STATEMENT OF CHARMAIN BOGUE EXECUTIVE DIRECTOR, EDUCATION SERVICE VETERANS BENEFITS ADMINISTRATION (VBA) DEPARTMENT OF VETERANS AFFAIRS (VA) BEFORE THE COMMITTEE ON VETERANS' AFFAIRS U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

JULY 17, 2019

Good afternoon, Chairman Levin, Ranking Member Bilirakis, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss several bills on the agenda. Unfortunately, due to the late notice of several of the bills, VA will only be able to provide limited testimony. VA will provide the remaining views in a follow up letter after the hearing. Accompanying me today are Jeffrey London, Executive Director, Loan Guaranty Service (VBA); David Carroll, Executive Director, Mental Health Operations (VHA); and Sean Clark, National Director, Veterans Justice Programs (VHA).

(1) Unnumbered Bill – Require proprietary for-profit educational institutions to comply with Federal revenue limits to participate in VA educational assistance programs

The proposed legislation would prohibit VA or a State Approving Agency (SAA) from approving a course of education offered by a for-profit educational institution if the school does not receive a minimum of 10 percent of its revenues from sources other than Federal funds. Federal funding would be defined in the proposed legislation as any Federal financial assistance referenced under title 38, United States Code (U.S.C.), the Higher Education Act of 1965 (HEA) (20 U.S.C. §§ 1001 et seq.), or any other Federal law, through a grant, contract, subsidy, loan, guarantee, insurance, or other means to a proprietary institution, including Federal financial assistance that is paid to an institution on behalf of a student or to a student to be used to attend an institution. This does not include any monthly housing stipends under 38 U.S.C. chapter 33. The proposed legislation is effective 180 days after the date of the enactment.

We have significant concerns regarding the implementation and administration of the requirements and cannot support the legislation as proposed.

First, the proposed legislation would require SAAs and/or VA to calculate the overall "revenue" of for-profit educational institutions. Based on the definition of Federal funds, VA believes the term "revenue" is comprised of much more than tuition and fee payments. The Department would need to have the proper resources to review business accounts concerning all revenue across an entire business operation to verify compliance with the proposed requirement and is aware of no SAA with such capacity.

Second, the proposed definition of "Federal funds" is comprehensive, which would create potential problems with implementation. VA is not aware of any existing

data source detailing every Federal law that provides financial assistance to an educational institution, on behalf of a student, or to a student "through a grant, contract, subsidy, loan, guarantee, insurance, or other means." Verifying such Federal funding would, therefore, be difficult. Moreover, this definition includes many sources of funding that are not included in the Department of Education's 90/10 rule, which only looks at Federal funds provided under Title IV. See 20 U.S.C. § 1094(a)(24), (d)(1), and (d)(2). VA's 85/15 rule (38 U.S.C. § 3680A(d)), which restricts assistance provided by VA based on the ratio of students utilizing VA benefits and is not limited to for-profit schools, is similarly much narrower than the proposed rule. Based on the proposed legislation, VA and the SAAs would have to gather an excessive amount of data regarding Federal funds paid to educational institutions to determine the initial and continued approval of educational programs; doing so in 180 days would be immensely challenging. VA believes that the bill as currently written would impose a heavy burden on the SAAs or VA in attempting to verify reporting by for-profit schools. VA funds SAAs via contract, with statute capping the funds available. See 38 U.S.C. § 3674(a). Given the highly detailed and unique information required to be assessed by the proposed statute, VA anticipates that SAAs will not have sufficient resources based on current funding to enforce the proposed statute.

Third, the 85/15 rule already limits which educational institutions (without regard to for-profit status) may take advantage of GI Bill funding, also addressing the apparent concern of schools that are over-reliant on Federal funds. The proposed legislation does not include a provision to allow currently enrolled students to finish their programs that parallels the 85-15 rule and would provide no authority to waive the requirements. Consequently, VA beneficiaries who may be enrolled in an institution that does not satisfy the criteria in the proposed statute would undergo a significant disruption, one that may prevent Veteran students and eligible dependents from completing their chosen programs due to a lack of alternatives, or because their GI Bill benefits are exhausted prior to graduation because all credits previously earned do not transfer to a new school.

Finally, the proposed legislation would apply equally to all types of programs offered by for-profit educational institutions, including degree, non-degree, flight, and on-the-job and apprenticeship training programs. We note that some of these programs do not involve traditional tuition and fee charges and/or do not primarily operate as classroom education. Given the scope of the inquiry into school revenue and school receipt of Federal funding, VA cannot provide an estimate regarding the likelihood that any institution would, or would not, currently meet the proposed requirements. The Department would be happy to work with the Subcommittee to provide technical assistance on the draft bill.

No benefits or administrative costs are associated with this bill.

(2) Unnumbered Bill – "Forever GI Bill Class Evaluation Act"

Section 2 of the proposed legislation would provide the findings and sense of Congress, including that:

- VA provided \$10.8 billion in Post-9/11 GI Bill education benefits to almost 800,000 Veterans in Fiscal Year (FY) 2014.
- According to the Government Accountability Office's (GAO) October 2015 report, VA made \$416 million in Post-9/11 GI Bill overpayments in FY 2014, affecting one in four educational beneficiaries and about 6,000 schools.
- According to the report, Veterans using other VA education programs must verify their enrollment each month, but VA does not require those using the Post-9/11 GI Bill to do the same. VA not requiring Veterans using the Post-9/11 GI Bill to verify their enrollment every month can cause significant time to lapse between when Veterans drop courses and when this is reported, according to the report, meaning VA's process allows Veterans to incur thousands of dollars in overpayments and increases the program's costs associated with collecting these debts.

Section 3 of the proposed legislation would amend 38 U.S.C. § 3313(d)(1) to provide a limitation on when VA can issue a tuition and fee payment for a program of education leading to a degree pursued at an Institution of Higher Learning (IHL). Specifically, it would prohibit VA from making the lump sum payment for tuition and fees prior to 14 days after the start of the quarter, semester or term, unless the Secretary provides for a waiver. Additionally, if an individual withdraws during the first 14 days of the quarter, semester, or term, VA "shall not" issue a tuition and fee payment to the IHL. The proposed legislation would apply to a quarter, semester, or term that begins on or after the date that is 14 days after the date of enactment.

While VA supports the intent of the proposed legislation, we cannot support this bill due to the potential impact on Veterans and other VA education beneficiaries. While the proposed change could possibly decrease some overpayments and debts owed to VA, we believe such legislation would inadvertently shift the tuition and fee debt to the Veteran as certain schools would still require payment for the period of enrollment. VA's Post-9/11 GI Bill claims processing system, the Long-Term Solution (LTS), is currently programmed to release awards for tuition and fees no earlier than 14 days prior to the beginning of an enrollment period. As such, VA would need to make modifications to the LTS to implement the proposed legislation.

The proposed legislation would also require that VA not make payment for tuition and fees if an individual withdraws from a program of education during the first 14 days of the quarter, semester, or term. As drafted, it is clear that VA should not pay retroactive benefits for individuals if they withdraw during the first 14 days of the term and benefits have not yet been paid. However, VA notes that it is unclear how the statutory provisions in 38 U.S.C. § 3680(a), which are generally applicable to benefit payments under the Post-9/11 GI Bill, and the proposed legislation would interact. Specifically, the proposed legislation is arguably inconsistent with section 3680(a)(1)(C), which creates an exception to the general prohibition on payment for withdrawals (regardless of timing) if mitigating circumstances exist. Section 3680(a)(1)(C)(ii) dictates that mitigating circumstances shall be considered to exist for initial withdrawals totaling not more than 6 semester hours.

Section 2 also identifies GAO concerns with Post-9/11 GI Bill students not having to verify enrollment each month, but the proposed legislation does not make any

statutory change relevant to this finding. VA currently has a process to assist schools in avoiding overpayments and minimizing student debts while also ensuring educational beneficiaries can receive their monthly benefits payment in a timely manner. Educational institutions are required to submit certifications to VA within 30 days of the beginning of the term. VA encourages schools to submit enrollment certifications prior to this deadline through VA's dual certification process: initially certifying \$0 for tuition and fees, and then subsequently certifying the net charges for tuition and fees. This process assists schools in avoiding school overpayments by allowing them to certify enrollments as early as possible with the term dates, credit hours, and other pertinent information while leaving the tuition and fees field blank. Once the school's drop-and-add period or another specified time by the school is complete, the educational institution can submit the updated tuition and fees amount. Through this process, schools benefit by submitting an accurate tuition and fees amount to VA while also ensuring the educational beneficiary receives their books and supplies stipend and monthly housing allowance payments without delay.

VA also notes that the proposed legislation as written would apply only to eligible individuals under the Post-9/11 GI Bill who are pursuing a program of education leading to a degree at an IHL. This change would not include eligible individuals pursuing a program of education at non-degree granting institutions. In addition, this change would also not apply to individuals pursuing a program of education leading to degree while on active duty. VA would be happy to work with the Subcommittee to provide technical assistance on the proposed legislation.

(3) Unnumbered Bill – Require that educational institutions abide by Principles of Excellence (POE) as a condition of approval for purposes of the VA educational assistance programs

This bill would amend 38 U.S.C. § 3679 to require disapproval of courses at educational institutions that do not agree to abide by the POE set forth in Executive Order (EO) 13607 or at those institutions that have agreed to abide by such POE but are in violation of those POE. This bill would essentially codify the POE established in EO 13607.

In addition, this bill would expand the POE by requiring educational institutions and any third-party lead generator, marketing firm, or company that owns and operates educational institutions to comply with the Department of Education's regulations in 34 C.F.R. §§ 668.71 through 668.75 and 668.14. This bill would also do the following:

- Prohibit these entities from inducements, including any gratuity, favor, etc. to employees or contractors for the purpose of securing enrollments of Veteran students, with the exception of scholarships, grants, and tuition reductions provided by the educational institution;
- Require refrainment from providing any commission, bonus, or other incentive payment based directly or indirectly on securing enrollments or Federal financial aid (including educational assistance under this title) to any person or entity engaged in student recruiting, admission activities, etc.; and

 Require refrainment from high-pressure recruitment tactics, including making three or more unsolicited contacts for the purpose of securing Veteran student enrollments.

While VA supports the intent of this proposed legislation of making the POE a part of the approval requirements for educational institutions and thereby ensuring Veterans, Servicemembers, and their families receive the information and protections they deserve as intended by EO 13607, VA cannot support this bill due to our concerns with the potential impact on degree programs at public IHLs and other programs that are currently exempt.

First, there are currently 2,176 programs at IHLs that, although eligible to participate in POE, have chosen not to do so (6.404 IHLs eligible; 4.228 have POE agreements – 66 percent; 2,176 without a POE agreement – 34 percent). Of these 2,176 non-signatory IHLs, 579 are public IHLs. From the beginning of the POE program, many public IHLs have expressed an inability to commit to POE due to the requirement that they provide a personalized form covering the total cost of the entire education program. For a standard bachelor's degree, a school must provide the student with a cost worksheet outlining tuition and fee charges for the entire 4 to 5 years of the program. Since many public IHLs do not directly control their own tuition charges (which are often dictated by a Board of Regents, state legislature, or some other outside advisory and oversight body), many schools have stated they cannot guarantee tuition charges for years in advance and are afraid of being accused of operating bait-andswitch schemes, and, consequently, many have chosen not to be POE signatories. Under the proposed legislation, if a public IHL is externally forced to raise tuition charges during a student's program of education, it could potentially be found in violation of the POE and face disapproval.

Second, VA considers the requirements of the POE to be incompatible with some types of training programs, for example, foreign schools, apprenticeship and on-the-job training programs, and other programs that do not charge tuition and fees. However, the proposed amendment would not include any provisions to exclude such incompatible programs. Therefore, VA would encourage Congress to work with VA to determine a list of excluded programs for explicit exemption in the statute or to include a provision that would allow the Secretary of Veterans Affairs to establish a list of program types that would be exempt from the proposed rule.

Third, VA is extremely concerned that adequate enforcement of proposed section 3679(f)(2)(B) would be beyond the administrative capabilities of SAAs. As currently written, the proposed prohibitions are far-reaching (applying to third parties and associated companies), require gathering of evidence to determine whether a violation of subjective standards has occurred, and appear to require adjudications that are highly complex, potentially contentious, and extremely resource intensive by the SAA and/or VA that are independent of any such determinations already made by the Department of Education. Since the proposed requirements would apply to third-party and parent companies, verification of compliance could significantly increase the volume of corporate records that an SAA would have to review. Implementation of these rules may overload existing SAA resources. VA funds SAAs via contract, with statute capping the funds available. See 38 U.S.C. § 3674(a). Given the highly detailed

and unique information required to be assessed by the proposed statute, VA anticipates that SAAs would not have sufficient resources based on current funding to enforce the proposed statute. Proposed subsection (f)(2)(B)(ii)(II) also appears to be partially duplicative of 38 U.S.C. § 3696(d)(1), which already prohibits VA from approving enrollments and paying benefits based on courses offered by educational institutions providing commissions, bonuses, or other incentive payments related to recruiting success.

Fourth, VA opposes the direct incorporation of another agency's regulations into a statutory limitation on participation in VA benefits. Regulations codified in title 34, C.F.R., implement Department of Education requirements, not VA requirements. This means that title 34 rules may be changed by the Department of Education without consultation or oversight by VA and could lead to a situation in which Department of Education's unilateral actions lead to the de facto disapprovals for purposes of GI Bill programs. Furthermore, SAAs have no expertise regarding the title 34 requirements and, therefore, the incorporation of these novel requirements would create a larger administrative burden.

Fifth, the specific title 34 regulations incorporated would appear to effectively eliminate GI Bill benefits for unaccredited courses. Currently, statute allows for GI Bill benefits to be used for courses that are accredited and unaccredited. 38 U.S.C. §§ 3675 (detailing approval requirements for accredited courses), 3676 (detailing approval requirements for unaccredited courses). Congress does not appear to have afforded such discretion for participation in Title IV programs, instead requiring the Department of Education to recognize accrediting bodies, 20 U.S.C. § 1099b, enter into agreements with schools that will provide adequate information to accreditors, 20 U.S.C. § 1094(a)(3)(C), and verify that schools are accredited, 20 U.S.C. § 1099c(a). One of the title 34 regulations that the proposed law incorporates into the POE that would become mandatory for GI Bill participation appears to implement the statutory requirement that schools enter into an agreement with the Department of Education. See 34 C.F.R. § 668.14. Therefore, it appears that the proposed statute would create standards that could only be met by schools that have met Department of Education requirements, including accreditation, which would effectively eliminate VA's ability to pay benefits pursuant to 38 U.S.C. § 3676. VA is unaware of any indication that this is the intent of the proposed statute and would be happy to work with the Subcommittee to provide technical assistance on the draft bill.

Finally, VA would recommend that the POE requirements be codified in title 38, U.S.C. Otherwise, educational institutions, SAAs, and other stakeholders will have to separately search out those statutorily imposed requirements and may have concerns regarding the official or authoritative source for the statutory requirements and/or confusion as to whether or not a version of the POE they find is the one that was effective on the date of enactment of the subsection.

As a technical matter, VA also notes that the words "Executive Order 13607" appear to have been inadvertently omitted after the word "under" in proposed section 3679(f)(1)(A).

(4) Unnumbered Bill – Authorize State Approving Agencies to carry out outreach activities

The draft legislation would add a new subsection (f) in 38 U.S.C. § 3673, which would authorize an SAA to carry out outreach activities. No additional amounts would be appropriated to perform the outreach activities.

VA supports the intent of the proposed legislation; however, we do not support the bill because we believe it is unnecessary as the SAAs are currently required to perform outreach activities. Section 3672(d)(2) specifies that, in conjunction with outreach services provided by VA under 38 U.S.C. chapter 77 for education and training benefits, each SAA shall conduct outreach programs and provide outreach services to eligible persons and Veterans about education and training benefits available under Federal and State law. VA's cooperative agreement with SAAs includes tasks such as providing technical assistance, training, and outreach as a function and allots a percentage of time to perform those functions.

VA believes the SAAs are currently fulfilling their compliance and oversight role with educational institutions and have limited funding to engage with individuals for expanded outreach responsibilities. VA currently reimburses SAAs for their work related to outreach events and functions and the travel associated with them. While VA cannot directly pay for outreach materials itself, VA pays an administrative funding based on salary reimbursement under 38 U.S.C. § 3674(b) and these funds may be used for printing, marketing materials, mailings, information technology services, web platforms, etc. It is unclear what additional outreach duties SAAs are being asked to fulfill within this proposed legislation. VA is unsure if the SAAs' current cooperative agreement funding will support the additional costs to enhance outreach efforts to eligible VA educational assistance students, nor do we believe the SAA offices have the additional manpower to perform an expanded outreach effort.

As a technical matter, we note that this bill would add a new subsection (f) to section 3673. However, the last subsection under section 3673 is currently subsection (d).

No benefits or administrative costs are associated with this bill.

(5) Unnumbered Bill - Legal Services for Homeless Veterans Act

The draft bill would create new 38 U.S.C. § 2022A, which would require VA, subject to the availability of appropriations for such purpose, to make grants or enter into cooperative agreements to eligible entities that provide legal services to homeless Veterans and Veterans at risk for homelessness. VA would have to establish criteria and requirements for grants and cooperative agreements and publish those criteria and requirements in the Federal Register. VA would be required to consult with organizations that have experience in providing services to homeless Veterans in establishing these criteria and requirements. VA could only make grants or enter into cooperative agreements with entities if they (1) are a public or non-profit private entity with the capacity (as determined by VA) to effectively administer a grant or cooperative agreement; (2) demonstrate that adequate financial support will be available to carry out the services for which the grant or cooperative agreement is sought; and (3) agree to

meet the applicable criteria and requirements established by VA and have demonstrated the capacity to meet such criteria and requirements. Funds provided under grants or cooperative agreements would have to be used to provide legal services to homeless Veterans and Veterans at risk for homelessness to address legal matters that contribute to the risk of becoming and remaining homeless. VA would have to report once every 2 years on grants and cooperative agreements under this section. To the extent feasible, each report would have to identify the number of homeless Veterans assisted; a description of the legal services provided; a description of the legal matters addressed; and an analysis by VA of the operational effectiveness and cost-effectiveness of the services provided. Subsection (c) would require VA, within 90 days of the date of the enactment of this Act, to establish in the Federal Register the criteria and requirements for grants and cooperative agreements.

As we note in our discussion of H.R. 716, infra, legal services remain a crucial but largely unmet need for homeless and at-risk Veterans and generally speaking, we welcome the opportunity to support the provision of legal services to homeless and at-risk Veterans. However, VA recommends technical edits to the bill language.

First, the bill would authorize VA to make grants to or enter into cooperative agreements with eligible entities to provide legal services to homeless Veterans or atrisk Veterans. We note that VA has not established parameters under which cooperative agreements would be used, so we recommend against including language suggesting this program would be anything other than a grant program. VA has significant expertise in administering grant programs, particularly as a means of assisting homeless or at-risk Veterans. Second, the bill would direct VA to establish criteria and requirements within 90 days of enactment. We believe VA would need to issue regulations to implement this authority appropriately, and 90 days would be an inadequate amount of time to develop effective regulations. We are concerned that if VA were forced to attempt to issue regulations within 90 days, we would be unable to design and build an effective program. We are also concerned about the requirement to consult with organizations that have experience in providing services to homeless Veterans within this timeframe. If VA were provided additional time—for example, 1 year from enactment—VA could consult with such organizations through the standard regulatory process. This also would ensure the general public's awareness and participation in the development of the program, as well as the participation of a broad spectrum of organizations with experience in providing services to homeless Veterans. There are other technical amendments we would recommend, and we would welcome the opportunity to discuss these with the Subcommittee.

We note that H.R. 716 and the draft "Legal Services for Homeless Veterans Act" both address the same issue with slightly different approaches, and we appreciate the Committee's and the sponsors' interest and commitment. While both bills, with the modifications identified in our testimony, could be supported by VA, we prefer H.R. 716 and recommend the Committee advance that bill if it chooses to assist homeless and atrisk Veterans.

We estimate the draft bill would cost \$750,000 in FY 2021, \$779,250 in FY 2022, \$4.05 million over 5 years, and \$8.96 million over 10 years.

(6) Unnumbered Bill - VA Economic Hardship Report Act

This draft bill would require VA to submit to Congress within 1 year of enactment a report on the economic factors that contribute to Veteran suicides. The report would have to identify the number of Veterans: who are homeless; who are housing insecure; living in poverty; who are food insecure; who earn at or below minimum wage; and who have died by suicide or attempted suicide and who are, or were at the time of such suicide or attempted suicide, homeless, in poverty, or food insecure. Not later than 180 days after submitting the report, VA would be required to conduct a study on the link between poverty, food insecurity, housing insecurity, and Veteran suicide.

We fully support the principles and intended result of the bill, because it is consistent with VA's goals and current efforts. The more information we have in terms of the factors that result in Veterans attempting suicide or dying by suicide, the better we can develop effective public health and individual interventions to reduce suicidality. However, we do not support the bill as written. Initially, we note that VA already has the authority to provide information to Congress or conduct research studies, so the bill would provide no new authority in that regard. Additionally, several of the terms used in the draft bill are undefined and several of the provisions in this bill would require information that is not available to VA. We further note that, among the issues identified in the bill, several are not currently available in a timely fashion, and multiple years' worth of information may need to be combined to facilitate appropriate analyses to examine potential associations between the required data elements and the risk of suicide. Similarly, the data sources for socioeconomic factors listed in the bill are de-identified and available only at a population level or as part of a standardized survey; they are not tracked at the individual level. Therefore, any potential association between these factors and Veteran suicide could be examined at a population level but not individually. We note that it is unclear whether the requirement in subsection (b) to "conduct" a "study" means that VA must commence a study or complete a study. If the intent of the bill is for VA to complete a study within 180 days of submitting the report required by subsection (a), this would require either that VA delay the submission of that report or rush a study through the process, compromising its validity and reliability. Also, VA is already supporting research that will improve our understanding of risk factors associated with suicidality, and we are concerned that the approach suggested here could be too narrow to produce meaningful results.

We do not have a cost estimate for this bill.

(7) Unnumbered Bill – Authorize the Secretary to collect overpayments of Specially Adapted Housing (SAH) assistance

The unnumbered bill would provide express authority for the Secretary to collect overpayments made in connection with SAH grants awarded under 38 U.S.C. chapter 21. The SAH program provides grants to eligible Veterans so that they can acquire housing adaptations made necessary by the nature of certain service-

connected disabilities. VA's Loan Guaranty Service (LGY) administers the SAH program.

Most eligible Veterans receive SAH grants under 38 U.S.C. § 2101(a) or (b). Grants authorized under section 2101(a) are most commonly used for making homes wheelchair accessible. Grants authorized under section 2101(b) are generally used to mitigate other mobility-related issues throughout homes. Temporary Residence Adaptation (TRA) grants, authorized under 38 U.S.C. § 2102A, are available to Veterans who reside temporarily with family members and need to adapt a family member's home to meet the Veteran's needs. Under 38 U.S.C. § 2102B, housing adaptations necessitated by a Vocational Rehabilitation and Employment (VR&E) rehabilitation plan must be furnished under the SAH program. Since 2016, VA has made SAH Assistive Technology (SAHAT) grant funding available to individuals, researchers, and organizations to develop new technology that will expand home modification options for Veterans and enhance their ability to live in specially adapted homes.

The chapter 21 statutes set forth Veterans' eligibility standards, which include criteria relating to entitlement for compensation under 38 U.S.C. chapter 11, term of military service, nature of disability, legal right to occupy the home, and ability to afford the home. Congress established maximum aggregate amounts of assistance available under section 2101(a) and (b) grants and directed VA to increase such limits to correspond with increases in the residential home cost-of-construction index.

If a Veteran meets the eligibility criteria, it is feasible that the Veteran can live in an adapted home, the property is suitable for adaptation, and the Veteran has not exceeded the usage or dollar limitations, LGY can conditionally approve SAH assistance. Upon conditional approval, a Veteran may incur certain preconstruction costs, e.g., necessary architectural services, land surveys, and legal fees. If construction plans demonstrate compliance with SAH standards and the Veteran enjoys the requisite property interest in the home, LGY can issue a final approval of the SAH grant. In many cases, upon final approval, LGY disburses the grant funds to a third-party escrow agent, as authorized by 38 C.F.R. § 36.4406(b). Also, upon final approval, the Veteran enters into a private contract with a builder to implement the adaptations.

Throughout construction, the SAH Agent continues to assist the Veteran as needed. The SAH Agent also approves the disbursement of grant funds from escrow as the builder completes certain construction milestones. In cases where disputes arise between the Veteran and the builder, the SAH Agent and other LGY personnel attempt to coordinate with both parties such that a favorable result can be accomplished for the Veteran. However, in some cases, Veterans must resort to retaining private counsel to pursue claims against builders. LGY has also encountered other cases where Veterans are unsatisfied with the quality of work provided by builders at early stages of construction. In one such case, a Veteran would not allow the builder to re-enter the home to remedy purported deficiencies and complete the project. In these dispute cases, some portion of SAH grant funds might have already been disbursed to builders or to Veterans. For example, VA's regulation at 38 C.F.R. § 36.4406(b) allows payment of SAH funds directly to a Veteran who incurs certain preconstruction costs. In another case, a builder might receive a disbursement from escrow at the midpoint of a construction process, only to abscond with the funds and never finish the project.

Currently, LGY lacks explicit authority to recover misappropriated SAH funds. In cases where LGY determines that a builder has performed substandard work or absconded with grant funds, LGY can record a Veteran's complaint in the SAH system of record and can also exclude the builder from further participation in SAH projects by issuing a Limited Denial of Participation (LDP) under 2 C.F.R. § 801.1100. LGY can also refer the case to VA's Office of Inspector General and the U.S. Department of Justice. These actions can help to mitigate the risk that such builders will harm other Veterans. However, given the private nature of the contracts between Veterans, builders, and escrow agents, and depending on which entity holds the funds at the time of a dispute, LGY cannot easily recover the grant funds. This is true even in cases where LGY is relatively certain that, for example, a builder performed shoddy work and damaged a Veteran's home.

The unnumbered bill would add a new subsection (f) to 38 U.S.C. § 2102 to authorize the Secretary to collect overpayments when they occur. Subsection (f)(1) would authorize the Secretary to determine whether an overpayment has been made to a person described by subsection (f)(2), as a result of a breach of contract. Subsection (f)(1) would also establish that such overpayments constitute a liability of such persons to the United States. Subsection (f)(2) lists such persons as (A) an individual who applied for SAH assistance, (B) an owner or seller of real estate associated with SAH assistance, (C) a builder, contractor, supplier, tradesperson, corporation, partnership, or person related to or associated with delivery of SAH assistance, (D) an attorney, escrow agent, or financial institution that receives, or holds in escrow, funds directly or indirectly relating to SAH assistance, and (E) a surviving spouse, heir, assignee, or successor in interest of or to, any person described above. Subsection (f)(3) would allow for any overpayment to be recovered in the same manner as any other debt due the United States. Subsection (f)(4) would authorize the Secretary to waive any overpayment as to an individual who applied for SAH assistance. However, such waiver would not release any other person described in subsection (f)(2) from liability. Subsection (f)(5) would expressly provide that recovery of overpayments under subsection (f) would not preclude the imposition of any civil or criminal liability under any other law. Subsection (f)(6) would require that the Secretary define in regulations what constitutes an overpayment under subsection (f), to include, at a minimum, the failure of any person to perform or allow to be performed any SAH work or the failure to compensate any party performing services or supplying goods associated with SAH. Subsection (f)(6) would also require that such regulations include in the definition of "overpayment" any disbursement of SAH funds that, in the sole discretion of the Secretary, constitutes a misuse of such funds. Subsection (f)(7) would require the Secretary to notify a person to which an overpayment was made of the Secretary's finding of such overpayment and to provide a reasonable opportunity for such person to cure or remedy the breach, error, or circumstance that effectuated the overpayment.

While VA suggests several technical amendments to the bill as drafted, generally, VA supports the bill. VA believes that authorizing the Secretary to hold a person listed by proposed 38 U.S.C. § 2102(f)(2) liable for overpayments would deter such parties from unilaterally terminating contracts involving SAH assistance, or otherwise expending grant funds for improper or unauthorized purposes. Currently, VA has little authority to deter such persons from unreasonably breaching contracts

involving SAH funds and has no overt statutory authority to recoup such funds. VA's LGY service has encountered several cases where grant funds were misused by SAH participants. For example, in one case a contractor received a disbursement of SAH funds but failed to pay his suppliers, which resulted in a supplier's lien against a Veteran's home and raised the threat of a foreclosure. In another case, a Veteran decided that he no longer wanted to purchase a yet-to-be fully constructed adapted home, after closing the purchase contract and commencement of construction. In that case, approximately \$30,000 had been disbursed from escrow to the builder. The builder had expended some portion of those funds during construction, before the Veteran breached the contract.

The Veterans Benefit Administration's education programs have a clear statutory authorization under 38 U.S.C. § 3685 to collect overpayments made in such programs. Section 3685 provides that whenever the Secretary finds that an overpayment has been made to a Veteran, eligible person, or educational institution, that such overpayment shall constitute a liability to the United States and may be recovered in the same manner as any debt owed to the United States. This bill would provide similar statutory authorization for the SAH program and would enable VA to recoup funds that may otherwise be non-recoverable program costs.

The bill does pose a few issues from a technical perspective. Under proposed section 2102(f)(1), the Secretary's authority to find that an overpayment has been made would be limited to cases involving a breach of contract or administrative error. There could be cases where LGY might seek to recover misappropriated SAH funds where a breach of contract might not have occurred in a strict legal sense. For example, unbeknownst to VA or a Veteran, an SAH builder might purchase building supplies from a supplier on credit. The supplier might attempt to attach a lien to the Veteran's home until the builder repays the supply debt in full, raising the danger of foreclosure. In such a case, the builder would not necessarily be in breach of his informal contract with the supplier, yet the Veteran could be subjected to an elevated foreclosure risk. Additionally, VA is not a party to contracts between the Veteran and the entity that is implementing the SAH assistance, i.e. selling, building, or adapting a home. In cases where VA sees evidence that SAH funds are being misused, VA might not be in a position to know whether a breach of contract has occurred in a strict legal sense. Proposed subsection (f)(6) would mandate that the Secretary prescribe in regulations what constitutes an overpayment. VA suggests amending proposed section 2102(f)(1) to allow the Secretary discretion to define "overpayment" as including cases beyond those involving breach of contract and administrative error.

As drafted, proposed section 2102(f)(2)(A) would limit the Secretary's authority to collect overpayments from, in relevant part, an individual who applied for assistance under chapter 21, title 38, U.S.C. However, under 38 U.S.C. § 2102B, implementation of certain VR&E rehabilitation projects, initiated via applications submitted under chapter 31, are provided as SAH assistance under chapter 21. VA suggests an edit that would also allow the Secretary to collect overpayments from individuals who applied for assistance under chapter 31, where such assistance is being furnished under the SAH program.

The bill, as presented, contained a question relating to proposed section 2102(f)(2), namely, whether VA deemed it necessary to explicitly list the persons and

entities set forth by subsection (f)(2). VA recommends that the bill specifically enumerates the entities from which VA can collect an SAH overpayment, to avoid an interpretation that such authority is limited to collection efforts against Veterans and builders who misuse SAH funds. In addition to adding the individuals who applied for assistance under chapter 31 as discussed above, VA recommends amending proposed subsection (f)(2)(C) to include builders, contractors, suppliers, tradespersons, corporations, trusts, partnerships, or other persons related to delivery of SAH assistance. The bill also contained a question asking whether VA disburses SAH funds directly to third parties. As mentioned above, in certain cases, VA has authority to disburse SAH funds into an escrow account, managed by a third-party escrow agent. The escrow agent could be, for example, an attorney or a financial institution. Escrowed funds can be disbursed incrementally to Veterans, builders, sellers of real property, or other stakeholders. VA recommends that the bill retain the express authority for VA to collect overpayments from, for example, attorneys, escrow agents, and financial institutions.

Proposed section 2102(f)(4) would provide that the Secretary may waive recovery of any overpayment made to an individual who applied for assistance under 38 U.S.C. chapter 21. VA recommends expanding the waiver authority to cover all persons listed by subsection (f)(2), including Veterans who initially applied for assistance under chapter 31. VA appreciates the opportunity to work with the Committee to address any other technical issues with the draft bill.

Benefit savings associated with this bill are insignificant. No administrative costs are associated with this bill.

(8) Unnumbered Bill – Authorize the Secretary to assist blind Veterans who have not lost use of a leg in acquiring Specially Adapted Housing (SAH)

The unnumbered bill would amend 38 U.S.C. § 2101(a)(2)(B)(ii) to expand eligibility for SAH assistance under section 2101(a) to certain Veterans whose service-connected disability is due to blindness in both eyes, having only light perception. As mentioned above, SAH assistance under section 2101(a) is most commonly used for making homes wheelchair accessible. Assistance under section 2101(b) is generally used to mitigate other mobility-related issues throughout homes.

Under current law, a Veteran can be eligible for section 2101(a) assistance, in relevant part, provided that the Veteran is receiving compensation under chapter 11, title 38, U.S.C., for a permanent and total service-connected disability that is due to (i) blindness in both eyes, having only light perception, and (ii) loss or loss of use of one lower extremity, e.g., a leg. In contrast, a Veteran can be eligible for section 2101(b) assistance, in relevant part, if the Veteran is receiving such compensation for a disability that is due to blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens.

If enacted, the bill would expand eligibility for section 2101(a) SAH assistance to certain Veterans whose disability meets the first criterion discussed above, i.e. blindness in both eyes, having only light perception, but does not meet the second, i.e. loss or loss of use of one lower extremity. In other words, a Veteran whose disability is

caused solely by blindness in both eyes, having only light perception, could qualify for section 2101(a) SAH assistance, provided that other statutory criteria are met.

VA does not object to the general purpose of the bill. Under current law, a Veteran with blindness in both eyes, having only light perception, but without loss of or loss of use of one lower extremity, might be eligible for SAH assistance under section 2101(b) but might not be eligible for assistance under section 2101(a). The current aggregate dollar limit under section 2101(a) is \$85,645, and the current limit under section 2101(b) is \$17,130. VA's data suggests that certain Veterans who qualify for assistance under section 2101(b) but not section 2101(a) are unable to adapt their homes to meet all the needs caused by their service-connected disabilities. VA believes that such Veterans would benefit from expanded access to section 2101(a) grants. VA's review of section 2101(b) grant data for FYs 2016 through 2018 reveals that 155 individual Veterans would have met the expanded criteria for section 2101(a) grants, as proposed by the bill. Of those 155 Veterans, 115 Veterans (74 percent) utilized section 2101(b) grants for the first time. Of those 115 first-use Veterans, 79 Veterans obtained grants in amounts that were within \$1,000 of the aggregate dollar limit for the relevant fiscal year.

As mentioned, the bill would allow certain Veterans with blindness in both eyes, having only light perception, to qualify for SAH assistance under the higher dollar limit of section 2101(a). This would increase the amount of available assistance for such Veterans by \$68,515.

While VA supports increasing the aggregate limits for section 2101(b) grants to assist Veterans with severe blindness, VA is concerned that expanding access under section 2101(a) might be unnecessary. The bill, if enacted, would result in a nearly 500 percent increase in the amount of available SAH assistance for certain Veterans discussed above. VA's data evidences that many blind Veterans, i.e. 76 of the 155 cited above, were able to complete section 2101(b) adaptation projects for less than the current aggregate limit of \$17,130. For those that could not, VA does not yet have data as to the additional amount of funds such Veterans would have needed to fully adapt their homes. However, VA believes that the average difference would be far less than \$68,515, i.e. the amount by which the bill would expand section 2101(a) access for certain Veterans who are blind.

VA supports increasing the amount of SAH assistance available to Veterans with blindness in both eyes, having only light perception, but believes that expanding eligibility under section 2101(a)(2)(B)(ii) is not necessary to accomplish that goal. Rather, VA believes increasing the aggregate dollar limit under section 2101(b) would help ensure that such Veterans are able to fully adapt their homes. VA also finds that more data is necessary to determine the appropriate amount of such an increase and welcomes the opportunity work with the Committee to provide technical assistance relating to this bill.

Benefit costs associated with this bill are estimated to be \$4.1 million in 2020, \$23.0 million over five years, and \$39.8 million over ten years. No administrative costs are associated with this bill.

(9) H.R. 716 – Homeless Veterans Legal Services Act

H.R. 716 would require VA, subject to the availability of appropriations for such purpose, to enter into partnerships with public or private entities to provide general legal services to Veterans who are homeless or at risk of homelessness. The bill further specifies that VA is only authorized to fund a portion of the cost of legal services.

VA supports this bill if amended, as this bill is similar to a legislative proposal in VA's FY 2020 budget request. Each year, the CHALENG survey consistently reveals that many of the top ten unmet needs among homeless Veterans are legal needs. Veterans' lack of access to legal representation to address outstanding warrants or fines, child support matters, driver's license revocation, and other legal matters continues to contribute to their risk of homelessness. As background, we note that the Supportive Services for Veteran Families (SSVF) Program currently allows grantees to enter into partnerships with legal service providers to address legal needs that pose barriers to housing stability. However, this is not a required service under the SSVF regulations and is currently only provided to Veterans through 28 percent of grantees in the SSVF Program.

The consistency of legal issues arising in the CHALENG survey strongly suggests a relationship between Veterans' unmet legal needs and the risk of becoming homeless. The risk of homelessness posed by eviction and foreclosure proceedings is obvious and direct, but other unmet legal needs identified by CHALENG relate to Veterans' homelessness, as well. The inability to obtain a driver's license may render a Veteran unemployable, particularly in communities with few or nonexistent public transportation options. If employed, a Veteran with unpaid child support obligations may receive wages garnished at a rate that threatens his or her ability to retain housing. Child support arrearages can also lead to arrest warrants, and incarceration, even for a brief period, has been shown to be the most powerful predictor of homelessness among adult men. These legal problems can threaten Veterans' mental and physical health, as well as their housing stability, and it is not within VA clinicians' training, scope of practice, or authority to address them directly. The ability to fund the provision of legal services for Veterans would enable VA to take a more holistic approach to serving Veterans who are homeless or at risk for homelessness; however, we recommend technical edits to the bill language.

Rather than requiring VA to enter into partnerships, H.R. 716 should authorize VA to provide grants to ensure the language reflects a viable funding mechanism that VA could use to execute this new authority; Government funding is typically distributed through grants, contracts, or cooperative agreements. Furthermore, VA recommends removing the phrase "a portion of" from proposed 20 U.S.C. § 2022A(a). This change would allow VA to fund a portion or the entirety of the legal services provided under the partnership, thereby providing VA greater flexibility to support these efforts. VA would like to work with the Committee to make additional minor improvements to H.R. 716.

We estimate this bill would cost \$750,000 in FY 2021, \$779,250 in FY 2022, \$4.05 million over 5 years, and \$8.96 million over 10 years.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other

Members of the Subcommittee may have.