (H.R. 8879)* to be considered during the Subcommittee's July 10 legislative hearing.

Regardless of population size, geography and available resources, counties are deeply invested in our residents' health and well-being. Every day, we provide services that help vulnerable individuals and families thrive, functioning as an integral part of the federal, state and local partnership in veteran service delivery. Whether assisting veterans with pension and disability benefits, housing, employment, education, or providing mental health services that treat trauma and prevent suicide in partnership with the U.S. Department of Veterans Affairs (VA), counties are deeply invested in the health and well-being of our nation's veterans.

In 29 states, county veteran service officers (CVSOs) work to secure benefits for veterans by collaborating with the VA, state Departments of Veterans Affairs and Veterans Service Organizations to file VA claims. CVSOs are local county employees who are nationally accredited by the VA to prepare, present, and prosecute VA claims and are often a veteran's first point of contact in the community for accessing services. They assist veterans in accessing a range of benefits, including service-connected benefits, enrollment in VA health care, VA home loans, education benefits and available job placement assistance. Veterans are not always aware of the benefits available to them, and CVSOs are often the first to inform them about their eligibility. This relatively small workforce is responsible for successfully processing more than \$50 billion in direct compensation, pension, health care and other benefits for veterans each year.

Among these services, CVSOs assist veterans with filing disability claims for physical and mental health conditions related to Military Sexual Trauma (MST). This workforce has witnessed first-hand just how difficult this process is to navigate and how it can compound trauma for survivors. Even though thousands of United States military personnel experience MST every year, many do not receive—or even attempt to apply for—the benefits to which they are entitled due to the retraumatizing nature of the claims process, inconsistent sensitivity training for benefits staff and unrealistic evidentiary standards.



Counties applaud the *Improving VA Training for Military Sexual Trauma Claims Act*, which takes important steps to improve the claims process by requiring the VA Secretary to create a plan to improve MST training for Contracted Disability Compensation Examiners and improve quality assurance to prevent retraumatization during the examination process. The legislation would also ensure annual, continuously updated training for all Veterans Benefits Administration employees and require VA to automatically obtain all service and personnel medical records for PTSD-based claims to reduce red tape for claimants. These reforms will help CVSOs in their mission to ensure that survivors of MST can meet their immediate and long-term health needs, improving their quality of life and helping to facilitate their recovery and reintegration into civilian life.

Additionally, even with the assistance of CVSOs, many veterans are facing long wait times for their claims to be processed as the VA experiences backlogs. In a report from VA in December 2023, the Department reported that more than 368,00 cases are backlogged, meaning that they have been pending for over 125 days. Counties support the *Simplifying Forms for Veterans Claims Act*, which would direct VA to enter into an agreement with a federally funded research and development center to assess claimant forms and offer recommendations on how these forms can be clarified and improved, ultimately making the process more efficient for veterans and CVSOs.

Thank you for your consideration, and we look forward to working with you to ensure Congress quickly passes both of these bipartisan measures. Please direct any follow-up questions to Rachel Mackey, NACO's Legislative Director of Veterans and Military Affairs: rmackey@naco.org.

Sincerely,



Matthew D. Chase
Executive Director/Chief Executive Officer



**Prepared Statement of Georgetown University Center on Education and
The Workforce****Summary**

The Total Disability based on Individual Unemployability (TDIU) veteran compensation program provides a single flat payment to veterans experiencing total disability connected with their service. We suggest modifying this compensation by connecting the veteran's MOS to the civilian equivalent to better reflect what disabled veterans could have earned in the civilian labor force.

The attached earnings matrix details median civilian earnings (including the earnings of working veterans) by 3 levels of education (high school, middle skills, and a bachelor's degree or higher) within 22 major occupational groups. This approach documents that in 30 of 66 possible cases, the current TDIU payment is less than the lost potential earnings in the civilian occupation.

We further extend this analysis to account for career advancement. By splitting the workforce into age groups, we demonstrate that in 40 of the 66 cases, the median earnings of older workers (ages 45–54) exceed the current TDIU payment. This finding suggests that earnings growth should be considered when contemplating modified compensation. We propose a simple adjustment to account for earnings growth, which is to increase the TDIU payment annually by 1 percent above the COLA. This approach would raise the monthly payment from \$3,737 for a 25-year-old to \$4,840 for a 50-year-old.

Additional considerations

The approach of linking the MOS to the equivalent civilian occupation is limited by the degree to which each MOS can be linked. We believe that additional research is needed to determine whether a disproportionate share of disabilities occur among veterans whose MOS cannot be linked to a civilian occupation. We also suggest that civilian legal cases can provide guidance on disability compensation. Finally, we hold that the current payment should be treated as a floor for compensation. The current monthly base payment amount of \$3,737—equivalent to \$56,000 pretax annual earnings—may be reasonable for an individual, but may not be adequate to support a veteran’s household.

Discussion

Approach: We suggest adjusting compensation to account for lost earnings using the following approach: we assume that the service person, if not disabled, would have entered the civilian labor force and worked full-time full-year (FTFY) in an occupation aligned to their military occupational specialty (MOS). Had the veteran not been disabled, they would have garnered similar earnings to those observed for all 25-to-64-year-old FTFY workers in that occupation in the civilian labor force.¹ We assume that the MOS is mappable to the civilian occupation via efforts such as COOL, which the DOD uses to assist reentering veterans.

¹ For veterans who claim TDIU benefits after working in the civilian labor force, their prior civilian occupation and earnings can be used directly (with an earnings growth adjustment based on their age) instead of mapping their MOS.

To further explore this approach, we have created a matrix of monthly median earnings by 22 major occupations and by 3 education levels: high school diploma, middle skills (some college no degree, which implicitly includes certificates, and associate's degrees), and bachelor's degree or higher. This matrix (Table 1 of the attached) is populated by median earnings (66 medians); it is possible to be more granular, but we are not certain that more specificity will be informative as we believe that roughly 50 percent of the MOS categories will not meaningfully map to a civilian equivalent.

For the purposes of comparison, we adjust the current monthly TDIU payment of \$3,737 upwards to \$4,709 to reflect that it is tax exempt while the median monthly earnings for civilian occupations in the American Community Survey are subject to taxes. We assume an average tax rate of 26 percent to make this adjustment.² (We also suggest making further adjustments by local cost of living.)

We then compare the adjusted disability payment to the gross earnings in the matrix. This analysis demonstrates that prevailing earnings in 30 of the 66 education/occupation groups exceed the \$3,737 payment (adjusted to \$4,709) and could justify a higher compensation. These 30 education/occupation groups are distributed as follows: 5 groups at the high school level, 10 groups at the middle-skills level, and 15 groups at the bachelor's degree or higher level.

² We assume [15 percent federal taxes](#) and [11.2 percent state and local taxes](#).

Adjusting for earnings growth: As a second step in this analysis, we further adjust for lost potential earnings from expected earnings growth. In this part of our analysis, we estimate earnings growth by education and occupation for comparison with the flat TDIU payments. We calculate this estimate by comparing the earnings of workers ages 25–34 to those of workers ages 45–54 (Table 2 of the attached). This analysis demonstrates that while median earnings exceed \$4,709 for workers ages 25–34 in 15 education/occupation groups, that number rises to 40 education/occupation groups for working veterans ages 45–54.

The 40 (of 66) combinations for workers ages 45–54 in which earnings exceed \$4,709 include 9 (of 22) education/occupation groups at the high school level, 13 (of 22) education/occupation groups at the middle-skills level, and 18 (of 22) education/occupation groups at the bachelor’s degree or higher level. The 25 education/occupation groups in which the monthly median earnings of workers ages 45–54 exceed \$4,709 and the median monthly earnings of workers ages 25–34 **do not** exceed \$4,709 include 7 education/occupation groups at the high school level, 11 education/occupation groups at the middle-skills level, and 7 education/occupation groups at the bachelor’s degree or higher level.

This earnings growth analysis (Table 3 of the attached) suggests 1 percent growth in inflation-adjusted earnings per year for most of the education/occupation groups, which is based on observed annual growth. If we were to adjust the TDIU payment by 1 percent

per year, by age 50, a veteran disabled at age 25 would see the \$3,737 payment grow to \$4,840.

Further considerations: We want to be clear that this analysis relies on a simple counterfactual based on prevailing wages in specific occupations and does not make any complex adjustments for loss of livelihood. We suggest that further research is needed to understand what precedent exists in civilian injury cases, which is the most relevant parallel we can think of to address the question of how to adjust for disability. This investigation will be particularly important given our expectation that a significant share of disabilities occur in non-mappable occupations.

Lastly, we want to express concern that this matrix could be used to reduce payments for workers in 36 education/occupation groups if the career median is used and in 26 groups if the growth adjustment is used. CEW takes the position that \$3,737 is an absolute minimum monthly payment for loss of economic potential and should, at the very least, be subject to COLA.

Table 1 (page 1 of 3): TDIU comparison to high school earnings in civilian occupations

Education level	Occupation	Monthly median (\$)	Difference from tax-adjusted TDIU (4709) (\$)	Do civilian earnings exceed tax-adjusted TDIU (1=yes)
High school diploma	Management	5,183	474	1
	Business and financial operations	4,834	125	1
	Computer and mathematical	5,943	1,234	1
	Architecture and engineering	5,503	794	1
	Life, physical, and social sciences	4,880	171	1
	Community and social service	3,619	(1,090)	0
	Legal	4,347	(362)	0
	Education, training, and library	2,712	(1,997)	0
	Arts, design, entertainment, sports, and media	4,428	(281)	0
	Healthcare practitioners and technical	3,686	(1,023)	0
	Healthcare support	2,849	(1,860)	0
	Protective service	4,351	(358)	0
	Food preparation and serving related	2,513	(2,196)	0
	Building and grounds cleaning and maintenance	2,849	(1,860)	0
	Personal care and service	2,747	(1,962)	0
	Sales and related	3,671	(1,038)	0
	Office and administrative support	3,487	(1,222)	0
	Farming, fisheries, and forestry	3,189	(1,520)	0
	Construction and extraction	4,467	(242)	0
	Installation, maintenance and repair	4,683	(26)	0
Production	3,813	(896)	0	
Transportation and material moving	3,664	(1,045)	0	

Table 1 (page 2 of 3): TDIU comparison to middle-skills earnings in civilian occupations

Education level	Occupation	Monthly median (\$)	Difference from tax-adjusted TDIU (4709) (\$)	Do civilian earnings exceed tax-adjusted TDIU (1=yes)
Middle skills	Management	5,862	1,153	1
	Business and financial operations	5,210	501	1
	Computer and mathematical	6,460	1,751	1
	Architecture and engineering	6,222	1,513	1
	Life, physical, and social sciences	5,216	507	1
	Community and social service	3,657	(1,052)	0
	Legal	4,574	(135)	0
	Education, training, and library	2,721	(1,988)	0
	Arts, design, entertainment, sports, and media	5,067	358	1
	Healthcare practitioners and technical	4,893	184	1
	Healthcare support	3,163	(1,546)	0
	Protective service	5,784	1,075	1
	Food preparation and serving related	2,869	(1,840)	0
	Building and grounds cleaning and maintenance	3,252	(1,457)	0
	Personal care and service	3,128	(1,581)	0
	Sales and related	4,494	(215)	0
	Office and administrative support	3,744	(965)	0
	Farming, fisheries, and forestry	3,595	(1,114)	0
	Construction and extraction	5,185	476	1
	Installation, maintenance and repair	5,330	621	1
Production	4,393	(316)	0	
Transportation and material moving	4,019	(690)	0	

Table 1 (page 3 of 3): TDIU comparison to BA+ earnings in civilian occupations

Education level	Occupation	Monthly median (\$)	Difference from tax-adjusted TDIU (4709) (\$)	Do civilian earnings exceed tax-adjusted TDIU (1=yes)
Bachelor's degree or higher	Management	9,033	4,324	1
	Business and financial operations	7,876	3,167	1
	Computer and mathematical	9,481	4,772	1
	Architecture and engineering	9,488	4,779	1
	Life, physical, and social sciences	7,550	2,841	1
	Community and social service	5,031	322	1
	Legal	10,461	5,752	1
	Education, training, and library	5,352	643	1
	Arts, design, entertainment, sports, and media	6,621	1,912	1
	Healthcare practitioners and technical	8,017	3,308	1
	Healthcare support	3,821	(888)	0
	Protective service	7,227	2,518	1
	Food preparation and serving related	3,280	(1,429)	0
	Building and grounds cleaning and maintenance	3,611	(1,098)	0
	Personal care and service	3,733	(976)	0
	Sales and related	7,663	2,954	1
	Office and administrative support	4,673	(36)	0
	Farming, fisheries, and forestry	4,223	(486)	0
	Construction and extraction	5,212	503	1
	Installation, maintenance and repair	5,550	841	1
	Production	5,064	355	1
	Transportation and material moving	4,600	(109)	0

Table 2 (page 1 of 3): TDIU comparison with earnings-growth-adjusted high school earnings

Education level	Occupation	Median earnings of workers ages 25–34 (\$)	Median earnings of workers ages 45–54 (\$)	Annual growth	Difference from \$4,709 for workers ages 25–34 (\$)	Difference from \$4,709 for workers ages 45–54 (\$)	Do median earnings exceed \$4,709 for workers ages 45–54? (1=yes)	Do median earnings exceed \$4,709 for workers ages 25–34? (1=yes)
High school diploma	Architecture and engineering	4,721	6,035	1%	12	1,326	1	1
	Arts, design, entertainment, sports, and media	3,603	4,784	1%	(1,106)	75	1	0
	Building and grounds cleaning and maintenance	2,702	2,994	0%	(2,007)	(1,715)	0	0
	Business and financial operations	4,060	5,382	1%	(649)	673	1	0
	Community and social service	3,349	3,777	0%	(1,360)	(932)	0	0
	Computer and mathematical	4,861	6,794	1%	152	2,085	1	1
	Construction and extraction	3,827	4,954	1%	(882)	245	1	0
	Education, training, and library	2,583	2,833	0%	(2,126)	(1,876)	0	0
	Farming, fisheries, and forestry	2,946	3,349	0%	(1,763)	(1,360)	0	0
	Food preparation and serving related	2,395	2,549	0%	(2,314)	(2,160)	0	0
	Healthcare practitioners and technical	3,333	3,892	1%	(1,376)	(817)	0	0
	Healthcare support	2,702	2,994	0%	(2,007)	(1,715)	0	0
	Installation, maintenance and repair	4,053	5,071	1%	(656)	362	1	0
	Legal	3,992	4,504	0%	(717)	(205)	0	0
	Life, physical, and social sciences	4,369	5,224	1%	(340)	515	1	0
	Management	4,092	5,988	1%	(617)	1,279	1	0
	Office and administrative support	2,994	3,848	1%	(1,715)	(861)	0	0
	Personal care and service	2,695	2,792	0%	(2,014)	(1,917)	0	0
	Production	3,493	4,072	1%	(1,216)	(637)	0	0
	Protective service	3,603	4,871	1%	(1,106)	162	1	0
	Sales and related	2,994	4,143	1%	(1,715)	(566)	0	0
	Transportation and material moving	3,144	4,092	1%	(1,565)	(617)	0	0

Table 2 (page 2 of 3): TDIU comparison with earnings-growth-adjusted middle-skills earnings

Education level	Occupation	Median earnings of workers ages 25–34 (\$)	Median earnings of workers ages 45–54 (\$)	Annual growth	Difference from \$4,709 for workers ages 25–34 (\$)	Difference from \$ 4,709 for workers ages 45–54 (\$)	Do median earnings exceed \$4,709 for workers ages 45–54? (1=yes)	Do median earnings exceed \$4,709 for workers ages 25–34? (1=yes)
Middle skills	Architecture and engineering	4,976	7,206	1%	267	2,497	1	1
	Arts, design, entertainment, sports, and media	3,992	5,845	1%	(717)	1,136	1	0
	Building and grounds cleaning and maintenance	2,973	3,410	0%	(1,736)	(1,299)	0	0
	Business and financial operations	4,306	5,988	1%	(403)	1,279	1	0
	Community and social service	3,333	3,882	1%	(1,376)	(827)	0	0
	Computer and mathematical	5,066	7,655	1%	357	2,946	1	1
	Construction and extraction	4,355	5,748	1%	(354)	1,039	1	0
	Education, training, and library	2,533	2,794	0%	(2,176)	(1,915)	0	0
	Farming, fisheries, and forestry	3,148	3,792	1%	(1,561)	(917)	0	0
	Food preparation and serving related	2,701	2,966	0%	(2,008)	(1,743)	0	0
	Healthcare practitioners and technical	4,092	5,489	1%	(617)	780	1	0
	Healthcare support	2,918	3,349	0%	(1,791)	(1,360)	0	0
	Installation, maintenance and repair	4,541	5,855	1%	(168)	1,146	1	0
	Legal	3,777	5,358	1%	(932)	649	1	0
	Life, physical, and social sciences	4,287	5,855	1%	(422)	1,146	1	0
	Management	4,504	6,988	1%	(205)	2,279	1	0
	Office and administrative support	3,261	4,155	1%	(1,448)	(554)	0	0
	Personal care and service	2,833	3,332	1%	(1,876)	(1,377)	0	0
	Production	3,827	4,790	1%	(882)	81	1	0
	Protective service	4,591	6,625	1%	(118)	1,916	1	0
	Sales and related	3,540	5,190	1%	(1,169)	481	1	0
	Transportation and material moving	3,349	4,497	1%	(1,360)	(212)	0	0

Table 2 (page 3 of 3): TDIU comparison of earnings-growth-adjusted BA+ earnings

Education level	Occupation	Median earnings of workers ages 25–34 (\$)	Median earnings of workers ages 45–54 (\$)	Annual growth	Difference from \$4,709 for workers ages 25–34 (\$)	Difference from 4,709 for workers ages 45–54 (\$)	Do median earnings exceed \$4,709 for workers ages 45–54? (1=yes)	Do median earnings exceed \$4,709 for workers ages 25–34? (1=yes)
Bachelor's degree or higher	Architecture and engineering	7,554	10,812	1%	2,845	6,103	1	1
	Arts, design, entertainment, sports, and media	5,194	7,554	1%	485	2,845	1	1
	Building and grounds cleaning and maintenance	3,399	3,603	0%	(1,310)	(1,106)	0	0
	Business and financial operations	6,332	8,982	1%	1,623	4,273	1	1
	Community and social service	4,306	5,489	1%	(403)	780	1	0
	Computer and mathematical	7,984	10,670	1%	3,275	5,961	1	1
	Construction and extraction	4,491	5,666	1%	(218)	957	1	0
	Education, training, and library	4,384	6,138	1%	(325)	1,429	1	0
	Farming, fisheries, and forestry	3,410	4,871	1%	(1,299)	162	1	0
	Food preparation and serving related	2,994	3,293	0%	(1,715)	(1,416)	0	0
	Healthcare practitioners and technical	6,305	9,008	1%	1,596	4,299	1	1
	Healthcare support	3,493	3,897	0%	(1,216)	(812)	0	0
	Installation, maintenance and repair	4,721	6,305	1%	12	1,596	1	1
	Legal	7,554	13,220	2%	2,845	8,511	1	1
	Life, physical, and social sciences	5,405	9,255	2%	696	4,546	1	1
	Management	6,698	10,978	2%	1,989	6,269	1	1
	Office and administrative support	4,053	4,990	1%	(656)	281	1	0
	Personal care and service	3,258	3,963	1%	(1,451)	(746)	0	0
	Production	4,491	5,289	1%	(218)	580	1	0
	Protective service	5,456	8,612	2%	747	3,903	1	1
	Sales and related	5,741	9,008	2%	1,032	4,299	1	1
	Transportation and material moving	3,897	4,910	1%	(812)	201	1	0

Table 3: One percent per year growth adjustment to TDIU payment

Initial payment (\$)	Age	Years after completing service	1% annual growth (\$)
3,737	25	1	3,774
	26	2	3,812
	27	3	3,850
	28	4	3,889
	29	5	3,928
	30	6	3,967
	31	7	4,007
	32	8	4,047
	33	9	4,087
	34	10	4,128
	35	11	4,169
	36	12	4,211
	37	13	4,253
	38	14	4,296
	39	15	4,339
	40	16	4,382
	41	17	4,426
	42	18	4,470
	43	19	4,515
	44	20	4,560
	45	21	4,605
	46	22	4,652
	47	23	4,698
	48	24	4,745
	49	25	4,792
	50	26	4,840

Prepared Statement of James Vollman

**House Veterans Affairs Committee
Subcommittee on Disability Assistance and Memorial Affairs**

Hearing on the Total Disability based on Individual Unemployability (TDIU) Program

Better Information on Veteran Success in the Labor Market

**Written Testimony of
James Vollman
Former Associate Assistant Secretary of Labor**

Abstract

Research on veteran employment and earnings outcomes can inform legislative efforts to make adjustments to the TDIU program. Program specific research can also allow policy makers to understand who is served in terms of military MOS and other factors.

The databases and analysis needed to do TDIU specific research can also answer broader outcomes questions for veterans served by a number of programs within the Veterans Benefits Administration.

Problem Statement

Generally, VA tends not to track veterans for outcomes outside of the medical side (and on the medical side it just follows normal medical practice). VA knows little about the employment outcomes of most veterans other than the relatively small group that uses Vocational Rehabilitation services and even then it is only the immediate outcome. VA does not know why certain veterans succeed and others do not. VA could know much more about each veteran they touch.

Research Framework for Understanding Veteran Success in the Labor Market

The proposed research would utilize administrative data that VA already collects supplemented, if necessary, by additional data maintained by the Department of Defense on each individual service member. That data would be matched with the employment and earnings data maintained by the Census Bureau through their Longitudinal Employer-Household Dynamics (LEHD) program. (That program gathers earning data from state unemployment insurance wage records, Office of Personnel Management data on federal employees and IRS data on self-employment, as well as age data from Social Security.) The LEHD data is indexed by Social Security Number allowing the integration of multiple data sets. Information derived from research using the LEHD data can only be released in statistical form following the disclosure rules that meet the standards of US Code Title 13.

What Could or Should Be Included in the VA Data Set to Be Matched with LEHD

In doing the studies, VA would need to mine its own administrative data for information on each veteran's use of VA benefits services (GI Bill including the number of semesters completed, the program of study and whether a degree or certificate was earned). Also VA would need to include the veteran's disability ratings and whether if they achieved a 100% rating through the schedule or TDIU. VA would need to gather as much information as possible about the characteristics of the men and women as they exited the military from their own records or Department of Defense sources— their ranks, MOSs, length of service, tours of duty in war zones, branch of service, education level at exit, and their scores on the Armed Services Vocational Aptitude Battery (ASVAB). That final data point may prove critical for success analysis because all military personnel are subjected to substantial pre-service testing and the results of those tests often guide their military careers.

Organizing the Research Cohorts

Because LEHD contains earnings data back into the 1990's, it would be useful for VA to organize the data in will utilize for the research into four cohorts based on the year the service member exited the military. The cohorts would include those who exited 5 years ago, 10 years ago, 15 years ago, and 20 years ago. Data would then be delivered to one of the Census Research Center for matching to the LEHD data set.

Research Output

The output would include two large buckets: one grouping related to the veterans disability ratings and their qualification for compensation either through the schedule or through TDIU, the second grouping looking at general outcomes unrelated to disability ratings based on their exit characteristics when leaving the military and their utilization of VA services.

Disability and TDIU Related Output

- MOS characteristics of those qualifying for TDIU.
- Earnings and employment outcomes of those with combat MOSs without direct civilian analogs, in general and by disability ratings and TDIU participation
- Earnings and employment outcomes for those receiving 100% disability compensation via the schedule or through TDIU.
- Earnings and employment outcomes for veterans broken out by level of disability ratings (10%, 20%, etc.)
- Earnings and employment outcomes for each category of disability rating, in general and then by severity of the disability.
- Earnings and employment outcomes by level and disability rating and utilization of VA education and employment services

General Veteran Success Output for Use in Targeting VA Services and Allowing Veterans to Make Informed Choices

- Earnings and employment outcomes base on various entry characteristics of the veterans
- Earnings and employment outcomes for those utilizing VA education and employment services versus those who do not, cross tabbed using their service exit characteristics.
- Earnings and employment outcomes for those using the GI Bill based on program of study and number of semesters completed.
- Earnings and employment outcomes based on ASVAB scores.
- Earnings and employment outcomes for those using educational services where the ASVAB score would predict likely success in the program of study and those where it does not.
- Earnings and employment outcomes based on industries where the veteran is employed.
- Earnings and employment outcomes based on the locality of the veterans.

Potential Use of the Outputs

For Legislation or Policy Changes

Congress may wish to make adjustments to programs based on the data outputs. Specifically, understanding the impact of combat MOSs on employment outcomes and TDIU utilization may allow for program refinements.

Likewise, understanding the earnings outcomes of those with 100% ratings by schedule and those by TDIU might suggest compensation adjustments for TDIU based on earnings loss compared to other veterans.

VA could use the data to adjust the ratings schedule where certain types of disabilities are found to have an outsized impact on earnings and employment outcomes.

For VA Program Design

Understanding which groups of veterans is more likely to fall through the cracks (in terms of lower than average earnings and employment outcomes) might suggest program changes to target those veterans for additional services perhaps as early their pre-separation Transition Assistance Program.

Understanding which programs of study generally and when in there are in line with the veteran's ASVAB scores generate the best earnings and employment outcomes might allow VA to counsel veterans using the GI Bill or VR&E programs to more effectively utilize the benefits.

Understanding the mix of VA services that generates the best earnings and employment outcomes for each type of veteran might allow VA to customize their program offerings to optimize veteran success.

For Veterans

Some of the same information that could be used by VA to make program adjustments would also be useful to the veterans themselves to allow them to make more informed choices in selecting programs of study in education programs and knowing which industries and localities generate better earning and employment outcomes for veterans like themselves.

Testimony submitted by

James Vollman
Former Associate Assistant Secretary of Labor
President of Advanced Workforce Systems

Prepared Statement of Veterans of Foreign Wars of the United States

Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide testimony regarding this pending legislation.

H.R. 6507, Mark Our Place Act

The VFW supports this bill that would eliminate a service era requirement, authorizing the Department of Veterans Affairs (VA) to furnish or replace a headstone, marker, or medallion for the grave of any eligible Medal of Honor recipient irrespective of dates of service. Current United States Code specifies the decedent must have served on or after April 6, 1917. We believe this legislation would ensure appropriate memorialization of all recipients of our Nation's highest award for valor.

H.R. 7729, Dennis and Lois Krisfalusy Act

The VFW supports this legislation that would authorize VA to provide a headstone, marker or burial receptacle for any eligible spouse or child buried in a national, State, or tribal veterans cemetery regardless of the date of death. Per current United States Code, eligible spouses and children who died before November 11, 1998, or who die after October 1, 2024, are ineligible for this benefit. Additionally, the bill would extend this benefit for another 10 years to October 1, 2034. This legislation would remove obstacles that currently prohibit memorializing eligible family members alongside their veteran or active duty beneficiary based on the family member's date of death.

The bill's namesakes, Dennis and Lois Krisfalusy, were a veteran and his spouse killed in a Mexico earthquake in 1985. In 2023, VA provided a memorial marker for Dennis; however, current statute prohibits VA from inscribing Lois' name on the marker.

H.R. 8792, To establish a flower ordering program for gravesites under the purview of the American Battle Monuments Commission

In 2015, the American Battle Monuments Commission (ABMC) discontinued the ABMC Flower Fund program it initiated in the wake of World War II to enable families to place flowers at overseas gravesites. Over the succeeding decades, with the advent of electronic ordering and payment websites, commercial florists subsumed this function, quickly and efficiently processing floral orders.

The VFW supports the reinstatement of this program with the modern upgrades the bill identifies. Specifically, we support ABMC creating a modern program with a secure, public-facing payment system that accepts credit cards and electronic funds transfers. We also concur with ABMC locating the best value vendors in proximity to the gravesites, which is a challenging task for purchasers located in America and other locations. ABMC marketing of the program should spur interest, and the annual reporting requirement would enable sufficient oversight. However, the VFW urges close attention to the effects of the increased workload, especially at small ABMC sites, and adequate financial and staffing resources.

H.R. 8854, To amend title 38, United States Code, to authorize the provision of certain additional burial benefits for individuals for whom an urn or plaque is furnished, and for other purposes

The VFW supports this legislation that allows interment in a national cemetery for decedents whose survivors initially opted to receive a VA-furnished commemorative plaque or urn if the survivors (or other non-VA entity) pay for the commemorative item. Current United States Code specifies that survivors must make an irrevocable choice of burial location or commemorative item, adding stress to an already tragic event. The VFW favors options for survivors to decide how to memorialize their loved ones.

H.R. 8874, To direct the Secretary of Veterans Affairs to report on expanding the use of certain automation tools in the Department of Veterans Affairs

The VFW supports this legislation that would direct VA to create a plan to aid benefits claims processing by disseminating suitable automation tools developed for the Veterans Benefits Administration's Compensation Service to other VA organizational subdivisions in a deliberate priority order. The bill would also promote modifying existing tools as necessary to increase their availability, functionality, and compatibility with as many subdivisions as possible.

The VFW supports VA exploiting technology to its fullest extent to automate rote processes and build a more responsive, customer-focused claims process. We also suggest that VA employ its enterprise project management office to the fullest extent possible to implement the provisions of this legislation, as this office was instrumental in efficiently administering the *Honoring our PACT Act of 2022*.

H.R. 8880, To direct the Secretary of Veterans Affairs to seek to enter into an agreement with a federally funded research and development center for an assessment of forms that the Secretary sends to claimants for benefits under laws administered by the Secretary, and for other purposes

Veterans deserve straightforward, clear communications from VA that they can understand on their own. The VFW supports this bill that would seek to revise the forms and letters VA sends to claimants to make them more understandable and better organized. Hiring a federally funded research and development center (FFRDC) that would collaborate with Veterans Service Organizations and other stakeholders during the revision process should yield clearer and more coherent products. However, VA would require sufficient funding to hire the FFRDC, commission the analysis, and implement recommendations prior to the 2-year deadline in order for the review to succeed.

H.R. 8881, To amend title 38, United States Code, to permanently authorize the performance of Department of Veterans Affairs disability examinations by non-Department physicians pursuant to contracts, and for other purposes

The VFW strongly supports this bill that would permanently authorize license portability for contracted health care professionals to perform VA disability examinations. The disability examination system has evolved and expanded over many years. In 1996, VA established a pilot program to allow contracted physicians to assist with disability examinations and granted temporary license portability. Since the fall of 2016, VA has transitioned from VA-conducted examinations in VA settings to contracted examinations in non-VA settings for nearly all disability examinations. Exceptions are examinations that VA personnel must specifically perform by law.

This legislation would build upon this program by making license portability permanent and expanding the categories of eligible health care professionals authorized to conduct disability examinations, pursuant to contract specifications. The resulting increase in available providers would benefit all veterans by accelerating the initial stage of the disability claims process, but it would particularly assist rural and tribal veterans who often have few medical options near their homes.

H.R. 8893, To amend title 38, United States Code, to make certain improvements in the laws administered by the Secretary of Veterans Affairs relating to burials, and for other purposes

The VFW supports this legislation to extend VA's authority to bury eligible family members who predecease their active duty or veteran beneficiary, and authorize VA to furnish a single headstone or marker for a group interment if each individual in the group is eligible for that benefit.

This bill would allow burying families together, regardless of date of death, alleviating the uncertainty of eligible family members' final resting places. It would also enable appropriate recognition and memorialization of a group killed in a single event. Additionally, this legislation would extend the ending date of both authorizations by 7 years to October 1, 2031. Without this bill, these authorities will expire on October 1, 2024.

H.R. 8910, To authorize the Secretary of Veterans Affairs to enter into an agreement with the Montgomery County Land Bank for the transfer of certain land near Dayton National Cemetery to the Department of Veterans Affairs, and for other purposes

Though this legislation would apply to a specific situation in Ohio, the VFW supports both this bill and the overarching concept of expanding VA-administered cemeteries when able. In this particular case, the VFW supports authorizing VA to enter into an agreement with a local bank for the transfer of a 58-acre parcel of land near the Dayton National Cemetery that would ultimately provide additional veteran and eligible family member burial spaces.

In 2018, the median age of the Nation's 18 million veterans was 65 years old. Considering that fact, coupled with the 71-year-old median age of the 6.4 million Vietnam War veterans, the VFW encourages VA to create a proactive, comprehen-

sive national cemetery land acquisition strategy to ensure satisfying the last wishes of these large and aging veteran cohorts.

Discussion Draft, To amend title 38, United States Code, to make certain modifications to the administration of benefits for survivors of veterans under the laws administered by the Secretary of Veterans Affairs, and for other purposes

The VFW supports this legislation except for Section 3 that would amend two critical portions of United States Code, Section 5101(b)(1) by substituting “may also be considered” for “shall also be considered” and “may be considered” for “shall be considered.” Under current law, an application for survivor benefits automatically constitutes a claim for most other related benefits, simplifying the process for claimants. The proposed bill would shift a considerable burden onto survivors to first accurately discern for which benefits they qualify and then to separately apply for each one, all while coping with a personal tragedy.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any Federal grants in Fiscal Year 2024, nor has it received any Federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.

Prepared Statement of Young Kim

Thank you, Chairman Luttrell and Ranking Member Pappas, for holding this legislative hearing.

I am excited to see H.R. 8879, the “Improving VA Training for Military Sexual Trauma Claims Act” discussed in today’s hearing.

Currently, the VA must help veterans filing disability benefits claims for military sexual trauma, or MST, gather evidence for their claims. However, these claims are hard to prove since service records do not usually confirm such incidents.

Unfortunately, VA claims processors and examiners do not have sufficient training to recognize indirect markers of MST or training to avoid forcing victims to relive their trauma. In fact, disability compensation examiners are only required to complete an outdated sensitivity training once every 5 years.

The Improving VA Training for Military Sexual Trauma Act would require that VA employees involved with MST claims complete annual training to identify evidence of MST claims and annual sensitivity training to avoid retraumatizing victims of MST.

Every year, the VA Secretary must update the training and submit a report to Congress, developing a plan to improve training and ensure that veterans are not retraumatized. The VA would be able to access all service records when a veteran files a disability compensation claim based on MST.

H.R. 8879 is a commonsense measure that ensures VA staff are prepared to provide veterans with the support and protection they deserve. Streamlining the MST claim process and improving VA training is a win for our veterans.

I thank the Committee for considering H.R. 8879 and Representative Budzinski for co-leading this bill with me.

Thank you, and I yield back.

Prepared Statement of Maxine Waters

MAXINE WATERS
MEMBER OF CONGRESS
43RD DISTRICT, CALIFORNIA

COMMITTEE:
FINANCIAL SERVICES
RANKING MEMBER

Congress of the United States
House of Representatives
Washington, DC 20515-0535

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July 10, 2024

The Honorable Mike Bost
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

The Honorable Mark Takano
Ranking Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

The Honorable Morgan Luttrell
Chairman
Subcommittee on Disability Assistance and
Memorial Affairs
U.S. House of Representatives
Washington, DC 20515

The Honorable Chris Pappas
Ranking Member
Subcommittee on Disability Assistance and
Memorial Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen and Ranking Members:

Thank you for organizing today's hearing in the Subcommittee on Disability Assistance and Memorial Affairs on pending legislation, in order to consider, inter alia, *H.R. 6362 - Protecting Benefits for Disabled Veterans Act of 2023*. I introduced this critical bill in order to address the devastating impact of service-connected disabilities on many of our nation's veterans, who served with honor and courage to protect our great nation, and I am proud to have received the endorsement of the Disabled American Veterans (DAV) for this important bill.

The *Protecting Benefits for Disabled Veterans Act* would codify and make permanent the Department of Veterans Affairs (VA) Individual Unemployability (IU) program. The IU program compensates veterans who are unable to maintain gainful employment because of a service-connected disability.

Over three and a half million veterans live with a disability connected to their service to the United States. For many, these disabilities make obtaining and maintaining employment difficult, if not impossible. When a veteran with a service-connected disability applies for benefits, the VA assesses the disability and assigns it a rating, on a 0-100% scale, with 100% representing a "total" disability. A higher rating means the veteran is entitled to more compensation. The IU program was created in recognition of the fact that some disabilities, even if the VA does not consider them to be a "total" disability, can prevent veterans from

maintaining employment. Specifically, the IU program allows veterans with a disability rating of at least 60%, or two or more disabilities with ratings totaling at least 70%, to be compensated as if they had received a 100% rating if their disabilities prevent them from maintaining gainful employment.

Although this program has assisted disabled veterans since 1934, it is not authorized by statute, and it has consistently been the target of cost-cutting proposals. Budget cuts to this essential veterans' program could throw thousands of veterans into poverty and homelessness, and would mean a significant loss of income for our most vulnerable veterans and their families. Cutting the benefits of our nation's disabled veterans in this manner would be heartless and inexcusable.

When a previous administration proposed reducing the number of veterans eligible for IU and cutting the program by \$3.2 billion in 2017, the resulting budget allocation was met with widespread condemnation by veterans and veterans' advocacy organizations. This bill will codify the IU program and protect our nation's disabled veterans so that they will never lose the benefits that they have earned and upon which they depend.

The *Protecting Benefits for Disabled Veterans Act* will ensure that veterans, who are unable to maintain employment due to a service-connected disability, can continue to have access to the IU program as it currently exists. Furthermore, by clarifying and including all veterans who are entitled to compensation, the bill ensures that veterans applying for the IU program will not be denied based on their age or eligibility for retirement benefits.

I sincerely and wholeheartedly appreciate your attention to the needs of our nation's disabled veterans, and I look forward to your favorable consideration of the *Protecting Benefits for Disabled Veterans Act*.

Sincerely,



Maxine Waters
Member of Congress

Enclosure (1)



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February 27, 2023

The Honorable Maxine Waters
United States House of Representatives
221 Rayburn House Office Building
Washington, DC 20515-0543

Dear Representative Waters:

On behalf of DAV and our over one million members, all of whom were wounded, injured or made ill during wartime service, I write to offer our support for the *Protecting Benefits for Disabled Veterans Act*, legislation to codify Department of Veterans Affairs (VA) regulations for Total Disability Based on Individual Unemployability (TDIU), commonly referred to as IU.

The IU benefit is based on the severity of the individual veteran's unique disability picture and its impact on the veteran's ability to obtain and maintain substantial gainful employment. Generally, the veteran must have a single disability rated at 60% or a combined evaluation of 70% to be eligible for IU. Per the regulations, VA is not allowed to consider the veteran's age in any determinations for IU.

DAV is pleased to support the *Protecting Benefits for Disabled Veterans Act*. For decades, there have been proposals to terminate IU benefits for veterans who reach the Social Security retirement age. It is important to note that IU is not similar, nor related to Social Security retirement benefits or federal unemployment insurance. This legislation will ensure that IU remains available for all veterans regardless of age or receipt of any other earned federal benefits.

Representative Waters, thank you for introducing this important legislation and for your continued efforts to support our nation's veterans disabled during military service.

Sincerely,


Joy L. Jern
National Legislative Director

Document for the Record Submitted by Morgan McGarvey

July 10, 2024

The Honorable Morgan Luttrell
Chair, Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans Affairs
364 Cannon House Office Building
Washington, DC 20003

The Honorable Chris Pappas
Ranking Member, Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans Affairs
550 Cannon House Office Building
Washington, DC 20003

Dear Chairman Luttrell and Ranking Member Pappas:

As representatives of the nation's largest gun violence prevention organizations, we write in strong opposition to two bills before the Subcommittee on Disability Assistance and Memorial Affairs: the "Safeguarding Veterans 2nd Amendment Rights Act of 2024" and the "Veterans 2nd Amendment Restoration Act of 2024." These bills represent significant threats to both the well-being of our veterans and the safety of our communities.

American veterans are disproportionately impacted by the suicide crisis, with more than 6,500 veterans dying by suicide each year,¹ and more than 70% of veterans' suicides involving firearms, compared with 51% of all suicides nationwide.² Easy access to firearms greatly increases the risk of death by suicide, since the presence of a firearm significantly increases the likelihood that a suicide attempt will be fatal.³ Veterans own firearms at a higher rate than non-veterans.⁴ The combination of higher ownership rates along with increased risk from firearms in the home has led to a veteran gun suicide rate that is 1.6 times the non-veteran adult rate.⁵ Both of these bills would deprive the Department of Veterans Affairs (VA) of critical tools to

¹ Based on an average of the five most recent years of available data: 2016-2020. "National Suicide Data Report Appendix, 2022" US Department of Veterans Affairs, Office of Mental Health and Suicide Prevention, https://www.mentalhealth.va.gov/suicide_prevention/data.asp.

² "National Suicide Data Report Appendix, 2022" US Department of Veterans Affairs, Office of Mental Health and Suicide Prevention, https://www.mentalhealth.va.gov/suicide_prevention/data.asp; Centers for Disease Control and Prevention, Wide-ranging Online Data for Epidemiologic Research (WONDER), "Fatal Injury Data," last accessed Oct. 15, 2018, <https://wonder.cdc.gov/Deaths-by-Underlying-Cause.html>.

³ Andrew Anglemyer, Tara Horvath, and George Rutherford, "The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: a Systematic Review and Meta-analysis," *Annals of Internal Medicine* 160, no. 2 (2014): 101–110.

⁴ Emily C. Cleveland et al., "Firearm Ownership among American Veterans: Findings from the 2015 National Firearm Survey," *Injury Epidemiology* 4, no. 1 (2017); Katherine Schaeffer, "Key Facts About Americans and Guns," Pew Research Center, September 13, 2021, <https://www.pewresearch.org/fact-tank/2021/09/13/key-facts-about-americans-and-guns/>.

⁵ Based on 2020 data. "2022 National Veteran Suicide Prevention Annual Report," US Department of Veterans Affairs, Office of Mental Health and Suicide Prevention, September 2022, <https://www.mentalhealth.va.gov/docs/data-sheets/2022/2022-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-508.pdf>.

protect those beneficiaries who may be at risk of harming themselves or others, resulting in even more tragedies.

The “Veterans 2nd Amendment Restoration Act of 2024” would require the VA to notify the Department of Justice that records on VA beneficiaries transmitted by the VA “solely on the basis of a determination . . . to pay benefits to a fiduciary” without a judicial order or finding of dangerousness for use by the National Instant Criminal Background Check System (NICS) “was improper” because such beneficiaries “were not adjudicated as a mental defective under 18 U.S.C. 922(g).” For decades, the VA has provided these records to NICS based on longstanding federal law and regulations, and has done so because these beneficiaries have been determined to be “mentally incompetent” due to injury or disease, including schizophrenia, panic disorder, PTSD, and others, which renders them prohibited from purchasing and possessing firearms. The VA does so through a robust process with strong due process protections built in, as Congress has required, including avenues to appeal and have their firearm rights restored through both the VA and the courts.

This legislation, however, would require the VA to look back at the hundreds of thousands of these records that have been transmitted to NICS using this process and, in effect, require their removal where there is not a judicial order or finding of dangerousness. To that end, the Veterans 2nd Amendment Restoration Act goes much further than the Consolidated Appropriations Act, 2024, that was enacted in March, and H.R. 705, the Veterans 2nd Amendment Protection Act that the House Committee on Veterans Affairs passed in May. Section 413 of the Consolidated Appropriations Act, 2024, prohibits the VA from using funds to report these VA beneficiaries to NICS absent a judicial order or finding of dangerousness—without changing the underlying laws or regulations that make them prohibited persons. H.R. 705 would prohibit the VA outright from transmitting these records to NICS. The Veterans 2nd Amendment Restoration Act, however, would be retroactive and legalize firearm purchase and possession for this population of VA beneficiaries who, for decades, have been unable to purchase or possess firearms. It would invariably put hundreds of thousands of veterans and VA beneficiaries at risk of firearm suicide and represents one of the most significant weakenings of NICS in recent years.

The “Safeguarding Veterans 2nd Amendment Rights Act of 2024” would prohibit the VA from initiating, participating, or advocating in what the gun lobby has deemed “gun confiscation” proceedings at the state-level—more appropriately called “Extreme Risk Protection Order” (ERPO) programs. 21 states—red, purple, and blue—and Washington DC have enacted ERPO laws, which authorize courts to order, on the basis of evidence, the temporary removal of a firearm from someone determined to be a danger to themselves or others. In 2022, Congress made an historic bipartisan investment—\$750 million between Fiscal Year 2022 and Fiscal Year 2026—to support the implementation of these programs and other state crisis intervention programs with the landmark Bipartisan Safer Communities Act.

That’s because ERPO programs save lives: Researchers estimate that for every 10 to 20 gun removals carried out under the ERPO laws in Connecticut and Indiana, one life was saved

through an averted suicide.⁶ For veterans, this has the potential to be even more impactful. Over nine million veterans receive health care through the Veterans Health Administration, meaning that VA medical practitioners may well be the first to observe warning signs that are a cause for alarm and are in a unique position to intervene to protect veterans in crisis from harming themselves or someone else. The VA should be encouraged and incentivized to use state-level ERPO programs, when and where appropriate, to do just that, but the Safeguarding Veterans 2nd Amendment Rights Act does just the opposite.

Limiting access to guns for veterans and other VA beneficiaries who may be in crisis is a critical step to help keep them safe, especially for veterans who are at the highest risk for suicide. However, these two bills are dangerous, and would undermine the work the VA does to save lives and keep veterans safe. We ask this Subcommittee to prioritize the safety and well-being of our veterans by opposing this legislation and, instead, supporting measures that truly protect those who have served our nation. Thank you for your attention to this urgent matter.

Sincerely,

Tanya Schardt, Senior Counsel and Director, State and Federal Policy, Brady
David Bond, Director, Federal Government Affairs, Everytown
Vanessa Gonzalez, Vice President, Government and Political Affairs, GIFFORDS
Zeenat Yahya, Director of Policy, March for Our Lives

⁶ Jeffrey W. Swanson, et al., "Implementation and Effectiveness of Connecticut's Risk-based Gun Removal Law: Does it Prevent Suicides," *Law & Contemporary Problems* 80, (2017): 179-208; Jeffrey W. Swanson, et al., "Criminal Justice and Suicide Outcomes with Indiana's Risk-Based Gun Seizure Law," *The Journal of the American Academy of Psychiatry and the Law* 47, no. 2 (2019): 188-197.