STATEMENT OF THE HONORABLE JAIME AREIZAGA-SOTO
CHAIRMAN, BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES
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Good afternoon, Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss several bills that would affect the Department of Veterans Affairs (VA) programs and services. Accompanying me today is Brianne Ogilvie, Assistant Deputy Under Secretary, Office of Policy and Oversight, Veterans Benefits Administration and Jessica Pierce, Assistant Director, Compensation Service Policy Staff.

H.R. 2911 The Fairness for Servicemembers and their Families Act of 2023

The proposed legislation would create a new section under title 38 of the United States Code that requires the Secretary of Veterans Affairs to periodically review the automatic maximum coverage under the Servicemembers' Group Life Insurance (SGLI) program and the Veterans' Group Life Insurance (VGLI) program.

Section 2(a) of the bill would require the Secretary to review the automatic maximum coverage under these programs every 3 years by measuring the statutory maximum against the Consumer Price Index (CPI) for the fiscal year (FY) ending during the preceding calendar year compared to the average of the Consumer Price Index for fiscal year 2005.

VA does not support unless amended. VA suggests revising the bill to clarify that the results of the analysis submitted to Congress should be used as a leading indicator for coverage increases, rather than for an exact amount of coverage, for the following reasons:

First, there are other measures of coverage comparison, such as coverage available in other large employer plans and military benefit associations. For many Service members, the SGLI program offers more than a typical employer plan would offer already.

Second, the SGLI program was never intended to be the sole source of life insurance coverage for Service members, but rather as foundational coverage that can be added to through commercially available supplemental coverage if desired. VA and private insurers have worked in tandem since the establishment of SGLI in 1965 to meet the needs of Service members.

Third, the administrative simplicity of offering coverage in $50,000 coverage increments, as currently provided for by law, is critical in ensuring Service members understand the coverage they have and for the uniformed services in collecting premiums. Offering coverage outside of the current increment structure would significantly increase administrative costs both for the services and for the program's primary insurer, Prudential Insurance Company of America, who administers SGLI. As the program is self-supporting, any administrative cost increases would be borne by the insureds.

Additionally, the proposed legislation does not take into consideration that coverage amount for SGLI/VGLI was increased to $500,000 on March 1, 2023. H.R. 2911 still references the prior coverage maximum amount of $400,000 and the CPI for FY 2005 when coverage was increased from $250,000 to $400,000.

Estimated General Operating Expenses (GOE) Costs: The GOE estimate for FY 2024 is $2,000 and includes salary, benefits, rent, travel, supplies, other services, and equipment. 5-year costs are estimated at $4,000 and 10-year costs are estimated to be $8,000.

H.R. 3651 The Love Lives On Act of 2023

The proposed legislation would amend titles 10 and 38 of the United States Code to improve benefits and services for surviving spouses, and for other purposes.

Section 2 of the bill would remove the delimiting date for spouses under the Marine Gunnery Sergeant John David Fry Scholarship by removing paragraph (2) from 38 U.S.C. § 3311(f). It would also allow a surviving spouse to retain Fry Scholarship benefits even after remarriage.

Section 3(a) of the bill would amend section 103(d) of title 38 of the United States Code by making structural modifications and inserting a new clause which reads "[n]otwithstanding clause (ii), the remarriage of a surviving spouse shall not bar the furnishing of benefits under section 1311 of this title to the surviving spouse of a Veteran." Then within paragraph 103(d)(5), subparagraph (A) would be struck, and the remaining subparagraphs would be renumbered.

Section 3(b) provides that, beginning the first day of the first month after the date of the enactment of the bill, dependency and indemnity compensation (DIC) payments shall be resumed under section 1311 of title 38, United States Code, to an individual who is: (1) the surviving spouse of a Veteran; and who (2) remarried before reaching age 55 and the date of the enactment of this Act.

Section 7 of the bill would amend the definition of a surviving spouse for Veterans benefits under paragraph 3 of section 101 of title 38, United States Code. The bill would remove the language that requires a marriage be between members of the opposite sex. It would also remove language within the same paragraph that reads "or

(in cases not involving remarriage) has not since the death of the Veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person."

VA supports with amendments and subject to the availability of appropriations. The removal of the restriction on remarriage in section 2 and the change in the definition of "surviving spouse" in section 7 would allow certain individuals to retain and use their educational assistance. However, VA recommends Congress add an explicit provision to section 2 that would reinstate eligibility for any surviving spouses who lost eligibility to the Fry Scholarship due to a remarriage and likewise add an explicit provision to section 7 (or in a new section) that would reinstate eligibility for any surviving spouses who lost eligibility to the Dependents' Educational Assistance Program due to remarriage. Resumption of entitlement is specifically addressed in section 3(b) of the bill with regard to DIC beneficiaries, and VA supports extending similar equities regarding educational assistance for survivors under section 2 and section 7 of the bill. Furthermore, the 15-year time limitation in § 3311(f) being removed by section 2 is also mentioned in 38 U.S.C. § 3321(b)(5)(A). To create consistency and eliminate confusion, VA recommends Congress also amend § 3321(5) to read as follows:

> (5) Applicability to spouses of deceased members. --The period during which a spouse entitled to educational assistance by reason of section 3311(b)(9) may use such spouse's entitlement shall not expire.

No mandatory or discretionary costs are associated with section 2.

Regarding section 3, VA supports the removal of remarriage restriction requirements for surviving spouses. The bill specifically addresses DIC benefits under 38 U.S.C. § 1311, which VA reads as applying to benefits granted under both sections 1310 and 1318 of the same title. If this is not the case, then VA recommends modifying the language in the bill to ensure all chapter 13 benefits are applied consistently for each benefit type. VA notes that the bill would create a disparity between DIC beneficiaries and survivor pension beneficiaries under chapter 15, the latter of whom would remain precluded from receiving those benefits if they remarry at any age. Furthermore, VA notes this bill would also create a disparity between DIC beneficiaries and survivors who qualify for Medal of Honor special pension under Chapter 15 because benefit entitlement is restricted to remarriages after age 57.

VA has further concerns with section 3(a) of the bill. Pursuant to 38 U.S.C. § 3701(b)(2) and (b)(6), certain surviving spouses are eligible for VA home loan benefits. Currently, VA relies upon a determination of the surviving spouse's eligibility for DIC benefits when evaluating eligibility for VA home loan benefits. The bill, as drafted, would create a disconnect between the requirements for DIC benefits and the requirements for home loan benefits for surviving spouses, because proposed 38 U.S.C. § 103(d)(5)(C) would still bar a surviving spouse from receiving VA home loan benefits if the spouse remarries prior to age 57. While VA could implement the

legislation as drafted, the inability to rely solely on the DIC determination would increase the complexity of, and likely the time needed to complete, a determination regarding a surviving spouse's home loan eligibility. VA would need to evaluate whether a surviving spouse with DIC remarried prior to age 57 as this would no longer be considered when awarding DIC benefits. Aligning the requirements for DIC and home loan eligibility would ensure a more streamlined process for determining eligibility for VA home loan benefits for surviving spouses.

VA further recommends deletion of the proposed language within section 3(b)(2)(A) stating that the resumption of DIC payments for the surviving spouse of a Veteran be restricted to remarriages that occurred prior to the surviving spouse reaching age 55. This requirement would disparately impact surviving spouses who were subject to statutory requirements in effect at the time of their benefit adjudication which resulted in the denial or termination of DIC benefits due to a remarriage that occurred at an age greater than 55. An example would be a surviving spouse who was afforded DIC benefits per the reduction of remarriage age restrictions from 57 to 55 per Public Law 116-315, *the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*, § 2009 (January 5, 2021). The main concern for the disparate impact would be that Public Law 116-315 did not incorporate language similar to that of the Love Lives On Act of 2023 regarding the express requirement to resume the payment of DIC benefits for all potentially affected individuals. Instead, those surviving spouses who were either subject to DIC benefit denial or termination due to a remarriage between the ages of 55 and 57 would have to reapply to have their benefits granted or restored. As such, the language of the current bill would continue to disadvantage that population. The removal of the bills' language within section 3(b)(2)(A) would not detract from the intent of the bill and would result in a more clear, consistent, and equitable application.

Additionally, VA cites concerns regarding its ability to implement section 3(b) as well as the timeframe provided in the bill for doing so. The bill as written implies that VA will be responsible for identifying all potential claimants who were either denied or their eligibility terminated for DIC due to remarriage. This would require extensive outreach efforts, identification of individuals who are not currently in receipt of benefits, and significant implementation time.

Mandatory benefit costs associated with section 3 are estimated to be $15.3 million in 2024, $137.7 million over 5 years, and $327.7 million over 10 years. Additional time would be needed to estimate administrative costs.

VA supports section 7, and views the amendments to 38 U.S.C. § 101(3), which would result in the removal of language, as being supportive to the surviving spouses of Veterans. The removal of "a person of the opposite sex" conforms with the Supreme Court decision in *Obergefell v. Hodges*, which ruled that marriage is a fundamental right under the Fourteenth Amendment to be afforded to same-sex couples and extends to the application of benefits subject to said marriage.

VA also supports the bill's proposed removal of language that results in the denial or termination of benefits for a survivor who lives with another person and holds themselves out to the public as being the spouse of such other person, without necessarily being legally married to said individual. The language under 38 U.S.C. § 101(3) as currently written has resulted in many survivors electing to be in a committed relationship but choosing not to remarry nor hold themselves out as the spouse of another individual in order to maintain benefit eligibility. The removal of the specified language supports the overall intent of the bill to be more claimant friendly.

However, VA again recommends that Congress add an explicit provision to section 2 that reinstates eligibility for any surviving spouses who lost eligibility to the Fry Scholarship due to remarriage and likewise an explicit provision to section 7 or elsewhere that reinstates eligibility for any surviving spouses who lost eligibility to Dependents' Educational Assistance Program due to remarriage.

No mandatory or discretionary costs are associated with section 7.

Finally, VA defers to the Department of Defense (DoD) on sections 4, 5, and 6 of the bill, as these sections amend title 10 of the United States Code, which pertains to programs and services administered by the United States Armed Forces.

H.R. 7100 The Prioritizing Veterans' Survivors Act

The proposed legislation would amend 38 U.S.C. § 321(a) to reorganize the Office of Survivors Assistance (OSA) under the Office of the Secretary of Veterans Affairs.

VA opposes this bill. OSA strives to serve as a resource regarding all benefits and services furnished by VA to Survivors and dependents of deceased Veterans and members of the Armed Forces. Furthermore, OSA works to pursue matters related to policy, legislation, and other initiatives to benefit such survivors and dependents.

OSA is currently located within the Veterans Benefits Administration (VBA). This strategic placement under VBA provides them access to business lines that administer survivor benefits and allows them to collaborate directly with these business lines on beneficial initiatives for survivors. Furthermore, it provides OSA the opportunity to relay insight received from their survivor engagements to VBA. This allows OSA to utilize this information in pursuits with VBA to advance legislative and regulatory opportunities that best serve survivors.

Additionally, this placement allows OSA to directly access expert knowledge about survivors' benefits, by working directly with program offices which provide services and benefits to which survivors may be entitled. This access to knowledge is vital for streamlining communication and allows OSA to ensure any impact to survivors is considered when VBA is drafting or reviewing policy or legislative initiatives. Relocating OSA would inhibit the efficient processes currently in place for pursuing

policy and legislative changes through VBA. These existing avenues allow OSA to effectively advocate for improvements to survivor benefits and services. Disrupting the streamlined processes would affect established lines of communication with VBA and detrimentally impact individuals that this office serves.

H.R. 7150 The Survivor Benefits Delivery Improvement Act of 2024

The proposed legislation would amend title 38 of the United States Code, to direct the Secretary of Veterans Affairs to improve equitable access to certain benefits under the laws administered by the Secretary and to improve certain outreach to individuals who served uniformed services and dependents of such individuals, and for other purposes.

Section 2(a) would provide the short title for this section 2 as the Survivor Benefits Data Collection Act of 2024.

Section 2(b)(1) would create a new section 38 U.S.C. § 5321, that requires the Secretary to develop a method to collect certain demographic data from recipients of survivors' benefits in consultation with certain VA advisory committees. Based on this collection, proposed section 5321 would require VA to designate certain demographics as underserved, and include demographic information in the submission of VBA's annual reports. Proposed section 5321 would also establish definitions for certain terms related to this information collection and reporting.

Section 2(b)(2) would set deadlines for VA to develop methods to collect the above demographic information and make initial designations regarding underserved demographics.

Section 2(c) would require VA to develop and submit to the House and Senate Committees on Veterans' Affairs an outreach and education strategy for raising awareness regarding burial benefits under 38 U.S.C. § 2303 among covered dependents and Veterans who belong to an underserved demographic.

Section 2(d) would require VA to conduct an assessment of the resources of the OSA and develop a strategy to ensure the availability of resources necessary for the function of such office.

Section 3(a) would provide the short title for section 3 as the Survivor Solid Start Act of 2024.

Section 3(b) would amend chapter 63 of title 38, United States Code, in several places to redesignate paragraphs, add a definition for "covered individual," and replace "Veterans" with "covered individuals" where applicable. Additionally, this bill would require VA to provide outreach services for surviving eligible dependents of deceased Veterans.

Section 3(c) would require VA to create full-time equivalent positions focused on survivors' benefits at VA call centers.

VA supports section 2, if amended, and subject to the availability of appropriations. VA highlights the need to edit the proposed 38 U.S.C. § 5321(a)(1)(A) as that proposed subparagraph uses an erroneous description that is inconsistent with existing law. The proposed paragraph uses the term "disability and indemnity compensation" while incorporating by reference to "chapter 13 [of title 38 U.S.C.]". However, under chapter 13, the term is properly referred to as "dependency and indemnity compensation" (commonly referred to as DIC). VA recommends using the term as written and defined under chapter 13, to avoid any confusion.

VA notes concern that the collection of the data points specified in proposed 38 U.S.C. § 5321(f)(2)(A)-(E) will require not only development, but also multiple levels of concurrence prior to approval from the Office of Management and Budget (OMB) to utilize those data points. It is presumed that future demographic data requests would also need to be incorporated within existing VA forms, which would result in significant additional work on the part of VA to implement this bill given the need to review, revise and approve numerous administrative claim forms, as well as obtain the necessary clearances from OMB and consultations with other entities as specified in paragraph (b) of the proposed bill. Additionally, under current procedures, certain awards of VA benefits can be made via automated processes without the collection of additional data—for example, in certain situations, surviving spouses who were a dependent on a Veteran's award can be granted benefits through automation if VA has sufficient information already on file at the time of the Veteran's death. The Secretary understands that failure to provide information is not to be considered in the receipt of benefits but, nevertheless, the agency would be in a position of issuing benefits without even having attempted to collect the data specified by this bill as existing systems would not necessarily have captured this data previously. For all of these reasons outlined above, VA recommends the 180-day implementation date under section 2(b)(2)(A) be expanded to an implementation window of 24 months from the date of enactment to allow for adequate evaluation of forms as well as the development, testing, and implementation of systems.

VA also views the implementation under section 2(b)(2)(B) of the proposed legislation as not being feasible, and again recommends the implementation window be expanded to 24 months. This would provide sufficient time for data collection and analysis prior to VA drafting designations of "underserved demographics under subsection (c) of such section 5321" for Secretary of Veterans Affairs proclamation.

VA does not support section 3. VA highlights that the mandated frequency of once per quarter in the proposed language for 38 U.S.C. § 6307(c) is a more frequent cadence than the outreach provided to separating and retiring Veterans under the VA Solid Start (VASS) program (38 U.S.C. § 6320) and could be seen as disparate treatment. The bill would also require that the outreach be by "mail, email, and telephone," which could be read as requiring all three forms of communication be used

every time. VA agrees with the concept of using all three forms of outreach as outlined but does not agree with using all three forms of communication concurrently. As a requirement of VASS, attempts at contact are made with newly retired and those newly separated under said program in 3 general windows of time: 0-90 days post-separation, 91-180 days, and 181-365 days. VA recommends mirroring this cadence for survivors and supports using the date VA is notified of the Veteran's death to start the notification process timeline.

The proposed amendments to 38 U.S.C. § 6307 made by section 3(b)(5) of the bill require that outreach be conducted with eligible dependent(s) of a Veteran. Generally, VA is only notified of the deaths for individuals who are in receipt of VA benefits, as opposed to any and all Veterans who once served in the uniformed services. Thus, eligibility is not determined until a claimant files a claim for benefit unless they were previously identified as a dependent on the Veteran's award. If VA was never provided information that identifies a dependent, then it would not be possible for VA to conduct outreach to those individuals.

As drafted, and as it pertains to beneficiaries that VA has on its rolls, the outreach services are to continue until the eligible dependent files a claim for a benefit; however, 38 U.S.C.§ 5101(a)(1)(B) allows for benefits to be paid to survivors who have not filed formal claims if the record contains sufficient evidence to establish entitlement. Because of this, VA would omit outreach to these survivors who receive benefits paid without a claim filed. Furthermore, VA may take notification of death from any individual, so it would be reasonable for benefits to be paid without VA engaging with an eligible dependent at the time of the Veteran's death.

VA further highlights that the wishes of those who no longer want to be contacted by VA are respected by VASS. The precedent created by VASS's existing approach to outreach appears to conflict with this proposed bill's requirement in section 3(c)(1)(A) mandating that VA continue contacting a survivor until they file a claim without any regard for a survivor's communicated wishes.

Finally, VA recommends broadening the contact information provided to eligible dependents under proposed section 6307(c)(2)(A) to include "appropriate contact information for additional support" or similar. VA notes that the provision of contact information for only the OSA would result in an unmanageable caseload for that office. By broadening the language in the bill, VA would be able to determine the most appropriate office(s) to refer eligible dependents, to include but not limited to OSA. Similarly, VA provides that the removal of the specified full-time equivalent position allocation in this section would allow for VA to properly assess staffing needs to support the required outreach.

Estimated GOE Costs: The GOE estimate for FY 2024 is $491,000 and includes salary, benefits, rent, travel, supplies, other services, and equipment. 5-year costs are estimated at $2.6 million and 10-year costs are estimated to be $5.6 million.

H.R. XXX The Clear Communication for Veterans Claims Act

The proposed legislation would direct the Secretary of Veterans Affairs (Secretary) to enter an agreement with a Federally funded research and development center (FFRDC) to assess notification letters sent to claimants for benefits administered by VA and would require the Secretary to make changes to those notice letters in conformity with recommendations provided by the FFRDC.

Section 2(a) directs the Secretary to enter into such an agreement within 30 days after enactment of the bill.

Section 2(b) specifies that the FFRDC assessment shall include whether currently used notification letters can be feasibly altered to reduce paper consumption by, and cost to, the Federal Government. It also requires the FFRDC to include its recommendations for how the Secretary may, in compliance with laws administered by the Secretary, make such notices clearer to claimants, better organized, and more concise.

Section 2(c) provides that the Secretary would have no more than 90 days following receipt of the FFRDC's assessment to implement the proposed recommendations and to submit a copy of the report to the Committees on Veterans' Affairs of the Senate and House of Representatives.

Finally, Section 2(d) of the bill provides a definition of the term "FFRDC," and specifies that the terms "claimant" and "notice" as used in the bill have the same meanings given such terms in 38 U.S.C. § 5100.

VA cites concerns with this bill. While VA generally supports the intent of the bill, the deadlines it imposes are challenging, unrealistic, and would be difficult to implement.

VA notes concern with the language specifying that the FFRDC's report would be binding upon the Secretary. This provision leaves no room for VA to refine or improve upon the recommendations, should the need arise. While an FFRDC's report would provide an unbiased third-party view of the problem, VA views research and development processes as being designed to create recommendations, not policy. Moreover, VA must exercise caution to ensure that its notification letters comply with existing statutes and controlling case law (which is protean in nature). Although the bill directs the FFRDC to make recommendations in conformity with laws administered by the Secretary, VA is concerned that it should not adopt those recommendations on a wholesale basis without independently assuring that they did not put the Agency at risk for non-compliance with its legal duties to claimants.

VA is concerned that the bill's requirement to enter into an agreement with a FFRDC within 30 days following enactment of the bill may hinder VA's ability to ensure an agreement is reached with the FFRDC most appropriate for the task under VA's contracting requirements.

Additionally, VA is concerned that the bill's mandate to implement the FFRDC's recommendations within 90 days of receipt would be challenging at best and potentially unachievable without significant risk. VA notes that making changes to notice letters is a thoughtful, considered, deliberative, time-consuming, and complicated process which requires updating existing information technology systems. VBA claims processors handling compensation and pension claims operate in a paperless environment and utilize the Veterans Benefits Management System (VBMS) as the primary system to generate letters to Veterans and claimants. Updates to VA's technology systems, to include VBMS, are prioritized far in advance. Implementation of the letter changes required by the bill, if required within 90 days, could require VA to displace current priority updates that have a more substantial impact on Veterans.

VA views a 90-day window to implement the recommendations in the assessment as required in section 2(c)(2) as not being feasible given the needed technological and system upgrades that would be required. VA recommends an implementation window of at least 24 months from the date of enactment to allow for adequate system development, testing, and implementation. VA notes that these enhancements are required since letters to claimants are not constructed in one uniform manner. Letter generation is complex and current templates often require extensive editing, concurrence, deployment testing, and validation from subject expert, legal, regulatory, and technological standpoints to ensure that all case-specific factors for individual claimants can be captured.

Additionally, VA notes that legislative action is not required for an enterprise-wide review of VA's letters. If VA internally reviews its enterprise-wide letters and reports on the findings, this would result in a cost savings to the Government. Furthermore, VBA reviews and updates benefits claim letters internally on a regular basis.

For example, VBA utilizes a Language Change Control Board (LCCB) to review and approve all disability compensation and pension-related language change requests for letters, glossary texts, fragments, or any other external facing communications. The LCCB is responsible for ensuring that identified language changes are tracked, reviewed for accuracy, and sent to implementation in a timely manner. The LCCB is made up of members from various staffs across multiple VBA business lines. Requests are generated by statutes, regulation, policy, or procedure being implemented, or when deficiencies within our products are found. In addition, in 2023, a collaborative workgroup including members from VBA and the Veterans Health Administration (VHA) has reviewed all military sexual trauma-related letter language to ensure it is trauma-informed, including consultation with Veterans Service Organizations (VSOs).

Focusing on human centered design (HCD), VBA collaborated with the Veterans Experience Office from October to December of 2023 to conduct HCD co-design workshops to redesign Character of Discharge letters sent to Veterans with an Other Than Honorable discharge. The objective was to enhance clarity, accessibility, and

usefulness of these letters for Veterans seeking to understand their eligibility for benefits from the VA. VA is currently working to implement the findings.

In 2019, VBA's Insurance Service (INS) completed a review of all VA Insurance letters to reduce the number of letters being used based on usage and to revise content into a more reader-focused format. With the new Information Technology (IT) system INS recently implemented, the revisions from the 2019 project were used as a basis for the letter templates in the new SmartComm system. INS also moved toward online policy access, information and E-Forms, and electronic communications via email and Short Message Service text messages.

VA contracts with Prudential's Office of Servicemembers' Group Life Insurance (OSGLI) to administer SGLI and VGLI programs under VA Oversight. OSGLI regularly reviews their outgoing communications and updated their VGLI outreach materials in 2022.

VBA's Veterans Readiness and Employment (VR&E) Service participated in a workgroup in 2020, whose goal was to simplify and strengthen VBA's communication with Veterans. As a result, in July 2020, VR&E Service updated and released 15 letters to accomplish this goal.

VA further notes that there have been recent efforts to quantify the number of claims for which decision letters generated outside of the claims processing environment are required to be used, such as letters regarding pension benefits. Those efforts have yielded progress in incorporating advancements in modernizing letter templates.

H.R. 1083 The Caring for Survivors Act of 2023

The proposed legislation would amend title 38 of the United States Code, to improve and expand eligibility for DIC paid to certain survivors of certain Veterans, and for other purposes.

Section 2(a) of the bill would increase the DIC rate in 38 U.S.C. § 1311(a)(1) from $1,154 to an amount equal to 55% of the monthly 100% disability compensation rate in effect under 38 U.S.C. § 1114(j). This would adjust the current DIC rate of $1,612.75 effective December 1, 2023, to $2,132.47 (55% of $3,877.22 which is the 100% disability compensation rate in effect as of December 1, 2023).

Section 2(b)(1) would make the amendments made by subsection (a) effective for any payments made that are 6 months after the date of enactment. Section 2(b)(2) would require VA, for months beginning after the date that is 6 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.

Section 3 of the bill would amend 38 U.S.C. § 1318(b)(1), to reduce, from 10 years to 5 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."

VA supports, if amended, and subject to the availability of appropriations. Under 38 U.S.C. § 1311(a)(1), DIC is paid to a surviving spouse at the monthly rate of $1,154, which is increased in accordance with any increase of benefit amounts payable under title II of the Social Security Act pursuant to section 1311(f)(4). The current rate paid under section 1311(a), effective December 1, 2023, is $1,612.75. DIC is also paid to a surviving spouse, and to a child of a deceased Veteran, if the Veteran's death was not the result of their own willful misconduct and they were continuously rated totally disabling for specific periods of time prior to their death as outlined in 38 U.S.C. § 1318(a) and (b).

VA notes that Public Law 118-6 requires VA to increase the rate paid under section 1114 in addition to the rates paid under section 1311. VA views section 2(a) of this bill as allowing for the use of the current rate paid, as of December 1, 2023, under section 1114(j) of $3,621.95 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 the 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." VA infers that the intent of this provision 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 somewhat 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 118-6. VA believes 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.”

Additionally, 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 1 year after the date of enactment.

Regarding section 3 of the bill, 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 5 years, but less than 10 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 5 years but less than 10 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 the proposed language of subsection 3(1)(B) as incorporating an unclear and potentially overly complex application for survivor beneficiaries, the agency, and external partners. The proposed language of 1318(a)(2) creates a relationship between a 10-year rating requirement for full benefit entitlement and a 5-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 5 years, but less than 10 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 5 years of total disability rating as an example, exactly 5 years is half of 10 years, meaning a DIC benefit based on exactly 5 years of total disability rating would have exactly the same relationship to half of the benefit paid based on 10 years of total disability.

However, it is unclear how precisely VA should calculate the relationship. Using a Veteran with 5 years and 6 months of total disability rating as an example, VA would like to clarify if Congress’s intent is for VA to provide 55% of the benefits it would provide based on 10 years of total disability. Or, is the intent for VA to round up to 60%? If the Veteran has 5 years and 7 months, VA would like to clarify if the intent is to 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 requirement would be operationally difficult and would appear 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 5, but less than 10 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. VA would be unsure if the application of "bears the same relationship to" language would apply to solely the underlying DIC benefit rate, or if VA is meant to extend such application of benefit reduction to any additional supplemental allowance. 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 8 years before death *and* was married to the surviving spouse for those 8 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). 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 proposed language for subsection 1318(a)(2) as being inconsistent with the benefit's current intent and program integrity. As such, VA recommends removal of section 3(1) of the bill to allow the proposed amendments under section 3(2) to achieve the primary intent of DIC expansion. The effect of the proposed amendments under section 3(2) of the bill, on their own, would result in clearer and more consistent program application. Removing the novel adjudication calculations and solely retaining the amendment to section 1318(b)(1) is sufficient to fulfill the intended purpose of expanding DIC benefits to survivors of Veterans with a totally disabling disability rating by shortening the duration of time required for the disability to have been continuously rated. It would also maintain allowing 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. Under 38 U.S.C. § 5110(d), 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. VA recommends the bill be amended to add an explicit effective date.

Mandatory costs associated with H.R. 1083 are estimated to be $0 in 2024, $14.6 billion over 5 years, and $40.3 billion over 10 years.

Mandatory costs associated with section 2 are estimated to be $0 in 2024, $13.8 billion over 5 years, and $36.9 billion over 10 years.

Mandatory costs associated with section 3 are estimated to be $0 in 2024, $814.5 million over 5 years, and $3.4 billion over 10 years.

Additional time would be needed to estimate administrative costs.

H.R. XXX Medical Disability Examination Improvement Act of 2023

The proposed legislation would amend title 38 of the United States Code to alter matters relating to medical examinations for Veterans' disability compensation, and for other purposes.

Section 2 would make several amendments to 38 U.S.C. § 1168 including removing the term “Veteran” each place it occurs and replacing it with “covered Veteran,” and providing a definition for the term “covered Veteran.” Further, section 2 would modify the criteria for when VA is required to provide a Veteran with a medical nexus examination for a toxic exposure risk activity (TERA).

Section 3 of the proposed legislation would amend 38 U.S.C. § 5103A(d) by adding a new paragraph that would authorize VBA’s Compensation and Pensions (C&P) account to reimburse the VBA GOE account and the IT Systems account for all expenses of carrying out a medical examination or obtaining a medical opinion for VBA’s disability examinations. Section 3 further notes the intent to add authority for VBA’s GOE account to reimburse VHA for costs of carrying out medical examinations for C&P claims.

Section 4 of the proposed legislation would create an annual reporting requirement to conduct a study on improvements to VA covered medical disability examinations in rural areas. Section 4 would also require a study on access to covered medical disability examinations by Veterans who reside in rural areas.

Section 5(a) would require VA, within 180 days of enactment of the bill, to provide additional training to all claims processors who order or review medical disability examinations.

Section 5(b) would provide that mandatory training must include instruction on how to assess whether a covered medical disability examination is adequate for purposes of adjudicating claims for benefits, and instruction on how to assess whether a medical disability examination is necessary for purposes of adjudicating a particular claim for a benefit. That mandated training would also have to include review of relevant statutes, judicial decisions, regulations, and VA policies regarding covered medical

disability examinations including, at minimum, the duty to assist, the relevance of causation compared to other evidentiary standards in covered medical disability examinations, required elements of a covered medical disability examination (with an emphasis on the requirement for reasoned analysis to support medical opinions), the relevance of a lack of a statutory or regulatory presumption of service connection in covered medical disability examinations, and input from impacted employees of the Department, to include labor representatives.

Section 5(c) would require the specified mandatory training to be completed no less frequently than once per year.

Section 5(d) would amend 38 U.S.C. §§ 7101(d)(2) and 7288(b) to modify certain reporting requirements by the Board of Veterans' Appeals and the U.S. Court of Appeals for Veterans Claims.

Section 6(a) would require that not later than 1 year after the date of enactment, and not less frequently than once every calendar month thereafter, VA review a randomly selected representative sample of all medical disability examinations, defined as a medical nexus examination or a medical opinion, completed within the previous calendar month. Section 6(b) would require the Secretary to ensure that these reviews include statistically significant samples of covered medical disability examinations completed by both VA employees and contractors. Section 6(c) would require the Secretary to analyze the review under section 6(a) to determine whether these examinations were adequate for adjudicating claims under chapters 11 and 15 of title 38 of the United States Code. Section 6(d) would require the Secretary to provide another examination to a claimant who, following the analysis undertaken pursuant to section 6(c), received an inadequate examination. This examination, along with the processing of the individual's claim, would be provided on a priority basis.

Section 7 would require VA to establish a mechanism for contractors conducting disability examinations under a certain VA pilot program to transmit medical evidence introduced by claimants during examinations.

VA cites concerns with this draft bill. VA is concerned that amendments outlined in this bill could restrict eligibility for veterans exposed to toxic exposures outside of those locations defined in 38 U.S.C. § 1168. VA has provided comments on the non-TERA related provisions in the bill. The below analysis addresses the specific provisions of this draft bill.

VA cites concerns regarding Section 2. Generally, VA understands the intent of section 2 of this draft bill regarding the provision of examinations and nexus opinions for Veterans potentially exposed to chemicals, substances, and airborne hazards during service.

Regarding the revision to strike "with evidence of a disability and evidence of participation in a toxic exposure risk activity during active military, naval, air, or space

service" this could be construed as requiring examinations for nearly all claims for service-connected disability compensation under 38 U.S.C. § 1110, even if the Veteran does not have evidence of a current disability or active military service.

The draft bill's limitation of the application of the TERA examination and opinion requirements to "covered Veterans" would have several effects. Section 1168(c)(1)(A), as amended by the bill, would require VA to automatically provide TERA examinations and opinions for Veterans who served in the *location* of Southwest Asia theater of operations (SWATO) and other locations listed in section 1119(c) for which there were documented wide-spread exposures to burn pit emissions, particulate matter, oil well fires, and other toxins.

As originally prescribed in the PACT Act, Section 1168 enables veterans exposed to toxins during their military service to receive a medical nexus exam for non-presumptive conditions. The Individual Longitudinal Exposure Record (ILER) was created in December 2012 to allow the DoD and VA to construct a complete record of every Service member's occupational and environmental health exposure during their career. The enactment of the PACT Act brought ILER to the forefront as the main tracking system for toxic exposure risk activities (TERA). DoD does not generally classify activities performed by Service members as toxic versus non-toxic activities, however, DoD is required to document when a toxic exposure is identified. Through the accumulation of data, DoD does in fact classify certain locations as toxic or potentially toxic. As such, any location for which a toxic exposure occurred or potentially occurred can be appropriately identified and verified by VA and DoD based on ILER data.

The provision in section 1168(c)(1)(C), as amended by the bill, would allow VA to continue to identify certain locations for which toxic exposures occurred, and then afford TERA examinations and opinions for specific Veteran cohorts who participated in such TERAs. This type of real time surveillance is regularly occurring as VA continues to partner with DoD on identifying cohorts that were present at certain high risk locations. For example, VA has received the list of individuals within ILER who were subject to contaminated water from the Red Hill underground fuel storage facility in Oahu, Hawaii. Other types of surveillance efforts include those Veterans who served at Karshi Khanabad (K2) Air Base in Uzbekistan between 2001 and 2005.

In addition to the real time exposure monitoring that is documented in ILER, VA notes that in some circumstances where such monitoring may not have been available, high risk exposure locations are identified later and have been established by statute or regulation for presumptions of exposure. As such, VA notes that there are additional locations for which presumptions of toxic exposure already exist which could be added to the statute to ensure parity. However, VA highlights that the amendments to section 1168 change the requirements for mandatory examinations for toxic exposure, but VA's duty to assist for all claims remains unchanged. VA aims to sympathetically read all claim submissions and provides examinations on a case by case basis if indicated by the evidence of record even if not required by section 1168. Under the draft bill, VA could establish additional categories under new section 1168(c)(1)(C) but such new

categories would have to be established in regulation and could take years, if not decades, to be completed, potentially delaying the opportunity for veterans with toxic exposures to qualify for a medical nexus exam.

Amended section 1168(c)(1)(B) would trigger the examination and opinion requirements based on TERA for Veterans not covered under section 1119(c) who express that their claim is associated with a TERA (explicit claim). Currently section 1168(a)(1) requires VA to consider both implicit and explicit claims.

VA notes that for "covered Veterans," the examination and opinion requirements remain linked to the definition of TERA in 38 U.S.C. § 1710(e)(4)(C). Under this definition, any activity that requires a corresponding entry in Individual Longitudinal Exposure Record (ILER), regardless of the nature of the entry, generally affords Veterans eligibility to enroll in VA health care under section 1710(e)(1)(G). Importantly, VA does not recommend amending the definition of TERA in 38 U.S.C. § 1710, as this definition establishes eligibility for health care effective March 5, 2024.

VA does not believe section 2 of the bill would affect VHA workload or requirements to conduct compensation examinations. To the extent it does, such increased workload would require additional resources to support these efforts. If the bill does not increase the number of examinations that are required, this would not affect VHA's resource needs.

VA does not support section 3. The first portion of legislative text in section 3 is unnecessary because it duplicates existing authority (see 38 U.S.C. § 5101, special note on Pilot Program for Use of Contract Physicians for Disability Examinations, section (d)). Currently, all necessary expenses associated with C&P exams completed by VBA's contractors are funded by the VBA-GOE account or IT Systems account, and then VBA's mandatory C&P account reimburses the VBA-GOE and IT Systems accounts. VA needs this funding structure because VBA's C&P account is designed to issue benefit payments, not to pay for contracts or provide health care. For this reimbursement authority, VBA and OIT utilize existing infrastructure for discretionary-funded contracts; for example, contracts for C&P exams use the same systems, review/approval processes, reporting mechanisms, and internal controls that are used for any other VBA-GOE or IT funded contract.

In addition, the draft bill includes a note that would authorize VBA's GOE account to reimburse VHA for costs of carrying out medical examinations for C&P claims. Although the bill does not yet include legislative text for this provision, VA does not support the concept of VBA reimbursing VHA for costs of carrying out these examinations. C&P funding is generally intended for benefit payments to Veterans and their survivors. VBA works closely with the Office of General Counsel to ensure compliance with the law for this reimbursement authority and to avoid any chance of misuse of funds that could instead be used for benefit payments. VBA has high standards for documentation required for reimbursement under this authority. In 2023, 92% of C&P exam requests were sent to VBA's contractors, and VBA obligated $3.2

billion for necessary expenses associated with contract C&P exams. VHA does not separate costs associated with C&P examinations in its budget and does not have systems in place to separately report costs associated with C&P exams from all other health care costs. The proposed expansion of authority to all C&P medical examinations and opinions would be extremely difficult to administer and introduce an unnecessary risk of misusing funds that are generally intended for benefit payments to disabled Veterans and their families.

With respect to section 4 of the bill, VA generally supports this section but recommends a definition of "rural" also be provided.

VA does not support Section 5. VA notes that comprehensive training regarding medical disability examinations is currently provided to claims processors. Claims processors are provided initial in-person and virtual training in VA's foundational training program. In addition, proficiency of claims processors with 1 or more year of experience is assessed annually. That assessment includes evaluation of their knowledge of the medical disability examination process. Training mandates in sections 5(a) through (c) of the bill are largely redundant of training VA currently provides, and therefore may not produce any additional benefit to Veterans. VA defers to the United States Court of Appeals for Veterans Claims on section 5(d)(2) of the bill, as that language pertains to the Court's reporting requirements.

VA does not support section 6. VA has a comprehensive quality program at the national level through the systematic technical accuracy review (STAR) program and at the local claims processor level which capture medical opinion accuracy and nexus exams. When errors are identified through the quality review process, VA ensures the claimant receives another examination, if necessary.

VA notes a discrepancy between section 6(a) which requires a "randomly selected representative sample" and section 6(b) which refers to "a statistically significant sample." VA suggests reconciliation of this terminology.

VA further notes that implementation of section 6 would necessitate extensive coordination across many VBA business lines and staff offices to include (at minimum) the Office of Field Operations, Compensation Service, Pension and Fiduciary Service, Office of Administrative Review, the Medical Disability Examination Office, the Office of Performance Analysis and Integrity, and VHA's Office of Disability and Medical Assessment (DMA). Implementation of section 6 would also necessitate ensuring availability of sufficient personnel to accomplish its goals, as well as the creation of standardized operating procedures to ensure consistency and accuracy in the mandated reviews.

VA supports section 7, subject to the availability of appropriations.

H.R. XXX The Toxic Exposures Examination Improvement Act

The proposed legislation would modify sections of title 38 of the United States Code related to toxic exposures and the duty of the Secretary of Veterans Affairs to provide Veterans with medical examinations in connection with certain claims for disability compensation under the laws administered by the Secretary.

Section 2(a) would amend 38 U.S.C. § 1168(a) by striking “such evidence is not sufficient to establish a service connection for the disability” and inserting “such evidence does not contain sufficient medical evidence for the Secretary to make a decision on the claim.”

Section 2(b) would amend 38 U.S.C. § 1119(a)(1), by inserting “that indicates that the Veteran was subject to a toxic exposure” after “tracking record system,” and amends 38 U.S.C. § 1710(e)(4)(C)(i) by inserting “that indicates that the Veteran was subject to a toxic exposure” before “for the Veteran.”

VA cites concerns. The below analysis addresses the specific provisions of this draft bill.

VA has no objection to the amendment to 38 U.S.C. § 1168(a) in section 2(a) of the bill that would change the current threshold for ordering an examination and medical opinion for claims based on TERA. This change would align the examination threshold under 38 U.S.C. § 1168 with the long-standing examination threshold under 38 U.S.C. § 5103A.

This bill seeks to align the statutory language in 38 U.S.C. § 1168 with the language from 38 U.S.C. § 5103A. This difference in language may impact the number of examinations and medical opinions requested based on 38 U.S.C. § 1168. However, VA is unable to determine whether this change would reduce the number of examinations and TERA medical opinions requested. If a Veteran provides evidence of a disability and there is evidence of their participation in a TERA, a nexus opinion from a VA examiner or contract examiner would still be required to decide the claim. The only time a claim based on participation in a TERA may be denied without an examination and medical opinion is when the Secretary has determined under 38 U.S.C. § 1168(b) that there is no indication of an association between the claimed disability and the TERA.

It is important to note that VA bears a duty to assist veterans in obtaining evidence necessary to support their claim for a benefit. The medical nexus exam represents an important opportunity for a medical provider to consider how toxic exposures may have contributed to the health concerns the veteran is seeking a service connection determination. VA highlights that the amendments to section 1168 change the requirements for mandatory examinations for toxic exposure, but VA’s duty to assist for all claims remains unchanged. VA aims to sympathetically reads all claim submissions and would provide examinations on a case-by-case basis if indicated by the evidence of record even if not required by section 1168.

VA acknowledges the provision that would amend 38 U.S.C.§ 1119(a)(1) but notes it would not change VA procedures. This provision would require VA, when considering a claim that was submitted based on a toxic exposure, to consider any record of the Veteran in an exposure tracking record system *that indicates that the Veteran was subject to a toxic exposure*. As written, it does not appear that such change in and of itself would substantially change the outcome of claims or how VA operates when reviewing claims based on toxic exposures. As a matter of course, VA always checks ILER when a claim is not subject to the exception clause in 38 U.S.C. § 1168(b) and, in the end, VA would not expect service connection to be granted for any claim based on a toxic exposure if the evidence does not reveal that they were exposed to a chemical, substance or airborne hazard. It also is important to note that this provision does not by itself inherently require VA to order examinations and opinions since that mandate is controlled in section 1168.

While VA understands the intent of the provision that amends part of the TERA definition as codified in section 1710(e)(4)(C) to mean any activity "that requires a corresponding entry in an exposure tracking record system (as defined in section 1119(c) of this title) *that indicates that the Veteran was subject to a toxic exposure* for the Veteran," **VA restates here that it does not recommend amending the definition of TERA in 38 U.S.C. § 1710 at this time because the current definition is part of the health care eligibility expansion VA commenced on March 5, 2024.**

Under current law, any activity that requires a corresponding entry in ILER, regardless of the nature of the entry, generally affords Veterans eligibility to enroll in VA health care under § 1710(e)(1)(G). The proposed change would have the effect of narrowing eligibility for VA health care, as well as VBA nexus examinations. VHA has developed guidance and training materials based on the existing definition of TERA, changes to this provision would increase administrative costs, potentially significantly, and would likely create confusion among Veterans and VA staff. VA cautions against changes that would disrupt VHA's efforts, recently begun, to enroll Veterans who participated in a toxic exposure risk activity while on active duty, active duty for training, or inactive duty training under 38 USC 1710(e)(1)(G). VA is seeking to enroll as many Veterans as possible under these new authorities, and is concerned with any actions that would limit eligibility under this law.

Additionally, the newly proposed definition of TERA would create a circularity, in that toxic exposure is defined in 38 U.S.C. § 101 as including TERAs. The new definition would have the effect of defining a TERA as an activity that requires a corresponding entry in ILER that indicates that the Veteran was subject to a TERA.

H.R. XXX The Veterans Appeals Efficiency Act of 2024

The proposed legislation would amend title 38 of the United States Code with the goal of improving the efficiency of adjudications and appeals of claims for benefits under laws administered by Secretary of Veterans Affairs. These amendments would further require the Secretary to provide the Committees on Veterans' Affairs in the House and Senate with annual reports on lengths of the adjudication of Board of Veterans' Appeal (Board) remands. The bill would also add a requirement for VA to track and maintain information on certain benefits administered by the Secretary.

Section 2(a) of the bill would amend 38 U.S.C. § 5109B to add a subsection in which VA would be required to submit an annual report on the length of time a claim (or issue within a claim) that is remanded by the Board is pending before the Secretary after such return or remand.

Section 2(b) of the bill would add a new section under title 38 of the United States Code, 38 U.S.C. § 5109C, that would require VA to use technology to track and maintain information on certain benefits claims relating to the timeliness of adjudications, VBA's compliance with Board remand orders, supplemental claims, death notices and the assignment of fiduciaries, and Board remands that were determined to be "unnecessary" under section 2(c)(2) of the bill.

Section 2(c) of the bill would amend 38 U.S.C. § 7104 in three ways. Section 2(c)(1) of the bill would authorize the Chairman of the Board to aggregate multiple appeals if they involve substantially similar questions of law or fact under a revised version of section 7104(a). Section 2(c)(2) of the bill would create a new subsection under section 7104 that requires the Secretary, through the Chairman of the Board, to ensure substantial compliance with Board remand orders, or waive compliance under limited circumstances. And section 2(c)(3) of the bill would add a new subsection to section 7104 that allows the Board and appellants to request an opinion from VA's General Counsel regarding a question of law that arises in an appeal under review by the Board.

Section 2(d) of the bill would amend 38 U.S.C. § 7252 to grant the U.S. Court of Appeals for Veterans Claims (Veterans Court) supplemental jurisdiction over class-wide claims for benefits that are pending at the Board. It would further toll the period for a claimant to seek administrative review of an eligible claim beginning the date on which the claimant submits a motion for class action review to the Veterans Court. The tolling period would end 60 days after the court either rules on the motion or the eligible claim, whichever is later. Additionally, section 2(d) would authorize the Veterans Court to remand matters to the Board to address a question of fact or law when the court determines the Board failed to A) address an issue raised by the claimant or reasonably raised by the record, or B) provide an adequate statement of reasons or bases for its decision. During this remand, the Veterans Court would retain jurisdiction over the matter.

Section 2(e) of the bill would require the Chairman of the Board to carry out a study identifying questions of law or fact the Board commonly considers when reviewing

appeals for which precedential guidance would assist the Board in issuing final decisions on such appeals. The Chairman would be required to report the findings of this study to the House and Senate Veterans' Affairs Committees not later than one year after enactment of the bill.

Section 2(f) of the bill would require the Secretary to enter into an agreement with an FFRDC to assess the feasibility of authorizing the Board to issue precedential opinions on questions of law or fact arising in matters before the Board. The selected FFRDC would submit a written assessment to the Secretary with its findings and recommendations, and the Secretary would have 90 days after receiving that assessment to submit a report to the House and Senate Veterans' Affairs Committees. The Secretary would also be required to create policies and procedures to implement the FFRDC's recommendations.

Section 2(g) of the bill would require the Secretary to a plan to ensure VA benefits claims are assigned to VBA adjudicators in a timely manner and submit a copy of that plan to the House and Senate Committees on Veterans' Affairs within 1 year of the bill's enactment.

VA has various positions on sections of this bill. Many of the proposed jurisdictional and procedural amendments in this proposed bill would fundamentally alter key provisions of the carefully constructed Appeals Modernization Act (AMA) in ways that would re-introduce many of the same inefficiencies and wait times for Veterans that they experienced under the Legacy system of appeals. The net effect would be to add significant delays to appeals processing timelines and lead to exponential a growth in appeals backlogs at a time when the Board has finally started to reduce the number of pending appeals in its inventory for the first time since AMA was fully implemented 5 years ago.

VA supports section 2(a), if amended, and subject to the availability of appropriations. It is unclear whether this section of the bill is intended to include both legacy appeal remands and AMA remands. VA proposes separating the reporting requirements for the two groups of remands. Currently, remands under the legacy system inventory are being worked down and once all legacy appeals are addressed then the need for reporting on these remands will diminish. Information on legacy remand timeliness is publicly available in section 2A of the monthly AMA Metrics Report, found at https://www.benefits.va.gov/REPORTS/ama/.

Additionally, VA cites concerns with the phrase "or issue within a claim" as a criterion for reporting because VA does not currently have the technical capacity to reliably track timeliness at the issue level. Particularly as it pertains to legacy appeals, multiple appealed issues may be aggregated into a single Board decision, which could unintentionally skew the average timeline reporting required under this bill. Understanding the complexities and challenges involved in managing claims and appeals, the technical capability requires development to improve the visibility and management of claims as they progress through various stages of the claims process,

from initial filing to resolution, if appealed. The technical capability would need to be developed between VBA and the Board to ensure compliance with the reporting requirements.

Further, overly specific statutory data tracking and reporting requirements could reduce the flexibility of the agency to adapt to changes in policy and implement improvements in the future to offer Veteran-centric data points to best inform claimant choice as to which options under the AMA to pursue when challenging a claim decision.

Additionally, while current section 5109B is focused solely on claims filed with VBA, the bill's proposed subsection (b) is not as specific. If the Committee intends to include VHA, VHA would need to add functionality to track the length of time a claim is pending after a return or remand from the Board. If the drafters only intend for this to apply to VBA, VA recommends stating so clearly.

Additionally, the reporting requirement does not appear to capture the varying complexities in post-remand actions required for certain claims; some remand instructions are very simple, while others are lengthy with additional dependencies on examinations or experts. This reporting requirement could fail to reflect the actual work being done following a remand from the Board.

VA has no objections to section 2(b)(1). Proposed section 5109C(a)(1)(A) requires tracking of "continuously pursued" claims. Current system structures do not allow for the connection of a single contention between multiple claims. Additionally, Veterans commonly request service connection for symptoms, as opposed to diagnosed conditions, limiting the ability to track continuity between claims using methods such as text mining.

As an initial matter, VA notes that the series of conditions set forth in the new section 5109C appear focused on VBA, but the language is not so limited. VHA could have claims for benefits that are continuously pursued, remanded by the Board, or pending a hearing by the Board. If the Committee only intends for this to apply to VBA, VA recommends stating so clearly. Other terms in the bill, such as the reference to instances in which "a VBA adjudicator does not comply" are unclear as to the scope of behavior that would be considered non-compliance. VA also recommends the drafters clarify this scope as well.

Proposed section 5109C(a)(1)(C) includes reporting on claims "afforded expeditious treatment by [VBA] pursuant to section 5109B," and proposed section 5109C(a)(1)(D) includes reporting on remands pursuant to 38 U.S.C. § 7104. VA has no objection to these provisions as the information is available in systems of record.

VA opposes section 2(b)(2). Compliance with a Board remand is sometimes a subjective measure that might not be consistently captured by individual Veterans Law Judges, which would lead to inconsistent data that could not be reasonably relied upon

for potential intervention strategies. For example, if the Agency of Original Jurisdiction (AOJ) grants the remanded claim in full without conducting the development directed by the Board, it is unclear if this would trigger reporting requirements under a failure to comply even though the claim has been resolved in the Veteran's favor. A second significant challenge is that there is no system in place to determine when the AOJ does not comply with a Board remand order unless the AOJ's decision is subsequently appealed to the Board within 1 year. Appeals in the AMA are not automatically returned to the Board after a Board remand and subsequent AOJ decision. Therefore, there is no way to evaluate if the Board's remand instructions were substantially complied with when there is no further Board review of the decision. Once an AMA appeal is remanded, the Board no longer has jurisdiction over it. Complying with this for AMA appeals would require an entirely new structure and review program of all post-remand AOJ decisions, which would take considerable additional personnel resources and IT development costs. Again, this would divert already scarce personnel and financial resources away from the Board's focus on deciding pending appeals as swiftly and fairly as possible. Tracking compliance with Board remands also would require increased system integration to track remands and would require significant technological development and testing requirements by VA to successfully accomplish.

VA cites concerns with section 2(b)(3). As the bill references supplemental claims filed in accordance with 38 U.S.C. §§ 5104C(a) and 5110(a)(2), the information required is applicable to supplemental claims filed within 1 year of the agency of original jurisdiction decision, thus establishing continuous pursuit. VA's Corporate database has the capability to track and retrieve information for supplemental claim timeliness.

However, VBMS is not designed to track the date of prior decisions for each issue in any given supplemental claim. While VA Form 20-0995 Part II asks the claimant to identify the specific issues and the date of the VA decision notice, this data is not recorded in systems and is used only by the claims processors responsible for thoroughly reviewing all claim submissions and evidence of record to determine if continuous pursuit is at issue and applying appropriate effective dates accordingly. To implement this proposed statue, VA must have sufficient IT appropriations to redesign relevant VBMS pages to capture the prior decision date to identify supplemental claims filed within a year of the original decision and those that were not. It is unclear what efficiency would be gained from separately tracking supplemental claims that are continuously pursued.

VA has no objection to section 2(b)(4). This information is available in its systems of records.

VA does not support section 2(b)(5)(a). The resources necessary to satisfy this requirement would drastically reduce the Board's annual adjudications. As a practical matter, the Board's Chairman does not personally review Board decisions and it would not be feasible for him or her to independently review each remand order for a determination on whether it was unnecessary. All Veterans Law Judges are expected to exercise independent judicial discretion in deciding cases pursuant to the Judicial

Cannons of Ethics governing the conduct of all Federal judicial officials, and so review of their decisions on individual cases and issues has traditionally been reserved to random sampling for quality assurance purposes or when the performance or conduct concerns with an individual judge requires particular scrutiny by more senior judicial officials.

Furthermore, the tracking requirements would create serious delays in the timely production of Board decisions. Last year, the Board adjudicated 103,245 appeals and is on track to adjudicate 111,000 appeals this year. It is important to note that most appeals have more than one issue and that it is common for individual issues to be resolved in different ways. In other words, many Board appeal decisions involve mixed results, with some issues granted and/or denied and other issues where a remand is more appropriate or legally required. Approximately 57,000 appeals adjudicated during FY 2023 required at least 1 issue be remanded. Requiring the Chairman or other Board member judges to independently review and advise or determine whether each remand is appropriate requires sufficient personnel resources be diverted to complete case file reviews that essentially amount to "second opinions." Using last year's data as a benchmark, that would require approximately 57,000 additional reviews and opinions to be rendered by scarce judicial resources. It would necessarily hinder the adjudication of other pending appeals, thus creating a backlog at a time when the Board has started to reduce the pending appeals inventory for the first time in 5 years. Inefficiencies in the entire appeals system created by proposed section 5109C(a)(5) would be harmful to Veterans who have already waited a long time for resolution of their appeals.

VA does not support proposed section 2(b)(5)(b). VA strives to complete all claims as efficiently as possible. All claims actions, whether they move a claim forward, defer action for further development, or record new evidence development or suspense date for receipt of said evidence, are input in VBMS by claims processors. National Work Queue (NWQ) is strictly a claims distribution engine designed to ensure that claims are distributed to an adjudicator to take the next action on any claim efficiently. As such, NWQ is not designed to defer or change suspense dates, which generally require a claims processing decision by an adjudicator.

A deferral is an internal document to clarify information received from the examiner, perform administrative actions to include minor corrections, or perform additional development. Additional development will trigger written notice to the claimant and the representative, and in such cases the pertinent contents of this deferral document are already available through the written notice informing the claimant of the additional information or action required. Notice of other administrative actions would be confusing to a layperson as those actions are simply internal tracking mechanisms for VA claims processors.

While a deferral represents a return to a prior stage of the claim for additional action, the use of suspense dates and reasons is part of the fundamental processing of a claim in VBMS and does not necessarily indicate any abnormal delay of the claim. Suspense dates are established to ensure that actions are taken promptly and may

reflect a reasonable period of time based on current workload or the expiration of a statutory waiting period for evidence development. It is unclear what value this information has to the claimant or representative. If claimants and representatives desire to know how much longer until the claim is completed, this information will not be satisfactory.

Veterans and claimants are already able to access information on pending claim actions through VA.gov, which provides information on the status of claim, decision review, or appeal. It also allows claimants to check the evidence filed online to support the initial claim, any additional evidence requested to support the claim, and to download decision letters for certain types of claims, decision reviews, and appeals. Claimants may obtain additional assistance by contacting VBA's National Contact Center by phone, sending questions through the secure Ask VA (or AVA) online tool, or by visiting a local VBA benefits office. Additionally, a claimant's accredited representative and/or Veterans Service Officer, may have access to the electronic VA claims folder to assist with claims for benefits. Without additional context regarding the intent of the bill, VA notes that this provision may be unnecessary given the existing authorities and processes in place.

VA does not support section 2(c). Section 2(c)(1) authorizes the aggregation of Board appeals, which would substantially alter the Board's longstanding case distribution and would completely upend docket order rules in unfair ways for many Veterans. For example, allowing aggregating appeals for the same Veteran across dockets with different evidentiary windows will create increased confusion as each appeal will need to be evaluated independently based on its own evidentiary record. Worse, it would allow a Veteran with a pending appeals on the same or similar issue to file a new appeal on the same or similar issue with entirely different evidence (possibly, years later based on the current pending inventory) and then essentially cut the line in front of other Veterans with their more recently filed appeal. If a change in law allowed this, the Board would also need to completely revise its case management systems, to include integration with other VA systems, to allow this entirely new method of moving cases ahead of others. It would require both a complete overhaul of the Board's docketing system and would also require other potential legal changes for unforeseen consequences regarding which docket date should be controlling for the aggregated or merged appeal. For example, there may be instances where a later docket date (on, for instance, the Direct docket) might provide the Veteran a faster decision than an earlier Hearing docket date, but it would be impossible to predict how these issues might impact not only individual Veteran choices, but also the impacts of those choices on other Veterans who have been waiting longer. Further, different evidence windows for separate appeals that are aggregated or joined would add further confusion to the AMA system at a time when Veterans, representatives, and adjudicators are just becoming familiar with the nuances of AMA after many decades under the legacy system.

Moreover, one of the fundamental challenges of aggregation, regardless of where in the system it is applied, is that it only lowers the total amount of system-wide work that must be done to the extent it replaces individualized review of the evidence.

Overall, aggregation seems likely to shift the Board's focus away from substantive review of the evidence and toward procedural issues. Also, there is no readily apparent reason why aggregating claims will result in more grants than denials. Claimants whose claims are aggregated will be bound to any resulting denials despite not having received individualized review of their evidence.

Aggregating appeals would be a sharp departure from the Board's longstanding role in evaluating the particular and unique facts and circumstances for each appeal that is filed at the Board. When the Board reviews an AOJ decision, it conducts a de novo review and decides all questions of law and fact necessary to adjudicate the claim. This proposed change to the Board's jurisdiction apply a legal or factual conclusion to an entire class of claimants without appropriate consideration of the specific and unique facts of each case. Rather than speed up the appeals process, the Board believes that aggregation of appeals for different Veterans would require a significant amount of attorney and/or Veterans Law Judge (VLJ) resources to be diverted to determining what metrics would be applied in choosing cases for aggregation and on-going review of the Board's entire pending inventory of approximately 206,000 cases to identify a common class of Veterans.

There are also significant technological resource concerns, as Caseflow–an application that allows authorized personnel to download each document in a Veteran's electronic claims folder into a single file–is not currently designed to docket, process, or otherwise track aggregated appeals. Consideration of what docket number, or docket selection, to assign such an aggregated claim would require balancing the different needs and requests of the multiple appellants involved and would necessarily require moving some cases out of docket order, thus unfairly adjudicating some claims before their place in line. Aggregating any later filed appeals with earlier ones will necessarily move a newer appeal to the front of the line ahead of older ones that have been waiting longer negatively impacting Veterans who are patiently waiting in line. Even if appeals could be aggregated, each appeal would have to be adjudicated on its own factual basis and would require independent analysis. The evidence of record for each individual case is still unique and would have to be evaluated individually. Moreover, there does not appear to be any mechanism in the bill that would allow individual claimants to oppose or opt out of aggregation, thereby depriving some Veterans of the ability to have their appeals decided on their own merits and independent of an entire class. Therefore, rather than create efficiencies in the system, aggregating appeals would cause a significant delay to many appeals in the system.

VA does not support section 2(c)(2). This would require the Chairman of the Board to ensure compliance with Board remands. VA is concerned that this requirement would require the Board to have direct oversight of claims and decision reviews processed by VBA. Currently, compliance with Board decisions is conducted through quality reviews conducted at both the local and national levels within VBA. The bill suggests an additional review conducted by the Board. This is particularly pertinent under the AMA modernized review system, where appeals once remanded and a final decision issued by VBA, do not return to the Board unless the claimant opts to appeal

the VBA decision to the Board. This feature of the AMA was enacted purposefully to ensure claimants could choose which organization next reviewed their claim. Moreover, deliberation on resource allocation is necessary to determine the prudence of conducting another mandatory review on VBA decisions by the Board without the request or consent of the claimant: this mandatory churning of cases between VBA and the Board causes delays, strips claimants of their ability to make choices in the review process, and was a core feature of the legacy appeals system that precluded it from successfully serving Veterans and was intentionally removed from the AMA system.

Additionally, as a technical drafting matter, VA notes that section 2(c)(2) of the bill redesignated current 38 U.S.C. § 7104(f) as 38 U.S.C. § 7104(g), but section 2(c)(3) of the bill creates a new 38 U.S.C. § 7104(g) without regard for the aforementioned redesignation.

VA does not support section 2(c)(3). This would create a new subsection under 38 U.S.C. § 7104 that would allow the Board to request an opinion from VA's General Counsel regarding a question of law that arises in an appeal under review by the Board. VA's General Counsel is the Department's chief legal officer and provides legal assistance to the Secretary concerning the programs and policies of the Department. VA is, in essence, the organizational client of the Office of General Counsel (OGC). The Board currently has processes in place for seeking legal guidance from OGC. From this standpoint alone, section 2(c)(3) is duplicative and unnecessary.

Section 2(c)(3) provides that the Board "may" request an OGC opinion on the motion of the appellant. This provision is most naturally read to suggest that the Board retains independent judgment regarding whether to request an opinion. To the extent this language could be construed to create a right on the part of appellants to request OGC opinions, there are significant ethical considerations. Neither the General Counsel nor OGC provide legal opinions to individuals or private parties as they are not OGC's clients. Section 2(c)(3) of the bill–which would require the General Counsel to provide legal opinions to non-clients–would be at odds with the General Counsel's authority under 38 U.S.C. § 311. Furthermore, providing such legal opinions could be at odds with the Rules of Professional Conduct for OGC attorneys in the jurisdiction in which they are admitted to practice law. For example, Rule of Professional Conduct 4.3(a)(1) in the District of Columbia (where OGC is headquartered) prohibits attorneys from providing advice to an unrepresented person when the person's interests "are or have a reasonable possibility of being in conflict with the interests of the lawyer's client."

Although proceedings before the Board are non-adversarial in nature, proceedings before the U.S. Court of Appeals for Veterans Claims (Veterans Court) are adversarial in nature. The parties often have distinctly conflicting interests, and so Rule 4.3(a)(1) would prohibit the OGC attorney from providing a legal opinion to an unrepresented appellant. Given that OGC represents VA as an organizational client before the Veterans Court, OGC attorneys would be forced either to comply with their ethical obligations and violate a Federal statute or comply with the statute and violate their ethical obligations at the risk of jeopardizing their law licenses.

Even under the view that the Board may deny an appellant's request for an opinion, OGC is still concerned that the claimant may develop an expectation of an attorney-client relationship. This and other ethical issues identified above may still be implicated even under this reading of the bill.

But our Nation's Veterans need not navigate the claims process without legal assistance to obtain benefits. VA has accredited approximately 14,000 attorneys, VSO representatives, and claims agents who can assist claimants in the preparation, presentation, and prosecution of their claims before VA's regional offices (RO) and the Board. Many of these accredited individuals represent Veterans at no charge, and Veterans can search for qualified representatives on a publicly available VA webpage, https://www.va.gov/ogc/apps/accreditation/index.asp.

Furthermore, OGC necessarily exercises discretion in deciding whether and to what extent to issue public-facing opinions. In doing so, it accounts for its primary duty to provide candid guidance to the Secretary and other department officials, as well as other considerations impacting agency functions such as pending rulemaking or ongoing litigation involving related issues. This provision would interfere with that discretion and hamper OGC's ability to faithfully carry out its duties.

VA is also concerned that the provision would likely lead to a wide range of motions by appellants for OGC opinions on questions not appropriate for OGC opinions, including the ultimate issues of entitlement in their case.

Additionally, OGC precedent opinions are subject to direct review by the U.S. Court of Appeals for the Federal Circuit. Were this bill to become law, under sections 2(c)(3) and 2(d)(2) of the bill, if the Board requested a legal opinion from OGC pursuant to a Veterans Court remand, and OGC were to issue a precedent opinion that the appellant challenged at the Federal Circuit, it would create a scenario where the Board, the Veterans Court, and the Federal Circuit could all exercise jurisdiction over the same appeal at the same time. The resulting chaos and confusion introduced into the system would create more problems than the bill presumably aims to solve.

Related to litigation, under the reading that allows the Board to decline to ask for an opinion, the bill could be understood to create an appealable issue that does not currently exist. VA anticipates an increase in litigation at the Veterans Court and the Federal Circuit over the Board's rulings on such motions, including denials of motions and reframing of the requests proposed by appellants. Further, it is unclear whether the Committee intends for the Board's rulings on these motions to be separately appealable issues, particularly in light of proposed 38 U.S.C. § 7252(c)'s expansion of the Veterans Court's ability to remand issues to the Board while still retaining jurisdiction. This lack of clarity could lead to more disruption and uncertainty within the appellate system, as well as increased workloads for the courts and OGC.

VA would need additional resources to address the increase in requests for OGC opinions and the additional litigation that would result from this provision. While VA cannot predict the number of opinions that the Board and/or appellants would request from OGC, requests in even a small percentage of the Board's cases could have an overwhelming impact on OGC's ability to provide legal advice and guidance to VA in the absence of a significant increase in resources. As previously stated, the Board is on track to issue 111,000 decisions this year. If OGC received requests for opinions in only 2% of those cases, this would entail 2,220 OGC opinions per year. If the average request merits 15 hours to draft and issue an opinion, that would require 33,300 hours of attorney time, or the equivalent of roughly 25 additional attorneys on staff, which VA estimates would cost $4.9 million. VA expects that staffing needs would increase the more frequently the Board or appellants request these opinions.

VA does not support section 2(d). The bill's expansion of the Veterans Court's jurisdiction to allow review of benefits claims which may be granted on a class-wide basis prior to a final Board decision is contrary to the very well-documented and carefully considered legislation that originally created the Court in 1988, especially the debate about the appropriate jurisdictional scope of the Court to review only "final" decisions by the Board and Secretary.

The bill's amendments to 38 U.S.C. § 7252 would create supplemental jurisdiction to review all pending claims at the Board. Eligible claims are those within the substantive scope of a certified class, "that can be granted on a class-wide basis," as determined, "pursuant to the rules and practice," of the Court. Expanding the Court's jurisdiction to review all matters "pending" a final decision by the Board and those pending appeals previously remanded by the Board to VBA. This would represent approximately a 600% increase in cases that would be subject to Court review. This proposed bill would add another 200,000 pending appeals at the Board, plus at least another 40,000 cases remanded by the Board back to VBA at any given time. This would essentially mean the proposed bill would create a 600% increase in the number of cases subject to Court review, well above the roughly 40,000 "final" Board decisions encompassed within the Court's jurisdiction today.

VA notes that granting two separate tribunals with overlapping jurisdiction may cause confusion for appellants before the Veterans Court and the Board and may result in misdirected action from the Board. Further, it is unclear how those tribunals are to treat an appellant's case where one or more claims is part of a question certified for class treatment, but others are not. For example, if an appellant is seeking benefits for an orthopedic condition and dermatitis in the same appeal, and a class is certified for an issue relating to dermatitis, the bill offers no clarity on how either the Board or the Veterans Court should proceed with the pending orthopedic condition claim. Moreover, the amendments provide that there is finality and binding aggregate resolution for granted appeals, but never for certified classes that lose on the merits. As this appears to encourage class certification as another possible avenue of relief without any loss of an appellant's other options, the total work system-wide will increase, not decrease.

The amendments further authorize the Veterans Court, if it has taken supplemental jurisdiction over an appeal, to remand that matter to the Board for the limited purpose of ordering the Board to address a question of law or fact that the Board failed to address, or to provide adequate reasons or bases for its decision. These amendments would also authorize the court to require the Board to issue a decision within in a court-prescribed time while it retained jurisdiction. This has the potential to create a perpetual loop between the Board and the court if there are ongoing disputes over the adequacy of the Board's reasons or bases. The result would be similar to the remand loop between the Board and the AOJ experienced in the legacy process that the AMA was intended to cure. Additionally, the Veterans Court could retain jurisdiction over an appeal even where the appellant is satisfied with the supplemental decision. This would not only delay finality for the successful appellant but would be a time-consuming process for the Board that would require significant resources and would delay the adjudication of other appeals waiting for a Board decision. As the proposal allows the Veterans Court to prescribe the time period for a new decision to be issued, this could cause a substantial burden on the Board and on Veterans waiting for a decision if normal docket order rules are ignored. If appeals are frequently remanded with a limited time period to complete, they would necessarily need to be prioritized over other appeals that are waiting for a Board decision. Finally, the Board would need to build new functionality in its Caseflow case management system which would be a significant IT development requirement.

Also, VHA could have claims that would become subject to the Veterans Court's supplemental jurisdiction. If the Committee only intends for this to apply to VBA, VA recommends stating so clearly.

VA does not support section 2(e). This section would require the Chairman of the Board to carry out a study to identify questions of law or fact the Board commonly considers for which precedential guidance would assist the Board in issuing final decisions on such appeals. To the extent that the provision is intended to increase consistency across Board decisions, it is unlikely that the study and report requested would have its desired impact. Questions of fact would be case-specific and would not be appropriate for precedential guidance. As for questions of law, the Board already has authority to request an opinion from OGC when necessary. Thus, this section of the proposed bill is duplicative and unnecessary.

VA cites concerns with section 2(f). These concerns stem from the assignment of authority to FFRDCs without clear statutory guidance on their role as determining authorities within VA. While an independent assessment of the feasibility of Board precedential decisions and the consolidation of appeals could yield valuable insights, the requirement for strict implementation of the findings appears excessive. The Secretary should retain greater decision-making authority for final implementation, considering the overarching needs of the agency. Moreover, having the Board bound by other Board decisions is also inconsistent with current law and would likely require substantial revisions of other statutes within title 38 of the United States Code and revisions to VA's regulations governing the Board. Any policies or procedures to

implement recommendations could be substantial and would have to go through multiple levels of departmental review to carefully debate and consider substantial legal, regulatory, and procedural overhauls. VA is concerned that it would take significantly longer than 90 days to develop the necessary policies and procedures recommended by the FFRDC. Finally, there would be significant cost to commission such a study that would require additional resources or resource trade-offs with the current Board budget.

VA cites concerns with section 2(g). This section requires VA to provide a plan to Congress to show how claims are assigned to an adjudicator in a timely manner *to* the NWQ. VA interprets this to mean the timeliness of distribution *from* NWQ *to* the RO-based adjudicators. NWQ is a paperless workload management system designed to optimize VBA's productive capacity. Claims are eligible for distribution when actionable and there is available capacity to complete the required actions in each lifecycle of the claims process. VBA aggressively manages timely distribution of claims for completion through a team of 28 NWQ full-time equivalent employees, who monitor daily assignment of claims to ROs. This plan thus would represent a granular view of VA's execution of the funding provided by Congress to support staff who process claims across VBA's entire portfolio. VBA's NWQ only manages disability rating claims, pension claims, survivor claims, claims that do not require a rating decision, and administrative reviews across each lifecycle to ROs, but staff are allocated across the entire portfolio based on a financial operating plan. This plan would require VBA to expend resources to create a report, which diverts resources away from activities leading to the efficient and accurate processing of claims.

H.R. XXX Veterans Appeals Options Expansion Act of 2024

The proposed legislation would amend multiple sections of title 38 of the United States Code to address intent to file claim submissions, the dockets maintained by the Board, and notices of untimely evidence.

Section 2(a) of the bill would amend 38 U.S.C. § 5101(a) by adding a new paragraph to address claims for VA benefits received on an incorrect prescribed form. This section would require VA to treat those submissions as an intent to file pursuant to 38 C.F.R. § 3.155 or successor regulation.

Section 2(b) of the bill amends 38 U.S.C. § 7107 by adding new paragraphs relating to continuously prosecuted claims previously remanded by the Board for which a subsequent notice of disagreement was filed. This section requires the Chairman of the Board to ensure those cases are treated as if they were assigned to a docket pending the date the initial appeal was filed, and assigned to the Board judge who held the most recent hearing relevant to the case. Additionally, this section would authorize movement of such cases between AMA dockets pending in the Board's inventory up until the time the case is assigned for decision, which would often lead to evidentiary periods being extended and could potentially add procedural steps that would further delay case adjudications.

Section 2(c) of the bill amends 38 U.S.C. § 7113 by adding a new subsection relating to untimely evidence received. Under this section, the Board would be required to notify claimants of receipt of untimely evidence and explain why such evidence cannot be included in the evidentiary record.

VA cites concerns with section 2(a) of this bill. An intent to file (ITF) is a claimant-centric concept provided in 38 C.F.R. § 3.155(b). Upon receipt of an ITF, VA will furnish the claimant with the appropriate application form prescribed by the Secretary. If VA receives a complete application form prescribed by the Secretary, appropriate to the benefit sought within 1 year of receipt of the ITF, VA will consider the complete claim filed as of the date the ITF was received.

VA acknowledges and supports initiatives to allow claimants the option to select the decision review or appeal lane they deem most advantageous for their case outcome. However, categorizing any form as an ITF under section 3.155 would deviate from the regulation's intended purpose of improving the quality and timeliness of the processing of Veterans' claims for benefits by standardizing the claims and appeals processes through the use of forms. As written, it is unclear whether the proposed bill allows for any documentation to be used as an ITF even if not on a form prescribed by the Secretary.

VA supports the intent behind this proposed change, which appears to ensure that claimants who submit an incorrect prescribed form have the date of receipt of that incorrect form documented and tracked for effective date purposes should the correct form be received within 1 year. However, it is important to note that the concept of an ITF exists only in VA regulatory guidance pursuant to 38 C.F.R. § 3.155(b). There are complexities inherent to adding a statutory requirement linked to a solely regulatory provision.

First, VA notes that 38 C.F.R. § 3.155(a) advises claims processors to treat a request for benefits not on an appropriate prescribed form as a request for application (RFA). In such cases, VA notifies the claimant of the information necessary to complete the correct form, but there is no protection of the date of receipt of the incorrect form if the correct form is subsequently received. This may occur, for example, where a VA Form 20-0995, *Decision Review Request: Supplemental Claim*, is received but other information suggests the claimant's intent to be a claim for increase or new claim for compensation, which should be submitted on a VA Form 21-526EZ, *Application for Disability Compensation and Related Compensation Benefits*. This scenario could also occur in reverse where VA receives a VA Form 21-526EZ, but it later becomes clear that the claimant's intent was to file a supplemental claim.

VA has heard concerns from VSOs and accredited representatives that the RFA process can be frustrating for them and for claimants. Based on this feedback, VA is currently exploring administrative solutions to address concerns regarding the current RFA process such that a claimant's date of receipt could be protected in such cases when an incorrect claim form is received. While analysis is in the early stages, VA

believes that these concerns could be addressed administratively through rulemaking or form revision without introducing significant procedural and legal complexity to the claims process. VA is open to collaborating with the Committee to determine whether statutory revision is necessary and the best path forward to address the issue.

Second, 38 C.F.R. § 3.155(b)(2) requires that an ITF must identify the general benefit (for example, compensation, pension), but need not identify the specific benefit claimed or any medical condition(s) on which the claims is based. VA Form 21-0996, *ITF a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC* (https://www.vba.va.gov/pubs/forms/VBA-21-0966-ARE.pdf), allows the claimant to select from the following general benefit types: 1) compensation, 2) pension, or 3) survivors' pension and/or dependency and indemnity compensation (DIC). Claimants may choose all that apply. Per 38 C.F.R. § 3.155(b)(6), VA will not recognize more than one ITF concurrently for the same benefit (for example, compensation, pension). This regulatory structure is dependent upon claimant identification of the benefit(s) sought when submitting the ITF, allowing for consistent tracking of ITFs in VA's electronic claims processing system and eliminating claims processor interpretation of claimant intent.

The proposed amendment refers broadly to "a claim for benefits under the laws administered by the Secretary," consistent with section 5101(a). As such, it appears VA would be required to apply the concept of ITF much more broadly than it currently exists in regulation, treating an application on a prescribed form for any VA benefit that appears to be an incorrect form as an intent to file, adding considerable complexity to the administration of various VA benefits. If this bill were enacted, VA would notify the claimant that the form submitted appears to be a claim for a benefit not covered under the form submitted and provide the perceived correct form and any information necessary to complete the form. However, this requires the claims processor to interpret the claimant's intent, and that interpretation may be incorrect.

Based on the complexity of applying a statutory provision to a purely regulatory concept, and the need for a clearer outline of statutory intent, prior to making statutory changes to amend 38 U.S.C. § 5101(a) for the purpose of allowing incorrect claim forms to be treated as ITFs, VA recommends adding the guidelines for an ITF to the statute. VA is concerned that inclusion of ITF language into 38 U.S.C. § 5101 without it first being written into statute could create unintended complications and confusion. VA stands ready to provide the Committee with technical assistance in this regard.

Third, 38 C.F.R. § 3.155(b)(1) provides that an ITF can be submitted in one of three ways: 1) saved electronic application, 2) written intent on prescribed intent to file a claim form, or 3) oral intent communicated to designated VA personnel and recorded in writing. Because claims processors primarily look to VA's regulations for guidance in these matters, a regulatory update would be required to allow an incorrect claim form to be treated as an ITF in addition to these three ways.

Fourth, claimants are only permitted to have one ITF pending at a time. Under 38 C.F.R. § 3.155(b)(6). VA does not allow the submission of another ITF to "update" or "cancel" a prior ITF because this could create a situation where a claimant inadvertently deprives him or herself of a currently held effective date. The language of the bill, read in isolation, could be understood as requiring VA to treat the submission of the incorrect form as an ITF regardless of this rule. In order to prevent harm to claimants, VA suggests the bill be revised to align with the broader rule that only one ITF at a time may be pending.

Lastly, the phrase "with a claim for benefits" in the first line of the proposed paragraph (3) may imply that a claimant must already have a pending claim for benefits for this provision to apply. VA recommends revision to avoid confusion and to specify the pursuit of a "claim" versus an "appeal," thereby removing the potential for unintended consequences concerning appeals before the Board.

VA suggests the following:

> "(3) If an individual pursues a claim for benefits under the laws administered by the Secretary using a prescribed form under paragraph (1) that is not the correct form for the benefits sought or for such claim, the Secretary shall treat such form as an intent to file a claim under section 3.155 of title 38, Code of Federal Regulations, or successor regulation unless the individual already has a pending intent to file for that same benefit."

VA also notes that while section 3.155 is a VBA regulation, the language in the bill is exceptionally broad and could be read to establish an "intent to file" process and requirement for VHA benefits. If the Committee only intends for this to apply to VBA, VA recommends stating so clearly.

VA does not support section 2(b) of the bill. This section would essentially re-create the same inefficiencies within the Legacy appeals system that the AMA sought to remedy after pending legacy appeals grew to nearly 475,000 cases, many of which took as long as 10 years to fully resolve underestimates provided at the time.

The proposed amendments to this section would result in piecemeal proceedings with ever-changing appellate records. This is a stark contrast from the closed record system AMA implemented to improve accountability, efficiency, and fundamental fairness to all waiting Veterans. Over the past 4 years, AMA appeals on average have been resolved 3-4 years faster than legacy appeals, have a 20% lower remand rate, and have a 10% higher grant rate. With legacy appeals still working their way through the system, the remanded cases keep displacing AMA cases at a high rate, and frequently receive multiple reviews before awaiting AMA cases can be adjudicated for the first time. Allowing remanded cases to move to the head of the line would erode the progress gained under the AMA.

As briefly summarized above, section 2(b) of the bill would also require any subsequent appeal of a previously remanded and continuously pursued claim to be assigned to the VLJ "who held the most recent hearing relevant to such case." This was a legacy system requirement that the AMA removed for efficiency, and a mandated, rigid return to that model will increase wait times for appellants as their appeals must wait to be assigned to a particular VLJ out of the over 130 VLJs currently appointed to the Board. The verbatim transcript of the Veteran's hearing (and notes of the judge who conducted the hearing) on the same or similar issue would also be available even if a different judge is deciding the appeal, and so appellants would not be prejudiced if their remanded appeal were assigned to a different judge. Nevertheless, the Board is committed to ensuring the same judge who held the hearing decides the AMA appeal to the greatest extent practicable. However, that should be a matter of procedural discretion rather than a legal mandate that could have the same unintended consequences that the AMA remedied.

Section 2(b) of the bill also amends 38 U.S.C. § 7107(e) to allow Veterans to switch between Board dockets or withdraw a claim on appeal at any time before the date on which the appeal "is assigned to an individual employed by the Department responsible for writing the decision of the Board with respect to such case." This allows a docket switch at any time up until the appeal is assigned for review and drafting of a decision, but proposed section 7107(e)(2) would prohibit a docket switch after that date. Allowing appellants to switch dockets at any time would diminish the carefully considered efficiencies built into the AMA system, and these proposed changes would essentially mimic the features of the legacy system which allowed appellants to add evidence or request a hearing at any time, thus creating further delays in issuing decisions. Furthermore, proposed section 7107(e)(1)(B) would allow a withdrawal of a claim or issue at any time up until the appeal is assigned for review and drafting of a decision. This appears to be redundant of what is already afforded via regulation which permits withdrawal of a modernized appeal at any time before the Board issues its decision, and the withdrawal is effective the date it is received. In other words, the current regulatory scheme provides a longer period in which an appellant may withdraw their appeal than proposed 7107(e)(1)(B) would allow. Withdrawal is not required to switch dockets before the Board. To the extent withdrawal of an appeal is required to switch from the Board Appeal review lane to either the Supplemental Claim or Higher-Level Review lanes, as written this new paragraph would not affect the time limits for an appellant to switch lanes and maintain continuous pursuit of their claim.

VA does not support section 2(c) of the bill. This section would require the Board to promptly notify the appellant when any evidence submitted in connection with a case before the Board is untimely and may not be considered as part of the evidentiary record before the Board. Such notice must inform the appellant of from one docket to another under proposed 38 U.S.C. § 7107(e). The requirements made by this amendment would be administratively burdensome and would add significant delays to appeals processing timelines, thus leading to growth in appeals backlogs. This is particularly true if appellants were allowed to change dockets multiple times because each docket has its own evidentiary windows.

The amendments would also require the Board to immediately and repeatedly review the appellant's claims file after an appeal is docketed to determine whether VA received any documents from the appellant or representative subsequent to the issuance of the notice of the AOJ decision on appeal, and then review and determine whether a notice under section 7113(d) is necessary. This is particularly problematic if the AOJ utilizes a claims system and document repository that the Board cannot access, such as those used by VHA. Furthermore, proposed section 7113(d) does not appear to contain any limitation on the number of notice letters that the Board must transmit to an appellant. Requiring the Board to conduct a review and provide such a notice every time an appellant submits evidence outside of the window of time permitted by section 7113 would dilute much of the administrative efficiency value of closing the record. This is particularly true if the Board must send multiple notice letters to appellants who–despite previously receiving section 7113 letters–continue to send untimely evidence to the Board without opting to switch dockets.

H.R. XXX Veterans Claims Quality Improvement Act of 2024

The proposed legislation would amend title 38 of the United States Code, to provide for certain revisions to the VBA adjudication manual and to mandate various procedures with an intended goal to help improve the quality of the adjudication of claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

Section 2(a) of the bill would amend 38 U.S.C. § 311 by creating three new subsections: subsection (a), which restates current section 311; subsection (b), which requires the General Counsel to review any revisions to the VBA adjudication manual; and subsection (c), which requires the General Counsel to develop and carry out a training program for VBA on rules, guidance, and other issuances that have a material effect on claims for benefits administered by VA.

Section 2(b) of the bill would require the Secretary, in consultation with the General Counsel and the Chairman of the Board, to complete a study that identifies issues about which an opinion from the General Counsel would foster consistency in the decisions of claims for benefits administered by VA. Not later than 1 year after enactment of the bill, the Secretary would be required to submit the study's findings in a report to the House and Senate Veterans Affairs Committees.

Section 3(a) of the bill would amend 38 U.S.C. § 7101 by adding a new subsection directing the Chairman of the Board to develop and carry out a quality assurance program with respect to Board decisions. The Secretary would be required to submit an annual report to the House and Senate Veterans' Affairs Committees on this program, beginning no later than 1 year after enactment of the bill.

Section 3(b)(1) of the bill would create new 38 U.S.C. § 7101B, which would require the Secretary, in conjunction with the Chairman of the Board, to develop and

carry out a training program for members of the Board on timely and correct adjudication of appeals under chapter 71, title 38 of the United States Code. In carrying out the program, the Secretary would be required to consider Board member and covered employee feedback, error data generated under proposed 38 U.S.C. § 7101(f), and remands from the Veterans Court. The Secretary would be required to submit an annual report to the House and Senate Veterans' Affairs Committees on this program. Section 3(b)(1) also creates a definition of the phrase "covered employee."

Section 3(b)(2) of the bill would amend 38 U.S.C. § 7101A(c)(1)(B) by requiring performance reviews of Board members no less often than 1 year to determine whether the members' job performance meets the performance standards set for members. The current statute requires these reviews to be conducted no less often than every 3 years. Section 3(b)(2) would further amend 38 U.S.C. § 7101A by creating a new subparagraph that prohibits the performance review panel from considering the timeliness or quality of work of any Member of the Board when reviewing the performance of a covered employee (as defined by proposed 7101B).

Section 3(c)(1) of the bill would amend 38 U.S.C. § 7104(d) by adding a new paragraph that requires Board remand orders contain a statement of the specific reasons why the claim was remanded, including any failure of VA to satisfy the statutory duties to assist or notify the claimant. Section 3(c)(2) of the bill would further amend 38 U.S.C. § 7104 by adding a requirement that where the Board remands a claim, the Secretary, to the maximum extent practicable, issue a copy of the remand order to the VBA employee "who committed the error resulting in the decision of the Board to remand."

Section 3(d) of the bill would add a new and additional reporting requirement to the Board's longstanding 38 U.S.C. § 7114 annual reporting requirements, mandating "the Chairman of the Board and the head of VBA's Office of Administrative Review" supplement current remand statistics to include "the number of decisions of the Board to remand a claim…determine[d]" to be unnecessary.

Section 3(e) of the bill would require the Secretary, in consultation with the Chairman of the Board and the head of VBA's Office of Administrative Review, to develop a plan to improve the quality of Board remand orders for further action and mitigate the number of such decisions that are unnecessary under any applicable law or regulation. The bill would require the Secretary to develop this plan within 6 months of the bill's enactment and submit a report to the House and Senate Veterans' Affairs Committees within those 6 months.

VA does not support this bill. VA is the organizational client of OGC and, much like the Board, VBA currently has processes in place for seeking legal guidance from OGC. OGC routinely provides guidance to VBA, to include legal advice related to its adjudication manual revisions. To this point, OGC provided VBA with advice in 2021 on the legal requirements for revisions to VBA's adjudication manual. OGC has responded to VBA's subsequent questions on this subject as they have come up, and OGC and

VBA will continue working together to ensure manual revisions are legally sufficient. Proposed 38 U.S.C. § 311(b)'s codification of a process that is already in place and operational is redundant and unnecessary.

Proposed section 311(b) would direct OGC to review each provision of relevant VBA manuals that would have a "material effect" on claim adjudications. OGC does not routinely monitor all changes to all relevant VBA manuals to determine whether they would have a material effect on claims adjudication, but necessarily relies upon its VBA colleagues to identify changes potentially requiring OGC review and guidance. To the extent section 311(b) is intended to impose a burden on OGC to regularly monitor all changes to the relevant VBA manuals, OGC would need additional resources to carry out that function and, in any event, such routine monitoring would be an ill-advised use of OGC resources.

With respect to the study and report required by section 2(b) of the bill, VA notes that VBA, the Board, and OGC regularly discuss legal issues that impact the administration of VA benefits, including at monthly meetings to discuss developments in caselaw, statute, and regulations. In the event of an adverse decision with greater implications for a particular benefit line, OGC provides guidance to VBA and the Board on how to comply with the court's decision and does so in a manner that provides consistency in the administration of benefits. Even in circumstances where VA receives a favorable court decision with broader implications across benefits lines, OGC has provided training to its clients to aid in better understanding and implementing the decision. One such example is a 2022 OGC training on a Federal Circuit decision, *Lynch v. McDonough*, that clarified how the benefit-of-the-doubt rule is properly applied under 38 U.S.C. § 5107(b).

While a study may identify specific legal issues of concern at a given point in time, VA believes that VBA and the Board, as the subject matter experts on administering VA benefits and in partnership with OGC, are well suited to identify the concerns targeted by section 2(b) of the bill on an ongoing basis. If VBA or the Board discover inconsistencies in claims adjudications that may stem from a lack of clarity on a legal issue, OGC currently provides guidance on those issues as they arise and stands ready to do so in the future.

Further, this study could include a review of VHA decisions and benefits as well. If the drafters only intend for this to apply to VBA, VA recommends stating so clearly.

Should the Committee advance the bill, VA recommends replacing each instance of "the General Counsel" with "the Office of General Counsel" to clarify that the Office of General Counsel would review these revisions rather than the General Counsel personally review each revision.

VA does not support section 3(a). This section is duplicative and unnecessary, as the Board already maintains a quality review program conducted by the Board's Office of Assessment and Improvement. The quality review program and the quality

assurance rate are included in the Board's Congressionally-mandated annual reports. The Board's quality review program reviews Board decisions prior to dispatch to identify clear and unmistakable errors, customer service errors, and process protection errors. The Board presently works to ensure that identified errors are reviewed prior to a decision being issued through issuance of a memorandum identifying the error with recommended actions to cure the error. Its current quality assurance program has been in place for decades, has evolved over time as the law and caseloads have changed, and is robustly documented with statistics and procedural manuals that are publicly available and published (including in CMRs). The entire program was recently reviewed by the Government Accountability Office (GAO) over the course of about 18 months and further refinements are being made to the program as a result of that review and a November 29, 2024, GAO report. It is unclear how this legislation might disrupt or potentially limit these longstanding efforts.

VA does not support section 3(b). This section is duplicative of the Board's current efforts. The Board already maintains a robust training program implemented by its Professional Development Division. This program delivers Board-wide training covering a variety of topics, such as the AMA and the PACT Act, as well as issue-based training such as special monthly compensation and musculoskeletal ratings. Additionally, VLJs participate in an annual multi-day training program. The training program is designed to provide ongoing education on procedural and substantive areas of Veterans' law and enhance judges' issuance of sound decisions requiring training on the "correct adjudication of appeals" implies that there is a correct outcome in any given appeal before the Board. As stated above, the ultimate outcome of a particular appeal is based on the judge's factual findings for that specific appeal and the application of the law to those facts. Reasonable minds may differ on a fact-specific outcome without one being "correct" and the other being or "incorrect." The Board already provides training that incorporates legal errors identified through the Board's quality review program, as well as on appeals remanded to the Board from the Veterans Court. Such training is provided in Board-wide trainings, monthly digests, monthly tips, and special alerts. In recent years, the Board has delivered trainings targeting the most common errors identified in the quality review process, as well as the precedential cases cited most often in Court of Appeals for Veteran Claims decisions and Joint Motions for Remand.

Further, VA notes the Committee's intent regarding proposed 38 U.S.C. § 7101a(h)(1), which prohibits the performance review board from considering the timeliness and quality of any Board member's work when reviewing the performance of a covered employee. As drafted, it would appear the bill precludes the review board from considering whether a covered employee prepared untimely or poor work product for a Board member's review and final signature.

VA does not object to section 3(c).

VA does not support section 3(d).VA notes that the Board currently provides remand data in its annual report. This proposal essentially would add a requirement that the Board independently review every issue remanded in a Board decision to legally

evaluate whether, in the opinion of the judicial reviewer, any of the remands were "unnecessary" and to then to report "the number of decisions of the Board to remand a claim…determine[d] to be unnecessary." It further implies this judicial review and reporting should be done by "the Chairman of the Board and the head of [VBA's] Office of Review of the Veterans Benefits Administration." Vesting VBA or its subcomponent Office of Appellate Review the judicial authority to review Board directives for necessity would undermine the Board's 90-year jurisdiction of being the "final" authority to make findings of fact or law on benefits and services administered by the Secretary. Even if the provision were revised to correct this legal oversight, the required judicial review of each of those independent legal remand determinations by Board judges every year would be resource intensive and further delay other appeal reviews and adjudications. Last year, the Board adjudicated 103,245 appeals and is on track to adjudicate 111,000 appeals this year. It is important to note that most appeals have more than one issue and that it is common for individual issues to be resolved in different ways. In other words, many Board appeal decisions involve mixed results, with some issues granted and/or denied and other issues where a remand is more appropriate or legally required. Approximately 57,000 appeals adjudicated during FY 2023 required at least 1 issue be remanded. Requiring the Chairman or other Board Member judges to independently review and advise or determine whether each remand is appropriate require sufficient personnel resources be diverted to complete case file reviews that essentially amount to "second opinions." Using last year's data as a benchmark, that would require 57,000 additional reviews and opinions to be rendered by scarce judicial resources and would necessarily lead to at least a 50% reduction in the number of appeals that could be adjudicated. This, in turn, would lead to an exponential growth in pending appeals, all at a time when the Board has started to reduce the pending appeals inventory for the first time in 5 years.

VA does not support section 3(e). Implementation of this section would slow the adjudication of appeals and negatively impact Veterans. Additionally, it is unclear whether there are specific metrics the Committee has in mind that would satisfy the requirements of a plan to improve the quality of the Board's remands. Similar to subsection (d) of the bill, if the Committee only intends for this plan to apply to decisions on claims pertaining to VBA claims rather than VBA and VHA claims, VA recommends stating so clearly.

Conclusion

This concludes my statement. We thank the committee for your continued support of programs that serve the Nation's Veterans. My colleagues and I are prepared to respond to any questions you may have.