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DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE

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Good morning, Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to present our views on eighteen bills that would impact various programs and services of the Department of Veterans Affairs (VA). Joining me today are Mr. Jeffrey London, Executive Director of Medical Disability Examination Office, Veterans Benefits Administration; Mr. Kevin Friel, Deputy Director of Pension and Fiduciary Service, Veterans Benefits Administration; and Ms. Kristina Messenger, Deputy Executive Director, Operations, Compensation Service, Veterans Benefits Administration.

H.R. 2971 Veterans Claims Education Act of 2023

This bill would amend 38 U.S.C. § 5103A to include specific notice requirements for VA to provide to unrepresented claimants upon receipt of an initial claim and require VA to regularly maintain an easily accessible online tool to allow claimants to search a list of accredited representatives that would be updated quarterly. The bill would provide definitions for "accredited person" and "represent" applicable to amended section 5103A. The bill would also direct VA to add a "warning" regarding fees that may be charged by accredited agents and attorneys to all VA web portals through which an individual may file a claim for certain VA benefits. The bill would require that the warning link the aforementioned search tool for finding accredited representatives and link a website for reporting unaccredited entities who prepare, present, or prosecute VA benefits claims. Finally, the bill would require VA to review VA accreditation under 38 U.S.C. § 5904 and submit to Congress recommendations for legislative or administrative action for improvements.

VA supports this bill, subject to amendment, and subject to the availability of appropriations.

VA generally supports the intent of this bill, which is consistent with VA's own efforts to warn Veterans and claimants about predatory practices and connect them with VA-accredited representatives. However, VA requests clarification of certain provisions of the bill and recommends removal of certain provisions where the requirements have already been met by current practice or required by existing law.

As an initial issue, 38 U.S.C. § 5901 was amended in November 2023 to require that anytime a claimant logs into a VA website or online tool, such website or online tool would issue to the claimant: (1) a warning of potential predatory practices that violate 38 U.S.C. chapter 59; (2) a link to an online VA tool through which the claimant may report an individual who violates 38 U.S.C. chapter 59; (3) a link to an online VA tool through which the claimant may search for an agent, attorney, or entity that is recognized by VA for the preparation, presentation, or prosecution of VA claims; and (4) a link to a VA website or online tool that provides final disciplinary decisions for VA-recognized agents, attorneys, and entities. VA requests clarification as to the intended interplay, if any, of the bill with the existing law.

The bill would require upfront notification on initial claims to claimants about the availability of VA accredited representatives and Veterans Service Organizations (VSOs). VA agrees that such a proactive approach helps ensure that claimants, especially those without a VA-accredited representative, are informed from the outset about their options for representation. However, this requirement would be largely duplicative of VA's current practices. For example, for disability compensation claims, VA already provides, on VA Form 21-526EZ, information regarding representation and a link to VA's online search tool.

The bill would require VA to provide the web address of a publicly available VA website through which a claimant may report to VA an unaccredited person who represented the claimant and any fee charged for such representation. However, VA's current enforcement authority against these unaccredited individuals and organizations is limited. VA sends them a cease-and-desist letter informing them of the law and requests that, to the extent they are violating it, they stop. Currently, absent a statute specifically criminalizing these actions by unaccredited actors, VA and its Federal partners lack effective tools to regularly take more stringent actions against these actors for these violations of VA law. VA is concerned that encouraging claimants to report their complaints to VA, without also implementing a specific Federal criminal prohibition that targets this type of wrongdoing, may confuse Veterans into thinking that VA may be able to provide recourse for them. This may deter them from reporting their complaints to other enforcement entities that may be better positioned to take more meaningful action on their behalf (for example, state attorneys general for possible violations of state laws, the Federal Trade Commission for possible fraud or scams, or the Consumer Financial Protection Bureau for issues with debt collection or other consumer financial products and services). VA notes that the fiscal year (FY) 2025 President's Budget request for VA includes a legislative proposal to "Reinstate penalty for certain acts." LegSum-20.

Also, the bill would require VA to maintain an online tool to search for VA-recognized VSOs and their representatives, claims agents, and attorneys that is already available. VA understands that this tool is important to Veterans and claimants, and VA is in the process of improving the website interface for this tool to make it easier to use. The "Find a Rep" feature was launched in March 2024, and enhanced in May 2024 to include the Veteran's representation status. In the first quarter of FY 2025, VA aims to

include the online digital submission of VA forms for appointing representation. Importantly, the information for the "Find a Rep" tool pulls from the same data system as the long-standing web search tool on OGC's webpage, located at: https://www.va.gov/ogc/apps/accreditation/index.asp. The link for the OGC website is included on both forms that claimants use to appoint representation. Claimants may currently use either tool to search for VA-recognized VSOs and their representatives, claims agents, and attorneys. The bill would require that the online tool be updated at least once each calendar quarter. The database supporting VA's current search tools is continuously updated based on requests for changes in accreditation information and through annual compliance checks relating to accreditation. Currently, based on changes in the data, the OGC's search tool is updated every 72 hours, and the "Find a Rep" tool is updated weekly.

The bill's requirement that, in each VA web portal through which an individual may file a claim for a benefit administered by the Veterans Benefits Administration (VBA) or Veterans Health Administration (VHA), VA place a warning regarding fees an agent or attorney may charge for assistance in filing such a claim is similar to VA's existing webpages discussed previously. Currently VA's webpage on accredited representatives (https://www.va.gov/get-help-from-accredited-representative/) provides a link to FAQs (https://www.va.gov/resources/va-accredited-representative-faqs/), which provides information for claimants on when an accredited attorney or agent may charge a fee and how to file a complaint if a claimant believes their VA-accredited representative acted unethically or violated the law. Additionally, OGC's long-standing webpage at https://www.va.gov/ogc/accreditation.asp provides information on when fees may be charged. Last, because benefits claims are often submitted to VHA differently than claims to VBA, VA recommends that this requirement be limited to claims for benefits administered by VBA.

The bill would require VA to review and provide to Congress, within 180 days of enactment of the bill, recommendations for legislative or administrative action regarding section 5904, which pertains to accreditation of claims agents and attorneys. This provision is unnecessary. The Government Accountability Office is currently reviewing the OGC ADF program and developing recommendations for the program. In addition, for at least the past five years OGC has made recommendations for legislative change through the President's Budget request for VA and continues to recommend those proposals.

Finally, VA looks forward to working with Congress to adjust some details of this bill. As such, VA welcomes the opportunity to provide technical assistance on this bill, to include several minor edits that are not discussed here. VA roughly estimates costs of between $4.8M and $5.3M annually. If this legislation is passed without funding, VA would need to de-prioritize other Veteran-facing initiatives.

H.R. 6362 Protecting Benefits for Disabled Veterans Act

This bill would amend chapter 11 of 38 U.S.C. by codifying total disability due to individual unemployability (TDIU), a rating currently available in agency regulations, in a new section 1166. Much of what the bill does is consistent with what is currently established in agency regulations. While VA has no concerns with codifying the TDIU benefit in statute, VA has substantive concerns on several points of deviation between the current regulatory structure and the proposed bill. Where certain provisions currently in regulation are not included in new section 1166, it is unclear whether Congress intended to remove authority for those provisions or if the intent was to allow VA to further define terms and requirements in accordance with current regulation when the statute is silent.

VA supports this bill subject to amendment, and subject to the availability of appropriations.

Most potentially problematic is that the new section's primary criteria would authorize VA to assign TDIU when a Veteran is unable to secure or maintain gainful employment "as a result of, in part or in whole," a service-connected disability. This would seem to permit a TDIU rating for Veterans who are unemployable in part due to *non*-service-connected disabilities. VA is concerned that providing a total disability rating for VA compensation based in part on non-service-connected disabilities may conflict with statutes indicating that VA disability compensation is paid for service-connected disability. *See* 38 U.S.C. §§ 1110, 1114, 1153, 1154, and 1155.

Consistent with current regulation, the Veteran would have to have a service-connected disability rated at least 60 percent disabling, or two or more service-connected disabilities with at least one rated at least 40 percent disabling and others that when combined are rated at least 70 percent disabling. Also consistent with current regulations, the single 60 percent or 40 percent disability could be established based on disabilities of one or both upper or lower extremities, disabilities resulting from common etiology or a single accident, disabilities affecting a single body system, or multiple disabilities incurred as a prisoner of war. However, the bill leaves out an additional provision allowed in regulation, that the single 60 percent or 40 percent disability can also be established based on multiple injuries incurred in action.

The bill would also give the Secretary authority to assign a total disability rating to Veterans who do not meet the primary criteria if they are able to secure or maintain only marginal employment or, despite being able to secure or maintain substantially gainful employment the Secretary nonetheless determines that a total rating is appropriate considering the totality of circumstances, including total household medical expenses and the cost of living in the area in which the Veteran resides. The bill would therefore give broad discretion to the Secretary to award TDIU.

Currently, if a Veteran has a service-connected disability that meets the eligibility criteria and earns income that does not exceed the amount established by the Census Bureau of the U.S. Department of Commerce as the poverty threshold for one person, the Veteran is considered only marginally employed and may be entitled to TDIU. Veterans

may also be found to be marginally employed when their income exceeds the poverty threshold if their employment is in a protected environment such as a family business or sheltered workshop. In determining entitlement to TDIU, marginal employment does not qualify as substantially gainful employment. A recent decision of the U.S. Court of Appeals for Veterans Claims clarified that employment in a protected environment means employment in a lower-income position that, due to the Veteran's service-connected disability or disabilities, is shielded in some respect from competition in the employment market. While the draft bill's definition of marginal employment does not include this clarification, VA could further clarify the term in regulation.

VA is concerned with the provision that will allow TDIU to be granted if the Veteran maintains substantially gainful employment if VA determines appropriate after consideration of the totality of circumstances (including total household medical expenses and the cost of living in the area in which the veteran resides). This would require claims processors to take into consideration medical expenses and cost of living expenses for such determinations. While VA could define the parameters of this process via rulemaking to the extent necessary, the administration of these provisions will be unavoidably complex and resource intensive. Claims processors would be required to conduct a financial analysis with no assurance that records provided by the Veteran reflect a complete accounting. Further, Veterans that live in areas with a higher cost of living may disproportionately receive Individual Unemployability (IU). Many may see this outcome as inequitable. Thus, while VA acknowledges that this is a discretionary provision, VA has significant concerns and recommends this provision be removed from the bill.

The bill would also establish important prohibitions. It would preclude the Secretary from considering the age of the Veteran or the Veteran's eligibility for any retirement benefit, including Social Security. To clarify, VA does not preclude TDIU based on age or retirement status or receipt of Social Security. Per regulation, age cannot be considered as a factor in service-connected claims. Veterans who are 62 or older may therefore be eligible to receive Social Security and VA TDIU benefits. VA has no concerns with this provision in the bill as it reflects current practice.

Finally, this bill leaves out the current regulatory extra-schedular consideration for Veterans who are unemployable due to service-connected disabilities but fail to meet the required evaluation percentages for eligibility. Current regulation mandates that claims processors should submit to the Director, Compensation Service, for extra-schedular consideration all cases of Veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the requisite disability percentage standards for TDIU. It is unclear if it was the Congress's intent to remove this authority for such consideration. While, in general, VA could likely maintain TDIU on an extra-schedular basis absent it being explicitly mentioned in statute, this bill could be construed to effectively prohibit extra-schedular TDIU. Briefly, the increased discretion provided in subsection (c)(2)(B) is available only for disabilities described in subsection (a)(2). Subsection (a)(2) does not contain an extra-schedular route to TDIU, but instead requires the current schedular predicates be met. This bill, therefore, could be read to

have the perverse effect of allowing people who are currently able to maintain substantially gainful employment to receive TDIU because they live in a high cost of living area, but prohibit people not able to maintain substantially gainful employment from receiving TDIU if their disabilities do not meet schedular criteria.

VA is open to collaboration on this draft bill to clarify the Committee's intent and resolve points of deviation between the draft bill and the current regulatory structure.

Mandatory and discretionary costs are associated with H.R. 6362, but additional time would be needed to estimate costs.

H.R. 6507 Mark Our Place Act

This bill would eliminate the date limitation in 38 U.S.C. § 2306(d)(5)(C)(i), under which VA is currently authorized to provide a distinct headstone, marker, or medallion for the graves of Medal of Honor recipients buried in private cemeteries, or to replace a previously furnished headstone, marker, or medallion if the original does not signify the decedent's status as a Medal of Honor recipient, but only if those recipients served on or after April 6, 1917.

VA supports this bill, subject to the availability of appropriations.

This bill would ensure that the gravesites of recipients of the Medal of Honor include an appropriate recognition. The Medal of Honor is the highest award for valor in action against an enemy force that can be bestowed upon an individual serving in the Armed Forces of the United States. The award is generally presented to its recipient by the President of the United States of America in the name of Congress. Since 1976, VA has provided distinctive Government-furnished headstones and markers for Medal of Honor recipients to recognize this prestigious honor. VA's current practice is to inscribe the headstone or marker with the term "Medal of Honor," accompanied by a graphic representation of the award based on the individual's unique branch of service design. If the headstone or marker is marble or granite, an application of gold Lithochrome paint is applied to the entire inscription. VA has also developed a medallion that signifies a Veteran's status as a Medal of Honor recipient. By removing the date of service restriction, VA would be able to ensure a visual reminder to visitors of the sacrifices made by all recipients of the Medal of Honor.

Costs to the mandatory compensation and pension account for this bill are estimated to be insignificant at $54,000 in 2025, $285,000 over five years, and $605,000 over 10 years.

H.R. 7361 Flowers for Fallen Heroes Act of 2024

This bill would establish a flower ordering program for gravesites under the purview of the American Battle Monuments Commission (ABMC).

VA defers to ABMC.

Because VA has no authority over ABMC, we respectfully defer to that organization for views on this bill.

H.R. 7729 Dennis and Lois Krisfalusy Act

This bill would amend 38 U.S.C. § 2306(b)(2) to expand eligibility for memorial headstones and markers for certain family members of Veterans and active-duty Service members. Family members eligible under this paragraph are the spouse, surviving spouse, or eligible dependent child of a Veteran, and the spouse or eligible dependent child of a member of the Armed Forces serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's or child's death. Currently, these family members are eligible if their death occurs on or after November 11, 1998. Additionally, a family member of an active-duty Service member would be eligible for a memorial headstone or marker if such family member's death occurs before October 1, 2024.

This bill would remove from the statute the earliest date of death of November 11, 1998, for a family member of a Veteran or an active-duty Service member to be eligible for a memorial headstone or marker and would extend the existing date by which an eligible family member's death must occur, so that VA can continue to provide a memorial headstone or marker for the spouses and eligible dependent children who predecease active-duty Service members. The bill would extend the date by which an eligible family member's death must occur for 10 additional years to October 1, 2034.

VA supports this bill, if amended, and subject to the availability of appropriations.

VA supports amendments to the bill to also address the October 1, 2024, date in 38 U.S.C. § 2402(a)(5) by which an eligible family member's death must occur for VA to inter eligible family members of active-duty Service members in a VA national cemetery. Furthermore, rather than simply extending the date-of-death limitations in both sections 2306 and 2402 by 10 years, VA supports amendments to remove entirely the date-of-death limitations in both sections. Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation will retain the opportunity to obtain a government-furnished memorial headstone or marker or to choose to inter their loved ones in a VA national cemetery. We note that the Preserving Veterans' Legacies Act would remove the October 2, 2024, date limitation from section 2402(a)(5) and that section 101 of the Veterans' Burial Improvement Act of 2024 would remove that date limitation from both section 2306 and section 2402. Those bills are discussed separately in this testimony. VA would need additional time to estimate mandatory costs associated with this bill.

H.R. XXXX Dayton National Cemetery Expansion Act of 2024

This bill requires the Secretary of Veterans Affairs to enter into an agreement with the Montgomery County Land Bank for the transfer of certain land near Dayton National Cemetery to the Department of Veterans Affairs once such land is acquired by the Montgomery County Land Bank. VA would be required to use the land for expansion of the Dayton National Cemetery.
VA opposes this bill.

VA policy on expansion and establishment processes are found in NCA Directive 3001, Department of Veterans Affairs National Cemetery Establishment, Expansion, and Replacement ("Directive 3001"). This directive provides statutory references, establishes mandatory policy for the establishment, expansion, and replacement of VA national cemeteries, as well as detailed decision criteria for expanding, replacing, or closing an existing national cemetery.

VA has no need to acquire additional land for expansion of the Dayton National Cemetery at this time or in the foreseeable future. In addition to being unnecessary, acquisition of the land identified in this bill would raise several significant concerns. The National Cemetery Administration monitors the rates at which each cemetery will deplete capacity for each type of burial it provides (e.g., casketed burials in pre-placed crypts or in "traditional" burial sites (i.e., without a pre-placed crypt), in-ground burials of cremated remains, columbarium spaces for cremated remains, etc.). Dayton National Cemetery has burial space available for every burial option until at least 2051, at which time the cemetery could deplete its available space for traditional casketed burials; casketed burials in pre-placed crypt sites are estimated to be available until 2063. VA estimates depletion of other burial options extend even further in the future. In addition, NCA and VHA are discussing transfer of land from the medical center to the cemetery which could move the depletion dates out even further. This approach is a standard practice and established at numerous locations within VA.

VA has identified other concerns with this bill, including the speculative nature of the land acquisition by the Montgomery County Land Bank. The bill does not contain any time limits on the acquisition of the land by the Land Bank, yet VA is mandated to enter into an agreement with the Land Bank to take possession of the land, even if VA still has no need for the land by the time the Land Bank has acquired all the parcels. Although the Land Bank must transfer the land at no cost to VA, acquisition costs are not the only costs VA must consider. VA would have to clear the land of structures and subsurface infrastructure, which may not be necessary on other land that VA could consider. VA would be required to maintain the land once acquired, creating a financial burden on VA, especially if VA still had no need for the land or, more concerningly, if VA did have need for land but this parcel was found to be unusable as cemetery land. Not all land is amenable to uses that involve burial of human remains. The land could have hidden hazards, such as chemicals from previous residential or commercial uses, that make the land unusable. The existing infrastructure, such as sewers and streets might need remediation. These costs could burden VA despite the "no cost" nature of the initial land transfer.

The parcel of land the bill describes includes occupied single-family homes and happens to be on the city's west side, which, according to Dayton's mayor, and supported by available demographic information, is home to much of the city's African American population. VA is concerned about the potential for this bill to be used to force families from their homes, especially if the message to those families is that VA "wants" their land. VA remains committed to the planned development of our currently owned land to meet local burial needs before investigating options for new acquisition.

H.R. XXXX Preserving Veterans' Legacies Act

Section 2 of this bill would authorize VA to inter spouses and dependent children who predecease active-duty Service members by removing the existing date-of-death limitation of October 1, 2024, currently in 38 U.S.C. § 2402(a)(5).

VA supports section 2 of this bill, if amended, and subject to the availability of appropriations.

VA supports section 2 of this bill, but only if it is amended to also eliminate the October 1, 2024, date-of-death limitations contained in 38 U.S.C. § 2306(b)(2)(B) and (C), thus allowing VA to provide memorial headstones and markers for the same individuals, regardless of their date of death. Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation will retain the opportunity to obtain a government-furnished memorial headstone or marker or to choose to bury their loved ones in a VA national cemetery. We note that H.R. 7729, discussed above, would extend but not remove the October 1, 2024, date limitation from section 2306(b)(2)(B) and (C) and that section 101 of the Veterans' Burial Improvement Act of 2024 would remove that date limitation from both section 2306 and section 2402. Those bills are discussed separately in this testimony.

Section 3 of the bill would amend 38 U.S.C. § 2306 to allow VA to provide a headstone or marker for group burials if each individual in the group is eligible for a headstone or marker.

VA supports section 3 of the bill, and subject to the availability of appropriations.

The primary mission of NCA is to provide eligible individuals with final resting places in national shrines, including provision of a headstone or marker, by maintaining a system of national cemeteries under 38 U.S.C. § 2400. In addition, VA provides headstones and markers for the graves of individuals listed in 38 U.S.C. § 2306. In some instances, individuals are buried in mass gravesites, such as trench burials that were used during the Civil War or gravesites in which remains (generally cremated remains) are commingled. NCA is also aware of locations that contain multiple individual graves, where it is impossible to determine who is buried in each particular grave. Often in these situations, the number of individuals in the common gravesite makes provision of individual headstones infeasible—there simply may not be room for dozens or even

hundreds of individual headstones. However, VA currently has no clear authority to furnish a group burial headstone or marker for these eligible decedents. Because VA is not authorized under current section 2306 to furnish a group burial headstone or marker, VA has been unable to fulfill our mission to those who have earned the benefit through service and sacrifice.

VA would need additional time to estimate mandatory costs associated with this bill.

H.R. XXXX Ensuring Veterans' Final Resting Place Act

This bill would amend the current authority under which VA provides, in lieu of burial and other memorialization, a plaque or urn to commemorate the memory of a Veteran whose remains are cremated and not interred. This bill would allow a family that received a plaque or urn to reimburse VA for the cost of the plaque or urn to reinstate VA's ability to provide burial or other memorialization benefits for the Veteran.

VA does not support this bill.

Although VA shares Congress' apparent view that this authority should be amended, we do not support this bill as the best way to do so. This bill would place VA in the position of selling urns and plaques, which is neither an appropriate role for VA nor a solution to the inequity posed by this statutory authority.

Congress is aware of the negative comments VA received when it published a notice of proposed rulemaking implementing the plaque-and-urn benefit. VA took specific steps in its regulatory documents to ensure members of the public would be aware that acceptance of the plaque or urn benefit would be in lieu of other memorialization or burial benefits. Most of the comments received on the rulemaking raised concerns regarding the waiver of future eligibility for burial or memorialization benefits through acceptance of a commemorative plaque or urn. We appreciate Congress' effort to introduce this bill to potentially address the concerns but note that it does not address all of them.

This bill could further exacerbate the original problems by allowing those who can afford to "reimburse" VA for the cost of the plaque or urn to retain the right to burial and memorialization benefits for their Veteran. Others, who could not afford that, would still receive only this limited benefit, which would create inequities based on the financial circumstance of surviving family members. Allowing for reimbursement would similarly not address some of the long-term issues of which VA became aware as regulatory implementation progressed, such as urns containing cremated remains being abandoned by future generations and yet the Veteran being ineligible for interment in a national cemetery or for a VA-furnished marker in any cemetery.

In addition, casting VA as a purveyor of plaques and urns places the Federal Government in competition with local funeral providers and with sellers of awards and signs, potentially causing financial harm to these typically local and small businesses as

families choose to “buy” an urn or plaque from VA. We note that VA’s provision of an urn to contain cremated remains is an inequitable benefit as VA does not provide a casket for remains that are not cremated. Underscoring all of this, VA is adamantly opposed to the unprecedented act of allowing someone to “buy” a VA benefit or forcing surviving family members to pay VA to reinstate a Veteran’s eligibility for burial and memorialization benefits.

Although VA testified in 2020 before this committee in opposition to the bill that introduced this benefit, we have done our best to implement the law that was enacted. VA understands the desire of some survivors to retain the cremated remains of a loved one, as well as their desire to feel VA has provided appropriate recognition of their loved one’s service. VA notes that two benefits are currently available to families, a burial flag, and a Presidential Memorial Certificate (PMC), neither of which would require families to forfeit other benefits. We support Congress’ efforts to provide a meaningful benefit for these survivors, even if it is not the existing burial flag or PMC, but we are concerned that this bill would not only fail to resolve the problems with the original legislation but would also create additional issues. VA would like to work with the Committee to determine an equitable solution.

H.R. XXXX. Modernizing All Veterans’ and Survivors’ Claims Processing Act

This bill would direct VA to submit a plan to both the House and Senate Committees on Veterans’ Affairs regarding the feasibility of expanding VBA’s Automated Decision Support (ADS) technology beyond disability compensation claims to all VA benefit programs and services, the Debt Management Center program, and VA’s appeals processes. The plan would be due to Congress within 180 days of the bill’s enactment with annual updates scheduled for two years following the initial report’s submission.

VA does not support this bill.

ADS technology was developed specifically in accordance with the applicable laws, regulations, policy, and procedures related to the processing of claims for disability compensation benefits and may not readily transfer to other VA benefit programs, services, debt collection activities, or appeals. VA has significant concerns with the bill as it creates redundancies and overlap with VA’s current efforts to modernize VBA informational technology systems as part of Public Law 117-168, § 701(b). The 701(b) plan can be located here: https://www.govinfo.gov/content/pkg/CMR-VA1-00187554/pdf/CMR-VA1-00187554.pdf. VA's Office of Information and Technology (OIT), in partnership with VBA, has implemented a five-year IT Modernization Plan, covering Fiscal Years 2023 to 2027, which provides for an incremental approach to innovate and streamline the claims process and IT systems across VBA to include debt collections and appeals. Requiring VBA to review and analyze VA’s benefit programs, debt collection activities, and appeals process as well as all corresponding IT systems to determine whether ADS technology might be reconfigured would duplicate the efforts already underway.

H.R. XXX Veterans 2nd Amendment Restoration Act

This bill would provide 30 days for the Secretary to notify the Attorney General that VA's reporting to the National Instant Criminal Background Check System (NICS) under the Brady Handgun Violence Prevention Act of 1993 (Brady Act) was "improper" because individuals reported by VA were not adjudicated as mentally defective. The authority to update, correct, modify, or remove records from NICS is under 34 U.S.C. § 40901(e)(1)(D). Under this statute, VA reports all individuals previously reported to NICS if the criterion for reporting the individual no longer applies. To do so, VA weekly uploads a file to the FBI Law Enforcement Enterprise Portal to identify beneficiaries: whose prior ratings of incompetency have changed (by rating decision); who have died; and who successfully petitioned to have their firearm disability restored under the administrative process VA provides pursuant to the NICS Improvement Amendments Act of 2007.

VA opposes this bill.

VA reports individuals to NICS because of requirements imposed by the Brady Act, Public Law 103-159. Among other changes, the Brady Act imposed waiting periods and background records checks on the purchase of firearms from federal firearms licensees. These public safety measures help prevent persons prohibited from possessing firearms from accessing them and thereby help communities safe.

VA's reporting of individuals determined unable to manage their funds to NICS was required by the Brady Act and implementing regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) defining terms under 18 U.S.C. § 922(g). Beginning in March 2024, VA only reports individuals who have both been determined to lack the mental capacity to manage their own VA benefits, and who also have been determined by order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction to be a danger to self or others per the restrictions on VA's appropriation provided in Section 413 of Division A of the Consolidated Appropriations Act, 2024 (Public Law 118-42).

For background, NICS is a computer system established under the Brady Act used to query federal, state, local, tribal, and territorial criminal history record information and other records to determine an individual's eligibility to transfer, receive, or possess firearms and ammunition. The ATF regulations implementing the Brady Act provide the following definition for the term "adjudicated as a mental defective" under the Gun Control Act, 18 U.S.C. §§ 922(d)(4) and (g)(4): "[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease . . . lacks the mental capacity to contract or manage his own affairs." 27 C.F.R. § 478.11. In issuing this implementing regulation, ATF confirmed that "[VA] correctly interpreted the proposed definition of 'adjudicated as a mental defective' to mean that any person found incompetent by [VA] under 38 C.F.R. § 3.353 will be considered to have been adjudicated as a mental defective for purposes of [18 U.S.C. §§ 922(d)(4) and (g)(4)].

[38 C.F.R. § 3.353] provides that a mentally incompetent person is one who, because of injury or disease, lacks the mental capacity to contract or manage his or her own affairs." 62 Fed. Reg. 34,634, 34,637 (June 27, 1997). The Department of Justice confirmed that mentally incompetent beneficiaries have been adjudicated as a mental defective under the Gun Control Act and confirmed VA's obligation to report them to NICS remains binding.

Section 413 of Division A of the Consolidated Appropriations Act, 2024 (P.L. 118-42), prohibits VA from using appropriated funds to continue its prior practice of weekly reporting of every mentally incompetent beneficiary to NICS. Section 413 was an appropriation policy rider derived from H.R. 705 of the 118th Congress, 1st Session, the "Veterans 2nd Amendment Protection Act of 2023." That bill would have amended Chapter 55 of title 38, United States Code, by inserting a new section 5501B, by prohibiting the use of funds appropriated under the Act to report mentally incompetent beneficiaries, unless a judge, magistrate, or other judicial authority of competent jurisdiction finds that the beneficiary is a danger to himself, herself, or others. Pursuant to its practice to comply with applicable Federal law, VA complies with Section 413 of Division A of the Consolidated Appropriations Act, 2024.

This bill, the Veterans 2nd Amendment Restoration Act, would require the Secretary of Veterans Affairs to notify the Attorney General that VA's reporting of incompetent beneficiaries "was improper under the law because such individuals were not adjudicated as a mental defective under 18 U.S.C. 922(g)." VA's reporting was not improper. Mentally incompetent beneficiaries are prohibited persons under the Gun Control Act pursuant to the ATF's regulatory definition. Neither 18 U.S.C. 922(g) nor the ATF's implementing regulation impose any requirement that a judge, magistrate, or other judicial authority of competent jurisdiction find that the beneficiary is a danger to himself, herself, or others. That requirement exists solely within Section 413 of Division A of the Consolidated Appropriations Act, 2024, and serves only to prohibit the use of appropriated funds for VA to comply with its Brady Act reporting obligations.

This bill would thus require the Secretary of Veterans Affairs to erroneously notify the Attorney General that it erred by reporting incompetent beneficiaries to NICS. VA did not err; if this bill is passed into law, the Secretary of Veterans Affairs could not comply. VA understands that the sponsors of this legislation seek to restore the ability for persons VA has deemed incompetent to lawfully possess firearms. Pursuant to the NICS Improvement Amendments Act of 2007, VA already provides individuals an opportunity to petition for relief from that prohibition.

H.R. XXX Safeguarding Veterans 2nd Amendment Rights Act

This bill would prohibit any VA officer or employee, in the course of their duties, from taking part in proceedings relating to a state gun confiscation law. The bill broadly defines "gun confiscation law" to include any State law that provides the authority for the removal of firearms through a "risk-based, temporary, and preemptive protective order." This bill will hinder the ability of VA officers and employees, including mental health

providers and police officers, from discharging their duties and thereby risk the safety and security of Veterans, their families, and their communities. VA opposes this bill, which could prevent VA from providing appropriate care for some of our most vulnerable Veterans.

VA opposes this bill on the basis of Veteran safety.

With VA's top clinical priority being Veteran suicide prevention, VA continues a "whole of VA" approach to preventing Veteran suicide that integrates strategic planning, program operations and program evaluation across VA, including the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). This strategy focuses on the safety of America's Veterans with an emphasis on preventive measures. Increasing the time and distance between a person with thoughts of suicide and their access to lethal means reduces their suicide risk and saves lives. Scientific research has shown that mental health conditions are one clear risk factor for suicide and use of a firearm in a suicide attempt significantly reduces the chance of survival. Most Veterans who die by suicide die by firearm. Veteran firearm suicide mortality rates exceeded all other method-specific suicide rates in each year from 2001-2021. Firearm suicide death made up 72.2% of the overall Veteran suicides in 2021 compared to 52% of non-Veteran U.S. adult suicides. It is VA's mission to care for our Veterans and their families. This bill runs counter to VA's suicide prevention strategy and places Veterans, their families, and their communities at risk with by restricting VA officers and employees from using their professional judgment and experience to protect our most vulnerable.

VA interprets this bill as an effort to prevent VA officers and employees from participating in Extreme Risk Protection Order (ERPO) proceedings in the 21 states and the District of Columbia that have enacted such laws. ERPOs temporarily prohibit a person who is behaving dangerously or is believed to be at risk of committing violence from possessing or purchasing firearms and to provide a process for the removal of firearms already in the person's possession. ERPO laws have been enacted by state legislatures with broad bipartisan support, such as Indiana's Jake Laird Law, Ind. Code Ann. §§ 35-47-14-1, *et seq.*, which was enacted in 2005 with unanimous support in the Indiana House of Representatives. ERPO proceedings have been successfully initiated by law enforcement officers in communities throughout the country, including rural and non-rural jurisdictions, to maintain safe communities. The Bipartisan Safer Communities Act, Public Law 117-159, expanded eligibility for the Edward Byrne Memorial Justice Assistance Grant Program to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for qualifying ERPO programs.

Another example of an ERPO is Florida's Marjory Stoneman Douglas High School Public Safety Act. *See* Fla. Stat. § 790.401. Under its terms, only a law enforcement officer or a law enforcement agency, as defined in Florida law, may petition for a risk protection order against a person who "poses a significant danger of causing personal injury to himself or herself or others." This bill, if enacted, would prohibit VA police

officers from participating in any capacity in using Florida's law to initiate ERPO proceedings, even when faced with clear and convincing evidence that a person poses a significant danger based on recent threats or acts of violence toward self or others; serious mental illness; reckless firearm use, display, or brandishing; violations of domestic violence protective orders; prior violence arrests; alcohol or other substance use disorder; or the recent acquisition of firearms. Restricting VA police officers from participating in ERPO proceedings, when such proceedings are necessary in their professional judgment as law enforcement officers, is dangerous and risks tragedy to Veterans, their families, and the community.

Beyond prohibiting the *initiation* of ERPO proceedings by recognized petitioners, including law enforcement and healthcare professionals, this bill would restrict VA officers and employees, including police officers and mental health providers, from testifying or otherwise providing evidence in ERPO proceedings brought by others. Under Illinois' Firearm Restraining Order law, 430 Ill. Comp. Stat. Ann. 67/1 - 67/80, family members, people with minor children in common, people who reside together, and law enforcement officers and agencies may petition for an ERPO. This bill would prohibit VA officers and employees from participating in proceedings brought by worried family members, co-parents, cohabitants, or local law enforcement. Accordingly, VA clinicians would be unable to offer relevant medical evidence for the judicial authority's consideration. Compared to non-Veteran adults, Veterans are more likely to own firearms. Estimates derived from 2015 National Firearm Survey reports and VetPop data suggest that in 2015 firearm ownership was approximately 62% higher for Veteran men than for non-Veteran men, and it was approximately 107% higher for Veteran women than non-Veteran women. This restriction could thus leave some of our most vulnerable Veterans and their families at dangerous risk of suicide and violence.

Moreover, while VA interprets this bill as an effort to prevent VA officers and employees from participating in ERPO proceedings, it also encompasses other civil and criminal proceedings. ERPO laws are based on domestic violence protection order laws, which have been in place in all 50 states for decades and are a well-established tool for protecting people experiencing intimate partner violence. In fact, just last month, in *United States v. Rahimi*, Case No. 22-915, the Supreme Court upheld the constitutionality of disarming persons subject to domestic violence protection orders. Domestic violence protection order laws provide authority for the removal of a firearm through a risk-based, temporary, and preemptive protective order – and thus fall within this bill's categorical restriction.

Like its ERPO, Illinois' domestic violence protective order statutory scheme, created by the Domestic Violence Act of 1986, is instructive. Under it, a "person who has been abused by a family or household member" may petition for an order of protection. *See* 750 Ill. Comp. Stat. Ann. 60/201, 60/203. Among other remedies, a reviewing court can issue a risk-based, temporary, and preemptive order of protection prohibiting the respondent from "possessing any firearms during the duration of the order." If enacted, this bill would prohibit VA officers and employees, including police officers and clinicians, from testifying or otherwise offering evidence in domestic violence protection

order proceedings, which exist in some form in all 50 states and the District of Columbia.

Additionally, involuntary commitment standards and procedures are provided by state law. VA utilizes these state law procedures when it is necessary to initiate an involuntary commitment proceeding for an individual that is a danger to themselves or others. In Maryland, one of the possible outcomes of an involuntary commitment is that an individual must surrender firearms to law enforcement authorities. Md. Code. Ann, Health-Gen, § 10-632. The broad scope of this legislation would prevent VA from petitioning for clinically necessary medical care for Veterans in states like Maryland. This prohibition would have a significant impact on VA's ability to provide involuntary medical care and treatment on a locked inpatient mental health unit for those Veterans most in need of such care.

H.R. XXX Permanent Licensing Portability

This bill would amend title 38 by inserting after section 5103A new section 5103B, to make permanent and codify the pilot program for use of contract physicians for disability examinations, and for other purposes. VA appreciates the Committee's intent to make permanent and codify this pilot program.

VA supports this bill.

VA provides the following minor comments. Regarding the title in the new Section *5103B. Use of contract physicians for disability examinations*, VA recommends replacing "physicians" with "health care professionals," as VA utilizes a wide range of qualified medical professionals to conduct disability examinations. Regarding subsection (d) of new Section 5103B, *Mechanism for transmittal of evidence introduced by applications during examinations*, VA recommends replacing the term "Applications" with "Applicants" in the title.

No mandatory or discretionary costs are associated with this draft bill.

H.R. XXX Improving VA Training for Military Sexual Trauma (MST) Claims Act

Section 2 of the bill would require the Secretary to create a plan to improve the sensitivity training for contracted disability compensation examiners who examine veterans who are claiming entitlement to service connection for posttraumatic stress disorder (PTSD) based on military sexual trauma (MST). The plan (as well as a report on the plan to the Committees on Veterans' Affairs of the Senate and House of Representatives) would be due no later than 90 days after the date of the enactment of the bill.

Section 3 of the bill would amend 38 U.S.C. § 5103A(c) to mandate that in claims for PTSD based on an in-service personal assault, VA must assist by obtaining the claimant's service medical and personnel records.

Section 4 of the bill would require the Secretary to create a plan to improve quality assurance of contracted disability compensation examiners who examine veterans who have a history of military sexual trauma, to ensure that such veterans are not retraumatized during the medical disability examination process. The plan (as well as a report on the plan to the Committees on Veterans' Affairs of the Senate and House of Representatives) would be due no later than 90 days after the date of the enactment. Section 5 of the bill would require the Secretary to create a plan to improve training and provide annual training for all Veterans Benefit Administration (VBA) employees that process and determine service connection for disabilities resulting from MST. Additionally, no later than 90 days from enactment, the bill would require the Secretary to submit a report on this plan to the Committees on Veterans' Affairs of the Senate and House of Representatives.

VA cites concerns with this bill.

VA supports the Committee's intent to improve sensitivity training for contracted disability examination providers and to improve quality assurance of contracted disability compensation examiners who examine Veterans who have a history of MST, to ensure that such Veterans are not retraumatized during the medical disability examination process; however, VA cites concerns with certain provisions of the bill. Under current law, VA is required to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate a claim. This assistance includes obtaining all *relevant* Federal records (38 U.S.C. § 5103A, 38 C.F.R. § 3.159(c)). These records include, but are not limited to, military personnel records, service treatment records and records from other Federal agencies. In addition, 38 C.F.R. § 3.304(f)(5) outlines VA's policy on adjudication of claims for PTSD based on personal assault, providing that evidence from sources other than the Veteran's service records may corroborate the Veteran's account of the stressor incident. This regulation also states that evidence of behavior changes following the claimed assault may constitute credible evidence of the stressor, including but not limited to a request for a transfer to another military duty assignment, deterioration in work performance, etc.

Section 3 of the bill would require VA to obtain service medical records and service personnel records for *all* claims for PTSD based on in-service personal assault, deviating from the requirements for all other claimed disabilities, where such records must only be requested when they are relevant. Service treatments records are always considered in claims for compensation, and personnel records are generally requested for PTSD claims based on personal assault as such records would be relevant to the consideration of behavioral changes following the claimed assault. However, in some cases, credible supporting evidence to corroborate the stressor may be submitted by the Veteran or identified prior to requesting service personnel records.

VA cites concerns with section 3 because in some cases, service personnel records would not be necessary to substantiate the allegation of an incident, resulting in an unnecessary delay adjudicating the decision for the Veteran. This is especially true

considering that section 3 is also broader than the other sections of the bill, as its requirement relates to “personal assaults” more generally rather than MST specifically.

For these reasons, VA recommends removing Section 3.

As for section 5, VA appreciates interest from Congress in ensuring that adequate training on claims related to MST is provided for claims processors, however, this requirement is duplicative. VA notes that a comprehensive training curriculum already exists and training on PTSD and personal assault is part of the annual training requirement for claims processors.

The current VBA training curriculum contains many training modules pertaining to PTSD and personal assault, including claims based on MST. These training modules cover areas such as general development and evidence gathering, submitting examination requests, applying guidance to sympathetic reading of mental disorders, development for stressors related to personal trauma, evaluating evidence, and deciding a claim for service connection for disabilities related to MST, and much more.

VBA has developed training curricula using dynamic and practical training experiences for claims processors. This form of training enables claims processors to distinguish indicators of PTSD stressors that result from MST, such as deterioration in duty performance, requests for transfer, or substance abuse. All training content stresses the importance of complete evidence development for signs of an in-service MST event and takes a comprehensive approach to identifying evidentiary markers that indicate the possibility of the MST event. Legal and policy considerations are also included as part of the curriculum.

All initial decisions made by Rating Veterans Service Representatives (RVSRs) for MST-related disabilities require approval by a more experienced Rating Quality Review Specialist (RQRS) specializing in MST-related claims processing until the claims processor demonstrates an accuracy rate of 90% or greater. The accuracy rate is calculated based on a review of cases in which a condition claimed due to MST was either granted service connection, denied service connection, or received an increased evaluation. Further, MST claims processors are required to have three Individual Quality Reviews (IQRs) each month. These reviews determine the employee’s individual quality level as part of their overall performance evaluation. All reviews are processed and conducted by an MST trained QRS. Additional training requirements may be added based on error trends and analysis following these IQR reviews. As such, VA suggests the requirements of Section 5 are unnecessary.

H.R. XXX Simplifying Forms for Veterans Claims Act

This bill would direct the Secretary to enter into an agreement with a federally funded research and development center (FFRDC) for an assessment of forms sent to claimants, and to do so no later than 30 days after the date of enactment. It would require the FFRDC to consult with the Secretary, an expert in laws administered by the

Secretary, a veterans service organization recognized under 38 U.S.C. § 5902, and a veterans' advocacy organization, and to prepare and submit a written assessment of such forms and the recommendations of the FFRDC regarding how the Secretary may make such forms clearer and better organized. No later than 90 days after the Secretary receives the assessment, the bill would require the Secretary to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of such assessment and implement the recommendations in the assessment that comply with the laws administered by the Secretary. Finally, the bill would require the Secretary to implement such recommendations within two years after the date on which the Secretary commences such implementation.

VA cites concerns with the bill.

While VA generally supports the intent of the bill, the deadlines it imposes will be difficult to meet. VA is concerned that the bill's requirement to enter into an agreement with an FFRDC within 30 days following enactment of the bill may hinder VA's ability to identify an FFRDC most appropriate for the task. Also, section 2(c) of the bill would require the Secretary, within 90 days of receiving the FFRDC's assessment, to "implement" the FFRDC's recommendations "that comply with the laws administered by the Secretary," while section 2(d) would require the Secretary to "complete the implementation" of such recommendations within two years of such receipt. VA's concern with the proposed language as written is that any recommendations proposed within the FFRDC report must be adopted without modification. If the intent is for VA to identify which recommendations comply with the laws administered by the Secretary within 90 days, VA recommends replacing "implement" in (c)(2) with "identify." If this is the intent, VA notes that this timeline is likely infeasible as the volume of recommendations is unknown. The infeasibility of this requirement will be more significant if the recommendations include making major changes to VA forms, which could take several months. Alternatively, if the intent is for VA to begin implementation within 90 days, VA recommends replacing "implement" in (c)(2) with "begin to implement." VA recommends the language in Section (d) then be revised to align with the updated (c)(2).

As noted, the volume of recommendations from the FFRDC is inestimable and VA is concerned that the bill's mandate to complete the implementation within two years may not allow sufficient time to put all the changes into effect considering Paperwork Reduction Act requirements, OMB requirements, and existing information technology (IT) priorities. Potentially dozens of forms may be impacted and the extent of changes for each one could be substantial. VA notes that making changes to forms is a thoughtful, considered, deliberative, time-consuming, and complicated process which requires updating existing IT systems. VA must exercise caution to ensure that its forms comply with existing statutes and controlling case law.

Although the bill directs the FFRDC to make recommendations in conformity with laws administered by the Secretary, VA is concerned that it could 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. Doing so will

require detailed collaborative efforts involving multiple VA business lines that will certainly require more than 90 days, assuming the intent of (c)(2) is for VA to identify the recommendations that comply with laws administered by the Secretary within 90 days, as discussed above. VA is also concerned with the language defining covered entities.

The language also specifies 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 report could provide an unbiased third-party view, VA views research and development processes as being designed to create recommendations, not policy. Finally, it is unclear which VA entity would bear the cost or costs of the contract.

We also believe this legislation could be more clearly drafted to indicate congressional intent to have either paper or digital forms be reviewed. This legislation will require IT resources to both support the FFRDC's review and to implement its recommendations. The cost estimates for the Office of Information Technology front end are $10.2 million total over ten years.[1] The cost estimates for the Office of Information Technology back end are $7.65 million total over ten years.[2]

H.R. XXX The Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act.

This bill would amend 38 U.S.C. § 7101A to provide that the Chairman, Vice Chairman, and Members of the Board of Veterans' Appeals may employ non-supervisory staff attorneys to assist them in performing the work of the Board and requires such positions to be General Schedule (GS)-15 at the full performance level. Therefore, it would also establish pay up to GS-15 for non-supervisory Board of Veterans' Appeals staff attorneys to improve recruitment and retention. Specifically, the bill would require that "[t]he full performance level for [non-supervisory Board staff attorneys] shall be [GS-15]" without evaluation of the duties and responsibilities of position.

VA opposes this bill.

It is not in alignment with classification regulations and/or 5 U.S.C. § 5107, which states, "Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management." Consequently, it will be necessary to establish duties, responsibilities, and qualifications. The draft bill language in 38 U.S.C. § 7101A(b)(3), establishing the full performance level for non-supervisory Board staff attorneys at GS-15 would completely negate 5 U.S.C. § 5107.

[1] $170,000 per year salary per federal hire times $1.5 million for benefits & overhead times ten years product lifecycle times four hires (one product hire, two engineering hires, and one designer hire to support changes to letter downloads and Veteran notifications).

[2] $170,000 per year salary per federal hire times $1.5 million for benefits & overhead times ten years product lifecycle times 3 hires.

The Board's current recruitment and retention incentives have proven to be very effective in the past few years. Retention rates improved dramatically, with attrition rates dropping by 50% from FY 2018 through FY 2023. Responses to open attorney vacancy announcements during the past two years have been phenomenal, with roughly 1,700 applicants the first year and nearly 1,400 applicants last year during an even shorter recruiting window.

Budget impacts are also important. All attorney advisor positions are eligible for promotion to GS-14 and an ever-increasing number of the Board's roughly 1,000 attorneys are at that highest non-supervisory grade level. Over 60% are currently GS-14s and that number is growing because of increasing retention rates and regular upcoming promotions expected for the higher number of new attorney hires during the past two years. For example, payroll projections are expected to increase by nearly $15 million from FY25 to FY26 even if the Board adds no new personnel during that same period.

H.R. XXX Veterans' Burial Improvement Act of 2024

Section 101

Section 101 of this bill is similar to H.R. 7729 and section 2 of the unnumbered bill "Preserving Veterans' Legacies Act," in that it would address the date-of-death limitations in 38 U.S.C. §§ 2306(b)(2) and 2402(a)(5). Currently, the law only allows VA to provide memorialization or burial to spouses and eligible dependent children of active-duty Service members if the spouse or dependent child dies prior to October 1, 2024. Section 101 of this bill would eliminate these date-of-death limitations in each provision.

VA supports section 101, subject to the availability of appropriations.

The language would allow VA to provide spouses and eligible dependent children of active-duty Service members with memorial headstones and markers under 38 U.S.C. § 2306(b) and bury such individuals in a national cemetery under 38 U.S.C. § 2402(a)(5). Eliminating the date-of-death requirement in each of these statutes would ensure that active-duty Service members who lose their loved ones while serving our Nation would retain the opportunity to obtain a government-furnished memorial headstone or marker or to choose to bury their loved ones in a VA national cemetery. VA would need additional time to estimate costs associated with this bill.

Section 102

Section 102 of the bill would amend 38 U.S.C. § 2308 to authorize VA to pay a one-time, inflation-indexed, flat-rate benefit for the domestic transportation of a deceased Veteran to a covered Veterans' cemetery upon the qualifying death of a Veteran.

VA supports section 102, if amended and subject to the availability of appropriations.

In 2014, VA published final regulations pertaining to burial and plot allowances, which allowed for the payment of a flat rate for these benefits in some instances. The automation of burial claims allowed by the change in regulations has resulted in payment of these benefits to the eligible surviving spouse within six days of the notification of the Veteran's death, without the need for the surviving spouse to submit a claim. VA notes that this section was previously included as a proposal in the FY 2024 President's Budget Request

Although VA was able to make improvements in delivery of the burial and plot allowances through automation, the transportation costs could not be included, as the current statute only allows reimbursement of actual transportation costs. If the law is amended to authorize a one-time payment for the cost of domestic transportation, indexed for inflation, VA can automate adjudication and payment of these claims similar to the payment of the burial and plot allowances. This process would remove the burden on survivors to prove their actual expenses during a difficult and vulnerable period of transition. It would also ensure that survivors receive the benefit shortly after incurring the expense of a Veteran's burial.

VA notes concerns that this proposed change may result in disparate treatment of Veterans who are currently entitled to transportation benefits under 38 U.S.C. § 2303(a)(1)(B) but are not buried in a covered cemetery or who did not die while hospitalized by VA. This proposed change would no longer provide the transportation benefit to eligible Veterans as described in 38 U.S.C. §2303(a)(2) and limit payment of the transportation benefit to eligible Veterans who are buried in a covered cemetery or Veterans who died while hospitalized by VA. VA suggests revising this proposed bill to retain the eligibility for the transportation benefit that currently exists 38 U.S.C. 2303(a) for veterans not buried in "covered cemeteries."

Also, as a technical matter, the headings of 38 U.S.C. § 2308 and section 102 should refer to a "covered cemetery," not a "covered veterans' cemetery," to make them consistent with the new proposed terminology for section 2308. Relatedly, current section 2308(c) should be removed, not redesignated as section 2308(d), because the term "covered veterans' cemetery" would not be used in revised section 2308. Finally, VA recommends an implementation window of at least 24 months from the date of enactment to allow for adequate system development, testing, and implementation.

Section 103

Section 103 of this bill is virtually identical to H.R. 6507, the "Mark Our Place Act" discussed above, and would eliminate the date limitation in 38 U.S.C. § 2306(d)(5)(C)(i), ensuring that the gravesites of recipients of the Medal of Honor include an appropriate recognition. Additionally, VA notes section 103 is consistent with a VA legislative proposal in the FY 2025 President's Budget Request.

VA supports section 103, subject to the availability of appropriations, as discussed above regarding the Mark Our Place Act.

Section 104

Section 104 of the bill is similar to section 3 of the unnumbered bill "Preserving Veterans' Legacies Act" in that it would allow VA to provide a headstone or marker to mark the gravesite of individuals buried in a group interment.

VA supports section 104, subject to the availability of appropriations, for the same reasons as discussed above in regard to the "Preserving Veterans' Legacies Act."

Section 105

Section 105 of the bill would amend 38 U.S.C. § 2303(b)(1)(A) to add an additional group of individuals that a State, agency, political subdivision, or Tribal Organization may bury in a Veterans' cemetery and still be eligible for VA's plot allowance for eligible Veterans buried in the same cemetery. Specifically, the amendment would add Veterans who were discharged or released from service under conditions other than dishonorable but who do not meet the minimum active-duty service requirements under 38 U.S.C. § 5303A, as well as the spouses and dependent children of such Veterans. Such veterans are ineligible for certain VA benefits, including burial in a national cemetery. Consequently, under the current version of the statute, burial of these individuals in state or tribal cemeteries would disqualify those cemeteries from receiving a plot allowance for the burial of eligible Veterans.

VA supports section 105, subject to the availability of appropriations.

In 2022, Congress expanded the list of individuals who may be buried in a state or tribal cemetery while maintaining a cemetery's eligibility to receive the plot allowance for eligible Veterans buried in the same cemetery. Burial Equity for Guards and Reserves Act, Pub. L. No. 117-103, Div. CC, § 102, 136 Stat. 49, 1109 (2022). However, Veterans who do not meet the minimum active-duty service requirements under 38 U.S.C. § 5303A were not included in the list of individuals who may be buried in a state or tribal cemetery in that amendment.

While the change made by Public Law 117-103 did not change eligibility for the plot allowance itself—the benefit is only payable for the burial of a Veteran who is eligible to be buried in a national cemetery but instead is buried in a cemetery operated by a State, agency, political subdivision, or Tribal Organization—the intent of the amendment was to create some burial equity for certain military members whose service did not include active duty, as well as for the spouses and minor or unmarried adult children of such Service members. In other words, Public Law 117-103 allowed other individuals to be buried in a state or tribal cemetery without impacting the state or tribal organization's eligibility to receive the plot allowance for an eligible Veteran buried there. However, the law created an "unintended inequity" for Veterans who did not meet the minimum active-duty requirement in 5303A because, if any such Veteran were buried in the cemetery, the state or tribal organization would no longer be eligible for the plot allowance. VA supports section 105's proposed solution to this inequity through the expansion of the categories of individuals listed in 38 U.S.C. § 2303(b)(1)(A).

VA would need additional time to estimate mandatory costs associated with this bill.

H.R. XXX VA Insurance Improvement Act

Section 101
Section 101 of the bill would authorize eligibility for VALife coverage to all Veterans who apply before attaining 81 years of age without requiring a service-connected disability.

VA supports section 101 of this bill, subject to the availability of appropriations.

However, VA requests that the legislation propose a future effective date to allow time for VA to implement the changes. VA requests an effective date of one year after enactment to allow adequate time for implementation, including information technology, staffing, and policy and procedure changes, as well as development of a national communications campaign to all Veterans.

The current statute limits insurance eligibility coverage to Veterans with a service-connected disability, and there is no similar program available for Veterans without a service-connected disability rating. Elimination of the service-connected disability requirement would expand insurance eligibility under this program similar to other non-compensation benefit programs such as education or home loans.

Expanding the eligibility criteria for VALife to include all Veterans under age 81, regardless of whether they have a service-connected disability, would encourage greater participation of Veterans in the insurance program. VALife was designed to be self-supporting and is not authorized by statute to receive an annual subsidy to cover claims expenses that exceed the amount of premiums collected and investment income received during a policy year. This bill would potentially decrease the overall mortality experience, encourage wider participation among Veterans, and reduce upward premium pressure by putting the program in a stronger financial position while also expanding access to more Veterans in need of life insurance. VA notes that this bill was previously included as a proposal in the FY 2024 President's Budget Request.

Section 102
Section 102 of the bill would allow reimbursement of Veterans' Mortgage Life Insurance (VMLI) administrative expenses from VMLI program funds (premiums and appropriations in the mandatory Veterans Insurance and Indemnities (VI&I) account) to better align with the handling of expenses for other Government life insurance programs administered by VA.

VA supports section 102 of this bill.

However, VA recommends revising the bill language to clarify the source of reimbursement funds. VA recommends adding the following clause, "from amounts

available for ‘Veterans Insurance and Indemnities’” at the end of the last sentence in proposed 38 U.S.C. § 2106(d)(1) to explain the source of the reimbursements.

Currently, under 38 U.S.C. § 2106(d), the United States Government bears the costs of administering VMLI and requests discretionary budget appropriations to fund the expense. However, other Government life insurance programs reimburse for administrative expenses out of life insurance program funds and are funded by mandatory appropriations.

By reimbursing VMLI administrative expenses from the VMLI program funds (premiums and appropriations in the Veterans Insurance and Indemnities account), this bill would ensure that all Veterans serviced by Government life insurance programs are treated the same in the event of a lapse in appropriations impacting the General Operating Expenses (GOE) and Information Technology Systems accounts.

Section 103

Section 103 would revise the definition of “uniformed services” in 38 U.S.C. § 1965 to include the Space Force.

VA supports section 103 of this bill.

VA supports the amending 38 U.S.C. § 1965(6) to define “uniformed services” as including the Space Force. However, VA recommends revising the bill language in section 1965(6) to instead adopt the definition of uniformed services in 10 U.S.C. § 101, which already includes the Space Force. This would ensure that not only is the Space Force treated as a separate uniformed service, but any future changes to the military components that comprise the uniformed services would automatically apply to the Servicemembers’ Group Life Insurance (SGLI) program without the need for additional legislation.

The definition of “uniformed services” in current section 1965(6) does not list the Space Force separately from the Air Force, which creates an inconsistency in how the military services are defined. Because the SGLI program identifies the Marine Corps as a separate service from the Navy—even though the Marine Corps falls under the Department of the Navy—it follows that the Space Force should be identified as a separate service from the Air Force, even though the Space Force remains under the authority of the Department of the Air Force. This bill would create parity between all uniformed services for purposes of SGLI eligibility.

Therefore, VA recommends removing the existing text defining “uniformed services” in the bill and replacing it with a reference to the “uniformed services” definition in 10 U.S.C. § 101(5) to maintain conformity with the definition of uniformed services used by the Department of Defense.

There are no mandatory or discretionary costs associated with this bill.

H.R. XXX Survivor Benefits Update Act of 2024

This bill would amend 38 U.S.C. §§ 1541(f)(1)(E) and § 5101(b)(1) to extend the statutory marriage delimiting date for surviving spouses of Gulf War Veterans and streamline VA's processing of survivors' benefits claims.

VA supports this bill and offers recommendations for amendment.

Section 101 would prevent any potentially inconsistent results in Survivors Pension claims based on Gulf War service and would ensure that all Surviving Spouses receive the most favorable consideration for VA benefits. Furthermore, this amendment provides an established delimiting date based on any termination date established by the Presidential proclamation of the Persian Gulf War ending, and the language in this amendment ensures that a consistent 10-year qualifying period is afforded to all Surviving Spouses seeking Survivors Pension benefits based upon a Veteran's Gulf War service. Due to the ongoing Gulf War, VA proposes to replace the outdated prescribed delimiting date of January 1, 2001, with a date that is 10 years and 1 day following the future prescribed ending date of the Gulf War. VA notes that this section and section 102 were previously included as a proposal in the FY 2024 President's Budget Request.

Section 102 would remove the statutory requirement that VA must decide three separate survivor benefits upon receiving a claim for one in 38 U.S.C. § 5101(b)(1). This change would enable VA to streamline the pension adjudication process, deliver decisions on claimed benefits and services timelier to beneficiaries in need during a difficult time, and reduce the burden on claimants to submit additional information on a benefit they may not even be claiming. It would also give the Secretary an option as to how best to administer and adjudicate survivors' benefits claims and permit the Secretary to delve into the intent of the claimant. Finally, it would allow a claimant to make an election. This bill would not eliminate a Surviving Spouse or child's opportunity to claim more than one benefit on a single form. Furthermore, this bill would reduce the administrative burden for both VA and the claimant and will expedite the delivery of benefits to survivors as a decision on all three separate survivor benefits would not be required by law when all benefits are not specifically claimed upon receipt of a claim for benefits under 38 U.S.C. § 5101(b)(1).

VA notes that this proposed amendment does not include changes to 38 U.S.C. § 5101(b)(2). The bill as drafted would treat Surviving Spouses and children different from parents because VA would still be required by law to decide all benefits for a parent upon receipt of a claim for benefits listed in 38 U.S.C. § 5101(b)(2). VA suggests revising language to replace "shall" with "may" within 38 U.S.C. § 5101(b)(2) to align with the changes proposed to 38 U.S.C. § 5101(b)(1). Revised language is provided within the suggested redline below.

Furthermore, VA suggests revising language within 38 U.S.C § 5101(b). VA suggests replacing the term “death pension” with the term “Survivors’ Pension” in each place it appears within 38 U.S.C. § 5101(b)(1). Also, VA suggests replacing the words “for compensation” with “for death compensation” each place they appear within 38 U.S.C. § 5101(b). These changes will ensure that statutory language aligns with current usage of language related to survivor benefits.

VA also notes that there is no effective date provided within the proposed language. VA highlights that necessary changes will be required to affected VA forms to allow a claimant to identify the specific benefit or benefits being claimed. This form change will ensure the intended effect of streamlined processing of survivor benefits and allow VA to adjudicate only the benefit or benefits being claimed. If enacted, VA estimates that enhancements will take approximately 12 months to be executed. VA provides that until these form updates are in effect VA would not be able to comply with this proposal.

No mandatory or discretionary costs are associated with this draft bill.
This concludes my statement. We would be happy to answer any questions you or other members of the Subcommittee may have.