

***Minority Veterans of America Statement for the Record  
for the Open Session Legislative Hearing Covering  
HR 1182, HR 1183, HR 5916, HR 6131, HR 6064, HR 6165, and several Discussion Drafts***



**Written Testimony Provided for:  
the House of Representatives Veterans' Affairs Committee  
Subcommittee on Disability and Memorial Affairs  
Open Legislative Hearing  
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Chairwoman Luria, Ranking Member Nehls, and Members of the Subcommittee,

We collectively represent the minority veteran community through the Minority Veterans of America (MVA). Our organization works to create belonging and advance equity for our nation's most marginalized and historically underserved veterans—those of color, women, LGBTQ-identifying, and (non)religious minorities. Our position affords us the honor of representing more than 10.2-million veterans and of directly serving thousands of veteran-members across 49 states, 3 territories, and 3 countries, many of whom have never been, and may never be, recognized or heard individually. We strive to be the most diverse, inclusive, and equitable veteran-serving organization in the country, and believe that through creating an intersectional movement of minority veterans, we can build a collective voice capable of influencing critical change.

The legislative inputs that my team and I have provided echo the lived experiences of the many minority veterans that we serve who have been historically excluded from the institutions designed to serve them.

### **H.R. 1182 and H.R. 1183**

#### *Veteran Deportation Prevention and Reform Act | Honoring the Oath Act of 2021*

We strongly support Chairman Takano's efforts to provide benefits for non-citizen members of the Armed Forces and to establish a military family immigration advisory committee. We offer the following comments and suggestions for consideration.

1. *Definition of "veteran."* In Sec. 15(4), the bill defines "veteran" similarly to existing law (see 38 U.S.C. § 101(2)): "a person who served as a member of the Armed Forces on active duty or in a reserve component and who was discharged or released therefrom under conditions other than dishonorable." (H.R. 1182 expressly adopts the definition in section 101 of title 38.) There are two issues with this definition:

*Guardsmen:* The definition excludes members of the National Guard of the various States (and District of Columbia), even if they were called to active duty. The definition should be modified to make clear that Guardsmen are included if they were called to active duty for any period, except perhaps not including active duty for training.

*"Under conditions other than dishonorable."* There are two issues with this definition:

- First, the language is ambiguous. The VA, for example, has interpreted to mean anyone with a Dishonorable, Other Than Honorable, or Bad Conduct discharge characterization, unless an exception applies that would restore the person to

“veteran” status. If Congress intends to exclude former servicemembers with certain discharge characterizations, it should state this clearly. We suggest as follows: “a person who served as a member of the Armed Forces on active duty or in a reserve component and who was discharged or released therefrom under conditions other than dishonorable, as defined in section 5303 of this title.” (Section 5303 contains the statutory bars to VA benefit eligibility, as defined from time to time by Congress.)

- Second, we strongly urge that the bill not exclude any veteran because of discharge characterization. Instead, if necessary, the Advisory Committee can take discharge characterization into account in reviewing cases and making recommendations on the removal of noncitizen veterans. Ideally, though, discharge characterization should *not* be a factor, in our view, because some veterans receive punitive discharges due to mental health conditions developed during and because of service. It would be unfair to continue to punish such veterans by excluding them from this program.
2. *Case review procedures and criteria.* In reviewing cases and making recommendations on the removal of noncitizen veterans, the Advisory Committee should be required to consider how a veteran’s service-related injuries and conditions—such as military sexual trauma, post-traumatic stress, and traumatic brain injury—may have contributed to any criminal charges or convictions that are a factor in removal proceedings, as well as other factors relevant to their service and post-service conduct. We offer the following suggestions:

*Sec. 7(c)(3)(A) and (B):* For maximum flexibility, the factors to be considered should be expanded significantly to include at least the following (all text is new, added at the end of sections (A) and (B)): “whether the individual –

- (v) suffered or experienced service-related injuries or conditions—including but not limited to sexual trauma, post-traumatic stress, and traumatic brain injury—that may explain or excuse conduct that is a factor in the removal proceedings;
- (vi) is receiving, is eligible for, or may be eligible for medical or behavioral health care, services, compensation, or other benefits from the VA for service-related injuries or conditions, and the effect that removal would have on the individual’s ability to receive or continue to receive such care, services, compensation, or benefits;

- (vii) has one or more service-related injuries or conditions that are likely to benefit from, improve with, or be rehabilitated by medical or behavioral health care or treatment;
- (viii) has received support for continued presence in the United States from community members, family, friends, and military colleagues;
- (ix) is the primary or a significant source of emotional, financial, or caregiving support for a U.S. citizen or lawful permanent resident spouse, fiancé, children, parent, or other family member;
- (x) has spent any significant time in the country of origin or country designated for repatriation, and has any existing family who still reside there; and
- (xi) any other factor that the Advisory Committee deems relevant, important, or significant.

*Sec. 7(c)(3)(C)*: the factors for covered family members should be expanded as well (new text is underline): “whether the individual –

- (i) supported or receives support from a member of the Armed Forces ...
- (ii) contributed or contributes to his or her local community ...
- (iii) is receiving, is eligible for, or may be eligible for benefits or services from the VA by virtue of the service of a veteran family member, and the effect that removal would have on the individual’s ability to receive or continue to receive such benefit;
- (iv) is the primary or a significant source of emotional, financial, or caregiving support for a U.S. citizen or lawful permanent resident spouse, fiancé, children, parent, or other family member;
- (v) has spent any significant time in their country of origin or country designated for repatriation, and has any existing family who still reside there— including, for a minor child, any person who could act as guardian;
- (vi) if a child, the age of the child; and
- (vii) any other factor that the Advisory Committee deems relevant, important, or significant.

3. *Eligibility*. *Sec. 11(e)*, defining eligibility for relief from removal under this statute, is structured such that some of the most vulnerable veterans may be excluded. This is because almost all noncitizen veterans are caught up in immigration proceedings because they have been apprehended on the suspicion of committing crimes or convicted of crimes. But in our experience, veterans have post-service law-enforcement encounters (including those that result in charges and convictions) because their military service left them with mental-health conditions that are not

adequately treated due to barriers to VA benefit access and eligibility. While we are mindful (and appreciative) that the criminal exclusions in the draft bill are narrow, we offer the following suggestions that are designed to ensure that veterans are not removed because their service-connected mental-health conditions that caused or contributed to their criminal conviction. (Added language is in underline; deleted language is in strikethrough text.)

*Sec. 11(e)(1)(A)(ii)*: The added language here will cover individuals who may have been removed or ordered removed without having served the entire sentence: “a crime that endangers the national security of the United States for which the noncitizen veteran has served or was sentenced to serve a term of imprisonment of at least 5 years.”

*Sec. 11(e)(2) Waiver*: Additional language will cover veterans with service-connected mental health conditions and other compelling circumstances based on their service:

“The Secretary may waive the application of paragraph (1)—

- (C) based on exceptional or substantial favorable service in the Armed Forces, including overseas deployment, service in combat zones or areas of active engagement with hostile forces, hardship service, medals and awards for merit, or other honest and faithful service;
- (D) based on compelling circumstances that mitigate, explain, or outweigh the circumstances that led to the charge or conviction, to include service-related mental or behavioral health or physical health conditions, family or personal problems, military sexual trauma or intimate partner violence, discrimination, or other such circumstances, and taking account of the individual’s age, maturity, and intellectual capacity; or
- (E) if a waiver otherwise is in the public interest.

*Sec. 11(f)(1)(B)*: The added language here will cover individuals who may not have served the entire sentence: “for which the noncitizen has served or was sentenced to serve a term of imprisonment of at least 5 years.”

4. “*Covered family member.*” There are several Sections of the proposed legislation that apply only to “noncitizen veterans,” thus excluding other individuals (as defined in Section 3(a)) from potential relief.

- *Section 4*: The study and report on those who were previously removed from the United States applies only to noncitizen veterans. If that wasn’t a deliberate choice, we suggest adding “and covered family members” or “individuals described in section 3(a)” where appropriate.

- *Sections 5 and 6:* We suggest that the instances of “noncitizen veterans” in these Sections be changed to “individuals described in section 3(a),” which is how the bill reads in Section 7.
- *Section 11:* The return of people removed from the United States applies only to noncitizen veterans. If that wasn’t a deliberate choice, we suggest adding “and covered family members” or “individuals described in section 3(a)” where appropriate.

### **H.R. 5916**

#### *Wounded Warrior Access Act*

We support Representative Aguilar’s efforts to amend title 38, United States Code, to allow for the electronic request of records relating to veterans’ claims files. Creating a streamlined process for veterans to request these files online is more efficient than mail and avoids unnecessary trips to VA facilities, at least for veterans with internet access. This is a welcome improvement for veterans who experience transportation insecurity, live in rural areas, have unreliable or delayed mail services, or are otherwise unable to visit facilities to make these requests.

### **H.R. 6131**

#### *Veterans Disability Claims Notification Improvement Act of 2021*

We support Representative Luria’s efforts to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to send claim notices electronically. In 2021, the Department of Veterans Affairs experienced delays in mailing time-sensitive notifications to veterans and claimants, citing staffing shortages and supply chain issues as the reason for the delay.<sup>1</sup> Timely receipt of these notification letters is critical to a successful disability claim administration for veterans. Delays in processing and sending these notices should not impact veterans filing for disability, as that can be financially devastating to veterans waiting for their claims to be successfully processed. Allowing the Secretary to authorize electronic notice to claimants can increase efficiency, improve communications with those who are housing unstable, reduce costs of printing, and mitigate the environmental impacts of producing these materials.

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<sup>1</sup> Robinson, C. (2021, December 2). VA announces delays in mailing critical notifications to veterans and claimants. *wtsp.com*. Accessed on March 24, 2022, at <https://www.wtsp.com/article/news/national/military-news/va-delay-mail-veterans-claimants/67-55e85f7b-e09a-4e1a-8f70-c0b94ffc5e7d>.

We recommend that considerations be made for the date of implementation as well as how and where veterans will be given the option to opt-in (or out) of electronic communications.

### **H.R. 6064**

*To enter into Agreement with National Academies of Sciences, Engineering, and Medicine for review of Military Sexual Trauma claims*

We support Representative Nehl's efforts to direct the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine for a review of examinations, furnished by the Secretary, to individuals who submit claims to the Secretary for compensation for mental and physical conditions linked to military sexual trauma. The current procedure for survivors of MST to file for disability following honorable service to this country is not only prohibitive but it also has the potential to be traumatizing.

Army Veteran Mia Renna details her experience filing for disability compensation for her MST following over 8 years of honorable service:

*"The hardest part about my experience was the reliving of my trauma when having to write down my story for my claim, as well as, talking to a third-party VA medical provider. During my appointment with the VA decision making medical provider, the doctor interrogated every detail of my trauma, invalidating my lived experiences. I received a 30% disability rating for my MST induced PTSD, but that does not begin to scratch the surface of medical conditions that have surfaced due to my trauma. I have an eating disorder, sleep disorder, and chronic pain that are not connected to my MST rating from the VA."*

According to 2018 reports by the Department of Veterans Affairs Office of Inspector General, over half of denied claims for MST were done so prematurely and that "claims processors had not completed all required actions to obtain and review evidence before making a decision."<sup>2</sup> Again in 2021, the OIG found that attempts to update protocols designed to mitigate these premature denials were not fully implemented by Veteran

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<sup>2</sup> United States Department of Veterans Affairs Office of Inspector General. (2021). VA OIG 20-00041-163, Improvements Still Needed in Processing Military Sexual Trauma Claims. Accessed on March 24, 2022 at <https://www.va.gov/oig/pubs/VAOIG-20-00041-163.pdf>.

Benefits Administration leadership. The report showed that, again, more than half (57%) of denied claims were the result of improper processing.<sup>3</sup>

For an MST survivor, claim denials are not merely paperwork errors, they are one more failure by the Department of Defense, Department of Veterans Affairs, and our country to recognize the sexual violence and harassment they endured while wearing the cloth of our nation. We support the efforts to enlist the National Academies to conduct a review of the current processes in place to ensure that survivors receive all of the benefits they are entitled to.

Additionally, studies indicate that survivors of unwanted sexual advances and sexual harassment are at increased risk of developing physical health ailments such as gastrointestinal conditions, obesity, diabetes, reproductive challenges and arousal disorder, asthma, sleep disorders, chronic pain, cardiovascular disease, and stroke.

### **H.R. 6165**

#### *Department of Veterans Affairs Post-Traumatic Stress Disorder Processing Claims Improvement Act of 2021*

We appreciate Representative Neguse's efforts to require the Secretary of Veterans Affairs to take actions to improve VA processing of claims for disability compensation for post-traumatic stress disorder. Standardized and updated training as well as statistical analysis to identify trends will improve processing and oversight of these claims.

Additionally, we have concerns that this discussion draft will be insufficient to address the deep challenges facing the Department with properly evaluating PTS claims. We recommend that efforts to improve the processing of PTS claims mirror proposals before this subcommittee to assess claims processing for MST. External partnerships with institutions such as the National Academies of Sciences, Engineering, and Medicine can provide a comprehensive review of procedures relating to PTS claims.

### **Discussion Draft**

#### *DIC Modernization Action (Ensuring continued eligibility for indemnity compensation on a basis other than age for certain surviving spouses who remarry)*

We support efforts to amend 38 USC § 103(d) to restore, under certain conditions, Dependency and Indemnity Compensation benefits to surviving spouses who remarry. We do not have further inputs.

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<sup>3</sup> *Id.*



### **Discussion Draft**

*To amend title 38, United States Code, to update certain terminology related to marriage under the laws administered by the Secretary of Veterans Affairs*

We strongly support Representative Newman's efforts to amend title 38, United States Code, to update terminology related to marriage under the laws administered by the Secretary of Veterans Affairs. Although "the opposite sex" provisions have been found to be unconstitutional<sup>4</sup> and are no longer enforced, removing this discriminatory language from United States Code is a welcome change that will restore dignity to over 1 million LGBTQ veterans.

### **Discussion Draft**

*To direct the Secretary of Veterans Affairs to create fact sheets, for veterans and for survivors of veterans, that compare benefits and compensation, to such individuals under laws administered by the Secretary, to monthly insurance benefits under title II of the Social Security Act, and supplemental security income under title XVI of the Social Security Act*

We support efforts to direct the Secretary of Veterans Affairs to provide meaningful information to veterans and survivors about benefits and compensation under laws administered by the Secretary, versus insurance benefits and supplemental security income under the Social Security Act. We believe that this discussion draft can be strengthened in the following ways:

1. The discussion draft does not currently include provisions for the distribution of materials created to those currently receiving benefits. While it is important to receive this information upon initial claim and when a veteran requests an increase in benefits, there are many current veterans who might be unaware of benefits they may be entitled to. We recommend upon creation of these materials, that the Department distribute to all veterans currently receiving benefits.
2. Many veterans and survivors are not currently receiving benefits through VA because they are unaware of the benefits available to them. We recommend publishing fact sheets on VA website and throughout VA facilities.

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<sup>4</sup> Following the Supreme Court's decision in *United States v. Windsor*, 570 U.S. 744, 133 S. Ct. 2675 (2013), the VA voluntarily ceased enforcing the statutory requirement that a spouse be a member of the "opposite sex." *Cardona v. Shinseki*, 26 Vet. App. 472 (2014); Att'y Gen.'s Letter to the Hon. John A. Boehner, Speaker of the U.S. H.R. (Sept. 4, 2013).

### **Discussion Drafts**

*Modernizing Department of Veterans Affairs Principles of Benefits Automation Act*  
*Modernizing Department of Veterans Affairs Disability Benefit Questionnaires Act*

We support efforts to direct the Secretary of Veterans Affairs to submit to Congress a plan to modernize the information technology systems of the Veterans Benefits Administration and to make certain improvements relating to the transmission of disability benefits questionnaire data to the VA. Improvement of systems and processes will no doubt benefit all veterans and create a more efficient Department. We do not have further inputs.

### **Discussion Draft**

*Expediting Temporary Ratings for Veterans Act*

We support efforts to direct the Secretary of Veterans Affairs to modify the information technology systems of the Department of Veterans Affairs to provide for the automatic processing of claims for certain temporary disability ratings. Again, improvements to systems and processes will create efficiencies that benefit all veterans. We do not have further inputs.

### **Discussion Draft**

*Survivor Solid Start Act (To amend title 38, United States Code, to improve outreach by the Secretary of Veterans Affairs to dependents of deceased veterans, and for other purposes)*

We support Representative Mrvan's efforts to amend title 38, United States Code, to improve outreach by the Secretary of Veterans Affairs to dependents of deceased veterans. We recommend that in addition to telephonic outreach, that additional provisions for materials distributed via U.S. mail and potentially text message. Dependent survivors who are of younger ages often prefer these methods of communications to traditional phone calls and often won't answer calls from unknown numbers.

### **Discussion Draft**

*Honoring Our Promise: Ensuring Equity in Accessing Military and Veteran Survivors Benefits Act (To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to improve equitable access to certain benefits of the Department of Veterans Affairs for the survivors of veterans, and for other purposes)*

We strongly support the collection of demographic data of survivors receiving DIC and other survivor benefits so that the Department can identify underserved populations. We firmly believe that data collection is critically important to delivering benefits and services

to all veterans, but most especially underserved veteran populations. The Department must be able to understand who is accessing its programs. Collection of demographic data will enhance the Department's ability to understand and reach underserved populations more efficiently and effectively. We have the following suggestion:

- In the definition of "demographic data," we recommend that "LGBTQIA+ status" be split separately into a "sexual orientation" category and a "gender identity" category. These two classifications are entirely different—sexual orientation refers to one's romantic and sexual attractions, while gender identity refers to the internal or personal sense of one's own gender. They are not related, and combining them may lead to confusion.

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We thank you for the opportunity to submit this written testimony for this Hearing. We look forward to continuing to work with you and your offices, and to support your efforts in serving our nation's minority veteran populations. If we can be of further assistance, please feel free to contact our Executive Director directly at [lchurch@minorityvets.org](mailto:lchurch@minorityvets.org).

Respectfully Submitted,

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