STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

Chairwoman Luria, Ranking Member Nehls, and other Members of the Subcommittee: thank you for inviting us here today to present our views on several bills that would affect VA programs and services. Joining me today are Cheryl Rawls, Executive Director, Office of Outreach, Transition, and Economic Development Service, VBA and Dr. Marsden McGuire, Director, Continuum of Care and General Mental Health, Veterans Health Administration (VHA).

H.R. 2568 – United States Cadet Nurse Corps Service Recognition Act of 2021

H.R. 2568, the "United States Cadet Nurse Corps Service Recognition Act of 2021," would amend 38 U.S.C. § 106 to recognize and honor the service of individuals who served in the U.S. Cadet Nurse Corps during World War II.

Section 2 of the bill would amend 38 U.S.C. § 106 to deem as active duty for purposes of eligibility and entitlement to headstones, markers, and other benefits under 38 U.S.C. chapters 23 and 24 the service of persons who served honorably in the Cadet Nurse Corps during the period beginning on July 1, 1943 and ending on December 31, 1948. Within one year of the date of the bill's enactment, the Department of Defense (DoD) would be required to issue to each member with qualifying Cadet Nurse Corps service a discharge from service under honorable conditions.

Congress has granted to DoD the authority to recognize civilian service as active duty under Public Law 95-202 pursuant to criteria set forth in that legislation. In the interest of consistent treatment of all groups seeking recognition of their service, we recommend that the process established by Congress in that legislation be relied upon to determine whether the service of the Cadet Nurse Corps should be recognized as active duty for purposes of eligibility and entitlement to VA benefits.

This bill would authorize DoD to design and produce a service medal, memorial plaque or grave marker, or other commendation to honor those who receive an honorable discharge for service in the Cadet Nurse Corps. The bill would also exclude members of the Cadet Nurse Corps with qualifying service from eligibility for interment in Arlington National Cemetery. VA defers to DoD concerning these provisions. However, VA does not support the provision of a separate DoD grave marker or memorial plaque to Cadet Nurse Corps members with qualifying service as it would directly conflict with VA's memorialization authorities governing the same benefits.

VA is unable to estimate the costs at this time for the additional funding and resources that would be needed if the bill were enacted.

H.R. 2724 – VA Peer Support Enhancement for MST Survivors Act

H.R. 2724, the "VA Peer Support Enhancement for MST Survivors Act," would direct VA to provide for peer support specialists for claimants who are survivors of military sexual trauma (MST). VA has technical concerns with this bill and cannot support it as currently worded. We would be pleased to work with the Subcommittee on technical amendments to address our concerns.

New 38 U.S.C. § 5109C would require VA to provide a "peer support specialist" for claimants who file a claim for disability compensation relating to MST, unless a claimant elects not to have a "peer support specialist." In addition, the "peer support specialist" would have to be trained as a victims advocate and may not be responsible for any part of adjudicating the claim of any claimant to which the specialist is providing support.

First, we wish to identify for the Subcommittee certain technical issues. Proposed section 5109C(c) would refer to 38 U.S.C. § 1165(c) to define the term "military sexual trauma." However, that term is not defined in section 1165(c). We suggest replacing "section 1165(c)" with "section 1166(c)," which defines "military sexual trauma." Also, section 2(b) of the bill would redesignate the second section 1164 of title 38, U.S.C., as added by Public Law 116-315, § 5501, as section 1165. However, Public Law 117-16, § 7, already redesignated the second section 1164 as section 1166.

The bill is also not entirely clear regarding the nature and duration of support services that VA would be required to provide MST claimants. For instance, proposed section 5109C(a) would state that "a peer support specialist [is] to provide the claimant with support during the claims process." However, the bill does not clarify what type of "support" the specialist must provide, e.g., emotional support, support with preparing the claim, support with processing the claim, or something else. The bill is also unclear as to how long the support services should last, e.g., until the filing of the claim, until a decision is issued, until a decision becomes final, or some other timeframe.

The language in proposed section 5109C(b)(2), which provides that a "peer support specialist" "*may* not be responsible for any part of adjudicating the claim of any claimant to which the specialist is providing support," is unclear. This language may be interpreted as permitting a "peer support specialist" to assist on an MST claim, but not to take part in adjudicating the claim. If that is the intent, Congress may want to be more explicit and clarify the intended role of a "peer support specialist," e.g., a "peer support specialist" "[may/shall] assist on an MST claim but shall not be responsible for any part of adjudicating the claim…" If Congress' intent is to preclude any assistance or adjudication activity by a "peer support specialist" on an MST claim, we suggest revising the language to state that a "peer support specialist" "shall not be responsible for any assistance on or any part of adjudicating the claim . . . ."

Depending on Congress' intent with the language in proposed section 5109(C)(b)(2), the Veterans Benefits Administration's (VBA) 112 MST outreach coordinators (one male and one female, at each of the 56 regional offices) may currently provide some of the claims support functions of "peer support specialists" contemplated under this bill, and Veterans Health Administration (VHA) peer specialists may not be able to provide the services contemplated by Congress.

To the extent Congress intends to permit or require a "peer support specialist" to assist Veterans with their MST claims, there may be some overlap with VBA's MST outreach coordinators, who currently act as the point of contact for Veterans with MST claims. VBA MST outreach coordinators listen to MST claimants and assist them with the compensation claims process. Each of VBA's 56 regional offices staff specially trained MST coordinators—a minimum of one male and one female, who are identified both online (see https://www.benefits.va.gov/benefits/mstcoordinators.asp) and on signs clearly visible at each regional office.

The bill states that a "peer support specialist" must also be trained as a victims advocate. Typically, the role of a victims advocate includes providing essential support, liaison services, and care to victims. As such, these types of duties for the "peer support specialists" under the bill would be outside of VBA's normal operating procedures.

VHA peer specialists currently support Veterans in coping with the stresses of the disability claims process for various health conditions, including MST. However, the bill's victim advocate training requirement and victim advocate role are distinct from the training background and the scope of practice for current VHA peer specialists. It is also not feasible to assign a VHA peer specialist to support every MST claimant due to the limitations of VHA peer specialist staffing and training, and their assigned work location in the VA health care system. Moreover, VHA peer specialists are not expected to assist Veterans with their benefit claims. Finally, providing peer support services specific to MST involves additional complexities and clinical issues, and if undertaken, should initially be established as a pilot program to ensure it can proceed safely, sensitively, and effectively.

Further, we note that VHA also has health-care services for Veterans who experienced MST (www.mentalhealth.va.gov/msthome.asp). VHA has MST Coordinators who can assist Veterans in accessing this care. Veterans who are experiencing distress as a result of the claims process can access treatment through VHA whose trained clinicians can provide support, as needed. VA supports Congress' overall intent to provide increased support to Veterans filing claims for MST and looks forward to working with the committee to address our technical concerns.

No mandatory costs are associated with this bill. Discretionary costs are not yet determined as VBA has technical concerns with this bill.

H.R. 2800 – WINGMAN Act

H.R. 2800, the "Working to Integrate Networks Guaranteeing Member Access Now Act" (WINGMAN Act), would add a new 38 U.S.C. § 5906 to direct VA to provide each Veteran who submits a claim for VA benefits an opportunity to permit a covered Congressional employee employed in the office of the Member of Congress representing the district where the Veteran resides to have access to all the records of the Veteran in VBA's databases.

New section 5906(a)(2) would require the Secretary to provide "read only access to such records to such a covered Congressional employee in a manner that does not allow such employee to modify the data contained in such records or in any part of a [VBA] database." Congress would have the ability to designate two such employees per Member of Congress (including two per Representative, Senator, Delegate, or the Resident Commissioner of Puerto Rico – so therefore 1,082 total employees) who would "satisfy the criteria required by the Secretary for recognition as an agent or attorney," but who would not be formally recognized as an agent or attorney. New section 5906(b)(2) would also bar VA from imposing any requirements for the employee beyond those requirements for *recognition* as an agent or attorney.

VA opposes this bill for several reasons. First, it improperly conflates the concept of access to claims records, which is addressed in 38 U.S.C. chapter 57, with the concept of recognizing individuals to act as agents and attorneys in the preparation, presentation, and prosecution of benefits claims before VA, which is addressed in 38 U.S.C. chapter 59.

The purpose of VA recognition is to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for Veterans' benefits. The laws governing recognition do not address the issue of access to claimants' records, which are governed separately by privacy and information security laws. Instead, the provisions in 38 U.S.C. chapter 59 and VA's implementing regulations address the regulation and oversight of persons providing representation before VA, including the ethical standards of professional conduct for representatives, requirements for continuing legal education, and whether fees may be charged in a particular case. Making congressional staffers' access subject to the criteria for recognition as an agent or attorney would subject them to provisions that are not relevant to their official duties as congressional staffers.

In providing remote read-only access to VBA records to a Veteran's agent or attorney, VA requires satisfaction of different criteria that are unrelated to, and without regard for, the individual's status as being "recognized." Although VA does provide read-only electronic access to recognized attorneys and agents who meet other relevant qualifications, the requirement that a congressional employee satisfy the criteria for recognition as an agent or attorney would have no logical relationship to the goals of ensuring access in a manner that is efficient and effective and appropriately safeguards the security of the records. Incorporating a new proposed section in chapter 59, which

pertains solely to claims representation, and requiring congressional staffers to satisfy the same criteria required by VA for recognition of agents and attorneys, can only create confusion about “recognition” in general and the role of congressional staffers in the claims process. Moreover, making the requirements for congressional employees to gain access to claimant records a function of VA’s recognition and accreditation program would unnecessarily complicate the operation of that program.

This bill would include a requirement that VA provide to each Veteran who submits a claim an opportunity to permit a covered congressional employee access to all of his or her records through direct access to VBA databases. This is unnecessary from a privacy or confidentiality perspective as there are longstanding methods, such as authorizations to release information, for Congress to obtain the consent of a VA claimant to disclose information to a congressperson and their staff. Each regional office has congressional liaisons who work with Members of Congress and their staffs to respond to constituent inquiries regarding their claims files. VA staff can assist any Members of Congress or their staffers with better accuracy since they know what to look for. Moreover, the bill would possibly impose a new burden on VA to contact every Veteran to “provide them an opportunity to permit” access to VBA databases by a congressional staffer. This requirement would delay the Veteran’s claim since VA would be required in many cases to send additional letters to claimants to solicit their consent. Further, it would impose a significant burden on VA to modify claims forms and corporate systems to track these consents. The extent of this burden would be partially dependent on whether, and when, a congressional seat was to change hands. In those cases, VA would be required to resolicit consent with regard to the staffers of the newly selected Member of Congress because the Veterans’ decision to authorize access to their VA records could change based on who is holding the congressional seat.

Furthermore, based on the current capabilities of VA systems, this bill, if implemented, would provide congressional staff who assist constituents of a Member of Congress with greater access to VA records than is provided to a VA employee. Under the Privacy Act, Federal employees may access private records only when necessary to perform their duties. This bill would impose no similar restriction on access by congressional staff. This generally means that a Veteran’s record could be accessed by the congressional employee at any time without being targeted to the Veteran’s specific needs. From a privacy and information security standpoint, granting congressional staff unrestricted access to the private information of Veterans and other VA claimants who have permitted such access with the understanding that it would be used to provide claim assistance could have serious unintended negative consequences for Veterans and their families who have entrusted VA with their personal medical and other information.

Similarly, although a Veteran’s authorization or consent to disclose information to a congressional staffer under the Privacy Act and other applicable confidentiality laws would provide sufficient authority for VA to provide access to VBA databases, the WINGMAN Act would confuse the Veteran’s or other VA claimant’s right to control the appropriate disclosure of information with their ability to control the access or available means to disclose the information. The bill would remove the read-only form of

congressional staff access from under the information security requirements of the Federal Information Security Modernization Act of 2014; the E-Government Act of 2002; 38 U.S.C. chapter 57, subchapter III, Information Security; and security baseline standards required by the National Institute of Standards and Technology. In effect, this bill would exempt congressional staff access to broad VBA databases from all requirements for VA to provide information security. Such an exemption from Federal information security requirements would be unprecedented and potentially dangerous.

Additionally, VA would be required to address serious technological obstacles to implement this bill. Currently, the VBA system provides access to one representative per Veteran or claim and for only the records of a Veteran who has specifically authorized access. To implement the WINGMAN Act, VA would need to redesign its system architecture to allow more than one representative per Veteran or claim, which would require extensive time, monetary expense, and manpower. Absent such system changes, in order to provide the type of electronic access to congressional staff contemplated by the bill, VA would have to displace the electronic access of current representatives—Veterans service organization representatives, private attorneys, and claims agents—causing substantial administrative burdens on VA and hardships on those representing Veterans and the Veterans they represent, while also interfering with the relationship between Veterans and their representatives.

Due to the above-described limitations on VA systems, the only way VA could provide the access contemplated by this bill in the near term would be if the bill language is modified to permit VA to provide congressional staffers with unfettered access to all Veterans' electronic claims records, as opposed to limited access based on power of attorney code. However, allowing unfettered access would be harmful to the privacy of Veterans who had not consented to or permitted such access, in violation of the existing privacy laws, and beyond the scope of the current version of the subject bill.

In addition, the bill would prohibit VA from obligating or expending more than $10 million for the period of Fiscal Years (FY) 2021 through 2024 for the purposes of this bill. However, VA estimates that, for the period of FYs 2022 through 2024, implementation would require VA to expend an estimated $40.5 million in GOE costs. IT costs are anticipated but not estimated at this time. No mandatory costs are associated with this bill.

Finally, please note the H.R. 2800 contemplates creating a new 38 U.S.C. § 5906; however, section 5906 is no longer available to add as a new section because a section 5906 was added by Public Law 116-283, § 548(a)(1), on January 1, 2021.

H.R. 2827 – Captain James C. Edge Gold Star Spouse Equity Act

H.R. 2827, the "Captain James C. Edge Gold Star Spouse Equity Act," would amend titles 10 and 38, United States Code, to expand certain benefits for surviving spouses of members of the Armed Forces who die in line of duty.

Section 2 would prohibit DoD from terminating a surviving spouse's annuity payment solely because the surviving spouse remarries. If a surviving spouse remarried before reaching the age 55 and before the date of enactment of this bill, DoD would resume annuity payments moving forward from the date of enactment. VA defers to DoD on this section.

Section 3 addresses benefits under 38 U.S.C. § 1311. VA opposes this section. The proposed amendments would result in the complete removal of remarriage considerations for dependency and indemnity compensation (DIC) benefits. This provision would negate Public Law 116-315, § 2009 (Jan. 5, 2021), which reduced the remarriage age from 57 to 55 for benefits falling under 38 U.S.C. chapter 13. This bill would result in disparate treatment of survivor benefits because DIC benefits granted under 38 U.S.C. § 1318 would remain subject to the age 55 limitation. We note also that beneficiaries of survivor's pension – who tend to be in a more vulnerable demographic than DIC beneficiaries – would remain ineligible for survivor's pension due to remarriage at any age. Finally, it is unclear if section 3(b) would require a surviving spouse to file an application for resumption of DIC.

VA believe there could be costs for section 3, but do not have estimates at this time.

H.R. 3402 – Caring for Survivors Act of 2021

H.R. 3402, the "Caring for Survivors Act of 2021," would improve and expand eligibility for DIC paid to certain survivors of certain Veterans. VA would support this bill, if amended, and assuming Congress provides additional resources.

Section 2(a) of the bill would increase the DIC rate in 38 U.S.C. § 1311(a)(1) from $1,154 ($1,357.56 effective December 1, 2020) to $1,730.53 (55 percent of $3,146.42 (rate in effect as of December 1, 2020 under 38 U.S.C. § 1114(j)).

Section 2(b)(1) would make the amendments made by subsection (a) effective for months beginning after the date that is six months after the date of the enactment of this legislation. Section 2(b)(2) would require VA, for months beginning after the date that is six months after the date of enactment, to pay dependents and survivors income security benefits under section 38 U.S.C. § 1311 to an individual eligible predicated on the death of a Veteran before January 1, 1993, in a monthly amount that is the greater of the following:

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

Under section 1311(a)(1), DIC is paid to a surviving spouse at the monthly rate of $1,154. Per Public Law 116-178, the current rate paid under section 1311(a) (effective

December 1, 2020) is $1,357.56. *See* Veterans' Compensation Cost-of-Living Act of 2020, § 2(b)(4) (Oct. 20, 2020). DIC is also paid to a surviving spouse and to the children of a deceased Veteran in the same manner as if the Veteran's death were service connected if his or her death was not the result of his or her own willful misconduct, and he or she was in receipt of or entitled to receive compensation at the time of death for a service-connected disability rated totally disabling if the disability was continuously rated totally disabling for a period of 10 or more years immediately preceding death. *See* 38 U.S.C. § 1318(a), (b).

VA notes that Public Law 116-178 requires VA to increase the rate paid under section 1114(j) in addition to the rates paid under section 1311(a). VA views section 2(a) of this bill as allowing for the use of the current rate paid under section 1114(j) of $3,146.42 in calculating the benefit provided under proposed section 1311(a)(1), as well as any future increases to section 1114(j).

VA further notes that section 2(b)(2) of this bill would require VA to pay the greater of the benefit under proposed section 1311(a)(1) and "[section 1311(a)(3)], as in effect on the day before the date of the enactment of this Act." The apparent intent is to use the rates under section 1311(a)(3) at that fixed point in time, even if those statutory rates are later changed. However, the statutory language is potentially ambiguous because the rates payable under section 1311(a)(3) may change even if the text of that provision remains unchanged. Congress routinely enacts annual cost-of-living adjustments (COLA) increasing DIC rates, including the section 1311(a)(3) rates. *See*, *e.g.*, Public Law 116-178. We believe the intent of the bill is to use the rate that would have been payable on the day before the date of enactment under section 1311(a)(2) and any COLAs in effect on that date. However, the bill language as drafted would also be susceptible to the interpretation that the rate should be increased by any subsequent COLAs because such rate would still be predicated on section 1311(a)(3) "as in effect on the day before the date of enactment of this Act." This ambiguity could be removed by adding language at the end of section 2(b)(2)(A)(i) of the bill saying, "including any applicable statutory cost-of-living increases in effect on that day."

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

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

such paragraph as the duration of such period bears to 10 years." It is unclear how Congress intends VA to apply proposed section 1318(a)(2).

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

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

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

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

This calculation is further complicated by the incremental structure of section 1311 used to calculate DIC benefits, which allows VA to supplement the base rate when a number of different conditions are met. For example, section 1311(a)(2) allows VA to pay an additional $246 per month of DIC if the deceased Veteran received a total disability for eight years before death *and* was married to the surviving spouse for those eight years. Sections 1311(a)(2) and 1318(b)(1) currently operate separately and apply separate standards, and not all proposed beneficiaries would qualify for DIC benefits under section 1311(a)(2). However, if a proposed beneficiary also qualifies for the increased payment under section 1311(a)(2), VA would be required to provide benefits at a rate that "bears the same relationship" to full benefits as the length of total disability rating of the Veteran "bears to 10 years." Using the family of a Veteran with exactly eight years of total disability rating who dies from a condition that is not connected to service that meet all applicable criteria as an example, proposed section 1318(a)(2) would require VA to provide a benefit under both section 1311(a)(1) and the increase under subsection (a)(2) which bears the same relationship as eight years does to ten years, meaning 80% of the full DIC benefit. Section 1311(a)(2) is not the only potential supplement to which VA would have to apply the reduction. *See, e.g.*, 38 U.S.C. § 1311(b) (allowing VA to provide an increase of $286 per month per child under 18 years old).

VA views the potential application of the language within subsection (a)(2) as being inconsistent with the benefit's current intent and program integrity. As such, VA recommends removal of paragraph (a)(2) and allow proposed amendments to (b)(1) to achieve the primary intent of DIC expansion. The effect of the proposed amendments to subsection (b)(1), on their own, would result in clearer and more consistent program application. The proposed amendment in section 1318(b)(1) is sufficient to fulfill the intended purpose of expanding DIC benefits to Veterans with a totally disabling disability rating by shortening the duration of time required for the disability to have been continuously rated and would allow VA to quickly implement the expansion while retaining the existing automation that allows the families of deceased Veterans to receive DIC benefits as quickly and accurately as possible.

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

VA recommends the bill be amended to add an explicit effective date. Due to the IT system updates required to implement and the enhanced ability to conduct oversight on said implementation, VA recommends the section be amended to coincide with the sunset of the reduction of Survivor Benefit Plan Survivor Annuities by Amount of DIC effective January 1, 2023. 10 U.S.C. § 1450(c)(1)(D).

Mandatory costs associated with this bill are estimated to be $1.7 billion in FY 2022, $8.8 billion for five years, and $25.0 billion for ten years. There are no anticipated discretionary costs associated with this bill if Section 2 and 3 are amended.

H.R. 3793 – Supporting Families of the Fallen Act

H.R. 3793, the "Supporting Families of the Fallen Act," would increase the maximum amount of Servicemembers' Group Life Insurance (SGLI) coverage that a member can carry while in service from $400,000 to $500,000. Following separation from service, former members would be eligible to purchase Veterans' Group Life Insurance (VGLI) up to the proposed $500,000 maximum coverage amount. VA supports this bill.

In order to operationalize an increase in SGLI and VGLI maximum coverage, VA would have to coordinate with the DoD Manpower Data Center and the primary insurer in the SGLI/VGLI program. This coordination would address administrative matters that include IT system changes, updates to forms, modifications to letters, and updates to online communications to reflect the new coverage amounts. VA would also have to confirm that the new maximum coverage amounts and corresponding premiums are actuarially sound.

There are no mandatory costs for VA from this proposal as the SGLI and VGLI programs are self-funded by Service members' premiums and interest earned on such premiums. VA does not anticipate any discretionary costs related to this bill.

Please note that DoD has mandatory costs related to this bill. This is due to current law, 37 U.S.C. § 437, requiring DoD to reimburse Service members for their SGLI premiums when they serve in a combat zone. DoD is projecting these costs based on the current SGLI premium rate and internal data on the number of Service members projected to serve in a combat zone for varying periods of time. DoD has information technology costs to make system enhancements to pay systems as well as the SGLI Online Enrollment System, the system of record for SGLI elections. DoD is developing these costs in response to this bill.

H.R. 4191 – Gold Star Spouses Non-Monetary Benefits Act

H.R. 4191, the "Gold Star Spouses Non-Monetary Benefits Act," would restore certain non-monetary Federal benefits to surviving spouses who are eligible for the Gold Star lapel button and who remarried.

Section 2(c)(1) of this bill would provide non-monetary VA benefits to surviving spouses eligible for a gold star lapel button under 10 U.S.C. § 1126, regardless of remarriage. This would restore VA benefits in cases where a surviving spouse's remarriage resulted in the termination of benefit eligibility.

Section 2(c)(2) would define “veteran” for the purposes of 38 U.S.C. chapter 37 (Housing and Small Business Loans) to include an individual who is the surviving spouse of a Veteran and is eligible for a gold star lapel button under 10 U.S.C. § 1126.

VA requests additional information regarding what is meant by the term “non-monetary” benefits in subsection (c)(1) of the bill. Such term is not currently used in title 38 of the United States Code and, without understanding which specific benefits Congress intends to encompass with the amendment, VA cannot provide a position on subsection (c)(1) at this time.

Assuming that “non-monetary benefits” would include the VA home loan benefit provided under 38 U.S.C. chapter 37, VA believes the amendment proposed under subsection (c)(2) is unnecessary. Pursuant to 38 U.S.C. § 3701(b)(2), the term “veteran” includes the surviving spouse of a Veteran who dies on active duty or from service-connected causes. As the gold star lapel button is awarded to the next-of-kin, including a surviving spouse, of a Service member who died while on active duty, such individual is already eligible for VA home loan benefits. An exception applies in the case of a surviving spouse who remarries before the age of 57, but subsection (c)(1) of this bill, if applicable to the home loan benefit, would amend 38 U.S.C. § 103(d)(2) to eliminate remarriage as a barrier to home loan benefits if such surviving spouse is eligible for a gold star lapel button under 10 U.S.C. § 1126.

Supporting survivors, including Gold Star spouses, is a priority for the Biden Administration. VA supports ensuring that Gold Star spouses have enduring access to VA home loan benefits but believes the specific amendments proposed in subsection (c)(2) of this bill are unnecessary as the existing statute and other amendments in this bill may accomplish the objective.

Due to questions regarding the interpretation of subsection (c)(1) of this bill, VA is unable to provide a cost estimate for subsection (c)(1) at this time. Given that most Gold Star spouses are already eligible under existing 38 U.S.C. § 3701(b)(2) and this bill would only expand home loan benefits to those Gold Star spouses who remarry before age 57, VA has determined the costs of subsection (c)(2) of this bill to be insignificant.

H.R. 4601 – Commitment to Veterans Support and Outreach Act

H.R. 4601, the “Commitment to Veterans Support and Outreach Act,” would amend 38 U.S.C. chapter 63 to authorize VA to award grants to states to improve outreach to Veterans through County Veterans Service Officers (CVSO) and Tribal Veterans Service Officers (TVSO) serving through states. The grant would provide funding to expand existing outreach programs, activities, and services or to hire more CVSOs and TVSOs, or for travel and transportation necessary to accomplish those purposes. In addition, a grant could also be used to provide education and training, including on-the-job training, to state, county, local, and tribal government employees who provide (or when trained, will provide) Veteran’s outreach services, in order to help those

employees obtain VA accreditation in accordance with procedures approved by the Secretary.

Assuming Congress provides resources, VA supports H.R. 4601 in concept, but asks that Congress adjust some details of the bill. Outreach is an integral part of VA's customer experience framework to engage Veterans, Service members, survivors, and caregivers. VA values the partnerships it has with Veterans service organizations, to include state, county, and tribal Veterans service officers who are affiliated with them, and continues to look for opportunities to further engage with the organizations; however, although this bill provides a mechanism for VA to receive funding through a separate appropriations account, to support this bill VA would need assurance that the account would be funded as extra resources would be needed to stand up the program. Moreover, although this grant program would be administered by VBA, the successful implementation of the program would be measured by additional individuals being approved for VA accreditation, which is a function performed by the Office of the General Counsel (OGC). Thus, OGC would also require additional resources to ensure that those individuals are timely accredited, and that their qualifications and conduct are appropriately tracked and monitored.

VBA is responsible for informing Service members, Veterans, survivors, dependents and eligible beneficiaries about VA benefits and services for which they may be eligible and assisting them in submitting applications. VBA maintains a robust outreach program, reaching millions of Veterans and working with partners, such as CVSOs and TVSOs, each year through various forms of customer-focused outreach programs, communications, and activities. In FY 2020, VA participated in more than 6,000 outreach events, reaching over 348,000 Veterans, Service members, survivors, dependents, and eligible beneficiaries to provide information, benefits, and services. Additionally, from October 1, 2020, through August 1, 2021, VA participated in more than 4,500 outreach events, reaching over 215,000 Veterans, Service members, survivors, dependents, and eligible beneficiaries.

With regard to H.R. 4601's language, we note that the stated purpose of the bill includes ensuring that Veterans and their families are "*assisted in applying for"* Veterans' benefits and services. This language, which is similar to language in existing 38 U.S.C. § 6301, has traditionally been reserved for describing the responsibilities of VA and the employees of VA. Using such language in reference to non-VA employees would be confusing as the role of a non-VA employee would be different. In fact, pursuant to 38 U.S.C. § 5902, the role would be much larger in scope than that of a VA employee as it would include the preparation, presentation, and prosecution of the VA benefits claim—not simply assistance with the claim's submission. This could be resolved by revising the bill's language to limit the use of the term "outreach" for the purposes of this grant program to informing Veterans and their family members of the availability of VA benefits and services, and then using language consistent with section 5902 when describing the CVSOs' and TVSOs' potential responsibility towards providing claim-specific assistance as a representative who is recognized by VA.

In addition, in 2017, VA revised its regulations that govern VA recognition to clarify that tribal Veterans' programs may be recognized specifically as "tribal" organizations in a manner similar to state organizations, but the bill, as currently drafted, would not include tribal governments as potential recipients under the grant program. The VA General Counsel is also exploring other ways to facilitate representation to tribal communities, such as partnering with tribal governments and using the discretionary authority afforded to him by the Secretary, pursuant to 38 U.S.C. § 5903, to authorize TVSOs who are affiliated with tribal governments, but not accredited through a VA-recognized organization, to prepare, present, and prosecute Veterans' benefit claims before VA on an ongoing basis. The language of H.R. 4601 would not allow for tribal governments that have TVSOs authorized pursuant to the General Counsel's authority to receive grants through this program.

VA's regulations also require representatives of state organizations, CVSOs, or TVSOs to be paid employees, working a minimum of 1,000 hours for the state, county, or tribal government, respectively, to obtain accreditation as a representative directly through the state's organization. The proposed section 6307(g) and (h) does not seem to permit the grant funds to be used to pay the salaries of CVSOs or TVSOs who are not "new" employees, which could cause any new position developed to be short lived as it would leave the state and county responsible for coming up with non-grant funding for the CVSOs' and TVSOs' salaries after the first year.

No mandatory costs are associated with this bill. Discretionary costs associated with H.R. 4601 are estimated to be $51.1 million in 2022 and $255.5 million over five years.

H.R. 4633 – Reissuance of Misused Funds

H.R. 4633 would amend 38 U.S.C. § 6107 to improve the repayment by VA of benefits misused by a fiduciary. This furthers the purpose of Congress under Public Law 116-315, § 7005, which amended section 6107(b) to require VA to reissue VA benefits in all misuse cases.

Section 1 of the bill would improve the repayment by VA of certain misused benefits by amending the structure, section headings, and content to provide a streamlined reissuance process while shifting VA negligence considerations to program oversight.

The bill would address an apparent unintended impact of Public Law 116-315 which amended section 6107 in a manner which has resulted in a need for a negligence determination in all cases prior to reissuance being conducted. Guidance which remains under section 6107(a) requires an evaluation of each misuse case, with a dollar amount greater than zero, to determine if VA was negligent. This imposes a requirement for a formal determination that utilizes resources that would be better expended if shifted towards program oversight and away from redundant negligence determinations which no longer impact whether or not the reissuance of benefits occurs.

VA supports this bill and its incorporation of language as it would result in a shift of negligence considerations to program oversight and away from an unnecessary determination tied to the reissuance of benefits, which will occur regardless of the outcome of the determination, as required under Public Law 116-315, § 7005. This bill would enable timelier reissuance of misused benefits and application of VA resources towards more effective methods of oversight to protect beneficiary funds.

VA has some minor readability concerns with the proposed language and offers to work with the Subcommittee in providing technical assistance.

No general operating expenses (discretionary) are anticipated with this bill. No mandatory costs are associated with this bill.

H.R. 4772 – Mark O'Brien VA Clothing Allowance Improvement Act

H.R. 4772, the "Mark O'Brien VA Clothing Allowance Improvement Act," would amend 38 U.S.C. § 1162 by adding a new subsection (b) to require VA to make recurring payments for a clothing allowance to qualifying Veterans until the Veteran elects to no longer receive such payments or until VA determines the Veteran is no longer eligible for such payments. Under a new subsection (c), VA would have to conduct reviews of clothing allowance claims to determine a Veteran's eligibility when it receives notice the Veteran is no longer eligible or within 5 years of the date on which the Veteran initially received a clothing allowance and periodically thereafter. VA would be required to prescribe in regulation standards for determining whether a claim for clothing allowance is based on a circumstance that is not subject to change. If the claim is based on a circumstance not subject to change, the review under subsection (c) would no longer be required. A new subsection (d) would state that if VA determines, as a result of a review under subsection (c), that a Veteran is no longer eligible, VA would have to provide notice to the Veteran of the determination and a description of applicable actions that could be taken and discontinue the clothing allowance.

VA supports this bill, but we recommend it be modified to incorporate technical amendments VA will share with the Subcommittee. VA welcomes the Subcommittee's interest in this program and authority; it has been more than a dozen years since section 1162 was last amended, and considerable advances in prosthetics, orthopedic appliances, and medications have occurred during that time. Further, the VA Office of the Inspector General published a report (Report #20-01487-142) this summer regarding the clothing allowance program that identified other opportunities to improve this program. We would welcome the opportunity to discuss this program and its authority in more detail with the Subcommittee. No mandatory or discretionary costs are associated with this bill.

Draft – Coordination Between VHA and VBA Regarding MST Claims

This bill would require VA to provide a Veteran with an MST-related disability compensation claim, during or immediately after each covered event and together with

each covered document, the following: outreach letters, information on the Veterans Crisis Line, information on how to make an appointment with a mental health provider, and other information on available resources relating to MST. If a Veteran enrolled in VA care submits an MST-related claim and consents to participation in a patient notification system, VBA would automatically notify VHA before and after the Veteran participates in any covered event or receives any covered document. A covered document would mean a determination (including a rating determination) VA provides to the claimant in connection with a claim for compensation. A covered event would include, with respect to a claim for compensation, a medical examination under 38 U.S.C. § 5103A, a hearing before the Board of Veterans' Appeals (Board) under 38 U.S.C. § 7107, and any other relevant event, as determined by VA.

VA supports the goals of this draft bill, but we have technical concerns with it as written. This bill appears to be designed to address important issues, such as improving coordination between VBA and VHA, increasing Veterans' awareness of available services, and increasing VA providers' awareness of events that may affect the Veterans to whom they are furnishing care. We appreciate that the notification process is generally defined, which is essential given the range of sensitive issues to consider in implementation. We believe it is crucial to consider how to best respect patients' privacy and autonomy in deciding when and how to involve their health care providers with their compensation claims. The latitude this bill would provide would allow VA to continue pursuing a patient-centric approach to care.

As to our technical concerns with the bill, first, the bill refers to Veterans enrolled in VA care, but not all Veterans are required to enroll to receive MST-related health care under 38 U.S.C. § 1720D. VA furnishes MST-related care to a number of people who are ineligible to enroll. We do not believe it is necessary to exclude non-enrollees from the notification mandate. Additionally, the bill uses the term "Veteran" throughout, which would limit the population covered by this bill to those who meet the definition of Veteran in 38 U.S.C. § 101. VA can furnish MST-related health care to persons who do not meet the definition of "Veteran" in section 101. We recommend this language be revised to more closely align with the population eligible for care under section 1720D.

We have greater concerns with the specific elements of the notification requirement, as mandatory notification both before and after such events is potentially intrusive to Veterans and burdensome on VA staff without adding value. While notification before an event could facilitate some outreach by VHA, additional outreach after an event would be unlikely to produce greater engagement and could be seen as badgering. Additionally, the requirement to notify after a covered event would require VA to dedicate resources to determining whether or not the event occurred; this is particularly an issue in terms of medical examinations, which could be canceled or postponed with little notice. We think it would be better if a single notification were mandated prior to the event, as this would provide VBA and VHA the ability to provide additional notification and outreach at other points in time on a case-by-case basis.

We are also concerned by the word “immediately,” as this implies a very short time window. The purpose of notification appears to be to facilitate VHA’s outreach to a Veteran to offer support before a covered event occurs, but it would undermine that effort if the window for notification were so short that VHA would not have adequate time to perform outreach. We believe a different term that provides more flexibility, such as “shortly before” would be better; combined with our prior recommendation, we would suggest the phrase “shortly before” replace “immediately before and after.”

Actions required under this bill would be very similar to the work that VBA is currently undertaking on MST. Under 38 U.S.C. § 7703(5), VBA is charged as the responsible administration within VA for outreach programs and other Veterans’ services programs. Along with this authority is the responsibility of informing Service members, Veterans, survivors, dependents, and eligible beneficiaries about the benefits and services for which they may be eligible.

Specifically, section (2)(a)(1) of the bill would require VBA, in coordination with VHA, to provide outreach letters. VA notes that the information Congress is asking VA to share is already provided through the claims process. The letters are prepared and released by the MST Claims Processor at the regional office, and the letters provide information about how to contact both the local VBA MST Outreach Coordinator and VHA MST Coordinator as well as additional MST-related resources.

VA suggests that Congress explicitly permit VBA to electronically share the requested information rather than specifying the information be shared in “outreach letters.” VBA currently requires a notification letter to the claimant upon receipt of an MST-related claim.

The provisions of the bill are redundant to the work VBA does with MST cases. VBA has 184 MST Outreach Coordinators nationwide. VBA MST Outreach Coordinators disseminate information about VA benefits and services, conduct MST-related outreach, provide personal assistance with submitting MST-related disability compensation claims, and connect Veterans, Service members and their families to resources and services available within VA and the local community. VBA MST Outreach Coordinators maintain a directory of resources for reference when Veterans have questions or display a need for assistance. This would include information on the Veterans Crisis Line and other resources on suicide prevention. VBA MST Outreach Coordinators also collaborate with VHA MST Coordinators and staff at VA Medical Centers (VAMC) to establish local procedures for obtaining MST-related mental health and other examination appointments. Additionally, VBA MST Outreach Coordinators connect MST survivors with local VAMC and Vet Center staff for VHA health care and mental health services.

VA notes that IT systems updates would be needed, to include coordination with the Board, and procedures for how VBA and the Board send notification to VHA at the time of a covered event and with release of a covered document. Current IT systems do not contain an automatic notification capability between VBA, VHA and the Board. Given

the various IT systems are managed by different contracts, to ensure coordination and prioritization across all VA administrations, VA requests an effective date of 18 months after implementation of the bill to allow for policy establishment and systems updates.

No mandatory costs are associated with this bill. We do not have a discretionary cost estimate for this bill currently. We would be pleased to work with the Subcommittee to address the issues we have identified here and to provide additional technical assistance.

Draft – Justice for ALS Veterans Act

This bill would amend 38 U.S.C. § 1311(a)(2) to extend the increased DIC rate under that provision to surviving spouses of Veterans whose death was due to amyotrophic lateral sclerosis (ALS) and is attributed to service-related causes, regardless of how long the Veteran had such disease prior to death.

VA appreciates the opportunity to comment on this important issue for Veterans and their surviving spouses impacted by ALS. VA supports what we believe to be the intent of this bill, which is to extend the increased DIC rate to the surviving spouse when a Veteran's death is attributed to ALS regardless of the length of time the Veteran suffered from the disease, and assuming Congress provides additional resources. VA notes that the existing requirement for a surviving spouse to have been married to the Veteran for a continuous period of eight years or longer prior to the Veteran's death remains in effect.

VA notes however that, while this bill would benefit surviving spouses of those who die from ALS before the end of the eight-year period of total service-connected disability required by current section 1311(a)(2), VA is concerned about the disparate treatment created towards surviving spouses of Veterans who pass away from other rapidly progressive diseases, such as cancer or Parkinson's disease. Mandatory costs are estimated to be $538 thousand in 2022, $3.0 million over five years, and $7.2 million over 10 years. No discretionary costs are associated with this bill. Section 2 would not result in significant workload.

Draft – Restoring Benefits to Defrauded Veterans Act

This bill would require VA to reissue misused benefits to a beneficiary's estate in cases where the beneficiary predeceased such reissuance. VA would support this bill, if amended, and assuming Congress provides additional resources.

Section 2 of the bill would add within 38 U.S.C. § 6107 an additional payee category denoting "in the case of a deceased beneficiary, the estate of the beneficiary" with respect to misuse and reissuance of funds.

For uniformity, VA suggests that the various forms of the term "reissuance" be utilized in lieu of the various forms of the term "repayment" in section 6107.

VA must evaluate various factors when determining to whom to reissue misused benefits when the beneficiary is deceased. Updating legislative language to more clearly identify the prioritization of who may receive reissued funds on behalf of a deceased beneficiary would provide greater consistency and legal basis for making such a determination prior to the reissuance of misused funds. Incorporating an order-of-priority would also align this bill with other sections in title 38.

VA recommends incorporating the intent of the bill within a new subsection of 38 U.S.C. § 6107, to improve readability while highlighting the legislative addition. The new subsection could read, "If a beneficiary predeceases the reissuance of misused benefits, the benefits should be disbursed to the individual or entity in the order listed as follows:

(i) The successor fiduciary, if serving the beneficiary at the time of death, for whom funds remain under their management to disburse;
(ii) The beneficiary's estate, to the extent VA is reasonably able to identify and locate the estate; and
(iii) VA, to be held until such time that law prescribes transference.

The new subsection could be placed at the end of section 6107 as a new subsection (e), following current subsection (d).

Benefit costs for this bill are estimated to be insignificant at $131,000 in FY 2022, $754,000 over five years, and $1.7 million over 10 years. No discretionary costs are associated with this bill.

Draft – Board Hearings Regarding MST Claims

This bill would create a new 38 U.S.C. § 7114 to modify the manner in which the Board conducts hearings for MST-related claims and would direct VA to modify language and practices with respect to such claims. The bill would define "covered case" and require the Board to: 1) promptly determine if a notice of disagreement filed with the Board involves a covered case; 2) allow an appellant in a covered case to request that a hearing be conducted by a Board member of a specific gender; and 3) approve such request unless the Board has good cause for why it cannot approve the request. The draft bill would define ''trauma-informed'' to mean using language or carrying out practices in a manner that: 1) is based on a knowledge of the awareness of the prevalence and impact of trauma on the physical, emotional, and mental health of an individual, including the behaviors of the individual and engagement by the individual to VA services; 2) is aimed at ensuring environments and services are welcoming and engaging to an individual who receives such services; and 3) ensures that language and practices do not re-traumatize the individual. The bill would require Board members conducting a hearing involving a covered case to refrain, to an extent practicable, from asking questions relating to the appellant's MST if the sought information is contained in the evidentiary record. The bill would prohibit the Board from remanding a covered case

to the agency of original jurisdiction (AOJ) to obtain a medical examination or opinion to establish nexus between the disability for which the covered case relates and service if the Board is able to decide the issue based on the evidentiary record of the case. The bill would also require, in a covered case remanded by the Board to the AOJ for purposes of obtaining a medical examination, that the examination be conducted by a covered medical provider who has not previously examined the appellant. Finally, within 180 days of enactment, the bill would require VA to conduct an audit of the language used in letters sent to individuals to explain decisions to deny covered claims and require the modification of language to ensure that letters use trauma-informed language, and that Veterans are not re-traumatized through insensitive language.

VA fully supports efforts to ensure MST victims feel as comfortable as possible during Board hearings. However, as drafted, this bill presents several legal and practical challenges. VA provided extensive technical comments to the House Committee on Veterans' Affairs to address identified issues with the language and seeks to continue to work with the Congress to resolve technical concerns. As written, the bill could: 1) result in additional delays in scheduling hearings, including legacy Travel Board hearings, and the adjudication of appeals due to such delays in affording hearings based on gender-related requests; 2) potentially implicate gender issues for Veterans service organization representatives who represent Veterans during Board hearings; and 3) potentially restrict Board Judges from asking appropriate questions in order ensure a complete and accurate record upon which they can properly adjudicate cases. The bill should also specify that references to "health care provider" should more narrowly reference "health care treatment provider" to demonstrate a treatment relationship for the purposes of Disability Benefit Questionnaires. Additionally, it is unclear the extent to which the bill would impact decision-makers' existing authority to properly develop the evidentiary record and to rely on medical evidence of record to adjudicative questions required to decide MST claims.

No or de minimis mandatory cost would be associated with this draft bill. Discretionary costs are not yet determined at this time.

Conclusion

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