

**STATEMENT OF
JEFFREY R. MAYO, ACTING ASSISTANT SECRETARY
HUMAN RESOURCES AND ADMINISTRATION / OPERATIONS, SECURITY AND
PREPAREDNESS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
U.S. HOUSE OF REPRESENTATIVES**

April 21, 2021

Good morning Chairman Pappas, Ranking Member Mann and Members of the Subcommittee. With me today are Hansel Cordeiro, Acting Assistant Secretary, Office of Accountability and Whistleblower Protection (OAWP); Ed Murray, Principal Deputy Assistant Secretary and Deputy Chief Financial Officer, Office of Management (OM); and Jessica Bonjorni, Chief, Human Capital Management (HCM), Veterans Health Administration (VHA).

Thank you for inviting us here today to present our views on H.R. 711, H.R. 1948, and twelve draft bills relating to whistleblower protection; Freedom of Information Act (FOIA) reform; improvement, accountability, transparency in health care , VA policing, Equal Employment Opportunity (EEO), sexual discrimination and harassment policies and procedures; strengthening of VA Inspector General (IG) oversight authority and VA background checks; improvement of Veteran debt collection and VA supply chain resiliency; and oversight of Coronavirus Disease 2019 (COVID-19) relief funding.

H.R. 711 – West Los Angeles VA Campus Improvement Act of 2021

H.R. 711 would provide several flexibilities that would assist VA in expediting delivery of housing and other services for homeless and at-risk Veterans and their families on the VA West Los Angeles Campus.

Section 2 of the bill would expand authority currently afforded VA by section 2(d) of the West Los Angeles Leasing Act of 2016, which permits VA to retain and use revenue from leases at the West Los Angeles Campus for the renovation and maintenance of the land and facilities at the Campus. H.R. 711 would expand that authority to include revenue received as consideration for easements and as proceeds from assets seized or forfeited, or restitution paid, in connection with any third-party land use at the Campus, and would also allow VA to use such funds more flexibly in support of temporary and permanent housing and other services for homeless Veterans, minor construction projects at the Campus, and carrying out community operations that support the development of emergency shelter or permanent housing for homeless Veterans and their families.

The Administration strongly supports H.R. 711. The expansion of authority in section 2 would be advantageous in several respects. First, it would expand VA's authority to retain not only lease revenue, but also other funds derived from the use of land at the Campus. VA would be authorized to use a wider variety of non-Federal funds to accomplish an array of necessary services and work on the Campus. Second, this bill would allow VA to make immediate use of available non-Federal funding to continue emergency care and shelter programs for homeless Veterans which were initiated using COVID-19 emergency funding that will soon expire. Third, this bill would add non-Federal funds to current funding to carry out utilities infrastructure improvements and other minor construction necessary to deliver permanent housing for homeless Veterans on the West Los Angeles Campus.

Section 3 of the bill would allow VA to execute enhanced-use leases to provide housing for homeless and at-risk Veterans at the West Los Angeles Campus with lease terms up to 99 years, an increase from the 75-year lease term authorized by current law. This section would afford enhanced-use lease developers greater flexibility in securing financing to adapt buildings and land at the West Los Angeles Campus into permanent housing. Because the Campus redevelopment plan is a long-term plan with housing delivery contemplated to occur in several phases under a single master enhanced-use lease, the longer lease term is necessary to enable the developer to obtain financing for each phase of the housing development. Phases will likely be executed over an 18-20-year period following master lease execution. Each phased development will secure its own independent financing package, and if the remaining master lease term is less than 75 years at that time, lenders/investors may be unwilling to fund that phase of project. This longer lease term is needed to allow sufficient time for debt under each phased development to be repaid over the life of the project's lease term, inclusive of any refinancing events.

This bill is cost-neutral at a minimum and may result in direct savings through generation of revenue.

H.R. 1948 – VA Employee Fairness Act

H.R. 1948 would amend title 38, United States Code (U.S.C.), to modify the collective bargaining exclusions for certain employees in VHA. H.R. 1948 proposes to remove collective bargaining exclusions for those specified in 38 U.S.C. § 7421(b), which includes physicians, dentists, podiatrists, optometrists, registered nurses, physician assistants, expanded-duty dental auxiliaries, and chiropractors (hereinafter "title 38 employees").

Section 2(1) of H.R. 1948 would strike subsections (b), (c), and (d) of 38 U.S.C. § 7422, which carves out a narrow exception to the extensive collective bargaining rights enjoyed by title 38 clinicians, reserving matters of the following: (1) professional conduct or clinical competence; (2) peer review; and (3) the establishment, determination, or adjustment of employee compensation to the Secretary's discretion.

Secretary McDonough has stated publicly and to our workforce that a unionized workforce is a strong workforce. Collective bargaining is a powerful means for a strong workforce which is VA's number one asset as we work toward increasing access and outcomes for Veterans, their families, caregivers, and survivors. VA supports organized labor and values the collective bargaining process with our labor partners. Because H.R. 1948 includes many complex issues under review, VA is not in a position to provide a stance on the bill at this time. We will follow up with the Committee and look forward to those discussions.

We would like to convey to the Committee that we have taken the following steps under Secretary McDonough's leadership to re-engage VA's labor partners and work together with our partners to improve labor relations at VA:

- The Secretary has conducted listening sessions with national unions and has met with local labor unions during site visits in Montana and Kansas.
- On January 29, 2021, VA notified national unions that VA was reviewing and identifying actions related to or arising from Executive Orders (EO) 13836, *Developing Efficient, Effective and Cost-Reducing Approaches to Federal Sector Collective Bargaining*, 13837, *Ensuring Transparency, Accountability and Efficiency in Taxpayer-Funded Union Time Use*, and 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles* that should be suspended, revised, or rescinded.
- On February 17, 2021, VA notified national unions that VA would no longer charge rent for union office space.
- On March 3, 2021, VA notified national unions that VA would re-provision email accounts and provide information technology equipment to union officials based on existing collective bargaining agreements (CBA) and memorandum of understanding (MOU).
- On March 3, 2021, VA notified national unions that the Office of Labor Management Relations October 4, 2019 and November 15, 2019 notices of implementation of EOs 13836, 13837, and 13839 were cancelled.
- On March 26, 2021, VA notified national unions and human resources (HR) professionals that union official time allocations were restored, except for eligible allocations which were affected by recent 38 U.S.C. § 7422 decisions for full title 38 positions.
- On March 26, 2021, VA notified national unions that VA will comply with CBAs in existence prior to EOs 13836, 13837, 13839 and recognize them as current agreements consistent with their effective dates.
- On March 29, 2021, VA notified national unions and HR professionals that official time will be granted for union officials attending the National Veterans Affairs Council 2021 Health and Safety Conference with the exception of any pure title 38 employee.
- In April 2021, the Chair and Co-Chair of VA's Employee Engagement Council conducted listening sessions with the national unions and sought their input on revisions to the enterprise-wide employee engagement plan.

Draft – Strengthening VA Whistleblower Protection Act

This draft bill would amend 38 U.S.C. § 323, which established the VA Office of Accountability and Whistleblower and Protection (OAWP), by directing the VA General Counsel to establish an Office of General Counsel (OGC) for the Office of Accountability and Whistleblower Protection (OAWP) (hereafter referred to as OAWP-OGC). The bill would require that OAWP-OGC be independent of VA's Office of General Counsel (OGC). The bill would also prohibit OGC from providing recommendations, opinions, or decisions for whistleblower cases under the jurisdiction of OAWP. The bill would prohibit OGC employees from being detailed or assigned to OAWP for two years after leaving OGC. The bill would also require OAWP to guide, advise, and assist whistleblowers regarding their rights and the authority of different entities that assist or respond to whistleblowers, provide an alternate dispute resolution program, and issue binding decisions for temporary relief. The bill also includes language stating that OAWP will obtain all evidence necessary to substantiate the complaint of the whistleblower.

The Administration supports legislative action that provides OAWP more autonomy to perform its critical statutory functions in an unbiased manner. VA previously provided the Committee technical advice on this legislative proposal to ensure that it appropriately addresses the Committee's intent of providing OAWP more autonomy to perform its functions in an unbiased manner and enhance whistleblower protections. VA would be pleased to continue working with the Committee staff on refinements to this bill or other legislative proposals about OAWP and its authorities. Therefore, VA would like to follow up with the Committee at a later time, both to continue technical comments on the legislation as well as provide a position on the bill.

Draft – VA FOIA Reform Act 2021

The draft bill would direct the VA Secretary to establish a plan to reduce the backlog of requests for information made to VA pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The plan, which would be due within 180 days of the bill's enactment, would be required to describe the technology and process improvements needed to improve FOIA response times. VA would also be required to report annually on its progress in implementing the plan. In addition, it would direct VA to request the Director of the Office of Government Information Services of the National Archives and Records Administration to assess VA's compliance with the FOIA.

VA has concerns with section (a) of the draft as written. The VA FOIA Reform Act of 2021 would require VA to place a level of focus on its Department-wide FOIA Program, and to perform assessments and analyses to determine the root cause of the VA FOIA backlog and noncompliance with mandated FOIA processing timeframes. Our chief concerns with the proposed bill are the definition of "backlog of FOIA requests" and how it would be used to measure compliance with the FOIA. Specifically, H.R. 7163 states the following:

“(d) BACKLOG OF FOIA REQUESTS DEFINED.—In this section, the term “backlog of FOIA requests” means the number of requests, as reported by the Secretary of Veterans Affairs to the Attorney General in the Annual FOIA Report, made by individuals to the Secretary pursuant to section 552 of title 5, United States Code, for documents or information that the Secretary has not fulfilled or provided a response to the individual.”

As is the case across the Federal Government, there are times when VA is not able to process a FOIA request within the time periods required by the Act. VA averaged over 21,600 incoming FOIA requests over the last three years (FY18 – FY20), many of which request voluminous records and require coordination across the different Administrations and Program Offices. Requests of such size and complexity cannot be processed within the 20-working day framework provided by FOIA. VA complies with provisions in 5 U.S.C. § 552(a)(4)(A)(viii) that prevent VA from assessing fees in instances when VA is unable to process a FOIA request within the prescribed timeframes.

There can be a wide variance in the level of complexity and resources needed to process FOIA requests. We respectfully request Congress consider the volume and complexity of FOIA requests when determining FOIA backlog metrics. We would be glad to discuss with the Committee the difficulty of using a single timeline in the metric outlined in the bill. One possibility would be using average processing days as a more useful metric. Over the last six fiscal years, VA has processed Simple Track FOIAs on an average of 32 days and Complex Track cases in 85 days. Requester concerns in this area are consistently oriented toward how long they must wait for their records so the barometer for their concern should be average processing days. Further, it will provide a constant measure for oversight versus a once per year snapshot.

While searching and locating information might be automated/facilitated, technology assisted review will not completely replace the need for manual line-by-line review. FOIA complexity and incoming volume will still require human intervention to ensure the proper redaction of sensitive information protected by a myriad of confidentiality statutes, violation of which would create liability for the Department. This said, VA will continue to search the market for accurate technology with automated review and redaction tools. VA is assessing the need to replace collateral duty FOIA analysts with full-time FOIA personnel. FOIA-related policies are being updated accordingly. We look forward to continuing to discuss these matters with Congress, but VA does not support this proposed legislation.

On November 18, 2020, the Congressional Budget Office provided a Cost Estimate impact for H.R. 7163 regarding the potential cost for VA to execute the requirements of the proposed bill. Assuming the hiring of 15 full-time equivalents (FTE) the first year and 10 more for each of the subsequent three years, costs are estimated at \$2 million in the first year and \$22 million over five years. Our recommended amendments to H.R. 7163 would not change this base cost estimate, although further

VA analyses are being reviewed and will be provided to the Committee.

Draft – VA Quality Health Care Accountability and Transparency Act

The “VA Quality Health Care Accountability and Transparency Act 2021” would direct the VA Secretary to make certain information publicly available on one VA internet website. VA’s website [accesscare.va.gov](https://www.accesscare.va.gov), which receives approximately 180,000 views per month (0.15% of all VA.gov page views), would meet the proposed legislative requirement. As such, this bill may be redundant. We note numerous concerns with the draft bill as discussed below, but we would be glad to discuss this issue with the Committee, including recent efforts to improve the user experience, and other possible improvements that could help fulfill the goals of this bill.

At present, the draft bill does not describe a primary audience. Without knowing who the site is intended to serve, designing an effective site could be very challenging. For example:

- If intended for third-party use, the site could provide data via Application Programming Interfaces (API), thereby allowing programmatic access by third parties and inclusion of that data as part of other products and programs.
- If it is for the press or public at large, the site might focus on a single dashboard with key data about VA’s health system overall. That dashboard could then allow a drill down into specific data for facilities, service types, etc. This would likely be better informed by usability research than by Congressional mandate.
- If for Veterans and their families, a single website might not be the best solution. User research shows that, generally, Veterans are interested in their particular facility, or how their facility compares to one or two others. As such, it is easiest to include this information directly on the facility websites, rather than a separate location. This, also, would be confirmed or refuted through further user research and usability testing.
- What we want to avoid is an “all of the above” approach. Research, history, and experience inform us that solutions intended to serve all possible audiences usually do not serve any of them effectively.

Likewise, the bill does not describe a problem to solve or a desired outcome from making the data available. We are concerned that mandating a specific solution with no metrics or measures for evaluating the solution’s effectiveness is likely to frustrate at best and fail at worst. Additionally, section (1)(a)(2) would mandate that “the Secretary shall update the internet website monthly, but not less frequently than on a quarterly basis.” This language can be too easily misinterpreted as “redesign the website” when what seems most important is that the data reflected is no older than one quarter. We would welcome the chance to follow up with the Committee to provide further technical assistance on this bill.

Draft – Strengthening Oversight for Veterans Act of 2021

The “Strengthening Oversight for Veterans Act of 2021” would provide authority for the issuance of administrative subpoenas (for the production of documents and records) from non-Federal agencies or individuals. Compliance with such subpoenas would be enforceable through appropriate Federal district courts. VA has no objection to the proposed legislation. However, we note VA’s Office of Inspector General (OIG) currently lacks authority to compel non-Federal employees, through the issuance of an administrative subpoena to provide testimony under oath.

The expansion of the ability to issue subpoenas, without judicial consideration, to former government officials and other individuals who might have information relevant to an IG investigation would add a mechanism by which former officials could no longer avoid questions from IG investigators. This enhanced authority could increase the depth of VA OIG investigations and contribute to a greater transparency and accountability. Some Federal IG offices currently have the authority to issue administrative subpoenas for testimony in specific types of investigations. The Department of Defense is currently the only agency that has an expansive authority to issue administrative subpoenas for testimony, as even the Department of Justice currently lacks such authority.

In addition to this proposed bill, on March 19, 2021, the “IG Subpoena Authority Act” was also introduced in the House. This similar bill would provide enhanced administrative testimony subpoena authority to all Federal IG offices. The Administration supports accountability and transparency and recognizes that increased subpoena authority would impact the completeness of IG investigations by providing an additional mechanism by which to obtain investigatory evidence of fraud, waste, or abuse. VA OIG, as the oversight authority for the Department, can provide further insight into how such increased authority may impact IG investigations and operations.

Draft - Improving VA Accountability to Prevent Sexual Harassment and Discrimination Act of 2021

VA is committed to all VA staff, patients, their families, caregivers, survivors, visitors, and advocates feeling safe in a workplace free of harassment and discrimination. Secretary McDonough has been clear since his first day that he will not accept discrimination, harassment, or assault at any level or at any facility within VA. VA is determined to provide a safe, inclusive, equitable environment for staff and the Veterans we serve. To that end, VA has established an internal working group to focus on policies and accountability related to sexual assault and harassment. Within the next several weeks, the work group will expand to include representatives of Veterans Service Organizations (VSO) and state and local Veteran organizations as required under *the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*.

Accountability of those who commit harassment or assault is an important part of creating a culture that is free from harassment and assault. VA is currently reviewing a series of proposals including re-alignment of VA EEO functions. Because of this ongoing review, VA defers comment on this legislation at this time, but will follow up once this review is completed.

Draft – VA Police Improvement and Accountability Act

The “VA Police Improvement and Accountability Act of 2021” would amend title 38, United States Code, to improve the staffing, transparency, and accountability of VA law enforcement operations. Specifically, the legislation would require VA to publish summaries and statistics on the website of each facility related to arrests, prosecutions, use of force incidents, and complaints against VA police officers; require VA to track and analyze these incidents; require police officers to use body worn cameras; require review and investigation of use of force incidents; and require development of a plan for establishing minimum standards for police staffing at each facility.

The Administration strongly supports efforts to improve staffing, transparency, and accountability of law enforcement operations, and supports many of the principles in this bill. VA recently has undertaken many positive steps that have goals and principles in common with this legislation. In 2016, VA conducted a body worn camera pilot at VA Medical Centers located in Dansville, IL, and Lexington, KY. We are currently conducting pilots in Baltimore, Phoenix, District of Columbia, and New Jersey facilities. One of the key findings of the initial pilots was that managing a body worn camera program is very resource intensive. Based on the timeframe of the draft bill and the lack of resources in the draft bill, VA will be challenged to successfully implement a body worn camera program in that short timeframe, and welcomes the opportunity to work with Congress to resource this initiative over a time period that will ensure effective implementation.

For example, implementing a VA-wide body worn camera program would take an estimated 1 to 2 years and require significant resourcing and expenditures. VA would need to research database and storage requirements; gain approval to host data; procure in excess of 3,000 body worn cameras (with service and maintenance repair contracts); and develop associated policy, procedures, and training on proper usage. VA would also immediately require additional police operations staff to administer a body worn camera program to include the following: receiving and processing requests for footage; obtaining footage from individual facility police units; and reviewing and redacting footage to safeguard against improper disclosure under provisions of the Health Insurance Portability and Accessibility Act (HIPAA), the Privacy Act, or other applicable privacy protections.

VA would face similar resourcing and expenditure challenges capturing, tracking, analyzing, and reporting police incident data as contemplated because there is currently no single database used by the Department for collection of the referenced police incident data. Accordingly, reporting on police incidents would be made more

complicated owing to the multiple locations from which data would have to be obtained. Investigating all use of force and similar incidents, as defined in this proposed legislation, would be similarly more difficult and require greater human and capital resources expenditure to accomplish as a single-source data repository is not currently available. While implementation of a Department-wide database occurs, in the interim, certain datapoints would need to be collected manually through static data calls, placing a high administrative burden on police units in the field to meet Congressional reporting requirements. Moreover, VA would need additional time to develop and coordinate comprehensive policies pertaining to usage, storage, dissemination, privacy, etc., to ensure appropriate oversight and safeguards are in place. As noted, VA believes in the direction established by this bill, but would like to discuss these implementation and resourcing concerns in a detailed way with the Committee.

VA estimates that enactment of this legislation would result in costs of \$27.6 million in the first year, \$101.9 million over a 5-year period, and \$205.1 million over a 10-year period. This estimate includes required staff to administer body worn cameras at 144 medical facilities across the country and staff to track, analyze, and review police incidents. It also includes estimated costs for procuring and sustaining body worn cameras, training on body worn cameras and use of force reviews, travel for use of force reviews, and a single database to track police incidents.

Draft – VA Beneficiary Debt Collection Improvement Act

This draft bill would amend title 38, United States Code, in an effort to improve the processing of Veterans benefits by VA, to limit the authority of the VA Secretary to recover overpayments made by the Department and other amounts owed by individuals to the United States, and to improve the due process accorded individuals with respect to such recovery.

Section 2 of the VA Beneficiary Debt Collection Improvement Act would insert in title 38, United States Code, a new section 5302B, and it would prohibit an individual from incurring a debt that arises from the participation in a program or benefit administered by the Under Secretary for Benefits if it is attributable to the failure of VA to process information provided by or on behalf of that individual within applicable timeliness standards established by the Secretary. If VA determines it has made an overpayment to an individual, VA would be required to provide notice to the individual of the overpayment and explain the right of the individual to dispute the overpayment, including a detailed description of the process by which to dispute the overpayment, or request a waiver of indebtedness. VA could not take any collection action for 90 days after the notice unless an exception provided in 38 U.S.C. § 5302B(c)(2) applies. VA supports section 2, subject to the availability of appropriations. While VA anticipates costs associated with section 2, due to the complexity of this provision, VA is unable to estimate the costs at this time.

Section 3 would amend 38 U.S.C. § 5315(a)(1) to state that interest and administrative costs will be charged on any amount owed to the United States for an

indebtedness resulting from a person's participation in a benefits program administered by VA other than a loan, loan-guaranty, or loan insurance program; a disability compensation program; a pension program; or an educational assistance program.

The Administration supports section 3, which is consistent with a legislative proposal VA submitted as part of its FY 2021 Budget request. There are no costs associated with section 3.

Section 4 would extend the window to request relief from 180 days to one year. VA supports section 4, subject to the availability of appropriations, and has provided technical assistance to the House and Senate Committees on Veterans' Affairs on the proposed Stopping Harm and Implementing Enhanced Lead-time for Debts for Veterans Act of 2020 (H.R. 5245 and S. 805), which includes concerns with 38 U.S.C. § 5302(a), Waiver of Recovery of Claims by the United States, and 31 U.S.C. § 3711(e)(1), Collection and Compromise. This change would provide consistency in the window to request relief, as 38 U.S.C. § 5302(b) currently provides Veterans 1 year and 38 U.S.C. § 5302(a) only provides 180 days. Aligning both to one year provides Veterans with additional time to request relief and helps eliminate confusion. Mandatory costs associated with section 4 are estimated to be \$80.3 million in 2021, \$461.6 million over 5 years, and \$1.1 billion over 10 years.

Section 5 would amend 38 U.S.C. § 5314 to prohibit the Secretary from offsetting Veteran benefits to collect a debt while the existence or amount of the indebtedness is disputed. It also would establish 38 U.S.C. § 5314A, which would require the Secretary to prescribe regulations for an administrative process for the dispute of the existence or amount of indebtedness and update the website and written communications to ensure they contain all information a person needs to dispute the indebtedness. It would further amend 38 U.S.C. § 5302(a) to preclude recovery of a debt if the cost to collect exceeds the debt amount.

The Administration does not fully support section 5 as currently written because 38 CFR § 1.911(c)(1) provides that a Veteran can write to VA to submit a debt dispute. VA has an established administrative process for disputing the existence or amount of indebtedness. VA communicates due process rights and obligations to Veterans with each debt notification. VA also provides the Veteran with information on the appeal process and the Appeals Modernization Act. Additionally, VA maintains the Manage VA Debt webpage where Veterans can access their debt information. As set forth at 31 U.S.C. § 3711(a)(3), VA has the authority to not recover debts if the cost of collecting the claim is likely to be more than the amount recovered. While VA does not support the requirements to prescribe an additional duplicative administrative process, VA does support the provision that speaks to the prohibition of VA collecting debts through offsets while a debt is being disputed. VA believes there will be no costs associated with Section 5 implementation, or that any such costs would be negligible.

Draft – VA Equal Employment Counseling Modernization Act

The Administration supports the draft “VA Equal Employment Counseling Modernization Act 2021,” which would eliminate the cap on the number of full-time VA employees providing EEO counseling, subject to the availability of appropriations. Although VA’s total workforce has nearly doubled since the creation of VA’s Office of Resolution Management in 1997, the staffing of frontline EEO professionals has not kept up with that growth. VA’s EEO counselors are a forward-facing team who engage individuals at the most sensitive time of their conflict or complaint. When staffed properly, EEO counselors are instrumental in timely resolution of conflicts at the informal stage before they escalate into formal complaints.

VA estimates that enactment of this bill would result in costs of \$6.4 million for FY 2022, \$34.1 million over the 5-year period from FY 2022 through FY 2026, and \$73.6 million over the 10-year period from FY 2022 through FY 2031.

Draft – VA Supply Chain Resiliency (Warstopper) Act

The “VA Supply Chain Resiliency Act 2021” would direct the Secretaries of Defense and VA to enter into an agreement to allow for VA participation in the Defense Logistics Agency “Warstopper Program.” The proposed legislation would establish reporting requirements for physical inventory and projected needs for critical items as well as implementation of VA integration into Warstopper.

As reported to the Committee in its March 24, 2021, hearing regarding VA’s medical supply chain, VA has come a long way in strengthening its supply chain logistics. VA identified the immediate need for national personal protective equipment (PPE) asset visibility. VA’s existing legacy system, a 50-year old inventory system, was unable to provide visibility into on-hand inventory and the usage or burn rate at each VA Medical Center. VA defined standards for reporting PPE inventory levels and burn rates; developed the methodology, standard operating procedures, and SharePoint site for data collection; and within 30 days, deployed an electronic dashboard. This dashboard, still in use today, provides enterprise-wide visibility of PPE on-hand inventory, burn-rates, and projected demand, from the individual VA Medical Center level to enterprise-level.

To overcome the supply chain challenges, VA increased the amount of critical medical materiel held at each VA Medical Center from 30 days to 60 days of supply. VA also established Regional Readiness Centers, geographically distributed to support the four Veterans Integrated Service Network (VISN) Consortiums. In doing so, we built resiliency into our internal supply chain to enable VHA to sustain continuous services to Veterans even when there are interruptions in support from the commercial supply chain. In the long term, the Regional Readiness Centers will support VHA preparedness for regional and national public health emergencies, including those secondary to national disasters (e.g., hurricane, flood).

We leverage the existing capability of the Defense Logistics Agency (DLA) and the Department of Health and Human Services via Interagency Agreements. As a result, we do not support this legislation as written because VA does not require legislative assistance to enter into an interagency agreement with DLA for participation in the DLA Warstopper Program. With regard to the reporting requirements in the bill, Executive Order 14001, *A Sustainable Public Health Supply Chain* (Jan. 21, 2021), directed multiple agencies, including VA, to, among other things, determine the identification of emergency needs. VA needs the results of that work effort to determine critical items, as described in section 2(a) of the draft bill.

Draft – Strengthening VA Background Checks Act

This draft bill would make certain improvements in the conduct of background checks with respect to employees and contractor employees of VA. Specifically, the legislation would prohibit VA from issuing a flash badge to a covered contractor employee unless a Special Agreement Check has been conducted, establish a process to periodically update suitability determinations, and institute certain reporting requirements.

While the Administration strongly supports improvements in the conduct of background checks, it does not support the “Strengthening VA Background Checks Act” because there is already a significant government-wide effort underway that would fulfill the goals of the bill.

Transformative data-driven approaches have recently transformed the personnel security vetting process model from a periodic reinvestigation of security clearance holders to a continuous vetting process. Notably, the legislation references the Office of Personnel Management (OPM) involvement with personnel screening processes; however, Federal background investigation work for suitability determinations migrated from OPM to the newly created Defense Counterintelligence Security Agency in 2020. Additionally, the draft bill does not incorporate upcoming requirements, policies, or procedures that will be implemented by all Federal agencies during the transition in 2021 from the current vetting process to Trusted Workforce 2.0.

OPM’s Suitability Executive Agent has directed all Executive Branch departments and agencies to begin implementing Trusted Workforce 2.0 by enrolling their national security sensitive populations in what it calls “transitional states.” The purpose of these states is to allow agencies to start moving toward an improved personnel vetting framework while full Trusted Workforce 2.0 capabilities are developed. By the end of FY 2021, traditional periodic reinvestigations for national security populations will be a thing of the past as improved immediate continuous vetting processes will be implemented.

The draft legislation also does not address a significant part of VA’s workforce – affiliates and volunteers. The VA Health Professions Trainees population alone includes over 100,000 people, and the VA Voluntary Service includes approximately 20,000

more people. Improved overall security cannot be realized absent inclusion of the full diverse and varied VA workforce.

Draft - Oversight of COVID Relief Funding

This draft bill would direct the VA Secretary to submit to Congress a plan for expending COVID-19 pandemic funding made available to VA.

In general, the Administration has no objection to this bill, subject to the availability of appropriations. The bill would require VA to submit a detailed spend plan for COVID-19 related funds and to report in a weekly basis on expenditures. In addition, the bill requires audits and reports on the use of funds by the VA Office of Inspector General (VA OIG) and Government Accountability Office (GAO). The bill would cover funds received by VA in the Families First Coronavirus Response Act (Public Law 116–127), the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136); and the American Rescue Plan Act of 2021 (Public Law 117–2).

VA has provided spend plans for the Families First and CARES Acts and has committed to provide spend plans for the American Rescue Plan. In addition, VA already provides weekly reports on obligations and expenditures for the Families First and CARES Acts. The bill merely would write current VA practice into law.

We estimate that enactment of this bill would result in minimal manpower costs for report preparation of \$27,000 for the remainder of FY 2021, \$281,000 over the 5-year period from FY 2021 through FY 2025, and \$631,000 over the 10-year period from FY 2021 through FY 2030. We do note that, as resources for all Federal agencies are limited, there seems to be little need for both the VA OIG and GAO to review and report on the same subject matter. We defer to VA OIG and GAO on their ability to complete this additional work, but we suggest that a review by a single agency might be sufficient.

Draft – OAWP Improvements

This bill would amend 38 U.S.C. § 323 to eliminate the Office of Accountability and Whistleblower Protection (OAWP) statutory authority to investigate allegations of senior leader misconduct and poor performance and allegations of whistleblower retaliation by VA supervisors. Instead, OAWP would transmit any allegations that it receives to the U.S. Office of Special Counsel (OSC). The bill would authorize the Secretary to transfer up to \$5,000,000 per year to OSC to be utilized by OSC to address VA whistleblower and whistleblower retaliation complaints. The bill would remove the requirement that OAWP maintain a toll-free hotline for anonymous disclosures; modify OAWP's reporting requirements; and include a number of reporting requirements for OSC concerning any money transferred under the new authority.

The Secretary recognizes that OAWP plays a critical role in improving accountability within VA. Since 2019, OAWP has made substantial improvements to its

investigations processes. OAWP investigators perform their work using standard operating procedures that were developed based on the Council of the Inspectors General on Integrity and Efficiency Quality Standards for Investigations. To ensure understanding and proper application of the law and standard operating procedures, OAWP developed comprehensive training for all investigators. When a new investigator is hired by OAWP, they undergo a week-long comprehensive training course and are linked up with a peer investigator for the first several months with OAWP.

OAWP implemented processes and practices to ensure a thorough review of investigations through investigative plans, frequent case reviews, and multilayered supervisory review of reports of investigation to verify investigative sufficiency and accuracy in those reports. OAWP also established a Quality Division, which performs quality assurance reviews of OAWP's investigative processes to ensure consistent quality across our investigative processes. The Quality Division reviews closed OAWP matters and cases to assess the conformity of those matters and cases to law, policy, and standard operating procedures. If deficiencies are identified, the Quality Division identifies the root causes for the deficiencies and recommends solutions. The work of the Quality Division enables OAWP to identify gaps early in the intake and investigation process in order to provide opportunities for improvement.

The turnaround of OAWP's investigations were recognized by the OIG in the closure of the majority of the recommendations that it made in its 2019 report. In general, OAWP investigations are faster but equally as thorough as those by other investigative entities. If this bill were enacted, OAWP would no longer conduct investigations. VA would be pleased to continue working with Committee staff on refinements to this bill or other legislative proposals about OAWP and its authorities. Therefore, VA would like to follow up with the Committee at a later time, both to provide technical comments on the legislation as well as provide a position on the bill.

Conclusion

This concludes my statement. We would be happy to answer any questions you or other Members of the Committee may have.