STATEMENT OF
MR. EVAN DEICHERT
ACTING DEPUTY VICE CHAIRMAN
VETERANS LAW JUDGE
BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
ON
LEGISLATION

June 24, 2025

Good afternoon, Chairman Luttrell, Ranking Member McGarvey, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss pending legislation and several bills that would affect VA programs and services. Accompanying me today are Mr. Kevin Friel, Executive Director, Pension & Fiduciary Service, Veterans Benefits Administration (VBA), Mr. James W. Smith II, Deputy Executive Director, Policy and Procedures, Compensation Service, VBA, and Dr. Colleen Richardson, Executive Director, Caregiver Support Program, Veterans Health Administration (VHA).

H.R. XXX Justice for America's Veterans and Survivors Act of 2025

This bill would create a new 38 U.S.C. § 534, requiring VA to submit an annual report to Congress containing data and information on causes of death among Veterans.

Subject to the availability of appropriations, VA supports the bill's intent but cites concerns with the level of detail of data tracking required by the bill. VA recognizes the tragedy of Veteran suicides and acknowledges the intent to identify any connections between the deaths of Veterans and their service-connected disabilities. VA already reports mortality data for all Veterans as part of the annual suicide prevention report. The most recent report, released in December 2024 (2024 national Veteran Suicide Prevention Annual Report), includes information on all-cause mortality

and leading causes of death for Veterans, overall and by receipt of VHA care, and information regarding receipt of VBA benefits, including compensation for service-connected disabilities, for Veterans, and for Veteran suicide decedents.

VA has concerns with the level of detail of data tracking mandated by the bill, including elements not currently tracked by VA systems, and whether the added effort and expense would yield actionable results. VA does not have access to some of the specific data elements the report requests. For example, “whether such Veteran died by suicide secondary to a service-connected disability rated as total.” VA may know that a Veteran’s death was rated by the coroner or medical examiner as a suicide and that the Veteran had a posttraumatic stress disorder (PTSD) service-connected disability rated as total, however we may not be able to ascertain whether the suicide was directly related to PTSD concerns, particularly if the contributed cause of death codes on the death certificate (record axis codes) did not indicate PTSD as a contributing cause.

Additionally, VA notes that if a Veteran died in a non-VA facility, was not in receipt of VA benefits, or a claim for VA survivor benefits had not been submitted, VA may not have access to information which provides a Veteran’s cause or manner of death.

If enacted, funding for extensive updates to current systems and processes would be needed to collect required information about each Veteran's primary and possible secondary causes of death, and manner of death. “Cause of death” is not defined, but we understand it to mean the underlying medical condition, disease, or injury that led to death, as contrasted with the manner of death, which refers to how that cause of death came about, such as natural, accidental, suicide, homicide, or undetermined. VA does not have a cost estimate at this time.

VA would appreciate the opportunity to discuss this bill with the Committee and better understand the intended outcomes and to determine what, if any, amendments would be needed to ensure that the required elements in the bill can be reported.

H.R. XXX Veterans Appeals Efficiency Act of 2025

Overall, VA supports the intent of this bill, subject to amendments and the availability of appropriations. Because the bill contains several independent subparts, VA provides a specific position on each subpart below. This bill would institute significant procedural changes at the Board of Veterans' Appeals (Board) and expand the jurisdiction of the U.S. Court of Appeals for Veterans Claims (CAVC). Without modification, we anticipate that the bill would add significant delays to appeal processing timelines and lead to an exponential growth in the appeal inventory, reversing current progress to reduce decision wait times. In sum, this bill as drafted would create substantial budgetary resource burdens on VA and adversely affect Veterans with pending appeals. VA does not have a cost estimate at this time.

Section 2(a) would amend 38 U.S.C. § 5109B to require the Secretary to provide Congress with annual reports on the average length of time that a claim, or issue within a claim, is pending with the Secretary following a remand from the Board; the number of cases advanced on the Board's docket; and the number of appeals dismissed by the Board.

Section 2(b) would require the Secretary to prescribe guidelines for advancement of a case on the Board's dockets.

Section 2(c) would add new section 38 U.S.C. § 5109C to require the Secretary to track data, and submit to Congress an annual report, regarding whether each claim for a particular benefit is: continuously pursued, filed in the national Work Queue but not assigned for adjudication, afforded expeditious treatment by VBA, remanded by the Board, or pending a Board hearing. The Secretary would also be required to track instances where a VBA adjudicator does not comply with remand instructions of the Board, supplemental claims filed within continuous pursuit after a finally adjudicated

decision, and “first notices” submitted to the Secretary of death of individuals in receipt of VA benefits.

Section 2(d)(1) would expand the authority of the Board to aggregate claims that contain common issues of law or fact. The Secretary would be required to submit a report to Congress, every 5 years, on the aggregation of claims.

Section 2(d)(2) would require the Secretary to ensure substantial compliance with Board remands, except where the Board has determined that evidence added to the record after a remand is sufficient to resolve the underlying issues or where the remand decision was unnecessary, in which case the agency of original jurisdiction may “waive” the compliance requirement.

Section 2(e) would expand the jurisdiction of the CAVC to certify classes with respect to claimants who are awaiting a Board decision, or who have received a Board decision and filed a supplemental claim within 1 year. This section would also allow the CAVC to remand questions of law or fact to the Board, while maintaining jurisdiction under a stay of judicial proceedings, where the Board has failed to (a) address an issue raised by the clamant (or the record) or (a) provide adequate reasons or bases.

Section 2(a)

VA cites concerns with this section, and subject to the availability of appropriations. VA cites concerns with the portion of section 2(a) requiring a report on the average length of administrative adjudication following Board remands. As an initial matter, VA cites concerns with the phrase “or issue within a claim” as a criterion for reporting. The Appeals Modernization Act (AMA), P.L. 115-55, does not contain a definition of “issue,” so that term should be clarified in the statute as having the meaning set forth by VA in 38 C.F.R. 3.151(c), which treats disability compensation for each individual disability as a separate issue. Assuming that is the definition envisioned, VA does not currently have the technical capacity to reliably track timeliness at the issue level. Particularly in the case of legacy appeals, multiple appealed issues may be aggregated into a single Board decision, which, if tracked under current capabilities as

one claim, could unintentionally skew the average timelines required under this bill. Achieving the technical capability to implement the bill would require expenditure of substantial program and information technology resources, and therefore require appropriations. VA does not have a cost estimate at this time.

VA proposes that, if this provision moves forward, the bill disaggregate the reporting requirement into the average for legacy claim remands and for remands under AMA because once all legacy remands are completed, the need for reporting on the legacy system remands will diminish.

VA cites concern with the portion of section 2(a) that would require reporting on the number of cases advanced on the docket (AOD) to be disaggregated by the reason provided in the request. While VA can report the number of cases granted AOD after a decision is rendered, disaggregated by reason (i.e., age, financial distress, serious illness, other), current systems do not track motion denial reasons.

VA cites concern with the portion of section 2(a) that would require reporting on the number of Board dismissals, disaggregated by dismissals due to the claimant's death, and whether the death was a suicide. First, while VA currently can report the number of dismissals due to death, Board systems do not track cause of death. Second, this raises substantial privacy concerns, including the risk of exposing personal information, compromising confidentiality laws, and retraumatizing surviving families. The agency is currently notified by the Social Security Administration (SSA) once a claimant has passed away. A death certificate may not always be of record to determine that the appeal should be dismissed, and the record may contain incomplete evidence to establish that a Veteran passed away by suicide. Therefore, VA cautions that any reporting on this specific data point may not be accurate or beneficial given the limited nature of available information and the privacy concerns noted above. Moreover, VA cautions that this requested data point may create an unintended perceived correlation between a pending appeal and Veteran suicide.

Section 2(b)

VA does not support this provision, which would require the Board to prescribe guidelines for AOD, including the type of evidence required to support the motion. VA views this provision as a duplicative and unnecessary requirement. The criteria for advancement on the docket—e.g., advanced age (defined as 75 years or older), serious illness, and severe financial hardship -- are already contained in statue and regulations. The Board applies the relevant statutes and regulations to guide its determinations on motions for AOD to ensure that those appellants most in need of an expedited decision receive priority processing. Cases with AOD status comprised approximately 21% of the Board's fiscal year (FY) 2024 caseload.

Section 2(c)

This section would require VA to substantially modify its systems to track and report numerous aspects of claims processing. As expressed below, some proposed tracking requirements would impose a heavy and, in our view, unnecessary burden on the Board.

VA cites concern with the portion of section (2)(c)(1) that would require VA to track claims, and issues within claims, that are continuously pursued. As an initial matter, we incorporate our suggestion above (in our views on section 2(a)) regarding the definition of issue. Additionally, the Board has no ability to track this information within its current case management systems, partly due to a lack of consistency in how claims are identified, and efforts to do so would require significant information technology development and testing resources to achieve changes in business processes and necessary system integration across VA. This would create a heavy and unnecessary resource burden on the Board.

VA opposes the portion of section 2(c)(1) that would require VA tracking and reporting on instances in which a VBA adjudicator does not comply with instructions in a Board remand decision. Complying with this requirement for AMA appeals would require an entirely new structure and review program covering all post-remand the

Agency of Original Jurisdiction (AOJ) decisions, which would require considerable additional personnel resources and information technology development costs. This increased resource burden would divert already scarce personnel and financial resources away from the Board's focus on deciding pending appeals as swiftly and fairly as possible. Tracking compliance with Board remands also would require increased system integration to track remands and would require significant VA technological development and testing to successfully accomplish.

Even with system modification, tracking noncompliance with Board remands presents practical problems with obtaining accurate data. First, compliance with a Board remand is a subjective measure that might not be consistently captured by individual Veterans Law Judges for several reasons, and this would lead to inconsistent data of questionable reliability for potential intervention strategies. Second, if the AOJ grants the claim in full without conducting the development directed by the Board, it is unclear if this would trigger reporting requirements under a failure to comply even though the claim has been resolved in the Veteran's favor. Third, for AMA claims, unless the post-remand AOJ decision is appealed to the Board within 1 year, there is no system in place, and no practical system we can envision, to determine whether the AOJ has complied with the Board's remand. Under the AMA, claims are not automatically returned to the Board following a post-remand AOJ decision. Thus, the Board does not review those claims for compliance with remand instructions. Legacy claim remands are, of course, a diminishing percentage of all Board remands.

To the extent this provision relies on the duties imposed on the Board in subsection 2(d) with respect to remand compliance, please see our views expressed below on that subsection.

Should the Committee nevertheless decide to move forward with this provision, VA requests that the statutory language clarify whether the term "remand" encompasses both legacy remands and AMA remands.

VA cites concern with the portion of section 2(c)(1) that would require VA to track and maintain information specifically for supplemental claims, including disaggregation between those filed within a year of the last VA decision (within continuous pursuit) and those filed outside of that period.

VA's Veterans Benefits Management System application is not designed to track the date of prior decisions for each issue in any given supplemental claim. While the required supplemental claims form asks the claimant to identify the specific issues and the date of the VA decision notice, this data is not recorded in VA systems and is used only by claims processors who are responsible for reviewing all claim submissions and evidence of record to determine if the claimant has maintained continuous pursuit. Therefore, VA expresses concern with the current technological capabilities of the agency to comply with the statutory requirements for these reports given that VA's current systems do not capture this data. Appropriations would be necessary, but VA does not have a cost estimate at this time.

Section 2(d)

VA does not support this provision. Section 2(d)(1) of the bill would provide the Chairman of the Board the authority to aggregate certain claims. Attempting to aggregate different Veterans' appeals would substantially alter the Board's case processes and would upend docket order rules in unfair ways for many Veterans with pending appeals.

First, this section would create a statutory conflict with 38 U.S.C. § 7107(a)(4), which requires the Board to decide each case before the Board "in regular order according to its respective place on the docket." Additional statutory language would be needed to address this tension and make clear how the Board can aggregate appeals without violating the docket order requirement. Similarly, statutory guidance would need to be provided on the timing applicable to a Veteran's right to a hearing and right to determine the scope of the evidentiary record in their case. *See* 38 U.S.C. §§ 7105(b)(3), 7107(c), 7113. It is unclear who would get the opportunity for a hearing

before the decision on the common question, and what the evidentiary record would be for such a decision. Even with statutory rules explicitly addressing these disconnects, the aggregation of appeals with different evidence windows would add further confusion to the AMA system at a time when Veterans and representatives are still becoming familiar with the nuances of the AMA.

Second, the aggregation of different Veterans' appeals would be a sharp departure from the Board's longstanding role in evaluating the particular and unique facts and circumstances for each appeal that is filed at the Board. A claim for benefits is first adjudicated by the AOJ. If an adverse decision by the AOJ is appealed to the Board, the Board will review the claim de novo and decide all questions of law and fact necessary to adjudicate the claim for benefits. Aggregation would apply a legal or factual conclusion to an entire class of claimants—but without appropriate consideration of the specific and unique facts of each case. If the goal of this bill is efficiency, the Board is at its most efficient when it is resolving individual cases based on the particular facts at issue. This has been its task for decades. In contrast, in addition to the agency's general authority to promulgate regulations interpreting statutory provisions, it is the VA Office of General Counsel (OGC) and the CAVC that are tasked with issuing precedential opinions for common questions of law or fact. *See* 38 U.S.C. §§ 7104(c), 7261. To be clear, it would only delay appeal resolution if cases that are ready for adjudication are (1) paused by the Chairman in order to provide appropriate due process for aggregation, then (2) joined with other cases for a decision on the common question, and then (3) placed back in the queue for another decision on the particular facts of the individual case. This is because, even after aggregation, each appeal would have to be adjudicated on its own factual basis and would require independent analysis. The evidence of record for each individual case is still unique and would have to be evaluated individually. Therefore, aggregating appeals would not speed up the process for any Veteran. In addition, aggregation would require a significant amount of attorney and/or Board resources to determine what metrics would be applied in choosing cases for aggregation and on-going review of the Board's entire, transitory, pending inventory of approximately 206,000 cases to identify a common class of Veterans.

There are also significant technological resource concerns, as the Board's case-processing system (Caseflow) is not currently designed to docket, process, or otherwise track aggregated appeals. Aggregation would require the Board to completely revise its case management systems, to include integration with other VA systems, to allow this entirely new method of moving cases ahead of others. It would require both a complete overhaul of the Board's docketing system and would also require other potential changes for unforeseen consequences.

If Congress is nevertheless interested in granting the Board this authority, VA recommends adding the words "in the discretion of the Chairman" to the proposed new sentence of section 7104, such that "the Chairman may, in the sole discretion of the Chairman, aggregate such appeals. . . ." This would reinforce a principle that the word "may" already suggests that aggregation would be solely in the discretion of the Chairman.

Section 2(d)(2) would require the Secretary, "acting through a member of the Board," to ensure substantial compliance with any Board decision to remand a claim. The AOJ would be permitted to waive this requirement if a Board member determines that evidence added to the evidentiary record after the date of the Board remand decision is sufficient to resolve the underlying issues or such a decision was unnecessary. Respectfully, VA does not understand how this section would work—namely, how the AOJ would waive the requirement based on a determination of a Board member who has no jurisdiction over, or involvement with, the claim at that point.

To the extent that this provision contemplates active oversight by a Veterans Law Judge of AOJ claims processing following a remand, such requirement would be grossly inefficient and resource intensive with little quantifiable benefit, given that the current system affords claimants who receive an AOJ decision on remand the right to appeal to the Board to correct any perceived AOJ error, including non-compliance with the Board's remand instructions. If the Board were required to review every claim it

remands for AOJ compliance, as well as adjudicate AOJ requests for waivers, the Board estimates that the resource drain would effectively cut Board annual adjudications by at least half. Approximately 57,000 appeals adjudicated during fiscal year (FY) 2023 included at least one issue remanded by the Board. Using that data as a benchmark, the provision would require at least 57,000 additional Veterans Law Judge reviews and opinions to be rendered per year, consuming scarce judicial resources. This would lead to an exponential growth in pending appeals and impose additional delays on all cases. Overall, this would make the VA appeals system markedly less efficient, contrary to the purpose of the AMA, and would be harmful to Veterans, particularly those who have already waited a long time for resolution of their appeals.

To the extent the intention of this provision is to ensure substantial compliance with Board remands, that duty is already part of binding caselaw. *Stegall v. West*, 11 Vet. App. 268, 271 (1998). If Congress wishes to codify that duty, it could simply state in the bill that "a remand by the Board imposes upon the Secretary a duty to ensure substantial compliance with the terms of the remand, absent a grant of the remanded issue."

Section 2(e)

VA does not support this section. Section 2(e) of the bill would revise 38 U.S.C. § 7252 to expand the jurisdiction of the CAVC. This expansion would not promote efficient claim resolution, would create confusion for and potentially prejudice Veterans, and is unnecessary.

This section would grant the CAVC jurisdiction over a claim currently being processed by VA, if it satisfies a class definition certified by the CAVC. This would create confusion for Veterans as to which entity has jurisdiction over their claim, not to mention delay if VA pauses claim processing to await the CAVC's decision. Veterans who have filed a notice of disagreement and expect Board review, or who have filed a supplemental claim and expect the VA regional office to review their new evidence (proposed § 7252(b)(1)(A)(ii) includes claimants who have chosen to file a supplemental

claim rather than a CAVC appeal after a Board decision), would suddenly find that the CAVC, an entity which they may have chosen to avoid, has jurisdiction over and can issue a binding decision on their case. The bill provides no due process protections for such Veterans, who could find themselves personally bound by an unfavorable decision that they did not request, in a proceeding that they may not have known about. Although the bill refers to Veterans who "have not opted out" in proposed section 7252(b)(2), it provides no protections on opt-out procedures. Even if it did, it would be very confusing for a Veteran to weigh the advantages and disadvantages of opting-out, with high stakes for that choice, since an unfavorable class ruling personally binds class members, i.e., once the CAVC has decided the issue, the Veteran is permanently foreclosed from providing alternative arguments on it.

This expansion is also unnecessary, as the CAVC already has the authority to issue precedential decisions on common questions of law or fact. Through a precedential decision, it can create a binding rule of law that VA must apply to all claims currently being processed. Precedential decisions are more advantageous for Veterans, because unfavorable precedents can be distinguished, whereas unfavorable class action rulings are personally binding for class members. Meanwhile, favorable precedents are no less advantageous, on balance, than favorable class action rulings, as VA must abide by both.

Moreover, as a matter of efficiency, it is unclear the benefit of bestowing the CAVC with direct jurisdiction over claims currently pending with VA, as the Court's jurisdiction is to review Board decisions, 38 U.S.C. § 7252(a), not to decide pending claims in the first instance, which is prohibited by 38 U.S.C. § 7261(c). Thus, the CAVC would presumably be granted supplemental jurisdiction over the claim to address a common question—but then remand it for the Board to address the case's individual facts in the first instance. If the claimant disagrees with the Board's individual fact determinations, or on legal rulings outside the scope of the class issues, the case will then return to the CAVC a second time. This process would not promote efficient claim resolution.

Finally, this expansion of CAVC jurisdiction is contrary to the very well-documented and carefully considered legislation that originally created the CAVC in 1988, especially the debate about the appropriate jurisdictional scope of the court to review only "final" decisions by the Board. While the Senate had passed Veterans' judicial review bills in five previous sessions, the House did not pass such a bill until a compromise emerged (the Veterans' Judicial Review Act) that limited the nature of the court that would be created: an appellate court that would be authorized to review questions of law and fact arising from a final agency action (a Board decision), but would not have jurisdiction over claims still proceeding through the "unique and desirable" administrative system, would not "have arrogated [ ] power" to "run the VA's claims system, and decide its cases for it," and could be singularly focused on Board decisions to avoid the "burden[ ]" and "delay" attendant with district court-like jurisdiction. S. Rep. No. 100-418 (1988); H.R. Rep. No. 100-963 (1988); 134 Cong. Rec. H9253 (October 3, 1988); 134 Cong. Rec. H10333 (October 19, 1988).

Section 2(e) would further provide that class members may submit a supplemental claim, notice of disagreement (NOD), or request for higher-level review (HLR), during the period between the filing of the motion for class action and 60 days after the later of the CAVC's final decision "with respect to such claim" or "with respect to such motion for class action." At the outset, it is unclear what "claim" is being referred to in the language "with respect to such claim." More importantly, however, the intent of this subsection is unclear. If the intent is to broaden the timeframe for these claimants to submit their supplemental claims, NODs, and requests for HLR, VA recommends replacing the "may submit" language here with "shall not be prohibited from submitting" language. Even with that replacement, however, this subsection would create confusing timelines, as VA processors evaluating whether a supplemental claim, NOD, or request for HLR is timely might have to review all recent motions for class action at the CAVC, determine whether the claimant was within the class definition, and determine the date of the CAVC's final decision on the motion and the claim, all to determine timeliness. Such a task does not promote efficiency.

Moreover, on the issue of agency timelines, some Veterans may think they satisfy the class definition, that the CAVC has supplemental jurisdiction over their claim, and that they need not meet ordinary agency timelines, but—if they are wrong—their claim is final and there is no recourse. Again, the potential for confusion with supplemental jurisdiction outweighs any speculative potential benefits.

Section 2(e) would next permit tolling when a claim is decided by the Board during the period the CAVC is reviewing a motion for class action. If the Committee moves forward with this section, VA recommends replacing the word "if" with "until" to clarify the length of the tolling and inserting a comma between the terms "review" and "the deadline."

Finally, section 2(e) would authorize the CAVC to issue limited remands to the Board, while retaining jurisdiction, for purposes of addressing a relevant issue or providing adequate reasons or bases. This authority would disrupt Board efficiency and could also create a perpetual loop between the Board and the CAVC if the court continues to determine that the Board's reasons and bases are inadequate. This could have a similar effect as the remand loop between the Board and the AOJ experienced in the legacy process that the AMA was intended to cure. In addition, the Board would need to build new functionality in its Caseflow digital management system to accommodate this type of remand, which would require significant resources.

We also note that the section is unclear as to what would happen if the limited remand results in a conclusion by the Board that there was a duty to assist error that needs to be corrected by the AOJ. It is unclear whether the Board could remand the case to correct that error, or whether the court would still have jurisdiction. The statute should directly address this eventuality.

If Congress is nevertheless interested in exploring this authority, VA recommends making this authority part of a six-month pilot program to test its efficiency. VA also recommends that Congress require the CAVC to give the Board at least 180

days to issue its supplementary decision, to account for other Veterans' appeals that have been waiting. Finally, VA recommends that Congress preclude entitlement to Equal Access to Justice Act (EAJA) fees on the basis of the CAVC ordering a limited remand, so as to prevent potential manipulation. At present, only about 20% of the average of 8-9,000 appeals filed with the CAVC each year are reviewed by the court's judges. The remaining 80% are set aside and remanded to the Board for further adjudication by order of the Clerk pursuant to agreement of the parties. This generates approximately $45-50 million in EAJA fees per year, regardless of the fact that most remands ultimately do not lead to a changed result for the Veteran. If EAJA is not precluded from this limited remand authority, a similar trend is likely to appear.

Section 2(f)

VA does not support this section. Section 2(f) of the bill would require the Board Chairman to carry out a study to identify questions of law or fact the Board commonly considers for which precedential guidance would assist the Board in issuing final decisions on such appeals. To the extent that the provision is intended to increase consistency across Board decisions, this is a burdensome and unnecessary means. The CAVC issues dozens of precedential opinions per year on commonly arising questions of law. In addition, the Board already has the authority to request an opinion from VA's OGC when it identifies a legal issue that warrants precedential guidance. And questions of fact are generally case-specific and not appropriate for precedential guidance.

Section 2(g)

VA cites concerns with this section. Section 2(g) would require VA to enter into an agreement with a Federally funded research and development center (FFRDC) to assess modifying the authority of the Board to issue precedential decisions with respect to questions of law or fact. The complexity and scope of this proposal would require significant resources to enter into that contractual agreement—probably several million dollars, at a minimum, or require resource trade-offs within the current Board budget. That does not account for the acquisition and legal resources needed to

execute and monitor performance of the agreement. Because such a study would evaluate a potentially substantial change to the Board's adjudication of appeals, the time and personnel resources involved with those participating would be extensive. The evaluation and full consideration of various options would be a large and complex undertaking, especially given the Board's historic role of issuing nonprecedential decisions.

The section also requires VA to begin developing policies and procedures to implement the FFRDC recommendations no later than 90 days after receipt of the FFRDC assessment, and to complete such development 6 months thereafter. But the policies or procedures to implement recommendations could be significant and complex and would have to go through multiple levels of internal review, as well as potentially notice and comment rulemaking, to carefully debate and consider the revision and overhaul of various regulations, processes, and procedures. Thus, it would take significantly longer than 90 days and 6 months to begin developing and to complete the necessary policies and procedures required under this proposal.

VA also cites concerns with the assignment of authority to FFRDCs without clear statutory guidance on their role as determining authorities within VA. While an independent assessment of the feasibility of Board precedential decisions and the consolidation of appeals could yield valuable insights, the requirement for strict implementation of the findings appears to unduly restrict the Secretary's decision-making authority for final implementation, under which the Secretary considers the overarching needs of the agency.

H.R. 659 Veterans Law Judge Experience Act of 2025

Section 2 would amend 38 U.S.C. § 7101A to require the Board Chairman to give priority consideration to individuals with 3 or more years of legal professional experience in areas that pertain to the laws administered by the Secretary when recommending individuals to the Secretary to serve as members of the Board.

VA does not support this bill. While it is unclear how or why the Chairman would be required to give "priority" to individuals with at least three years of experience in laws administered by the Secretary, it is important to note the professional experience and standards for the President to approve a Board Veterans Law Judge appointment are currently the same as those for the President to consider when nominating a judge for CAVC, responsible for reviewing Veterans Law Judge decisions for potential legal error. See 38 U.S.C. §7253(b). Like the CAVC judges, Veterans Law Judge appointments are recommended by the Chairman, and subsequently appointed by the Secretary subject to the approval of the President. Ideal candidates should be selected "solely on the grounds of fitness to perform the duties of the office" rather than any specific or arbitrary type of specialized experience.

VA is concerned that if the intent of the draft legislation is to give "priority" or preference to current or former VA attorneys, such a requirement would appear to violate commonly accepted merit systems principles under 5 U.S.C. §§ 2301-02. These principles have been considered with previous appointments of Veterans Law Judges to recruit qualified individuals from all segments of society and to not "discriminate for or against any employee or applicant." Though not required or recommended for Veterans Law Judge appointments, it is important to note Veterans preference is one statutory preference that is generally allowable under merit systems principles. That preference is one that is uniquely useful as Veterans filing VA appeals generally might expect Board judges to understand their unique circumstances of service and how that relates to their claims.

In addition, recent Veterans Law Judge recruitments and appointments during the past 4 years illustrate the importance of how merit systems principles and practices have strengthened the Board's cadre of more than 125 judges. Of the 50 Veterans Law Judges appointed by the Secretary and approved by the President during the past years, 30 of these judges had no prior experience with VA. However, all 30 of those Presidentially approved appointees had more than 7 years of either military/combat

zone service or prior judicial experience, and most of them had decades of such experience. Most had been appointed as judges for multiple agencies at the Federal and State levels. Of the remaining 97 Veterans Law Judge appointees currently serving, 95 of them had previously served as VA employees for more than 3 years, but only 4 had prior military experience or previously held judicial appointments prior to assuming their Veterans Law Judge duties.

This diverse set of experiences has proven valuable to the Veterans we serve. During the past three years, the Board has set successively increasing records for the number of appeals adjudicated each year—by far the highest level of output during the Board's 92-year history. While having such priority consideration might appear to be useful, maintaining VA discretion with respect to experience and qualifications for Veterans Law Judges will ensure VA continues to serve the Nation's Veterans in the best manner possible.

H.R. 2055 Caring for Survivors Act of 2025

The proposed legislation would amend title 38 of the United States Code, to improve and expand eligibly for dependency and indemnity compensation (DIC) paid to certain survivors of certain Veterans, and for other purposes.

Section 2(a) would increase the DIC rate in 38 U.S.C. § 1311(a)(1) from $1,154 to an amount equal to 55% of the monthly 100% Disability Compensation rate in effect under 38 U.S.C. § 1114(j). This would adjust the current DIC rate of $1,653.07 effective December 1, 2024, to $2,224.70 (55% of $4,044.91 which is the 100% disability compensation rate in effect as of December 1, 2024).

Section 2(b)(1) would make the amendments made by subsection (a) effective for any payment made that are 6 months after the date of enactment. Section 2(b)(2) would require VA, for months beginning after the date that is 6 months after the date of enactment, to pay dependents and survivors income security benefits under 38 U.S.C. §

1311 to an individual eligible predicated on the death of a Veteran before January 1, 1993, in a monthly amount that is the greater of the following:

- The amount determined under § 1311(a)(3), as in effect on the day before the date of enactment.
- The amount determined under § 1311(a)(1), as amended by section (a) of this bill.

Section 3 would amend 38 U.S.C. § 1318(b)(1) to reduce, from 10 years to 5 years, the period in which a Veteran must have been rated totally disabled due to service-connected disability in order for a survivor to qualify for DIC benefits. It would further add a new subsection (a)(2) to state the following: "In any case in which the Secretary makes a payment under paragraph (1) of this subsection by reason of subsection (b)(1) and the period of continuous rating immediately preceding death is less than 10 years, the amount payable under paragraph (1) of this subsection shall be an amount that bears the same relationship to the amount otherwise payable under such paragraph as the duration of such period bears to 10 years."

VA supports the intent of this bill but cites concerns and subject to the availability of appropriations.

Under 38 U.S.C. § 1311(a)(1), DIC is paid to a surviving spouse at the monthly rate of $1,154, which is increased in accordance with any increase of benefit amounts payable under title II of the Social Security Act pursuant to section 1311(f)(4). The current rate paid under section 1311(a), effective December 1, 2024, is $1,653.07. DIC is also paid to a surviving spouse, and to a child of a deceased Veteran, if the Veteran's death was not the result of their own willful misconduct and they were continuously rated totally disabling for specific periods of time prior to their death as outlined in 38 U.S.C. § 1318(a) and (b).

VA notes that Public Law 118-130 requires VA to increase the rate paid under section 1114 in addition to the rates paid under section 1311. VA views section 2(a) of this bill as allowing for the use of the current rate paid, as of December 1, 2024, under section 1114(j) of $4,044.91 in calculating the benefit provided under proposed section 1311(a)(1), as well as any future increases to section 1114(j).

VA further notes that section 2(b)(2) would require VA to pay the greater of the benefit under proposed section 1311(a)(1) and "[section 1311(a)(3)], as in effect on the day before the date of the enactment of this Act." VA infers that the intent of this provision is to use the rates under section 1311(a)(3) at that fixed point in time, even if those statutory rates are later changed. However, the statutory language is somewhat ambiguous because the rates payable under section 1311(a)(3) may change even if the text of that provision remains unchanged. Congress routinely enacts annual cost-of-living adjustments (COLA) increasing DIC rates, including the section 1311(a)(3) rates. *See*, *e.g.*, Public Law 118-130. VA believes the intent of the bill is to use the rate that would have been payable on the day before the date of enactment under section 1311(a)(2) and any COLAs in effect on that date. However, the bill language as drafted would also be susceptible to the interpretation that the rate should be increased by any subsequent COLAs because such rate would still be predicated on section 1311(a)(3) "as in effect on the day before the date of enactment of this Act." This ambiguity could be removed by adding language at the end of section 2(b)(2)(A)(i) of the bill saying, "including any applicable statutory cost-of-living increases in effect on that day."

Due to the extensive information technology system updates required to implement this bill and the enhanced ability to conduct oversight on said implementation, VA recommends that section 2(b)(1) be amended with an effective date of one year after date of enactment.

Regarding section 3 of the bill, VA views proposed section 1318(a)(2) as supporting the families of Veterans who die with a total disability rating that existed for

more than 5 years, but less than 10 years immediately preceding death. For individuals who qualify for DIC under proposed section 1318(b)(1) due to a Veteran's disability continuously rated totally disabling for a period of more than 5 years but less than 10 years immediately preceding death, VA views the proposed statute as more generous than existing law in that VA may provide DIC benefits to such individuals. However, VA views the proposed language of subsection 3(1)(B) as incorporating an unclear and potentially overly complex application for survivor beneficiaries, the agency, and external partners. The proposed language of 1318(a)(2) creates a relationship between a 10-year rating requirement for full benefit entitlement and a 5-year rating requirement for baseline entitlement per amendments to subsection (b)(1). The apparent effect would allow for DIC benefits to be granted based on a shortened duration of time that a Veteran must be continuously rated totally disabled, but then disallow full benefit entitlement through the utilization of an unclear payment structure.

Specifically, the benefit provided by VA to the families of Veterans with more than 5 years, but less than 10 years of disability rated as totally disabling under the proposed statute (proposed beneficiaries) would "bear[] the same relationship" to the full benefit amount as the length of totally disabling rating "bears to 10 years." Using a Veteran with exactly 5 years of total disability rating as an example, exactly 5 years is half of 10 years, meaning a DIC benefit based on exactly 5 years of total disability rating would have exactly the same relationship to half of the benefit paid based on 10 years of total disability.

However, it is unclear how precisely VA should calculate the relationship. Using a Veteran with 5 years and 6 months of total disability rating as an example, VA would like to clarify if Congress's intent is for VA to provide 55% of the benefits it would provide based on 10 years of total disability. Or is the intent for VA to round up to 60%? If the Veteran has 5 years and 7 months, VA would like to clarify if the intent is to provide 55.8% of full DIC benefits. Or should VA round up to 56%? The issue of precision and rounding could be challenged based on additional days. VA requests that Congress provide clear standards to avoid potential confusion and litigation.

VA does not currently reduce DIC benefits in any scenario along the lines it would be required to under the proposed language. This novel requirement would be operationally difficult and would appear to preclude automation, until extensive system updates cold be implemented to account for the required calculations. VA currently is able to automate, and therefore expedite, provision of DIC benefits pursuant to section 1318 because VA knows exactly how long a Veteran has received a total disability rating. The bill would require VA personnel to research and adjudicate to determine whether the family of a Veteran with more than 5, but less than 10 years of total disability would be eligible for the greater benefit paid under section 1311 for a service-connected cause of death, then determine how much to reduce the benefit if only section 1318 DIC were available.

This calculation is further complicated by the incremental structure of section 1311 used to calculate DIC benefits, which allows VA to supplement the base rate when a number of different conditions are met. VA would be unsure if the application of "bears the same relationship to" language would apply to solely the underlying DIC benefit rate, or if VA is meant to extend such application of benefit reduction to any additional supplemental allowance. For example, section 1311(a)(2) allows VA to pay an additional $246 per month of DIC if the deceased Veteran received a total disability for 8 years before death and was married to the surviving spouse for those 8 years. Sections 1311(a)(2) and 1318(b)(1) currently operate separately and apply separate standards, and not all proposed beneficiaries would qualify for DIC benefits under section 1311(a)(2). Section 1311(a)(2) is not the only potential supplement to which VA would have to apply the reduction. *See, e.g.*, 38 U.S.C. § 1311(b) (allowing VA to provide an increase of $286 per month per child under 18 years old).

VA views the potential application of the proposed language for subsection 1318(a)(2) as being inconsistent with the benefit's current intent and program integrity. As such, VA recommends removal of section 3(1) of the bill to allow the proposed amendments under section 3(2) to achieve the primary intent of DIC expansion. The effect of the proposed amendments under section 3(2) of the bill, on their own, would

result in clearer and more consistent program application. Removing the novel adjudication calculations and solely retaining the amendment to section 1318(b)(1) is sufficient to fulfill the intended purpose of expanding DIC benefits to survivors of Veterans with a totally disabling disability rating by shortening the duration of time required for the disability to have been continuously rated. It would also maintain allowing VA to quickly implement the expansion while retaining the existing automation that allows the families of deceased Veterans to receive DIC benefits as quickly and accurately as possible.

The bill as written does not contain an effective date for section 3. VA would likely interpret any new benefit eligibility created by this section to be effective based on the date of enactment of the bill, but not authorize retroactive payments. This outcome is complicated by the timeline for applying to receive DIC benefits. Under 38 U.S.C. § 5110(d), an application received more than a year after death cannot result in VA providing benefits retroactive to the date of death, but the applicant would qualify for DIC benefits from the date of application forward. VA recommends the bill be amended to add an explicit effective date.

VA notes that although a formal cost analysis has not been completed, that this bill is anticipated to come with a substantial cost to VA.

H.R. 2701 Fallen Servicemembers Religious Heritage Restoration Act

This bill would direct the American Battle Monuments Commission (ABMC) to establish a “Fallen Servicemembers Religious Heritage Restoration Program.” Under this program, the ABMC would contract with a nonprofit organization to contact survivors and descendants of deceased Jewish members of the Armed Forces who are buried in United States military cemeteries outside the U.S. under markers that indicate that such members were not Jewish.

VA defers to ABMC on this bill.

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

H.R. 2721 Honoring Our Heroes Act of 2025

This bill would direct the Secretary to establish and carry out a 2-year pilot program to furnish a headstone or burial marker to Veterans who died on or before November 1, 1990.

Subject to the availability of appropriations, VA supports the assumed intent of this bill to allow VA to provide a government headstone or marker for Veterans who died before November 1, 1990, when their grave is marked with a private marker. VA would like the opportunity to work with the Subcommittee to clarify the bill's language to prevent unintended consequences, and notes that the bill would incur costs. VA does not have a cost estimate at this time.

VA already furnishes headstones or markers for the unmarked graves of Veterans who died on or before November 1, 1990, and for the marked or unmarked graves of Veterans who died after November 1, 1990.

VA cites concerns with the lack of an explicit requirement in the proposed bill that a headstone or marker be used at the Veteran's gravesite or in a designated memorial area in a cemetery. Such a requirement currently exists in 38 U.S.C. § 2306(a), (b), and (d). Under the proposed bill, VA would be required to provide a headstone or marker regardless of where an applicant intends to place it, e.g., on a mantle, home garden, patio, display décor, side of the road, etc., and not necessarily for placement at the Veteran's gravesite. Installation of a VA headstone or marker outside of marking a Veteran's gravesite or other designated memorial area inside a cemetery would not fulfill the purpose of the headstone and marker program, which has existed under VA

since June 18, 1973. Additionally, this bill would create an inequity among Veterans, as Veterans who died after November 1, 1990, would not receive this same benefit.

VA cannot provide a cost estimate for this bill because the number of Veterans who would be eligible would include those from the Revolutionary War to those who died on or before November 1, 1990. An estimated 41 million Veterans have served in the United States military from the Revolutionary War to present. The national Cemetery Administration has furnished nearly 16 million headstones and markers since 1973, and the US Army furnished nearly 1.3 million headstones and markers prior to 1973. VA does not have an estimate of the total number of Veterans who died prior to November 1, 1990, but it likely exceeds the total combined number of Government-furnished headstones and markers ever provided by NCA and the Army.

H.R. XXX Veterans Claims Quality Improvement Act of 2025

Section 2(a) would require VA, within 1 year, to develop policies, procedures, and technological capabilities to ensure that each VBA employee that commits an avoidable deferral with respect to a claim in the national Work Queue is notified.

Section 2(b) would require VA, within 1 year, to complete a study, in consultation with VA's OGC, to "identify issues about which an opinion from VA's OGC would foster consistency in the decisions of the Secretary with respect to claims for benefits" and submit a report to Congress.

Section 3 would amend 38 U.S.C. §7101 to require the Board to develop policies and procedures to measure the quality of Board decisions; maintain data on errors in Board decisions and errors in decisions remanded or returned to the Board from the CAVC; maintain data regarding individual Board judges who issue a decision that is subsequently vacated by CAVC; and ensure that Board remands are necessary. In addition, the Board would be required to notify employees responsible for drafting decisions when a claim has been remanded and provide the employee with a copy of

the relevant CAVC order, including a copy of any joint motion for remand (JMR), and provide incentives for the employee to review such relevant orders, and ensure that any identified errors are corrected before the Board issues the final decision.

Because this bill contains multiple sections, **VA's position on each section of this bill is indicated below. Overall, VA supports this bill, if amended, and subject to the availability of appropriations.**

Section 2(a)

VA supports this provision, subject to amendment. VA recommends striking the provision requiring VA to notify employees of all avoidable deferrals and replacing it with a requirement to improve claims processors' first touch to minimize deferrals. VBA is working with the VA Office of Information and Technology (OIT) on technical solutions to improve the claims processor information at the point of action (i.e., Smart Claim Check and other artificial intelligence (AI) solutions), which we believe will be a better investment in quality improvement and efficiency. AI solutions provide enhancements focused on automation that guide the user through the next steps in claim development, rather than sending the claim to the previously assigned user. This will reduce the instances of claims needing to be re-reviewed and achieve value in all claims processing scenarios, rather than the specific case of re-review, which is backtracking in the claims process.

VA already compiles the information contemplated in the bill, and claims processors are made aware of the nature of their deferrals in the Workforce and Time Reporting System. VA interprets the language of Section 2(a) to require that deferral data is captured down to the individual claim processor level, and notes that we currently have processes in place which align with VA's interpretation of the intent.

Additionally, VA developed a reporting dashboard called the Deferral, Error and Transaction Dashboard which provides users with a detailed breakdown of deferral reasons and identifies the employees responsible for specific deferrals. While VA

appreciates the bill's goal to mandate provisions for tracking and reducing or eliminating avoidable deferrals, these measures may be redundant with the current efforts already in place.

Section 2(b)

VA does not support this provision, which would require a study and report on OGC opinions**.** The scope of this section of the proposed Bill and its purpose are vague and ill-defined. The provision does not specify whether its reference to OGC opinions encompasses only precedential OGC opinions. Without further clarification VA interprets this phrase to reference formal OGC opinions referenced as binding on the Board in 38 U.S.C. § 7104(c) and designated as precedential under 38 C.F.R. §§ 2.6(e)(8) and 14.507(b). It is also unclear what is contemplated with respect to "consistency" of claims decisions, because decisions often reach different outcomes based on a small variation of fact and may only superficially appear to be inconsistent.

With respect to inclusion in the study of issues before the CAVC in which OGC "has had inconsistent opinions in matter involving substantially similar questions of law or fact," the bill suffers from the same ill-defined target. We are unsure exactly what perceived problem this seeks to address. To the extent the target is VA's position in similar cases or questions before the CAVC, VA positions on similar cases, or questions presented for resolution, can be justifiably different based on small differences in facts or procedural history, such that a different position in similar cases may not indicate an inconsistency. Therefore, an attempt to identify the inconsistencies described in the provision would be resource-intensive and lack any guarantee of a productive result.

We note that questions of law regarding benefits-related decisions are typically covered in VA regulations, precedential judicial decisions, and other published policies that are reviewed by OGC for legal consistency. The Board and other VA components are specifically bound by those authorities. The CAVC issues dozens of precedential opinions per year on commonly arising questions of law.

Where those authorities are inconclusive, the Board already has the authority to request a precedential opinion from VA's OGC when it identifies a legal issue that warrants precedential guidance. We further note that OGC precedential opinions are not always the appropriate or ideal vehicle for addressing a given situation. Where the law affords policy discretion, one appropriate solution is generally a regulation, promulgated through notice and comment, that binds the Board.

On balance, VA does not believe the study called for in the bill would be an effective use of limited VA resources.

Section 3(a)

VA does not support this provision, which would require a new quality assurance program at the Board**.** This provision is duplicative and unnecessary, as the Board already maintains a quality review program, which is conducted by the Board's Office of Assessment and Improvement (OAI). The quality review program and the quality assurance rate are included in the Board's Congressionally mandated annual reports. The Board's quality review program reviews Board decisions prior to issuance to identify clear and unmistakable errors; customer service errors; and process protection errors. It is important to note that a small fraction of errors identified by OAI result in a different outcome for the appellant. The Board already works to ensure that identified errors are corrected prior to a decision being issued through issuance of a memorandum identifying the error with recommended actions to cure the error.

However, the Board notes that compliance with any identified recommendations cannot be required without overriding principles of judicial discretion governed by the Judicial Cannons of Conduct applicable to all Federal judicial officials. Because the Board's quality assurance program has been in place for decades, has evolved over time as the law and caseloads have changed, and is robustly documented with statistics and procedural manuals that are publicly available and published (including in CMRs), it is unclear how this legislation might disrupt or potentially limit these longstanding efforts. For example, the entire program was recently reviewed by the Government

Accountability Office (GAO) over the course of about 18 months and further refinements are being made to the program as a result of that review and November 29, 2024, GAO report.

This section would also require that every remand issued by the Board be evaluated by a quality reviewer prior to its issuance to determine the necessity of the remand. Oversight of that nature is impractical because of the volume of decisions issued by the Board. Such a program would require that a significant portion of the Board's attorney personnel be devoted to duplicating the time and effort already expended by the drafting attorney and signing Veterans Law Judge in the review of a claims file prior to making the decision to remand. This would impede the Board's ability to adjudicate appeals at current volume levels, negating any potential advantage to Veterans that might be gained by preventing a likely small number of remands deemed to be unnecessary. Moreover, such a program would infringe on the ability of Veterans Law Judges to exercise their discretion in the adjudication of an appeal.

This section of the proposed Bill would also require the Board to expend additional workforce and technological resources to establish a process to inform drafting attorneys and signing Veterans Law Judges of the CAVC remand and provide a copy of the order, regardless of whether that Veterans Law Judge and attorney are adjudicating the post-CAVC appeal. This would also result in reduced production, as the Veterans Law Judge and attorney would have to spend time reviewing a CAVC decision or JMR instead of working on appeals assigned to them. When an appeal is returned from the CAVC, the drafting attorney and Veterans Law Judge assigned the post-CAVC appeal are required to review the CAVC decision or JMR, which is associated with the claims file. In addition, providing incentives to the drafting attorney to review relevant orders and joint motions from CAVC is not necessary as these orders and motions are associated with the claims file and revieing them would already be relevant and required as part of file review and appellate disposition. This would result in reduced production, as the Veterans Law Judge and attorney would have to spend time reviewing a CAVC decision or JMR instead of working on appeals assigned to them. When an appeal is

returned from the CAVC, the drafting attorney and Veterans Law Judge assigned the post-CAVC appeal are required to review the CAVC decision or JMR, which is associated with the claims file.

Section 3(b)

VA does not support this provision, which would require the Board to carry out a program to provide Veterans Law Judges training on "timely and correct adjudication of appeals," which would consider feedback from Board staff with respect to the program; data on errors of decisions maintained through the quality review program; and decisions and JMRs from the CAVC remanding an appeal back to the Board. The section would be duplicative of current efforts. The Board already maintains a robust training program implemented by its Professional Development Division (PDD). The Board's training program covers a variety of topics, such as the AMA and the PACT Act, as well as issue-based trainings such as special monthly compensation and musculoskeletal ratings. Additionally, Veterans Law Judges participate in an annual multi-day training program. The training program is designed to provide ongoing education on procedural and substantive areas of Veterans' law, to best allow Veterans Law Judges to issue sound legal decisions by applying the law to the facts of the specific appeal assigned to them.

Requiring training on the "correct adjudication of appeals" implies that there is a correct outcome in any given appeal before the Board. As stated above, the ultimate outcome of a particular appeal is based on the judicial discretion and judgment of the reviewing VLJ based on a review of the evidence and application of the law. Reasonable minds may differ on an outcome without one being "correct" and the other being "wrong" or "incorrect." The Board already provides training that incorporates errors identified through the Board's quality review program, as well as on appeals remanded to the Board from the CAVC. Such training is provided in Board-wide trainings, monthly digests, monthly tips, and special alerts. In recent years, the Board has delivered trainings targeting the most common errors identified in the quality review

process, as well as the precedential cases cited most often in CAVC decisions and JMRs.

The bill appears to propose a statutory mandate that would prohibit the Secretary from holding decision-drafting attorneys or other Board employees accountable in their performance reviews if they contributed in any way to deficiencies in "the timeliness and quality of [the] work" performed by the Board's Veterans Law Judges they are responsible for supporting with timely and high-quality draft decisions. In other words, it appears the bill proposes that decision-drafting attorneys cannot be held accountable for preparing untimely or poor work product for Veterans Law Judge review and final signature.

Section 3(c)(1)

VA does not object to this provision, which would require Board remand decisions to include a statement of specific reasons why a claim is remanded. VA notes, however, that this provision is unnecessary as the reasons for remand are already explained in Board remand decisions under a separate section.

Section 3(c)(2)

VA supports this provision, if amended, and subject to appropriations. This section would amend § 7104 to require VA to issue a copy of remand decisions to each VBA employee who committed the error resulting in the remand.

VA notes that not all Board remands are the result of errors by VBA claims processors. In some instances, remands may be due to the submission of new evidence by the Veteran, changes in applicable law, or other external factors. As written, the provision may unintentionally attribute all remands to employee error, which does not reflect the full range of remand causes.

To ensure the provision aligns with its intended purpose, VA would support the bill by amending new § 7104(d)(2), by inserting the phrase "based on error on the

evidence before the AOJ" after "further action." This would clarify that the requirement applies only in instances where the remand is clearly attributable to a significant, identifiable error made by a specific VBA employee.

VA further notes that implementation would require substantial modifications to information technology systems to facilitate the delivery of Board decisions to individual VBA employees across the agency, and thus would require appropriations.

Section 3(d)

This section would add new 38 U.S.C. § 7115 requiring the Board to issue an annual report identifying the reasons for each remand, disaggregated by claims with a rating decision issued before February 19, 2019, and those with a rating decision issued on or after that date.

VA does not support this provision. This position is duplicative and unnecessary as the Board already provides remand data in its annual report. In addition, the reasons for remand are fact specific to each appeal, so an attempt to aggregate may not produce meaningful data.

Section 3(e)

VA does not support this provision. This section would require the Secretary, in consultation with the Chairman of the Board and the head of VBA's Office of Administrative Review, to develop a plan to improve the quality of Board remand decisions and mitigate the number of unnecessary remands. It also would require VA to submit a report outlining the plan within 6 months of enactment.

Implementation of this section will slow the adjudication of appeals at the Board and negatively impact Veterans, because it is not clear what would satisfy the requirements of a plan to improve the quality of the Board's remands. Efforts to develop and monitor a plan to improve Board decisions would be duplicative of current efforts. Moreover, it is not within the authority of VBA or OAR to review Board decisions to

determine whether the directives included in that decision by a Veterans Law Judge were necessary to the Board's adjudication of the appeal. The Board is vested with the authority to review decisions of the Secretary and to make the final decisions on that appeal. It is, therefore, within the Board's authority to determine what development is necessary to make the final decision. Vesting VBA or OAR with the authority to review Board directives for necessity would undermine judicial discretion and permit the AOJ to review the determinations of the Board.

VA notes that VBA encompasses multiple business lines and staff offices that are involved in adjudicative processes subject to Board remands. As such, VA believes that, with respect to the development and implementation of a comprehensive plan to reduce unnecessary remands, VBA's contribution would be most appropriately led by the Under Secretary for Benefits, who has overarching authority across these functions, rather than by OAR.

H.R. XXX Rural Veterans' Improved Access to Benefits Act of 2025

This bill would expand the definition of a health care professional and extend the license portability sunset date from January 5, 2026, to January 5, 2031. This bill also includes a reporting requirement.

Section 2(a)(2) provides a definition of a health care professional as a person who is eligible for appointment to a position in the Veterans Health Administration covered by section 7402(b) who (A) has a current unrestricted license to practice; (B) is not barred from practicing the health care profession in any state; and (C) is performing authorized duties for the Department under a contract entered into under subsection (a).

Section 2(b) would extend the license portability sunset date to January 5, 2031.

Section 2(c) would strike physicians assistants, nurse practitioners, audiologists, and psychologists, and replace those terms with health care professionals.

Section 2(d) contains a reporting requirement not later than 15 months after the date of enactment.

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

VA appreciates the Committee's efforts to improve the temporary licensure requirements for certain contract health care professionals who perform VA disability examinations. VA recommends an amendment to remove the sunset date on the licensure requirements. Eliminating the sunset date and broadening the definition of a health care professional would provide more flexibility to engage a wider range of qualified medical professionals. This expanded pool of professionals would lead to more timely disability examinations and allow VA to serve more Veterans by enabling contract examination vendors to send examiners to rural locations that need their expertise the most. Ultimately, this will result in shorter wait times and faster completion of examinations for Veterans.

Regarding the reporting requirement in section 2(d)(2) that requires disaggregation of timeliness data by health care professional, VA recommends removal of this requirement. Under current contracts with vendors, VA does not have access to this information because VA does not have contractual privity with the individual examiners subcontracted by VA's contract vendors. VA monitors the vendor's performance, but VA does not have access to the vendor's proprietary tracking system with individual provider information. Additionally, delays may be caused by factors outside the control of individual health care professionals. It is important to note that VA may return examinations to be reworked for reasons other than error. For example, if a claimant submits evidence after the examination has been scheduled, the examination may need to be returned to consider the new evidence.

Additionally, VA tracks timeliness for contract examination vendors from the time the vendors acknowledge receipt of the examination request to the time the vendor

completes the examination scheduling request. VA does not track when a vendor sends the examination request to the health care professional and when that examiner returns the completed Disability Benefits Questionnaire(s) to the vendor.

Modification of contracts would be required to implement this section. A costing determination is not available at this time.

H.R. XXX Modernizing All Veterans and Survivors Claims Processing Act

Section 2 would create standalone provisions requiring VA to develop and implement an automated tool to enhance efficiency in processing VA benefits claims. Subsection 2(a) would require the Secretary to submit an implementation plan to the House and Senate Committees on Veterans' Affairs containing the information specified in subsection 2(c), including the feasibility and benefits of using the automation tool to assist in processing VA claims. Under subsection 2(b) the automation tool would be developed for Compensation Service claims, and then be deployed to other VA business lines that process benefits claims. The tool would:

- Automate the retrieval of Veterans' service records or health records
- Compile evidence relevant to the determination of the claim
- Provide automated decision support relevant to the determination
- Automate information sharing between Federal agencies
- Assist in generating correspondence regarding the claim

Subsection 2(d) directs VA to prioritize the deployment of such an automation tool to the following program and staff offices:

- VBA Pension and Fiduciary Service;
- VBA's Education Service;
- VBA Program Offices as determined by the Secretary;

- VA's Debt Management Center; and
- VA's Board of Veterans' Appeals

Under subsection 2(e), VA would be required to make the tool available within 1 year of plan submission to each program office responsible for processing claims for pension or survivor benefits.

Section 3(a) would require VA to implement, within 1 year of enactment, policies, processes and technology (including in the National Work Queue) to identify and assign the following "situations" to a claims processor for action: (a) increases in the amount of dependency compensation paid to a beneficiary for a child, and (b) educational assistance paid to a Veteran's child.

Section 3(b) directs the Secretary, within 180 days, to submit a plan to ensure the proper labeling of documents uploaded to the Veterans Benefits Management System (VBMS), or any successor technology, to include documents labeled using automation technology.

VA supports the intent of the bill, subject to amendments and the availability of appropriations.

VBA appreciates Congress' support and encouragement of VA's automation efforts to maximize employee productivity and accuracy within the claims adjudication process. The automation tool described in Section 2 mirrors VBA's current automation efforts, called VA Automated Decision Support (ADS) technology. ADS is not end-to-end automation. Rather, it focuses on the administrative activities leading up to the claims decision that free claims processors for more complex and analytical duties. Based on our experience with ADS development, VA recommends the following amendments:

In subsection 2(a), VA recommends a timeline of not later than one year after the date of enactment of this Act to submit its plan. VA is currently working on a plan to identify the level of effort, timeline, and cost to expand ADS for all disability claims. VA expects to draft a plan by July 1, 2026, and will provide Congress with a copy of the document at that time.

In subsection 2(e), VA recommends a timeline of not later than the date of implementation identified in its plan to ensure the automation tool is made available to each program office responsible for processing claims for pension or survivor benefits. The plan required under subsections (a) and (c) is developed for disability compensation (Chapter 11, Title 38), specific to the laws and regulations governing that benefit and services. Subsection (e) pertains to pension and survivors' benefits (Chapters 13 and 15, Title 38). Pension and survivors' benefits have specific and distinct laws governing their administration that differ from those of disability compensation.

In subsection 3(a), VA recommends limiting the requirement to make a claims processor aware of, and address, a covered situation if a technological capability could not address the situation. Otherwise, the bill would negatively impact VA's ongoing automation efforts. As VBA evaluates automation expansion across VBA's benefit programs, it is working to identify situations in the claims process where benefit adjustments can be made using technology without human intervention.

Lastly, VA recommends a conforming amendment to the Internal Revenue Code, at 26 U.S.C. § 6103(l)(7), to require all Internal Revenue Service (IRS) officers and employees to redisclose Federal tax information (FTI) to contractors of the Department who administer (or assist in administering) a program listed in subparagraph (D)(viii). VA utilizes the IRS's FTI to validate a beneficiary's entitlement to pension benefits (monthly payments to wartime Veterans who meet certain age or disability requirements and who have income and net worth within certain limits). However, the current rule restricts access to this information to only authorized individuals and government

employees. Automation and other system technologies require specialized expertise that is often obtained through third-party vendors. For VA to automate the use of FTI for pension benefits, it is imperative that its contractors have authorized access.

Such technical capabilities would require appropriations, though VA is unable to provide a cost estimate at this time.

H.R. XXX Ernest Peltz Accrued Veterans Benefits Act

Section 2(a) would add new 38 U.S.C. § 5121B to provide a priority payment list when VA issues a decision awarding entitlement to pension to a Veteran before their death and a payment of such pension is due and unpaid when the Veteran dies. New section 5121B would also require VA, if no application for accrued benefits is filed within one year following the death of the Veteran, to pay the pension benefit to the estate of the deceased Veteran unless the estate will escheat.

Section 2(b) provides technical amendments to conform with the addition of 38 U.S.C. 5121B.

Section 2(c) provides that the bill's amendments will be effective for Veteran deaths that occur on or after the date of enactment.

VA supports the intent of this bill, but cites concerns, and subject to the availability of appropriations.

VA notes that new 38 U.S.C. § 5121B would create, with respect to Veterans granted VA pension benefits during their lifetime and owed a pension payment at the time of their death, an expanded priority payment list. Such benefits are called accrued pension benefits because they are due but unpaid at the time of death. The general rules regarding payment of accrued periodic monetary benefits are set forth in 38 U.S.C. § 5121. Whereas under current § 5121(a)(6), if there is no living spouse,

children, or dependent parents, the estate of a deceased Veteran is only entitled to the portion of accrued benefits necessary to reimburse the estate for any expenses paid by the estate related to the Veteran's last sickness and burial, the proposed provision would entitle the estate in that circumstance to the entire amount of accrued pension.

VA highlights that this amendment would provide a potentially larger payment to the Veteran's estate only for pension payments owed to the Veteran at time of death, and only where VA has actually awarded pension prior to death. The current limitation on payment of accrued benefits to a Veteran's estate would continue to apply with respect to pension payments owed to the Veteran at the time of death which have not been awarded and other types of periodic monetary payments owed to a beneficiary at time of death, creating disparate treatment. Other relevant periodic accrued benefits administered by VA include Disability Compensation, Dependency and Indemnity Compensation (DIC), and Survivors Pension.

Additionally, VA highlights concern with proposed § 5121B(b) that would require VA to pay pension benefits to the estate of the deceased Veteran, unless the estate will escheat, if no application is filed under 38 U.S.C. § 5121 within 1 year following the death of the Veteran. As a result, the bill would extend eligibility to the general estate of the Veteran without an application being filed that properly identifies the estate and/or the administrator or representative thereof, so that VA knows where to direct payment. Furthermore, VA notes that the language within proposed § 5121B(a) provides the estate an opportunity to apply for accrued benefits, resulting more favorable treatment toward one group of individuals who would be exempt from timely filing when it is required of all others. VA suggests that any expansion of potential payment of accrued benefits to a Veteran's estate extend equitably to the payment of all accrued benefits, not just pension benefits. VA would appreciate the opportunity to discuss this bill with the Committee to better understand the intended outcomes and to determine what, if any, amendments would be needed to ensure that the proposal aligns with the intent.

A cost estimate is not available at this time.

H.R. XXX Protecting Veterans Claim Options Act

This bill would amend 38 U.S.C. § 7104 to require the Board to adjudicate supplemental claims on the merits where a claimant has not submitted new and relevant evidence. It would also provide a new 90-day evidence submission window following a remand from the CAVC.

Section 2(a)

VA supports this provision, subject to amendment, and the availability of appropriations. One of the fundamental tenets of the AMA is that VA is not required to re-adjudicate a claim absent new and relevant (NAR) evidence. On the other hand, the AMA provides a general right of appeal to the Board. These principles are in tension where a claimant receives an AOJ (e.g., VBA) decision on the merits, files a supplemental claim, and then the AOJ denies re-adjudication for lack of NAR. At that point, the claimant may still want to appeal the merits denial to the Board without new evidence, but the only determination available to appeal is the question of NAR, because the merits decision has been superseded by the NAR decision. The claimant, through a choice to file a supplemental claim without evidence instead of an appeal to the Board, has lost the ability to appeal the AOJ's merits decision to the Board. This is sometimes referred to as the "supplemental claim trap." We view this bill as an attempt to address this situation.

While the AMA's expansion of claimant choice following an AOJ decision inherently carries the possibility that a claimant will make a bad choice, VA supports a legislative amendment to ameliorate the consequences in this particular situation where a claimant files a supplemental claim without NAR. Any solution, however, should be narrowly tailored to avoid reintroducing unintended inefficiency into the system.

As written, this bill may preclude the Board from denying a claim based on the lack of new and relevant evidence but does not specify whether the Board could deny a

claim on the merits where the AOJ found that no new and relevant evidence had been received and therefore did not reach the merits in the decision that was appealed to the Board. This issue arises in particular either where the Board finds that the evidence submitted to the AOJ was in fact new and relevant or where new and relevant evidence is submitted to the Board. In either case, the new evidence, and any new legal issues arising from it, have not been considered by the AOJ in the first instance.

Proposed section 2(a) also weakens the rule of finality. Currently, Board decisions are final when issued and can only be reviewed by the CAVC and higher Federal courts. Alternatively, a claimant may file a supplemental claim after a Board decision to obtain re-adjudication of the merits of an issue decided by the Board so long as new and relevant evidence is identified or submitted. However, proposed section 2(a) would create an avenue whereby claimants could circumvent the finality of Board decisions. If the new and relevant evidence requirement is removed at the Board level, claimants would be able to continuously file supplemental claims after Board decisions without having to submit any evidence, file a Board appeal of the resulting AOJ decision, and thereby obtain Board review of the merits again based on the same record previously considered by the Board. Essentially, the claimant would be able to obtain a second opinion on the prior Board decision without providing new evidence. This would increase the number of Board appeals without providing the benefit of additional evidence for the Board to review, which would in turn place a substantial burden on limited resources and add to the delay in claimant wait times.

VA supports the general approach of the bill but with further limits on the circumstances allowing claimants to avoid the supplemental claim trap when appealing to the Board. For example, the bill might limit the requirement for the Board to address the merits of an AOJ decision on the merits, even where an intervening AOJ decision denied a supplemental claim for lack of NAR, to situations where the claimant files a supplemental claim within one year of the prior VA decision on the merits. Under this approach, the risk associated with filing a supplemental claim instead of a Board appeal would be minimized because claimants could still obtain Board review on the merits, so

long as the request for Board appeal was timely received. This would ameliorate the trap, while continuing to encourage claimants with new evidence to file supplemental claims before requesting Board review, and without effectively rewriting a large portion of the comprehensive and carefully considered AMA with respect to supplemental claims.

We note that removing the new and relevant evidence requirement from the Board only will potentially incentivize Board appeal as compared to other lane options, potentially adding adjudication delay. This would be contrary to one of the purposes of the AMA, which was to provide additional paths for review and resolution at the AOJ level without necessitating an appeal to the Board.

Finally, any legislative attempt to improve the supplemental claims adjudication process should include amendments to address the difficulties posed by *Terry v. McDonough*, 37 Vet. App. 1 (2023). The Court of Appeals for Veterans Claims in *Terry* fashioned an overly broad solution to the supplemental claim trap by interpreting 38 U.S.C. § 5104C(a) to allow a claimant to file multiple administrative review (or "decision review") requests in response to the *same decision* by an AOJ, provided only one review request is pending at a time. The Court invalidated VBA's regulation providing for sequential review of AOJ decisions, such that a claimant can seek review of only the most recent VA decision. VBA has found that implementation of *Terry* adds complexity and inefficiency to the claims process, creates conflicts among the AMA's evidentiary rules, and thereby undermines the intended efficiency benefits of the AMA. *Terry* implementation imposes substantial time and cost burdens on VBA and introduces additional challenges concerning reporting requirements and tracking claims, complicating the overall claims processing workflow.

Section 2(b)

VA does not support this provision. Section 2(b) of the proposed bill would also amend 38 U.S.C. § 7113(d) to provide a new evidence submission window for cases remanded by the CAVC to the Board. This would allow the appellant and his or

her representative, if any, to submit new evidence to the Board within 90 days following such remand and require the Board to consider that evidence in the first instance. This proposed evidentiary window would frustrate current jurisdictional considerations relying on a closed appellate record for both the Board and reviewing Federal courts to consider. Approximately 6,800-7,700 remanded appeals are returned to the Board each year by the CAVC and the vast majority of those require the Board to provide additional "reasons or bases" for why the original record before the Board was insufficient to grant the relief sought. This newly proposed evidentiary window would completely upend that longstanding appellate practice in a way that would add confusion for Veterans, their representatives, and Board judges on how to adjudicate the remand in accordance with the Court's remand instructions. Worse, it would introduce conflicting procedures and requirements for the Board's review of medical evidence in the first instance. The confusion and disruption of such a substantial change not only erodes the carefully considered relevant evidence windows currently available to Veterans under the AMA, but it undoubtedly would lead to significant different and potentially inequitable processes and outcomes for Veterans and their families, caregivers, and survivors.

VA would be happy to work with the Committee to provide technical assistance on this and other technical concerns with the bill language.

H.R. XXX Veterans Caregiver Appeals Modernization Act of 2025

Section 2(a)(1) of this bill would amend 38 U.S.C. § 1720G(a)(4), which generally requires eligible Veterans and their family members to jointly submit to VA an application to participate in the Program of Comprehensive Assistance for Family Caregivers (PCAFC). The amendments would require VA to develop and implement a single digital system through which each VHA and the Board employee responsible for evaluating applications for PCFAC could access each such application and all documents received or submitted with respect to such applications.

Section 2(a)(2) would amend section 1720G(c), which currently establishes a rule of construction that decisions affecting the furnishing of assistance or support under this section are considered a medical determination and that nothing in this section can be construed to create an employment relationship between VA and caregivers or any entitlement to any assistance or support provided under this section. The amendments would add a further rule of construction stating that nothing in this section could be construed to affect, if an eligible Veteran dies during the pendency of an appeal of a VA decision affecting the furnishing of assistance or support services under this section, the eligibility of a family caregiver to receive monthly personal caregiver stipends to which the caregiver was entitled on the date of the eligible Veteran's death based on the evidence in the file on such date, and due and unpaid as of such date. Section 2(a)(2) would also add a new paragraph (3) that would require VA ensure that any VHA employee responsible for evaluating appeals of VA decisions affecting the furnishing of assistance or support services under this section be provided the same guidance and complete the same training as a higher-level adjudicator under 38 U.S.C. § 5104B.

Section 2(b)(1) would require VA to consider, when developing the required digital system that would be established by section 2(a)(1) of the bill, lessons learned from the implementation of the Veterans Benefits Management System (VBMS) to process benefits claims and whether other VHA-administered programs would improve from the development of a single digital system through which applications and documents relating to such programs may be accessed by applicable VHA employees responsible for evaluating such applications and documents.

Section 2(b)(2) would require VA, in carrying out the requirement under section 1720G(c)(5), to consider best practices developed from efforts to standardize the guidance and training available to VA employees responsible for the delivery of disability compensation to Veterans eligible for such compensation.

VA supports the intent of this bill, but cites concerns, and subject to amendments and availability of appropriations.

Section 2(a)(1) of the bill, which would require development and implementation of a single digital system specific to PCAFC applications and appeals of such applications, is unnecessary and could duplicate other efforts underway. The Caregiver Support Program (CSP) currently uses the Caregiver Record Management Application system (CARMA), which is a workflow management tool used to support PCAFC and allows for data assessment and comprehensive monitoring of PCAFC, in accordance with section 162 of the VA MISSION Act of 2018 (P.L. 115-182). CARMA includes data on applications and appeals, among other information. While Board employees generally do not seek direct access to CARMA, processes are in place that allow each VHA or Board employee responsible for evaluating PCAFC applications or appeals access to each application and all documents received or submitted with respect to each application and subsequent PCAFC eligibility determinations (e.g., stipend amount changes, revocation, discharge). Creating a new digital system specific to PCAFC would be duplicative, and while VA is unable to estimate a cost, VA expects it would be significant, as implementation of CARMA was over $100 million.

While VA does not support the development and implementation of a single digital system specific to PCAFC applications or appeals of such applications, VA notes that efforts are underway to establish a Health Benefit Management System or appropriate VHA and Board employees to access documentation regarding VHA health benefit decisions, including applications and related documents; this would not be limited to one specific VHA health care program or benefit.

In proposing amendments to section 1720G(c) in section 2(a)(2) of the bill, VA recommends Congress consider the impact of the February 27, 2024, decision of the U.S. Court of Appeals for the Federal Circuit (the court) in *Beaudette v. McDonough*, 93 F.4th 1361 (Fed. Cir. 2024), particularly with respect to the phrase “affecting the furnishing of assistance or support.” Historically, and before the Court of Appeals for Veterans Claims ruling in *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), VA interpreted that phrase in the context of § 1720G(c)(1) to mean that determinations

under § 1720G were beyond BVA's jurisdiction pursuant to 38 C.F.R. § 20.104(b) (and a predecessor regulation) and appealable only through the VHA Clinical Appeals Process. The court agreed that "medical determination" in § 1720G(c)(1) refers to VA's longstanding regulation (currently 38 C.F.R. 20.104(b)) exempting medical determinations from Board review. *Beaudette*, 93 F.4th at 1368. However, the court understood the phrase "affecting the furnishing of assistance or support" in § 1720G(c)(1) to exempt from Board review "only decisions relating to the need for or appropriateness of specific types of medical care and treatment", which it deemed "properly considered [to be] medical determinations." *Id.* Such decisions include whether a specific type of mental health service for a Primary Family Caregiver is appropriate or whether the type of respite care provided is medically and age-appropriate. *Id.* at 1369.

Pursuant to *Beaudette*, PCAFC decisions that do not affect the furnishing of support or assistance, including PCAFC eligibility decisions under § 1720G(a)(2), are within BVA's jurisdiction. Because section 1720G(c)(1) "bars judicial review of [PCAFC] decisions on the furnishing of assistance or support" (*Beaudette*, 93 F.4th at 1366), VHA continues to make the VHA Clinical Appeals Process available for individuals to appeal such PCAFC determinations.

Given this context, it is not clear if proposed section 1720G(c)(2)(B), as would be added by section 2(a)(2) of the bill, is intended to be limited to appeals of decisions that are medical determinations and beyond BVA's jurisdiction. Likewise, it is unclear if proposed section 1720G(c)(3) is intended to be limited to VHA employees who render PCAFC decisions that are not appealable to BVA (i.e., those to render medical determinations appealable through the VHA Clinical Appeals Process). It is also unclear why proposed section 1720G(c)(3) would refer to guidance and training specific to higher-level adjudicators under 38 U.S.C. § 5104B, as VHA employees also render PCAFC decisions in other contexts, such as for PCAFC applications and supplemental claims. If Congress intends for proposed section 1720G(c)(2)(B) and (c)(3) to refer to appeals of decisions that are reviewable by Board, VA recommends Congress revise

the bill language so that it is not limited to decisions “affecting the furnishing of assistance or support services” under § 1720G.

In addition to concerns about ambiguity, VA believes the proposed amendments to section 1720G(c) are unnecessary.

As it relates to training VHA employees, the provisions set forth in this bill are unnecessary and could undermine the extensive training requirements already in place and used throughout the CSP.

Individuals and teams within VHA responsible for evaluating appeals of PCAFC eligibility decisions receive initial and ongoing training relevant to their roles, including training on each PCAFC eligibility criterion, how such criteria are evaluated, and training in the consideration and weighing of evidence of record to inform the overall eligibility determination. The individuals or teams responsible for evaluating appeals of PCAFC eligibility decisions within VHA are trained clinicians, serving as experts in their field, classified and compensated accordingly, and provided with extensive and continuous training to ensure they render consistent, accurate decisions following a standard protocol.

As it relates to eligibility of a Family Caregiver for the monthly stipend payment in cases in which a Veteran passes away during an appeal, this additional language is unnecessary and could set unrealistic expectations. Individuals who wish to be designated as a Family Caregiver must submit a joint application, along with the Veteran, and participate in evaluations necessary for VA to determine eligibility of both the Veteran and caregiver. So long as all evaluations have been performed, training requirements met, and an initial home-care assessment completed, and VA has enough information to render a determination of eligibility, VA already renders such determinations, when appropriate, and issues applicable benefits to the Family Caregiver, even in cases where the Veteran has died before the PCAFC application or appeal has been decided.

However, in many cases in which the Veteran passes away during the pendency of a PCAFC application decision or appeal, the evaluations and other program requirements have not yet been completed before the Veteran's death for VA to render an eligibility determination. Although, the number of cases where a Veteran dies before the appeal is decided is small, the bill language, if enacted, could establish unrealistic expectations about caregivers' eligibility to receive monthly stipend benefits retroactively when the eligibility is not supported by the evidence in the file on the date of the Veterans death. Insofar as the draft suggests that VA could award benefits in all PCAFC appeals, notwithstanding the death of the Veteran, that is not accurate. While VA could attempt to determine eligibility based on information in the application or case file, key elements – such as identifying the personal care services required by the Veteran and assessing the caregiver's competence to provide such services at the Veteran's home – could not be done (or would not make sense to do) without the Veteran.

When evaluating eligibility for PCAFC, the evaluation process must consider multiple criteria, all of which must be met to determine eligibility and award benefits. If not all criteria are met, the evaluation process concludes, and VA denies the application for PCAFC benefits. It would be impractical and unreasonable for the applicants and VA to complete the full PCAFC evaluation process in its entirety, including the completion of caregiver training and an initial home-care assessment, when, for example, VA determines early in the evaluation process that certain criteria are not able to be satisfied, such as a Veteran not having a serious injury incurred or aggravated in the line of duty. However, this means that if an appeal is filed, and the Veteran dies before a decision is rendered on the appeal, VA may not have all of the evidence in the file that would be necessary to determine whether criteria were met prior to the Veteran's death. As a result, PCAFC benefits would not be awarded.\ As previously mentioned, when all steps of the application process have been completed and the individuals are determined eligible, VA already provides any benefits due to the surviving caregiver. Accordingly, this bill language is unnecessary.

Additionally, as a technical matter, VA notes that the term “entitled” in proposed § 1720G(c)(2)(B)(i) would be inconsistent with § 1720G(c)(2), which makes clear that nothing in § 1720G shall be construed to create any entitlement to any assistance or support provided under § 1720G. Additionally, section 2(b)(2) of the bill refers to paragraph (5) in section 1720G(c), but there would be no such paragraph (5); the reference here should be instead to paragraph (3). VA would be happy to work with the Committee to provide technical assistance on this and other technical concerns with the bill language.

We would appreciate the opportunity to discuss this bill with the Committee to better understand the concerns driving interest in this bill. The practical limitations and concerns associated with changes to the adjudication and appeals process could prove difficult to reconcile. We strongly support efforts to ensure Veterans, and their caregivers have full access to the benefits they have earned, but we want to ensure that any changes do not result in additional burdens without improved outcomes and experience.

VA does not have a cost estimate for this bill.

Conclusion

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