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113TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 113–672, Part 1

AMENDING TITLE 38, UNITED STATES CODE, TO AUTHORIZE THE SECRETARY OF VETERANS AFFAIRS TO RECOUP CERTAIN BONUSES OR AWARDS PAID TO EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS

DECEMBER 12, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 5094]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5094) to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	4
Background and Need for Legislation	4
Hearings	8
Subcommittee Consideration	9
Committee Consideration	10
Committee Votes	10
Committee Oversight Findings	10
Statement of General Performance Goals and Objectives	10
New Budget Authority, Entitlement Authority, and Tax Expenditures	10
Earmarks and Tax and Tariff Benefits	11
Committee Cost Estimate	11
Congressional Budget Office Estimate	11
Federal Mandates Statement	13
Advisory Committee Statement	13
Constitutional Authority Statement	13
Applicability to Legislative Branch	13
Statement on Duplication of Federal Programs	13
Disclosure of Directed Rulemaking	13
Section-by-Section Analysis of the Legislation	13
Changes in Existing Law Made by the Bill as Reported	16

49–006

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORITY TO RECOUP BONUSES OR AWARDS PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 714. Recoupment of bonuses or awards paid to employees of Department

"(a) RECOUPMENT.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapters 45 or 53 of such title, or this title if—

"(1) the Secretary determines such repayment appropriate pursuant to regulations prescribed by the Secretary to carry out this section; and

"(2) the employee is afforded notice and an opportunity for a hearing conducted by the Secretary.

"(b) REVIEW.—The decision of the Secretary regarding a repayment by an employee pursuant to subsection (a) is final and may not be reviewed by any other agency or any court.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"714. Recoupment of bonuses or awards paid to employees of Department.".

(c) EFFECTIVE DATE.—Section 714 of title 38, United States Code, as added by subsection (a), shall apply with respect to an award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs before, on, or after the date of the enactment of this Act.

(d) CONSTRUCTION.—Nothing in this Act or the amendments made by this Act may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs.

SEC. 2. LIMITATIONS ON SUBCONTRACTS UNDER CONTRACTS WITH SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY VETERANS.

(a) IN GENERAL.—Section 8127 of title 38, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m); and

(2) by inserting after subsection (k) the following new subsection (l):

"(l) LIMITATIONS ON SUBCONTRACTING.—(1)(A) The requirements applicable to a covered small business concern under section 46 of the Small Business Act (15 U.S.C. 657s) shall apply with respect to a small business concern owned and controlled by a veteran with a service-connected disability or a small business concern owned and controlled by a veteran that is awarded a contract that is counted for purposes of meeting the goals under subsection (a).

"(B) For purposes of applying the requirements of section 46 of the Small Business Act (15 U.S.C. 657s) pursuant to subparagraph (A), the term 'similarly situated entity' used in such section 46 includes a subcontractor for a small business concern owned and controlled by a veteran with a service-connected disability or a small business concern owned and controlled by a veteran described in such subparagraph (A).

"(2) Before awarding a contract that is counted for purposes of meeting the goals under subsection (a), the Secretary shall obtain from an offeror a certification that the offeror will comply with the requirements described in paragraph (1)(A) if awarded the contract. Such certification shall—

"(A) specify the exact performance requirements applicable under such paragraph; and

"(B) explicitly acknowledge that the certification is subject to section 1001 of title 18.

"(3) If the Secretary determines that a small business concern that is awarded a contract that is counted for purposes of meeting the goals under subsection (a) did not act in good faith with respect to the requirements described in paragraph (1)(A), the small business concern shall be subject to the penalties specified in—

"(A) section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

"(B) section 1001 of title 18.

"(4)(A) The Director of Small and Disadvantaged Business Utilization for the Department, established pursuant to section 15(k) of the Small Business Act (15 U.S.C. 644(k)), and the Chief Acquisition Officer of the Department, established pursuant to section 1702 of title 41, shall jointly implement a process using the systems described in section 16(g)(2) of the Small Business Act (15 U.S.C. 645(g)(2)), or any

other systems available, to monitor compliance with this subsection. The Director and the Chief Acquisition Officer shall jointly refer any violations of this subsection to the Inspector General of the Department.

"(B) Not later than November 30 of each year, the Inspector General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report for the fiscal year preceding the fiscal year during which the report is submitted that includes, for the fiscal year covered by the report—

"(i) the number of referred violations received under subparagraph (A); and

"(ii) the disposition of such referred violations, including the number of small business concerns suspended or debarred from Federal contracting or referred to the Attorney General for prosecution.".

(b) EFFECTIVE DATE.—Subsection (l) of section 8127 of title 38, United States Code, as added by subsection (a) shall apply with respect to a contract entered into after the date of the enactment of this Act.

SEC. 3. REVIEW OF LISTS OF FORMER PRISONERS OF WAR.

(a) REVIEW OF LISTS OF PRISONERS OF WAR.—The Secretary of Veterans Affairs shall review the VA POW list and the DOD POW list to identify any discrepancies in such lists.

(b) INSPECTOR GENERAL REVIEW OF PROCESS.—The Inspector General of the Department of Veterans Affairs shall review the process by which the Secretary determines that a veteran is a former prisoner of war, including whether the Secretary is following guidelines established by the Secretary to determine that a veteran is a former prisoner of war.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report on the VA POW list, including the following:

(1) Any discrepancies, by period of conflict, in the number of prisoners of war included on the VA POW list and the DOD POW list.

(2) With respect to veterans included on the VA POW list who are not included on the DOD POW list, information regarding how such determinations were made, including what types of evidence were used, in a manner that does not personally identify such veterans.

(3) The results of the review of the Inspector General under subsection (b), without change.

(d) DEFINITIONS.—In this section:

(1) The term "DOD POW list" means the list maintained by the Secretary of Defense, acting through the Defense Prisoner of War/Missing Personnel Office, of members of the Armed Forces who were prisoners of war.

(2) The term "VA POW list" means the list maintained by the Secretary of Veterans Affairs of veterans whom the Secretary determines are former prisoners of war.

SEC. 4. LIMITATION ON EXPANSION OF DIALYSIS PILOT PROGRAM.

(a) LIMITATION.—The Secretary of Veterans Affairs shall not expand the dialysis pilot program or create any new dialysis capability provided by the Department of Veterans Affairs in any facility that is not an initial facility until after the date that—

(1) the Secretary has implemented the dialysis pilot program at each initial facility for a period of not less than two years;

(2) an independent analysis of the dialysis pilot program has been conducted at each initial facility; and

(3) the report required by subsection (b) has been submitted.

(b) REPORT.—Not later than 60 days after the date of the completion of the independent analysis required by subsection (a)(2), the Secretary shall submit to Congress a report that—

(1) includes the results of that independent analysis, including a comparison of not only cost but non-cost factors such as access to care, quality of care, and Veteran satisfaction; and

(2) addresses any recommendations with respect to the dialysis pilot program provided in a report prepared by the Government Accountability Office.

(c) USE OF EXISTING DIALYSIS RESOURCES.—In order to increase the access of veterans to dialysis care and decrease the amount of time such veterans are required to travel to receive such care, the Secretary shall fully use the dialysis resources of the Department that exist as of the date of the enactment of this Act, including any community dialysis provider with which the Secretary has entered into a contract or agreement for the provision of such care.

(d) DEFINITIONS.—In this section:

(1) The term "dialysis pilot program" means the pilot demonstration program established by the Secretary in 2009 to provide dialysis care to patients at certain outpatient facilities operated by the Department of Veterans Affairs.

(2) The term "initial facility" means one of the four outpatient facilities identified by the Secretary to participate in the dialysis pilot program prior to the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs, and for other purposes.

PURPOSE AND SUMMARY

H.R. 5094, as amended, incorporates provisions from several bills, and was ordered to be favorably reported to the full House on September 10, 2014, by voice vote. Section 1 of H.R. 5094, as amended, incorporates the text of H.R. 5094, introduced on July 14, 2014 by Representative Jeff Miller of Florida, which would give the Secretary of the Department of Veterans Affairs (VA) the authority to rescind all or part of the amount of any award or bonus paid to a Senior Executive Service (SES) employee. Section 2 of H.R. 5094, as amended, incorporates the text of H.R. 4281, introduced on March 25, 2014 by Representative Tim Huelskamp of Kansas, which would enhance enforcement of performance requirements for small business concerns owned and controlled by veterans with or without service-connected disabilities who are awarded contracts by the VA. Section 3 of H.R. 5094, as amended, incorporates the text of H.R. 5172, introduced on July 23, 2014 by Representative Bill Johnson of Ohio, which would require that the Secretary review the list maintained by VA of individuals determined to have been prisoners of war to identify any discrepancies in the list. Finally, Section 4 of H.R. 5094, as amended, incorporates the text of H.R. 3831, introduced on January 9, 2014 by Representative David P. Roe of Tennessee, which would prohibit VA from expanding the current dialysis pilot program or creating any new VA-provided dialysis capability outside of the pilot program until certain actions have been completed. It would also require VA to fully use existing dialysis resources, including any community dialysis provider with which VA has entered into a contract or agreement.

BACKGROUND AND NEED FOR LEGISLATION

Section 1—Authority to Recoup Bonuses or Awards Paid to Employees of Department of Veterans Affairs

The Department has come under criticism for an array of issues that have affected the care and earned benefits of veterans. Investigations by the Committee and by the VA's Office of the Inspector General (VAOIG) have uncovered evidence of manipulation of VA's appointment system to hide the fact that veterans waited months to receive medical appointments at VA medical centers. This delay in receiving needed health care at the VA had serious consequences to the health and well-being of veterans and may have led to deaths that were preventable. Investigations also uncovered credible evidence that VA employees and VA senior managers had allegedly falsified data to improve their performance metrics resulting in a disability claims backlog that still reflects hundreds of

thousands of veterans awaiting a decision on their claim for disability compensation.

According to VA, in fiscal year 2013, the Department issued a total of $2,827,377 in performance awards to 304 SES and title 38 equivalent employees. Many of these 304 individuals were the senior managers overlooking or worse, fostering, mismanagement and negligence at VA medical facilities and aspects of the disability claims backlog in Regional Offices.

Following investigations by the Committee, the VAOIG, and outside media outlets that brought these scandals at VA to light, Committee members questioned the large sums of bonuses that were issued to many of these VA leaders who oversaw facilities where "secret" appointment wait-lists were used. Committee Members questioned VA at several Committee hearings from April 2014 to August 2014 on whether the Secretary would have the legal authority to recoup any performance awards or bonuses issued to senior executives if the Secretary deemed their performance, particularly performance based on manipulated data, merited the recoupment. On June 17, 2014, Committee staff was told at a briefing by Mr. Samuel Retherford, VA's Principal Deputy Assistant Secretary for Human Resources and Administration that the Secretary had the authority to rescind any bonus or performance award from a member of the Senior Executive Service within 12 months of it being awarded to the employee. Later, at a June 20, 2014 Full Committee oversight hearing entitled, "A Review of Awarding Bonuses to Senior Executives at the Department of Veterans Affairs," the Honorable Gina Farrisee, Assistant Secretary for Human Resources and Administration, informed Members of the Committee that the Secretary did not have the authority to rescind any bonuses or performance awards after they have been issued.

Following the conflicting statements made by VA employees as to whether the VA Secretary had the authority to rescind a performance award, Chairman Jeff Miller sent then-Acting Secretary Sloan Gibson a letter on July 15, 2014 explicitly inquiring whether VA has the authority to rescind a bonus already issued to an employee. The Secretary replied via letter on August 19, 2014 that, "the Department does not have the authority to rescind performance awards issued in accordance with policies and paid to SES employees for performance ratings that are final."

Section 1 of H.R. 5094, as amended, would give the Secretary the authority to direct any past, current, or future employees of the Department of Veterans Affairs to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, United States Code (U.S.C.), including under chapters 45 or 53 of such title, or title 38 U.S.C. This section would require the Secretary to give the employee notice of the intended recoupment as well as an opportunity for a hearing conducted by the Secretary.

Section 2—Limitations on Subcontracts under Contracts with Small Business Concerns Owned and Controlled by Veterans

A long-standing concern of the Committee has been the improper use of set-asides reserved for veterans. The Committee has heard testimony, received Inspector General reports, and reviewed reports of numerous unqualified businesses that took advantage of

set-asides rightfully reserved for veteran-owned (VOSB) or service-disabled veteran-owned small businesses (SDVOSB). Among the examples of fraudulent schemes that have been used:

(1) According to testimony that the VA OIG provided to the Subcommittee on Oversight and Investigations on August 2, 2012, Silver Star Construction, LLC of Blue Springs, Missouri received over $8 million, between December 2008 to July 2010, in government contracts reserved for SDVOSBs. Its owner claimed to have been awarded three Silver Stars, four Bronze Stars, three Purple Hearts, and other medals of valor during service in Southeast Asia. However, investigation established that the owner was a member of the National Guard who never served overseas and did not have a service-connected disability. Misrepresentation of individual status as a veteran or as service-disabled veteran is an unfortunately typical method of securing set-aside contract awards.

(2) Rent-a-Vet schemes involve the use of genuine service-disabled veterans as fronts to establish eligibility for otherwise non-qualified businesses. The veterans have no actual role in the management or control of the work performed by these businesses. For example, according to an August 25, 2014 press release by the United States Attorney for the Southern District of Iowa, contractor, Ram Hingorani of Midwest Contracting, Inc., recently pled guilty in connection with a $23.5 million SDVOSB fraud scheme involving a veteran who was simply a figurehead used for his service-disability status.

(3) Pass-through schemes occur when qualified veteran-owned or service-disabled veteran owned small businesses obtain contract awards but then pass on the work to separate non-qualified businesses to perform the work. For example, according to the August 2, 2012 testimony of the VA OIG, Arthur Singleton was indicted on mail and wire fraud charges for setting up GMT Mechanical of Grantville, Georgia as a shell company that self-certified with SDVOSB status when all of the work was performed by Singleton Enterprises that did not have SDVOSB status. The OIG's investigation not only uncovered the illegal pass-through but it also established that Arthur Singleton used rent-a-vet fraud as well that involved a bedridden Vietnam veteran with no actual role in either company.

Due to the continuing fraud and abuse of the veteran set-aside programs, stricter oversight and enforcement is required. Towards this end, section 2, of H.R. 5094, as amended, would provide law enforcement with the necessary tools to crack down on the contractors who use pass-through schemes and other methods to take advantage of set-asides rightfully reserved for veterans. A certification at the time of the contract award would constitute strong evidence of the knowledge and intent to deceive if a contractor is later found to have not been eligible. This provision would direct the Office of Small Business and Disadvantage Business Utilization and the VA's Chief Acquisition Officer to do what they should be doing all along, that is, to monitor and enforce compliance. Finally, this section would require the IG to produce annual reports showing the number of small business concerns suspended or debarred

from federal contracting and those referred for prosecution for violating the certification requirement.

Section 3—Review of Lists of Former Prisoners of War

There exists an inconsistency between Prisoners of War (POW) as recognized by the Department of Defense (DoD), versus those recognized by the Department of Veterans Affairs (VA). To date, the number of individuals identified as POWs by VA is significantly higher than the list of POWs maintained by DoD. Reviewing data from VA's Beneficiary Identification Records Locator Subsystem (BIRLS), as of September 30, 2013, and from the VHA Enrollment System, as of August 30, 2014, VA reports that the total living count of POWs in the VA system equals 9,077. That includes 8,319 in the BIRLS and VA Health Care Enrollment System; 682 in VA Health Care Enrollment System only; and 76 in BIRLS only. By period of service, VA reports POWs by period as follows: 5,493 World War II only, 658 Korea only, 761 Vietnam only, 37 pre-9/11 era only, 5 post-9/11 era only, and 2,123 with multiple periods of service.

While the Department of Veterans Affairs is empowered to make POW determinations which extend beyond those POWs recognized by the Service Departments, a review of discrepancies between the Departments' findings and justifications for those differences would clarify whether VA has consistently followed required guidelines in administering this important function. Thus, Section 3 of H.R. 5094, as amended, would ensure that POWs are properly accounted for by both VA and DoD, and would ensure that the process by which the Secretary of Veterans Affairs determines that a veteran is a former POW is appropriate and is properly utilized.

Section 4—Limitation on Expansion of Dialysis Pilot Program

Section 4 of H.R. 5094, as amended, would prohibit VA from expanding the current dialysis pilot program or creating any new VA-provided dialysis capability outside of the pilot program until certain actions have been completed. It would also require VA to fully use existing dialysis resources, including any community dialysis provider with which VA has entered into a contract or agreement.

Veterans with end-stage renal disease (ESRD) require time- and resource-intensive dialysis treatment. Traditionally, VA refers veterans with ESRD to non-VA dialysis providers. Over the last several fiscal years (FYs), both the number and cost of providing veterans with ESRD with non-VA dialysis care has risen significantly, from $133 million for 6,900 veterans (over $19 thousand per veteran) in FY 2008 to $425 million for 14,000 veterans (over $30 thousand per veteran) in FY 2013.

In 2009, VA began developing a pilot program to provide dialysis care to veterans in VA-operated, free-standing dialysis clinics. The VA undertook this pilot program using existing authorities and not in response to specific legislation. The goals of the dialysis pilot program are to: (1) improve the quality of dialysis care provided to veteran patients; (2) increase veteran access to dialysis care; (3) create additional medical research opportunities regarding veteran dialysis care; and, (4) address rising costs of veteran dialysis care. Through the pilot, VA established four outpatient dialysis clinics in

Durham, North Carolina; Fayetteville, North Carolina; Philadelphia, Pennsylvania; and, Cleveland, Ohio.

According to the Government Accountability Office (GAO) the dialysis pilot program has several significant shortcomings related to cost and performance. In May 2012, the GAO issued a report entitled, "Increased Attention to Planning, Implementation, and Performance Measurement Needed to Help Achieve Goals" (GAO–12–584). In that report, GAO documented a number of weaknesses in the execution of the planning and early implementation phases of the dialysis pilot program. Those weaknesses included failure to appropriately document the pilot location selection process, failure to produce consistent and comparable cost estimates for pilot locations, and failure to provide clear and timely guidance on the start-up fund repayment and cost savings calculations. GAO concluded that, collectively, these weaknesses could, ". . . serve to limit the achievement of the pilot's goals." In response to these findings, GAO recommended that VA take a number of actions, including providing guidance on start-up fund repayment as well as developing an evaluation plan that includes performance measures for the pilot's locations. In September 2014, GAO issued a follow-up report entitled, "Documentation of Plans for Concluding the Pilot Needed to Improve Transparency and Accountability" (GAO–14–646). In this report, GAO noted that VA has yet to document criteria or plans for concluding the dialysis pilot program and that current data on quality of care and treatment costs are limited due to ongoing evaluations. According to GAO, "[w]ithout a formally established timeline, VA cannot effectively monitor performance against specified timeframes, validate and defend the timeline of the dialysis pilot to VA decisionmakers and other stakeholders, or *ultimately hold VA decisionmakers accountable for future resource investment decisions*" [emphasis added]. GAO recommended that VA document the Department's plans for concluding the dialysis pilot program. Though VA concurred with this recommendation, GAO reports that the Department's response to GAO still did not clearly delineate plans for the pilot's conclusion.

The Committee expects VA to act without delay to fully address GAO's recommendations and, until the Department has done so, refrain from activating additional VA dialysis centers. Accordingly, Section 4 of the bill would prohibit VA from expanding the dialysis pilot program or creating any new VA dialysis capability until: (1) VA has implemented the existing dialysis pilot program at each initial facility for at least two years; (2) an independent analysis of the dialysis pilot program has been conducted at each initial facility; and, a report has been submitted to Congress that both includes the results of the independent analysis and addresses GAO's recommendations. To ensure that VA has sufficient capacity to provide veterans with ESRD timely and accessible dialysis care in the meantime, Section 4 of the bill would require VA to fully utilize the dialysis resources in place on the date of enactment, including contracts or agreements with community dialysis providers before any expansion of pilot dialysis sites.

HEARINGS

There were no full House Committee on Veterans' Affairs legislative hearings held on H.R. 5094, as amended. There was a full com-

mittee oversight hearing, however, which led to the drafting of section 1 of H.R. 5094, as amended, held on June 20, 2014, entitled, "A Review of Awarding Bonuses to Senior Executives at the Department of Veterans Affairs." The following witness testified at the hearing: The Honorable Gina Farrisee, Assistant Secretary for Human Resources and Administration, U.S. Department of Veterans Affairs.

SUBCOMMITTEE CONSIDERATION

On March 25, 2014, the Subcommittee on Oversight and Investigations conducted a legislative hearing on various bills introduced during the 113th Congress, including H.R. 4281, the Protecting Business Opportunities for Veterans Act of 2014 (from which section 2 of H.R. 5094, as amended, is derived). The following witnesses testified:

Ms. Stella S. Fiotes, Executive Director, Office of Construction and Facilities Management, Office of Acquisition, Logistics and Construction, Department of Veterans Affairs; accompanying Ms. Fiotes was Mr. Tom Leney, Executive Director, Office of Small & Disadvantaged Business Utilization, Department of Veterans Affairs; Mr. Gregory Wilshusen, Director, Information Security Issues, U.S. Government Accountability Office; Mr. Raymond Kelley, Director, National Legislative Service, Veterans of Foreign Wars; Ms. Diane Zumatto, National Legislative Director, AMVETS; Mr. James H. Binns, Chairman, Research Advisory Committee on Gulf War Veterans' Illnesses; Mr. Louis Celli, Legislative Director, The American Legion; Mr. Davy Leghorn, Assistant Director, Veterans Employment and Education Division, The American Legion; Mr. Frank Wilton, Chief Executive Officer, American Association of Tissue Banks.

On March 27, 2014, the Subcommittee on Health conducted a legislative hearing on various bills introduced during the 113th Congress, including H.R. 3831, the Veterans Dialysis Pilot Program Review Act of 2014 (from which section 3 of H.R. 5094, as amended, is derived). The following witnesses testified:

The Honorable Michael Grimm, U.S. House of Representatives, 11th District, New York; The Honorable Dina Titus, U.S. House of Representatives, 1st District, Nevada; The Honorable Jackie Walorski, U.S. House of Representatives, 2nd District, Indiana; The Honorable Sean Duffy, U.S. House of Representatives, 7th District, Wisconsin; The Honorable Marcy Kaptur, U.S. House of Representatives, 9th District, Ohio; The Honorable Kyrsten Sinema, U.S. House of Representatives, 9th District, Arizona; The Honorable David P. Roe, U.S. House of Representatives, 1st District, Tennessee; The Honorable Jeff Denham, U.S. House of Representatives, 10th District, California; Joy J. Ilem, Deputy National Legislative Director, Disabled American Veterans; Alethea Predeoux, Associate Director of Health Analysis, Paralyzed Veterans of America; Aleksandr Morosky, Senior Legislative Associate, National Legislative Service, Veterans of Foreign Wars; and, Madhulka Agarwal M.D., M.P.H., Deputy Under Secretary for Health for Policy and Services, Veterans Health Administration, U.S. Department of Veterans Affairs, accompanied by Philip Matkovsky,

Assistant Deputy Under Secretary for Health for Operations and Management, and Renée L. Szybala, Acting Assistant General Counsel.

Statements for the record were submitted by the following:

The Honorable Kevin McCarthy, U.S. House of Representatives, 23rd District, California; American Academy of Otolaryngology—Head and Neck Surgery; Department of Veterans Affairs Office of the Inspector General; International Hearing Society; Iraq and Afghanistan Veterans of America; National Association of State Veterans Homes; Servicewomen's Action Network; The American Speech-Language-Hearing Association; Warrior Canine Connection; Wounded Warrior Project; and, VetsFirst.

COMMITTEE CONSIDERATION

On September 10, 2014, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 5094, as amended, reported favorably to the House of Representatives, by voice vote. During consideration of the bill, the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute by Chairman Miller of Florida which combined the original bill with text from H.R. 4281, H.R. 5172, and H.R. 3831.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 5094, as amended, reported to the House. A motion by Ranking Member Michael H. Michaud of Maine to report H.R. 5094, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5094, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 5094, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 5094, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 11, 2014.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5094, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 5094—A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs, and for other purposes.

H.R. 5094 would modify several authorities and programs administered by the Department of Veterans Affairs (VA). CBO estimates that implementing H.R. 5094 would cost less than $500,000 over the 2015–2019 period, subject to the availability of appropriated funds. In addition, enacting H.R. 5094 would affect direct spending. However, CBO estimates that the net effects on direct spending would be insignificant for each year and over the 2015–2024 period. Enacting H.R. 5094 would not affect revenues.

Section 1 would give the Secretary of Veterans Affairs the authority to recoup all or part of awards and bonuses that were paid to employees of the agency after providing a notice of recoupment and an opportunity for a hearing conducted by VA. That authority would apply to such payments made by VA before the date of enactment of H.R. 5094 as well as those made after that date. CBO expects that this provision would be used infrequently, primarily to

mined to have committed a serious violation of the agency's standards of conduct. Of the roughly $400 million that VA pays out each year for awards and bonuses, about $4 million goes to senior staff.

Most federal statutes of limitation are no more than six years. On that basis, CBO expects that VA would not attempt to recoup payments made more than six years prior to the date of enactment. In addition, the authority would only affect current employees of VA; employees who resigned or retired would be exempt from recoupment.

In recovering overpayments made to employees, federal agencies have several options: they can require lump-sum or installment payments, or they can use salary offsets regular deductions from bi-weekly payroll payments. Based on general practices at federal agencies, CBO assumes that in most cases VA would offset future salary payments. Such offsets would reduce discretionary costs. In those cases where VA requires a lump-sum or installment repayment, the funds would generally be deposited in the Treasury and would be considered a reduction in direct spending. Because CBO believes that this authority would be used infrequently, and because employees could avoid recoupment by leaving the agency, CBO estimates that the amount of bonuses and awards that would be recouped would be significant.

Section 2 would require small business concerns owned and controlled by veterans to adhere to limits on subcontracting specified in the Small Business Act. CBO estimates that section 2 would have an insignificant effect on the federal budget.

Section 3 would require VA to complete a review of their prisoner of war (POW) list and compare it to the list created by the Department of Defense (DoD) to determine if there are any discrepancies between the two lists. After the review, VA would be required to complete a report detailing any discrepancies between the POW lists and how such discrepancies came to be. CBO estimates that implementing section 3 would cost less than $500,000 in 2015, subject to the availability of appropriated funds.

Section 4 would require VA to postpone further expansion of the dialysis pilot program until the initial sites have been operating for a least two years and an independent study has been conducted, CBO expects that any delay in expanding the program would be minimal, and thus, that section 4 would have an insignificant effect on discretionary spending.

H.R. 5094 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by permitting the Secretary of Veterans Affairs to recoup awards and bonuses given to VA employees any time before or after enactment of the legislation. The Secretary could direct any employee to repay all or a portion of the amount paid. Based on CBO's assessment that the amount of bonuses and awards that would be recouped would be insignificant, CBO estimates that the cost of the mandate to employees would fall well below the annual threshold for private-sector mandates established in UMRA ($152 million in 2014, adjusted annually for inflation.)

H.R. 5094 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5094, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 5094, as amended.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 5094, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that H.R. 5094, as amended, does not require any directed rule makings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Authority to Recoup Bonuses or Awards Paid to Employees of Department of Veterans Affairs

Section 1(a) would amend Chapter 7 of title 38 U.S.C, by adding at the end of the chapter, a new section, Section 714. This section would give the Secretary of the Department of Veterans Affairs the authority to direct a Senior Executive Service employee to repay, in part or in full, an award or bonus paid to the employee under chapters 45 or 53 of title 5. Section 1(a) also prescribes that the employee be afforded notice of such recoupment and an opportunity for a hearing to the Secretary and that the Secretary's decision fol-

lowing this hearing is final and may not be reviewed by any other agency or any court.

Section 1(b) adds a clerical amendment at the beginning of Chapter 7 of title 38 U.S.C. to reflect the new section, to read as—"714. Recoupment of bonuses or awards paid to employees of Department.

Section 1(c) applies this provision to any award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs before, on, or after the date of the enactment of this Act.

Section 1(d) ensures that nothing within section 1 of H.R. 5094, as amended, may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs

Section 2—Limitations on Subcontracts under Contracts with Small Business Concerns Owned and Controlled by Veterans

Section 2(a) would amend 8127 of title 38, United States Code, by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) a new subsection (l).

Subsection (l)(1)(A) would make applicable limitations on subcontracting for covered small business concerns under section 46 of the Small Business Act (15 U.S.C. 657s) to small business concerns owned and controlled by a veteran with a service connected disability or a small business concern owned and controlled by a veteran that is awarded a contract that is counted for purposes of meeting contracting goals.

Subsection (l)(1)(B) would define the term 'similarly situated entity' as a subcontractor for a small business concern owned and controlled by a veteran with a service-connected disability or a small business concern owned and controlled by a veteran for purposes of applying the requirements of section 46 of the Small Business Act (15 U.S.C. 657s).

Subsection (l)(2) would require that the Secretary of the Department of Veterans Affairs receive from an offeror before awarding a contract, a certification that the offeror will comply with the limitations on subcontracting and specify the exact performance requirements with an acknowledgment that the certification is subject to penalty in accordance with 18 U.S.C. 1001.

Subsection (l)(3) would provide that if the Secretary determines that a small business concern that is awarded a contract under this section did not act in good faith with respect to the requirements described in paragraph (1)(A), the small business concern would be subject to the penalties specified in section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1) and 18 U.S.C. 1001.

Subsection (l)(4)(A) would provide that the VA's Director of the Office of Small and Disadvantaged Business Utilization established by section 15(k) of the Small Business Act (15 U.S.C. 644(k)) and the VA's Chief Acquisition Officer established under 41 U.S.C. 1702 would jointly implement a process using the systems described in section 16(g)(2) of the Small Business Act (15 U.S.C. 645(g)(2)), or any other systems available, to monitor compliance with this subsection. The Director and the Chief Acquisition Officer would joint-

ly refer any violations of this subsection to the Inspector General of the Department of Veterans Affairs.

Subsection (l)(4)(B) would require that the Inspector General shall submit no later than November 30 of each year to the Committees on Veterans' Affairs of the House of Representatives and the Senate an annual report that includes (i) the number of referred violations received under subparagraph (A) and(ii) the disposition of such referred violations, including the number of small business concerns suspended or debarred from Federal contracting or referred to the Attorney General for prosecution.

Section 2(b) would apply the provisions of the subsection (l) to contracts entered into after the date of enactment of the Act.

Section 3—Review of Lists of Former Prisoners of War

Section 3(a) would require the Secretary of Veterans Affairs to review the lists of Prisoners of War maintained by the Secretary of Veterans Affairs and by the Secretary of Defense for this purpose, to identify any discrepancies in these lists.

Section 3(b) would require that the Inspector General of the Department of Veterans Affairs review the process by which the Secretary of Veterans Affairs determines that a veteran is a former prisoner of war.

Section 3(c) would require that the Secretary of Veterans Affairs provide a report to Congress no later than 180 days after the date of the enactment, on the prisoner of war list maintained by the Department of Veterans Affairs, findings related to comparison with the list of the Department of Defense, and the review of the Inspector General.

Section 4—Limitation on Expansion of Dialysis Pilot Program

Section 4(a) of the bill would prohibit VA from expanding the dialysis pilot program or creating any new VA-provided dialysis capability in any facility other than a facility that is an initial facility of the dialysis pilot program until VA has implemented the dialysis pilot program at each initial facility for a period of not less than two years. Section 4(a) would also require an independent analysis of the dialysis pilot program has been conducted at each initial facility, and the report required by Section 4(b) has been submitted.

Section 4(b) of the bill would require VA to submit a report to Congress not later than 60 days after the completion of the independent analysis and require the report to include the results of the independent analysis—including a comparison of cost and noncost factors such as access to care, quality of care, and veteran satisfaction—and address any recommendations with respect to the dialysis pilot program provided in a report prepared by the Government Accountability Office.

Section 4(c) of the bill would require VA to fully use the dialysis resources in place as of the date of enactment, including community dialysis providers that have entered into a contract or agreement with VA.

Section 4(d) of the bill would define "dialysis pilot program" as the pilot demonstration project established by the Secretary in 2009 to provide dialysis care to patients at certain VA outpatient facilities and defines "initial facility" as one of four outpatient fa-

cilities identified by the Secretary to participate in the dialysis pilot program prior to the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART I—GENERAL PROVISIONS

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CHAPTER 7—EMPLOYEES

Sec.
701. Placement of employees in military installations.
* * * * * * *
714. Recoupment of bonuses or awards paid to employees of Department.

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§ 714. Recoupment of bonuses or awards paid to employees of Department

(a) RECOUPMENT.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapters 45 or 53 of such title, or this title if—

(1) the Secretary determines such repayment appropriate pursuant to regulations prescribed by the Secretary to carry out this section; and

(2) the employee is afforded notice and an opportunity for a hearing conducted by the Secretary.

(b) REVIEW.—The decision of the Secretary regarding a repayment by an employee pursuant to subsection (a) is final and may not be reviewed by any other agency or any court.

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PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

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SUBCHAPTER II—PROCUREMENT AND SUPPLY

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§ 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

(a) * * *

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(l) LIMITATIONS ON SUBCONTRACTING.—(1)(A) The requirements applicable to a covered small business concern under section 46 of the Small Business Act (15 U.S.C. 657s) shall apply with respect to a small business concern owned and controlled by a veteran with a service-connected disability or a small business concern owned and controlled by a veteran that is awarded a contract that is counted for purposes of meeting the goals under subsection (a).

(B) For purposes of applying the requirements of section 46 of the Small Business Act (15 U.S.C. 657s) pursuant to subparagraph (A), the term "similarly situated entity" used in such section 46 includes a subcontractor for a small business concern owned and controlled by a veteran with a service-connected disability or a small business concern owned and controlled by a veteran described in such subparagraph (A).

(2) Before awarding a contract that is counted for purposes of meeting the goals under subsection (a), the Secretary shall obtain from an offeror a certification that the offeror will comply with the requirements described in paragraph (1)(A) if awarded the contract. Such certification shall—

(A) specify the exact performance requirements applicable under such paragraph; and

(B) explicitly acknowledge that the certification is subject to section 1001 of title 18.

(3) If the Secretary determines that a small business concern that is awarded a contract that is counted for purposes of meeting the goals under subsection (a) did not act in good faith with respect to the requirements described in paragraph (1)(A), the small business concern shall be subject to the penalties specified in—

(A) section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(B) section 1001 of title 18.

(4)(A) The Director of Small and Disadvantaged Business Utilization for the Department, established pursuant to section 15(k) of the Small Business Act (15 U.S.C. 644(k)), and the Chief Acquisition Officer of the Department, established pursuant to section 1702 of title 41, shall jointly implement a process using the systems described in section 16(g)(2) of the Small Business Act (15 U.S.C. 645(g)(2)), or any other systems available, to monitor compliance with this subsection. The Director and the Chief Acquisition Officer shall jointly refer any violations of this subsection to the Inspector General of the Department.

(B) Not later than November 30 of each year, the Inspector General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report for the fiscal year preceding the fiscal year during which the report is submitted that includes, for the fiscal year covered by the report—

(i) the number of referred violations received under subparagraph (A); and

(ii) the disposition of such referred violations, including the number of small business concerns suspended or debarred from Federal contracting or referred to the Attorney General for prosecution.

[(l)] *(m)* DEFINITIONS.—In this section:

(1) * * *

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