

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1947) to amend title 38, United States Code, to exempt transfers of funds from Federal agencies to the Department of Veterans Affairs for nonprofit corporations established under subchapter IV of chapter 73 of such title from certain provision of the Economy Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

[ROE ANS]

### PURPOSE AND SUMMARY

H.R. 1947, as amended, would (1) allow funds transferred to non-profit corporations established under section 7364 of title 38 to administer those funds without regard to fiscal year limitations; (2) cap the tuition and fee payments for flight school training programs at public institutions of higher learning under the Post 9/11 G.I. Bill, and (3) authorize VA to inscribe information remembering spouses or children on the headstones or markers of veterans interred in non-VA cemeteries.

Representative David P. Roe of Tennessee introduced H.R. 1947 on March 28, 2019.

### BACKGROUND AND NEED FOR LEGISLATION

#### I

The Department of Veterans Affairs (VA) has a statutory mission to conduct research to more effectively care for veterans and contribute to the nation's understanding of disease and disability<sup>1</sup>. In its more than 90-year history, VA's medical and prosthetic research program has led to numerous discoveries and advances including the development of the pacemaker in 1960<sup>2</sup> and the approval of the shingles vaccine in 2005<sup>3</sup>.

In 1988, Congress authorized the establishment of non-profit corporations (NPCs) at VA medical centers to provide a flexible funding mechanism to support VA research<sup>4</sup>. NPCs are non-profit, state-chartered entities that accept and administer funds from federal and private sector sources. There are currently 83 NPCs affiliated with the VA healthcare system and, collectively, they have contributed more than \$2 billion to VA research over the last ten years.

Typically, when VA receives research funding from a non-VA source - such as the National Institutes of Health or the Centers for Disease Control and Prevention - those funds are transferred by VA to the NPC to administer. In 2018, however, VA's Office of General Counsel

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<sup>1</sup> 38 USC 7303

<sup>2</sup> Hiroko Beck et al., *50th Anniversary of the First Successful Permanent Pacemaker Implantation in the United States: Historical Review and Future Directions*, 106 *The American Journal of Cardiology* (2010).

<sup>3</sup> MN Oxman et al., *A vaccine to prevent herpes zoster and postherpetic neuralgia in older adults*, *N Engl J Med* (2005).

<sup>4</sup> 38 USC § 73, subchapter IV.

uncovered an appropriations law limitation that prevents funding from being transferred to the NPCs for longer than one fiscal year. This has negatively impacted several ongoing, multi-year research projects across the country. This legislation would provide explicit authority for NPCs to administer amounts transferred to them without regard to fiscal year limitations.

## II

Section 102 of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (P.L. 111-377) modified the Post-9/11 G.I. Bill so that students attending public institutions of higher learning under the Post-9/11 G.I. Bill are eligible to receive the total net cost of in-state tuition and fees after the application of tuition and fees waivers, scholarships, or other federal, state, institutional, or employer-based aid or assistance. Students attending non-public institutions of higher learning are eligible for the lesser of the tuition and fees net cost after application of waivers, scholarships, or \$23,805. The cap is also subject to an annual cost-of-living-adjustment increase. This was a change from the original Post-9/11 G.I. Bill that capped tuition and fees at the highest in-state tuition rate per state regardless of whether the student was attending a public or non-public institution of higher learning.

At the Subcommittee on Economic Opportunity oversight hearing on November 19, 2014, entitled, “The Role of State Approving Agencies in Ensuring Quality Education Programs for Veterans,” the National Association of State Approving Agencies (NASAA) testified that it was concerned that changes made to the Post 9/11 G.I. Bill were encouraging some public institutions to contract with third-party flight schools for expensive flight or helicopter training. Since these private flight schools contracted with public schools, these private contractors were no longer limited in the tuition and fees they could charge since the statute only requires that schools charge the in-state tuition rate. Consequently, some veterans were receiving GI Bill benefits totaling well over \$100,000 for flight training, far exceeding what would be received if the private school cap of \$23,805 were applied.

As part of its legislative package presented to the Subcommittee at this hearing, NASAA recommended that the Subcommittee try to rein in this extravagant spending and place a cap on flight training at public institutions. This same sentiment was echoed at this hearing, and subsequent hearings during the 115<sup>th</sup> and 116<sup>th</sup> Congress, by VA and witnesses representing several leading veteran service organizations. In its written statement, during the Subcommittee on Economic Opportunity hearing on November 11, 2014, VA expressed concern that many public schools were using P.L. 111-377 to get around the current cap on vocational flight training, stating:

“There has been a significant increase in flight training centers, specifically those that offer helicopter training, which have contracted with public [Institutions of Higher Learning (IHLs)] to offer flight-related degrees. Sometimes these programs charge higher prices than those that would be charged if the student had chosen to attend the vocational flight school for the same training. This practice allows the flight schools to receive payments above the academic year tuition and fee cap imposed by statute, which is currently \$11,562.86. If those same classes are included in a public IHL degree program, VA can pay up to 100 percent of the in-state tuition and fee charges. This does not appear to be consistent with the intent of Congress as it relates to flight programs.”

VA also included a legislative proposal in its previous budget submissions to place the same cap on flight training as is currently in place for private, non-profit, and for-profit institutions. As a result of the proposal from VA, as well as concerns expressed by NASAA and veterans groups, section 2 would cap tuition and fee payments for flight training at public schools at \$23,805, which is the same tuition and fee cap for all private for-profit and non-profit institutions. Like the cap for-profit and private institutions cap, the public school flight school cap would also be subject to the cost of living adjustment.

This section would also prohibit students from taking flight training at a public institution as an elective course and would grandfather students currently in flight training programs for two years following enactment. The Committee believes this grandfather clause is important to cover current students who enrolled in these programs with the understanding that their tuition and fees would be completely paid for under the Post-9/11 G.I. Bill. The section also subjects all public school third-party contracted programs to the same cap.

The Committee has carefully studied and debated the application of the cap, and understands that application of the cap would change the funding model for some flight schools under the Post-9/11 G.I. Bill. The Committee, however, is concerned that the sharp growth in these programs and the undeniable increase in the cost of flight training following the enactment of P.L. 111-377 shows that there have been some who have found this loophole in the law and exploited it.

Data supports application of the cap to address exploitation by some flight schools. Between FY 2013 and FY 2014, the number of students taking flight training increased by only 171 students, or 9 percent. In comparison, the total cost to taxpayers for this program grew by \$37 million, or 87 percent, during this same period. Data also show that in one case in FY 2014,

VA paid over \$534,000 in tuition and flight payments for one student that year. In a story in *The Los Angeles Times* on March 15, 2015, entitled, “U.S. Taxpayers Stuck with the Tab as Helicopter Flight Schools Exploit GI Bill Loophole,” the owner of one of these schools essentially admitted to exploiting the loophole by stating, “Because there was no cap, we started to one-up each other... You kind of end up with an arms race.”<sup>5</sup>

Although the Committee understands that many of the past abuses in this program have been curtailed due to enforcement of existing regulations by VA, there is still no statutory limitation that keeps programs like these or other industries from taking advantage of this loophole in the future. The Committee believes that paying these unrestrained costs was never the intent of the Post-9/11 G.I. Bill. By implementing this cap, Congress would be curbing the potential for further abuse of this program and leveling the playing field for this program with the cap on tuition and fee payments authorized for private schools.

The Committee also recognizes that the cost of flight training at some institutions can be significantly higher than the proposed private school cap. To ensure that flight training is still an option for veterans, this section would also eliminate the current prohibition on using GI Bill funds to pay for training that leads to a private pilot’s license. By lifting this prohibition, this section would remove a barrier to entry to aviation careers while keeping the requirements that such training be used towards a goal of receiving training towards a vocation in aviation and not be used as elective training. The Committee has been told by the flight industry that most flight training programs can be completed in two years. To help meet the higher cost of flight training and meet this compressed timeline, this section would also authorize student veterans to accelerate their payments under the Post-9/11 G.I. Bill for flight training. This means that the students could choose to condense their 36 months of eligibility into 18 months and the amount of tuition and fees that VA would pay per year would be double the private school cap. The section would require that veterans receive educational counseling provided by VA under section 3697A(a) of title 38, U.S.C to ensure they understand the ramifications of their decisions to accelerate their benefits.

Data provided to the Committee on flight training under the Post-9/11 G.I. bill in FY 2016, indicated that if the cap on tuition and fees were in place, over 60 percent of all students would not be affected by the proposed cap and 87 percent would be covered by the accelerated payment option if they completed their training in two traditional academic years or 18 months. The Committee believes these two provisions will help alleviate the cost of flight training with the new cap on tuition and fees for flight training that would be put in place by this section.

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<sup>5</sup> Zarembo, Alan. “U.S. taxpayers stuck with the tab as helicopter flight schools exploit GI Bill loophole,” *Los Angeles Times*, March 15, 2015.

### III

Section 3 would amend 38 United States Code (U.S.C.) Section 2306 to allow VA to provide inscriptions remembering deceased spouses or eligible dependent children on veterans' government-furnished headstones or markers in non-VA cemeteries. This would include spouses and dependent children who predecease the veterans interred in these cemeteries, allowing their information to be included on the veterans' headstones or markers at time of interment. VA would also be authorized to replace, if feasible and upon request, previously-furnished headstones or markers for veterans buried in a non-VA cemeteries with information about the spouses or eligible dependent children following their death.

A covered cemetery is defined under Section 2306 of title 38 U.S.C. as a national cemetery, a veterans' cemetery of a State for which the Department has provided a grant under section 2408 of such title, and a veterans' cemetery of a tribal organization or on land owned by or held in trust for a tribal organization for which the Department has provided a grant under section 2408 of such title. Section 3 would permit these inscriptions on headstones and markers for veterans interred in cemeteries not covered under this definition.

Section 3 provides VA with the maximum authority it needs to work with grieving families to memorialize their loved ones in the way they want where they want.

Every veteran deserves to know their wish to be remembered in perpetuity alongside spouses and dependent children will be granted. The same is true for spouses and dependent children who appreciate the reassurance that they will be memorialized with their veteran spouse or parent.

Whether veterans choose to be laid to rest in national veterans' cemeteries, state or tribal cemeteries or in private cemeteries, this bill provides the guarantee that those wishes will be met.

### HEARINGS

For the purposes of section 103(i) of H.Res. 6 of the 116th Congress— (1) the following hearings were used to develop or consider H.R. 1947, as amended.

On April 9, 2019, the Subcommittee on Economic Opportunity conducted a legislative hearing on various bills introduced during the 116th Congress, including Section 2 of H.R. 1947, which was considered as a discussion draft "To amend title 38, United States Code, to make certain improvements to the educational assistance programs of the Department of Veterans Affairs with respect to flight training programs and certain other programs of education, and for other purposes.

The following witnesses testified:

Ms. Margarita Devlin, Principal Deputy Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Ms. Ashlynn Haycock, Deputy Policy Director, Education Support Services, Tragedy Assistance Program for Survivors (TAPS). Mr. Patrick Murray, Deputy Director, National Legislative Service, The Veterans of Foreign Wars. Mr. John Kamin, Credentialing and Education Policy Associate, National Veterans Employment and Education Division, The American Legion. Ms. Rebecca Burgess, Program Manager Citizenship Project, American Enterprise Institute.

Statements for the record were submitted by:

Disabled American Veterans

On May 1, 2019, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 116th Congress, including H.R.1126, the Honoring Veterans' Families Act, which is Section 3 of H.R. 1947.

The following witnesses testified:

The Honorable Mark Takano, U.S House of Representatives, 41<sup>st</sup> Congressional District of California; The Honorable David P. Roe, U.S House of Representatives, 1<sup>st</sup> Congressional District of Tennessee; The Honorable Conor Lamb, U.S House of Representatives, 17<sup>th</sup> Congressional District of Pennsylvania; The Honorable Greg Steube, U.S House of Representatives, 17<sup>th</sup> District of Florida; The Honorable Julia Brownley, U.S House of Representatives, 26<sup>th</sup> Congressional District of Florida; Mr. Matthew Sullivan, Deputy Under Secretary for Finance and Planning, National Cemetery Administration; accompanied by Mr. Kevin Friel, Deputy Director for Pension and Fiduciary, Veterans Benefits Administration; Dr. Patricia Hastings, Deputy Chief Consultant, Post Deployment Health Service, Veterans Health;

Mr. Derrick Curtis, Director, Software Testing & 508, Enterprise Portfolio Management Division, Office of Information Technology; Ms. Melanie Brunson, Government Relations Officer, Blinded Veterans Association; Mr. Karl R. Horst, Major General, U.S. Army (Ret), President and Chief Executive Officer, Congressional Medal of Honor Foundation; Ms. Allison Adelle Hedge Coke, Distinguished Professor of Creative Writing, University of California, Riverside; Mr. Carlos Fuentes, Director, National Legislative Service, Veterans of Foreign Wars; Mr. Rick Weidman, Executive Director, Policy and Government Affairs, Vietnam Veterans of America; Mr. Chanin Nuntavong, Veterans Affairs and Rehabilitation Division Director, The American Legion; Mr. Shane L. Liermann, Assistant National Legislative Director, Disabled American Veterans; and Dr. David A. Butler, Director, Office of Military and Veterans Health,

Health and Medicine Division, The National Academies of Sciences, Engineering, and Medicine; accompanied by Dr. Ourania Kosti, Senior Program Officer, Principal Investigator, Radiation Effects Research Foundation, The National Academies of Sciences, Engineering, and Medicine.

Statements for the record were submitted by:

The Honorable Doug LaMalfa, U.S. House of Representatives, 1<sup>st</sup> Congressional District of California; Mr. John Wells, Executive Director, The Military-Veterans Advocacy; Mr. Keith Kiefer, National Commander, National Association of Atomic Veterans; Mr. Robert Celestial, SGT, U.S. Army Retired (D.A.V.), Veteran who participated in Enewetak Cleanup; Mr. Ken Brownell, Veteran who participated in Enewetak Cleanup; and The American Federation of Government Employees, AFL-CIO.

#### SUBCOMMITTEE CONSIDERATION

On May 1, 2019, the Subcommittee on Economic Opportunity met in an open markup session, a quorum being present, and reported favorably a discussion draft “To amend title 38, United States Code, to make certain improvements to the educational assistance programs of the Department of Veterans Affairs with respect to flight training programs and certain other programs of education, and for other purposes to the Committee on Veterans’ Affairs by voice vote. This discussion draft is section 2 of H.R. 1947, as amended.

H.R. 1947 was not considered before the Health or Disability Assistance and Memorial Affairs Subcommittees.

#### COMMITTEE CONSIDERATION

On May 8, 2019, the Full Committee met in an open markup session, a quorum being present, and reported favorably H.R. 1947, as amended, to the House of Representatives by voice vote.

During consideration of the bill, the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Representative David P. Roe of Tennessee that would (1) exempt from the Economy Act, the transfer and administration of



funds by research corporations established by VA; (2) cap the tuition and fee payments for flight school training programs at public institutions of higher learning under the Post 9/11 G.I. Bill, and (3) authorize VA to inscribe information remembering spouses or children on the headstones or markers of veterans interred in non-VA cemeteries.

## COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 1947, as amended, reported to the House. A motion by Ranking Member David P. Roe of Tennessee to report H.R. 1947, as amended, favorably to the House of Representatives was adopted by voice vote.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE COMMITTEE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to support the research efforts performed by VA that advance and improve the provision of healthcare and benefits to eligible veterans, provide tuition assistance and education benefits to veterans, and support VA's mission to honor veterans and their families with lasting tributes that commemorate veterans' service and sacrifice.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1947, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1947, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1947, as amended.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1947, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1947, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1947, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

### *Section 1. Exemption of Certain Transfers*

Section 1 of the bill amends section 7364(b)(1) of title 38, pertaining to the transfer and administration of funds by research corporations, to exempt the administration of funds by non-

profit corporations from certain provisions of the Economy Act thus allowing these funds to be expended beyond the fiscal year in which the funds were appropriated.

*Section 2. Improvements to Assistance for Certain Flight Training and Other Programs of Education.*

- Section 2(a) would amend section 3034(d) of title 38, U.S.C. to remove the prohibition on the use the of G.I. Bill funds to pay for training that leads to a private pilot's license.
- Section 2(b) would amend section 3313 by adding a new subsection (k).
- The new 3313(k)(1) would authorize that participants using educational assistance through chapter 33 of title 38, U.S.C. for flight training at an institute of higher learning or vocational school may elect to receive accelerated tuition and fee payments that would be equal to double the amount authorized by section 3313(c) or the cap on tuition and fees at a non-public institution of higher learning. This payment would not be allowed to exceed the total cost of tuition and fees for the flight training program. This subsection would also clarify that living stipend payments would not be accelerated by this change. The new section 3313(k)(2) would require that before a participant makes an election to accelerate training through this section they would have to receive educational counseling under section 3697A(a) of title 38, U.S.C. The new section 3313(k)(3) would authorize that the charge against the participant's entitlement to educational assistance will be charged at a cost of two months for each month the accelerated payment is made.
- Section 2(c) would amend section 3313(c)(1)(A) of title 38, U.S.C., to subject flight training at public schools to the cap on tuition and fees established by 3313(c)(1)(A)(ii) of title 38, U.S.C. Under this provision, students would not be allowed to take flight training courses unless the training is specifically required to obtain their degree.
- Section 2(d) would amend section 3313(c)(1)(A)(ii)(II) of title 38, U.S.C., as added by the previous section to subject any program of education pursued at a public institution of higher learning in which the school enters into a contract or agreement with another entity to provide the program of education, or a portion of the program, to the cap established by 3313(c)(1)(A)(ii)(II) of title 38, U.S.C.
- Section 2(e) would require that the changes that would be made by this section apply to any quarter, semester, or term commencing on or after enactment of the bill and that the new rules would not go into effect for current students that would be impacted by this section for two additional years following enactment.

*Section 3. Provision of Inscriptions for Spouses and Children on Certain Headstones and Markers Furnished by the Secretary of Veterans Affairs.*

Provision of Inscriptions for Spouses and Children on Certain Headstones and Markers  
Furnished by the Secretary of Veterans Affairs

- Allows the Secretary to replace an existing headstone for an individual buried at a non-covered VA cemetery with a marker adding an inscription for the surviving spouse or eligible dependent child following his or her death.

- If the surviving spouse or eligible dependent child predeceases the veteran, the Secretary may include his or her name on the veteran's headstone in a non-covered VA cemetery.
- Authority under this section applies with respect to an individual who dies on or after October 1, 2019.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

[Insert Ramseyer]