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HEARING ON PENDING HEALTH AND BENEFITS LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 16, 2015

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HEARING ON PENDING HEALTH AND BENEFITS LEGISLATION

WEDNESDAY, SEPTEMBER 16, 2015

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:32 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Boozman, Heller, Cassidy, Rounds, Tillis, Sullivan, Blumenthal, Brown, Tester, Hirono, and Manchin.

OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA

Chairman ISAKSON. This hearing of the Senate Veterans' Affairs Committee will come to order. I want to thank the Members for being here and Ranking Member Blumenthal for his attendance and all of you in the audience for your attendance.

We have a jam-packed agenda where we are going to discuss legislation that is being proposed by Members of the Committee and other Members of the Congress, and we have two panels. The first panel will be members of the Veterans Administration testifying on the agenda. We will do Q&A after that period, and then we will have panel two, where we have The American Legion, Veterans of Foreign Wars, a public policy person from the University of Maryland, and the National Association of State Approving Agencies will be testifying, as well. So, we are going to have a busy, busy day.

Now, I would like to introduce Ranking Member Blumenthal for any opening statement he might want to make.

STATEMENT OF HON. RICHARD BLUMENTHAL, RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you. Thanks very much, Mr. Chairman. Thanks to everyone who is participating and attending this hearing and to my colleagues.

We do have a packed agenda, a lot of bills reflecting the many needs that our veterans have, and most of them are bipartisan bills, again, reflecting the work of this Committee, its practice of leaving party differences at the door and working together to meet the needs of our veterans. It is one of the great things about this Committee, and I want to thank the Chairman for continuing that tradition and giving me and others the opportunity to introduce bills that are important to our veterans.

First, the Career Ready Student Veterans Act, which I have introduced proudly with Senator Tillis and many other Senate colleagues, would make sure that our GI benefits are appropriate, applicable, and honestly administered. Too many of our veterans are misled into squandering those GI Bill benefits as a result of the pitches and the ads that they see, squandering them on worthless degrees, in fact, sometimes no degrees at all, and that hurts not only them, but also us as taxpayers, and this bill moves the GI Bill benefits system toward a more effective and efficient method.

The Fry Scholarship Enhancement Act, which has been introduced by Senator Brown and Senator Tillis, I thank both of them and I am proud to be a cosponsor. Currently, Fry Scholarship beneficiaries are barred from receiving supplemental funding from the Yellow Ribbon Program, which is used in cases where tuition fees at private schools exceed the amounts provided by the Post-9/11 GI Bill. This measure will help to remedy that gap and it will help people across the country, including one of my constituents, Sarah Green, a surviving spouse. She has two children who are using the Fry Scholarship to attend college, and she was disappointed to learn that her children, who lost their father while servicing our country after 9/11, are not eligible for this program.

I want to thank Senator Hirono for the Veterans' Survivors Claims Processing Automation Act, which will enable more survivors to process their claims through the currently all-too-lengthy, time consuming process for VA survivor benefits. We cannot forget the families of the fallen, and I thank Senator Hirono for her leadership on this issue.

Thank you to Senator Hirono, as well, for the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act. Getting good people and making the system more flexible for them to care for our veterans is critical.

Let me just close on this note, accountability. A lot of the focus and work in this Committee has been on accountability on the part of the VA. There is no question, in the wake of the debacle that we saw in Phoenix and elsewhere—with inordinate delays, cooked books, faulty recordkeeping, and worse—that there is a need for accountability so as to enhance and sustain the credibility of this great organization and the many, many, many hard working, honest, incredibly dedicated people who work there. We should be thanking them; many of them are veterans, as well.

The bill that I have introduced, S. 1856, is a common sense accountability measure that is tough and constitutional. Tough and constitutional is what we need in an accountability measure. We are going to hear from Don Kettl, our expert witness on issues of public sector management, as to why this bill provides, to quote him, "a strong and sensible strategy for solving many of the VA's most important problems."

There is a lot of important work to do on this agenda. This hearing is a sound and solid beginning. I thank my colleagues for their dedication to this cause.

Thanks, Mr. Chairman.

Chairman ISAKSON. Thank you, Mr. Ranking Member.

Your comments cause me to say something for the public and the press that is here and anyone else, the Members of the Committee.

You know, 3 months ago, we faced a major crisis when Richard and I both got a press release where the VA said it was going to be shutting down hospitals because they were running out of funding and, in a way, indirectly sort of blamed us for that. So, we had a "come to vision" meeting at the VA—the four corners, the Chairman and Ranking Member of the House of Representatives Committee and Richard and I. We met for, what was it, I guess about 3 hours that morning, really talking about how to solve problems rather than cause problems. We ended up saving the Veterans Choice Program, not closing any facility whatsoever, and having a far more accountable system in terms of veterans' benefits for health care. I want to thank Richard for his cooperation in getting us from point A to point B in doing that, as well as the Chairman and Ranking Member of the House.

I think in the weeks ahead, we are going to find a similar resolution for the Denver situation. I am very hopeful that it is going to happen. We are very close to that actually happening, which will be two of the major problems that we faced when we came in as the new Ranking Member and new Chairman of this Committee, both of which are being resolved in the interest of our veterans and in the best interest of the country.

Hopefully, this hearing today on bills before us will be a continuation of that type of a commitment, and I thank Richard for his cooperation and work on that.

Senator BLUMENTHAL. Thank you.

Chairman ISAKSON. What we are going to do, we are not going to do opening statements by any other Members. You are welcome to submit statements, or you can wait until the very end and talk all you want, but——

[Laughter.]

Chairman ISAKSON [continuing]. We are going to hear from the people who have given us their valuable time, who have come here. Then, we are going to go by the "early bird" rule when we go to questions and answers.

Our first panel is Thomas Lynch, M.D., Assistant Deputy Under Secretary for Health Clinical Operations, Veterans Health Administration, U.S. Department of Veterans Affairs, and that is a mouthful. He will be accompanied by Robert Worley, Director of Education Service, Cathy Mitrano, Deputy Assistant Secretary for the Office of Resource Management, and Susan Blauert, who is Deputy Assistant General Counsel, Office of General Counsel at the Department of Veterans Affairs.

So, we will turn to you, Dr. Lynch. Make it as brief as you can, but do not leave anything out. If you go over the 5-minute timer and it blinks a little bit, just keep on talking until you have gotten your point across.

STATEMENT OF THOMAS LYNCH, M.D., ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY ROBERT WORLEY, DIRECTOR OF EDUCATIONAL SERVICE, VETERANS BENEFITS ADMINISTRATION; CATHY MITRANO, DEPUTY ASSISTANT SECRETARY FOR OFFICE OF RESOURCE MANAGEMENT, OFFICE OF HUMAN RESOURCES AND ADMINISTRATION; AND SUSAN BLAUERT, DEPUTY ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL

Dr. LYNCH. Thank you, sir. Good afternoon, Mr. Chairman, Ranking Member, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA benefits, programs, and services. As you indicated, joining me today is Cathy Mitrano, Robert Worley, and Susan Blauert.

Mr. Chairman, we appreciate the Committee's attention to the many subjects important to the veterans we care for and we support many of the bills you are considering today.

VA fully supports S. 1450, which would allow for increased flexibility with physicians' schedules. This bill not only helps with ensuring the continuity of hospital and emergency care operations, but also with enhancing our recruitment and retention of these vital medical professionals by accommodating their variable work schedules.

VA sincerely appreciates Senator Hirono for sponsoring S. 1451, as this is one of VA's legislative proposals last year. VA recognizes the grief that a family has after the death of a loved one, and any efforts that VA can take to improve the notification process for a claim will ease anxiety in this time of stress.

VA also supports S. 1460, which would authorize recipients of the Marine Gunnery Sergeant John David Fry Scholarship to be eligible for the Yellow Ribbon Program under the Post-9/11 GI Bill. There are costs associated with this bill, as VA would need to refine existing technology to calculate eligibility and award payments.

VA supports the general intent of S. 1693, which would expand emergency treatment for certain veterans who were unable to access the VA health care system within the prior 24 months due to prolonged waiting periods. However, we request that no further action be taken on this bill until VA has completed its comprehensive review of the Department's Care in the Community Report, as required by Public Law 114–41, which includes evaluation of programs relating to emergency care.

VA supports the intent behind S. 1938, to improve accreditation requirements for programs for veterans and their beneficiaries, but we have some recommendations to improve the final language of that bill.

The draft legislation to improve educational assistance would make a number of changes that would affect the education benefits provided to veterans. VA is supportive of many of these sections and recommends some technical edits with others.

VA does not support S. 563, the Physician Ambassadors Helping Veterans legislation, as we already have authority to appoint phy-

sicians on a "without compensation" basis, which is currently being used routinely. In fact, VA is in the process of establishing such a pilot program in at least two locations. We would like to evaluate the results from that pilot in order to better inform the Committee whether any legislative actions are necessary.

In addition, VA does not support S. 564, the Veterans Hearing Aid Access and Assistance Act, because it is unnecessary and will unduly restrict the authority of the Secretary, which he already has to appoint health care practitioners under hybrid Title 38. Through this authority, VA is able to: (1) determine those occupations that possess the medical expertise needed for delivering high-quality health care; and (2) hire and retain highly-trained professional staff with credentials consistent with the qualification standards established for those occupations. Further, VA has concerns with the inconsistent licensure requirements for hearing aid specialists, which will fragment hearing health care services and limit the delivery of comprehensive hearing health care.

VA is also very concerned with the accountability bills on the agenda. Although S. 1856 is less onerous of the two bills, VA still has a number of legal and policy concerns with both bills, as described in more detail in our written testimony.

Mr. Chairman, I thank you for the opportunity to testify today. My colleagues and I would be pleased to respond to any questions that you or the other Members of the Committee may have.

[The prepared statement of Dr. Lynch follows:]

PREPARED STATEMENT OF THOMAS LYNCH, M.D., ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION (VHA)

Good afternoon Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA benefits programs and services. Joining me today are Robert Worley, Director of the Education Service in the Veterans Benefits Administration, Catherine Mitrano, Deputy Assistant Secretary for Resolution Management, and Susan Blauert and Kim McLeod, who are both Deputy Assistant Counsels in VA's Office of General Counsel

S. 290, INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY TO VETERANS ACT OF 2015

S. 290 the "Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015," would amend chapter 7 of title 38 by adding new sections 715, 717, and 719. These sections would affect Senior Executives, defined as career Senior Executive Service (SES) or Title 38 SES-equivalent employees, who work at VA.

VA has policy concerns about the implementation of sections 715, 717, and 719, as added by S. 290. VA is concerned that the provisions in this bill would impede VA's ability to recruit, retain, reward, and manage world-class talent to lead and sustain a transformed VA.

VA has made it clear that it intends to transform VA into an organization that focuses on Veterans. This transformation depends on expert career Senior Executives who are trained and motivated to lead the VA workforce in better, more effective ways. VA Senior Executives include highly-qualified individuals with private-sector business backgrounds, medical doctors and public health care professionals with specialty care and research backgrounds, Veterans, and dedicated employees who have worked their way up through the Civil Service to the senior-most career leadership positions in VA.

VA already is challenged to recruit and retain highly-qualified Senior Executives, in that many Senior Executives take a pay cut to join or stay at VA. For instance, the salary and benefits offered to most VA medical center directors are lower than the compensation package offered for a comparable position in the private sector. This bill, as currently drafted, would compound the challenges facing VA by arbi-

trarily capping VA Senior Executives' performance ratings, requiring VA to deliver those ratings to Congress while other agencies' executive ratings remain confidential, and requiring VA Senior Executives to change locations and programs every 5 years. Even the bill's reduction of retirement benefits for VA Senior Executives convicted of certain crimes singles out VA Senior Executives for treatment unparalleled in other agencies. Highly-qualified professionals are less likely to join or stay with VA as Senior Executives when they could serve elsewhere with higher pay and less punitive treatment.

In general, section 715 would reduce the annuity paid to VA Senior Executives who are removed from their senior executive position under 38 U.S.C. 713, or who leave VA while removal proceedings under section 713 are pending, if they have been convicted of a felony that influenced their performance while employed as a VA Senior Executive.

There are practical concerns regarding implementation of section 715 that we believe would prove impractical for VA and the Government. First, section 715 does not specify whether it would apply to felony convictions in Federal or State court. Assuming section 715 will only to apply to convictions in Federal court, the section does not specify the roles and responsibilities of the various Government components that investigate (e.g., VA's Office of Inspector General, Federal Bureau of Investigation) and prosecute (e.g., DOJ) Federal criminal matters. The section also does not address the roles and responsibilities of OPM, the agency that administers Federal retirement systems.

In order for section 715 to work properly, VA would have to be notified that an individual who was removed from VA under section 713 was convicted of a felony. VA would then have to determine that the former employee's conviction influenced his or her performance while employed at VA and also determine the "covered period" applicable under section 715. Next, VA would need to notify OPM, which would have to exclude the "covered period" from the individual's annuity, and recalculate the annuity. Assuming that the individual retired a number of years ago, OPM may also need to collect annuity payments that have already been made to the individual. Further complicating this matter, an annuity may need to be recalculated by OPM if an individual's conviction is overturned on appeal.

Section 715 also raises a number of legal issues, including concerns arising under the Due Process, Takings, and Ex Post Facto Clauses of the U.S. Constitution. Several of VA's concerns are shared by the U.S. Department of Justice (DOJ) and the U.S. Office of Personnel Management (OPM). . The bill raises substantive due process concerns if interpreted to have a retroactive effect. Additionally, OPM might need to collect annuity payments that have already been paid to a retired senior executive. Such collections would implicate the Fifth Amendment's Takings Clause. Finally, the legislation may raise concerns under the Ex Post Facto Clause, which are raised when a law would make punishable acts taken that were not punishable at the time they were committed.

VA is unable to determine the costs for section 715, based on some of the implementation concerns expressed above. Significantly, whatever costs would be incurred by VA in making a determination under this section would also result in costs to DOJ, which would have to defend the Government in litigation before the courts, and OPM, which would have to adjust the pension of a VA Senior Executive, and defend its adjustment, if appealed by the employee, before the U.S. Merit Systems Protection Board.

Section 717 would essentially require a forced distribution by limiting the number of individuals who can receive the top two rating levels ("outstanding" and "exceeds fully successful"). Section 717 would require VA to consider complaints and reports (including pending reports) from various Government agencies when determining the rating of a VA Senior Executive. Section 717 would also require the Secretary to reassign VA Senior Executives once every 5 years to a position at a different location that does not include the supervision of the same personnel or programs. Under the proposed bill, VA would also be required to contract with a nongovernmental entity to prepare a report on management training for VA Senior Executives. The bill would mandate that VA prepare a plan for implementing the findings in the nongovernmental entity's report.

VA Senior Executive performance ratings must be based on an individual's performance in order to maintain VA's OPM performance management certification. Limiting outstanding performance ratings to only 10 percent of VA Senior Executives, as proposed in the bill, would draw an arbitrary line for Senior Executive performance that is not based on individual performance. It would require the Department to rank executives against each other, rather than individual and organizational standards that are clearly established at the beginning of a performance period. VA's concerns are shared by OPM, which accredits SES performance manage-

ment systems for the Government. OPM's current regulations prohibit assigning candidates to categories based on percentages.

By capping the number of individuals who can receive outstanding performance ratings, the bill would also prevent the Secretary from making meaningful distinctions in performance and from appropriately assessing and rewarding individual executives' innovations and leadership achievements. Considering complaints and pending reports when reviewing Senior Executive performance also raises concerns about the ability of the employee to respond to management's review of his or her performance, since these complaints or pending reports may not be available to the employee. Moreover, complaints may later be unsubstantiated, and pending reports may be changed before they become final.

Requiring all Senior Executives to rotate to different positions every 5 years would broaden the experience base of our executives. However, legislating this particular approach may prevent key Senior Executives identified by the Secretary from fully mastering strategic positions, and may hinder the recruitment and retention of highly qualified SES and title 38 SES-equivalent employees. In requiring periodic rotation, the bill constrains the Secretary's ability to determine which executives to reassign based on VA's needs. The legislation could further hinder the Secretary's efforts to create continuity and stability within VA's operations.

Under section 3(b) of the bill, VA must prepare and report to Congress a plan to implement the recommendations of a report issued by a nongovernment contractor on management training for VA Senior Executives. If the expectation is that VA subsequently will implement this plan, section 3(b) might raise non-delegation doctrine concerns, because it would give a nongovernmental contractor authority to implement changes in Government policy and decide which policies should be changed. To avoid these concerns, we would construe section 3(b) as not necessarily requiring VA to implement the plan.

There may also be little value for VA to enter into a contract with a nongovernmental entity to review and report on VA's management training programs. VA already has a robust portfolio of learning and development offerings available to its executives, including executive coaching, onboarding and orientation programs, and just-in-time workshops, which develop the critical skills required to address VA's current challenges. In addition, VA works with OPM, which offers cost-free guidance to Federal agencies on management training.

The costs associated with this section are as follows:

- Initial year/first year costs:

  Performance Appraisal System:

  – SES Automated System: $18,000
  – GS Automated System: $3,000,000
  – Nongovernment Independent Training (one time cost): $1,250,000
- Five Year Costs:

  Performance Appraisal System:

  – SES Automated System: $90,000
  – GS Automated System: $5,000,000

  SES Relocation:

  – Relocation Costs (negotiable per contract) $21,000,000
  – Relocation Costs (required by regulation) $90,000,000
- Ten Year Costs:

  Performance Appraisal System:

  – SES Automated System: $180,000
  – GS Automated System: $7,500,000

  SES Relocation:

  – Relocation Costs (negotiable per contract): $42,000,000
  – Relocation Costs (required by regulation): $180,000,000

Section 719 would limit the Secretary's authority to place VA Senior Executives on administrative leave or in any other type of paid non-duty status for more than 14 days during a 365-day period.

While VA does not object to the purpose of section 719, it does have significant concerns about the section, as currently drafted. VA recommends removing "any other type of paid non-duty status" from section 719(a), as this could be construed to mean that sick leave, earned annual leave, and excused absences for other purposes (such as weather-related closures), which are types of paid non-duty status, would also be subject to the limitations in this section. VA also recommends that

the limitation of 14 days be increased to 60 days, as most administrative investigations that form the basis for disciplinary action take at least 30 days to complete.

VA is unable to determine the costs for this section.

For the reasons stated above, VA has major legal and policy concerns with S. 290.

S. 563, PHYSICIAN AMBASSADORS HELPING VETERANS ACT

S. 563 would create a new section 7405A in title 38 establishing the Physician Ambassadors Helping Veterans Program. The bill would require VA to use its authority under 38 U.S.C. 7405 to seek to employ physicians on a without-compensation basis in any practice area where the average wait time for veterans seeking care exceeds VA's wait time goals or in any medical facility with demonstrated staffing shortages. The bill would also require the appointment of a volunteer coordinator, who would seek to establish relationships with local medical associations, recruit physicians for employment under this Program, and serve as the initial point of contact for physicians seeking employment on a without-compensation (WOC) basis in the facility. The bill would require that physicians appointed on a WOC basis agree to commit to serving a minimum of 40 hours in a year in the facility where they have been appointed. VA would be required to provide a credential or privilege, or decide within 60 days that such credentials or privileges will not be granted, for physicians who seek non-compensation employment under this Program. VA would be required to submit an annual report to Congress on physicians employed under this Program; the report would be required to include the number of physicians employed on a WOC basis in each Veterans Integrated Service Network (VISN) and information about staffing levels and appointment waiting times for facilities in each VISN.

VA greatly values the services of WOC physicians, and will continue to leverage existing authorities to encourage WOC physicians to provide additional clinical capacity and expertise, but VA does not support S. 563 because VA already has authority to appoint WOC physicians under 38 U.S.C. 7405. Under current practice, the facility Chief of Staff, Physician Recruiter, or another member of the Human Resources Office coordinates WOC physician recruitment efforts, while the legislation would require a new position, the Volunteer Coordinator, to handle these responsibilities. Additionally, the legislation directs the Medical Facility Director to grant credentials or privileges to practice medicine within 60 days, but there may be circumstances in which a determination could not be made within that time period. For example, if there was a pending investigation underway, a history of patient complaints, or a refusal or inability to comply with VA standards or protocols, it could be difficult to make a determination in the allotted time. Similarly, it may be particularly difficult to make these determinations for international medical graduates. Furthermore, the bill's reporting requirements would be resource intensive because VA does not currently have an automated system to track or monitor appointees in WOC status.

VA estimates the costs of this bill would be negligible and would only be required for administration of the bill's requirements.

S. 564, VETERANS HEARING AID ACCESS AND ASSISTANCE ACT

S. 564 would amend VA's appointment authority to include licensed hearing aid specialists and would require an annual report on the provision of hearing aid services to Veterans. Section 2(a) of S. 564 would amend 38 U.S.C. 7401(3) to include "licensed hearing aid specialists," and would include "licensed hearing aid specialists" among those whose qualifications can be prescribed by the Secretary.

VA does not support section 2(a) of S. 564 because we do not believe it is necessary. VA already has authority under 38 U.S.C. 7401(3) to appoint health care occupations it considers "necessary for the recruitment and retention needs of the Department." Additionally, VA has authority under 38 U.S.C. 7402(b)(14) to establish qualification standards for health care occupations. Further, VA has concerns about the lack of standardized educational or professional health licensure requirements for hearing aid or instrument specialists. If this employee category is added to title 38, it could fragment hearing health care services and limit the delivery of comprehensive hearing health care.

VA provides comprehensive hearing health care services and employs both audiologists and audiology health care technicians who, in collaboration, deliver high quality and efficient care. VA audiologists are doctoral-level professionals trained to diagnose and treat hearing loss, acoustic trauma and ear injuries, tinnitus, auditory processing disorders, and patients with vestibular complaints. VA currently employs 320 audiology health technicians (commonly known as audiology assistants) who function under the supervision of audiologists. Some of these audiology health tech-

nicians are licensed as hearing aid specialists, although they are hired as health technicians whether or not they are licensed as hearing aid specialists. VA can appoint hearing aid specialists as audiology health technicians under title 5. Audiology health technicians have a broader scope of practice than the typical hearing aid specialist. VA developed this position associated core competencies for health technicians to provide efficient support services and assist audiologists in providing comprehensive hearing care. VA audiology health technicians have duties and responsibilities beyond that allowed by State law for hearing aid specialists. The majority of states (33) only require a high school education, while nine states have no educational requirement and eight states require an associate degree. Hearing instrument specialists are licensed to sell hearing aids and are regulated primarily for their hearing aid sales roles. The license does not require professional education, clinical training, or experiential health care apprenticeships. Using occupations with limited or inconsistent educational and licensing requirements would fragment VA's current high quality health care delivery system.

Section 2(b) of S. 564 would require VA, not later than 1 year after the date of the enactment of this Act and not less frequently than once every year thereafter, to report to Congress on several matters. First, VA would be required to report on timely access to Veterans to hearing health services furnished directly by VA, and VA's contracting policies for providing health care services to Veterans at non-VA facilities. VA would be required to report on staffing levels of audiologists, hearing aid specialists, and health technicians in audiology; a description of performance metrics with respect to appointments and care; the average wait times for appointments for disability rating evaluations, hearing aid evaluations, dispensing of hearing aids, and any follow-up hearing health appointments; and the percentage of Veterans whose waits times fell within certain defined time periods. Each report would also be required to include the number of Veterans who received care in the community for hearing health care appointments, the number of Veterans referred for certain identified services, and the policies of the Veterans Health Administration regarding the referral of Veterans to care in the community, and a description of how such policies will be applied under the Patient-Centered Community Care (PC3) program.

VA does not support section 2(b) of S. 564 because it is unnecessary. The requested data and information are already compiled as part of an ongoing and automated process. VA would be happy to brief the Committee on the various types of information currently compiled and disseminated on staffing levels and access to care.

Furthermore, VA recommends against requiring in statute reporting standards specific to the PC3 program. Under the VA Budget and Choice Improvement Act, Public Law 114–41, VA is required to review the full range of its current Care in the Community program, including PC3, and submit a report to Congress with recommendations for how to consolidate these authorities and programs into a single program to be known as the "Veterans Choice Program." Until such a review and plan is complete, we believe it would be inappropriate to institute a reporting requirement that may have little purpose or value in the future if the PC3 program is modified.

VA cannot estimate the cost of this provision at this time because we cannot know at what grade these positions would be classified, so we cannot determine the average salary or benefits for these positions.

S. 1450, DEPARTMENT OF VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT AND RETENTION ACT

S. 1450 would allow VA to arrange flexible physician and physician assistant work schedules to allow for the hiring and full implementation of a hospitalist physician system and to accommodate the unusual work schedule requirements for Emergency Medicine (EM) Physicians.

VA supports increased flexibility for critical medical personnel. Hospitalist physicians and EM physicians specialize in the care of patients in the hospital, often working irregular work schedules to accommodate the need for continuity of efficient hospital care. VA believes that increased scheduling flexibility would align VA practice with the private sector, facilitating the recruitment, retention of emergency physicians and the recruitment, retention and operation of a hospitalist physician system at VA medical centers (VAMC). We note concerns that the Office of Personnel Management will provide in its statement for the record with respect to certain of the bill's provisions. The Administration looks forward to working with the Congress and our agency partners to finalize language on these provisions.

VA believes S. 1450 would be cost neutral in terms of impact on salaries as it merely authorizes flexibility in physician and physician assistant work schedules to allow for the hiring and full implementation of a hospitalist physician system and improvements in EM physician coverage and enhanced ability to recruit EM trained and experienced physicians.

S. 1451, VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015

S. 1451, the "Veterans' Survivors Claims Processing Automation Act of 2015," would authorize VA to pay benefits to a survivor of a Veteran who has not filed a formal claim if the record contains sufficient evidence to establish the survivor's entitlement to such benefits. The bill would specify that the date on which a survivor notifies VA of the Veteran's death would be treated as the date of receipt of the survivor's application for benefits. S. 1451 would be applicable to claims based on a death occurring on or after the date of enactment of this legislation.

VA supports S. 1451. The Department submitted a similar legislative proposal for the Fiscal Year (FY) 2016 Budget. Under 38 U.S.C. 5101(a), a claimant must file a formal claim as a condition of receiving benefits. However, when a survivor of a Veteran files a claim for VA benefits based upon the Veteran's death, the information and evidence necessary to decide the claim is often contained in the Veteran's claims file. As a result, it is not necessary from a practical standpoint for a claimant to file a formal claim in such circumstances. Elimination of the formal-claim requirement would automate the delivery of uninterrupted benefits to qualifying survivors.

VA has one technical comment. VA would prefer to change the language from "the date on which a survivor of a Veteran notifies the Secretary of the death of the Veteran," to "the date on which the Secretary is notified of the Veteran's death." The modified language would allow VA to be more liberal when providing benefits in instances where the survivor is not the individual notifying VA of the Veteran's death.

VA estimates that there would be no benefit or general operating expenses (GOE) associated with S. 1451.

S. 1460, FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015

S. 1460 would allow recipients of the Marine Gunnery Sergeant John David Fry Scholarship to be eligible for the Yellow Ribbon program under the Post-9/11 GI Bill. The Yellow Ribbon program is currently available to Veterans and most transfer-of-entitlement recipients receiving Post-9/11 GI Bill benefits at the 100% benefit level attending institutions of higher learning. The program provides payment for up to half of the tuition-and-fee-charges that are not covered by the Post-9/11 GI Bill, such as charges that exceed an academic year cap or out-of-state charges, if the institution enters into an agreement with VA to pay or waive an equal amount of the charges that exceed Post-9/11 GI Bill coverage. This bill would take effect for the academic year (August 1) beginning after the date of enactment.

VA does not object to S. 1460, subject to Congress identifying acceptable offsets for the additional benefit costs. VA would need to make modifications to its existing information technology (IT) systems to implement this legislation. Specifically, VA would need to modify the Benefits Delivery Network (BDN), the VA-Online Certification of Enrollment (VA-ONCE), and the Post-9/11 GI Bill Long-Term Solution (LTS), to calculate eligibility and award Yellow Ribbon program payments for Fry Scholarship beneficiaries. VA estimates that it would require 1 year from the date of enactment to make the IT system changes necessary to implement the proposed legislation.

VA estimates the benefit costs associated with enactment of the bill to be $492,000 in FY 2016, $2.7 million over 5 years, and $6.2 million over 10 years. Although VBA administrative costs are estimated to be insignificant, IT costs are estimated to be $5 million. This IT estimate consists of the design, development, testing, and deployment of the new functionality that would be needed to meet the requirements of this legislation.

S. 1693, EXPANDING EMERGENCY TREATMENT FOR CERTAIN VETERANS

Today, only Veterans who are "active Department health-care participants" (as defined by 38 U.S.C. § 1725(b)) and who meet all of the other administrative and clinical eligibility criteria of section 1725 are eligible to receive reimbursement under this section for the reasonable value of (unauthorized) non-VA emergency treatment of non-service-connected disabilities furnished them by non-VA emergency providers. To be such a participant, a Veteran, in addition to being enrolled in VA's health care system, must, pursuant to section 1725(b)(2)(B), have received care under 38 U.S.C. chapter 17, within the 24-month period preceding the fur-

nishing of the non-VA emergency treatment. S. 1693 would amend section 1725(b)(2)(B) to include Veterans who have been unable to receive care under chapter 17 within the mandated 24-month period because of a waiting period imposed by the Department with respect to a new patient examination of such Veterans.

VA supports S. 1693 but, as discussed below, requests that no further action be taken at this time. We recognize that some Veterans have been enrolled in VA's health care system but unable to become actual users of the system because they have not been able to receive their "new patient examination" due to waiting periods (in appointment scheduling) for care in VA. As a result, although enrolled, they fail to meet the full statutory definition of an "active Department health-care participant" for purposes of being able to receive reimbursement under section 1725. The bill would provide a fair remedy for those whose section 1725 claims are denied solely because VA scheduling procedures and wait times prevented them from receiving VA care within the 24-month period preceding their receipt of non-VA emergency treatment.

While the goal of this bill is well-intentioned, we believe it premature for Congress to take any action on this measure until VA has completed its comprehensive review of the Department's Care in the Community programs, which includes a review of the monetary benefits available under section 1725. For that reason, we respectfully request that the Committee forbear consideration of S. 1693 (and any similar measure) until VA has an opportunity to complete its review and share the results, including recommendations, with the Committee.

VA estimates that the cost associated with enactment of S. 1693 would be $2.86 million in FY 2017, $3.0 million in FY 2018, $15.8 million over 5 years, and $35.8 million over 10 years.

S. 1856, VA EQUITABLE EMPLOYEE ACCOUNTABILITY ACT OF 2015

S. 1856, the "Department of Veterans Affairs Equitable Employee Accountability Act of 2015," would amend chapter 7 of title 38 of the United States Code by adding new sections 715, 709A, 717, and 719. It would also amend chapter 73 of Title 38 by adding a new section 7324A. These sections would affect all VA employees occupying a position under a permanent or indefinite appointment who are not on a probationary or trial period.

S. 1856 is a more measured alternative to a series of recent legislative proposals targeting VA employees by providing extraordinary authority to sanction them, not available in other Federal agencies. However, VA has legal and policy concerns with S. 1856.

Section 2(a) of S. 1856 would amend chapter 7 of Title 38 by adding in a new section 715, which would give the Secretary authority to suspend a VA employee without pay if the Secretary determines the performance or misconduct of the employee is a clear and direct threat to public health or safety. The Secretary would be authorized to remove an employee so suspended after providing a written statement of charges, allowing the employee not less than 7 business days to respond to the charges, and, at the request of the employee, providing a formal review of the proposed removal action within 15 business days of the employee's request. A decision to remove an employee under section 715 could be appealed to the Merit Systems Protection Board (MSPB) under section 7701 of Title 5, and employees may seek judicial review of an MSPB decision under section 7703 of Title 5. If the Secretary determines a suspension or removal under this provision is unwarranted, illegal, violates a collective bargaining agreement, or is a prohibited personnel action, the employee is entitled to back pay for the time the employee was suspended or removed. At this time the Department does not have costs associated with this section.

Section 715 raises a number of policy concerns. Under section 715, an employee would be able to have his or her proposed removal reviewed by a "Department authority duly constituted for purposes of this section," before the Secretary can make a determination on the removal. An employee would also be entitled to appeal a removal decision to the MSPB and subsequently to the U.S. Court of Appeals for the Federal Circuit. Typically, an employee who is removed from the government receives notice of a proposed removal, an opportunity to respond, and a decision on the proposed removal. If entitled, the employee may appeal the removal action to the MSPB, or the employee may file a discrimination or whistleblower retaliation complaint. If the employee appeals to the MSPB, the employee may seek judicial review of the MSPB decision before the U.S. Court of Appeals for the Federal Circuit. By adding in a new departmental review, section 715 would add in an unnecessary new process, because a removal proposed under this section is already subject to review by the Secretary, and subsequently, if the action is taken, by the MSPB

and the U.S. Court of Appeals for the Federal Circuit. Section 715 would also add to the cost of the agency to litigate and adjudicate the personnel action, as the section requires a new "Department authority duly constituted for purposes of this section." To remedy this policy problem, VA recommends eliminating the departmental review in section 715(b)(3).

VA also recommends that section 715 apply in cases where the Secretary determines the performance or misconduct of an employee "significantly or adversely impacts Veteran health care or benefits." This standard, in lieu of the proposed "clear and direct threat to public health or safety" standard is more particularly suited to the mission of VA and will provide the Secretary better flexibility in addressing its unique mission needs. In addition, it will avoid the application of case law decided in other contexts that have previously interpreted "clear and direct threat to public safety" in a manner that could restrict the Secretary's ability to invoke section 715. Similarly, VA recommends the proposed standard for removal in section 715(a)(2) be changed from "is necessary in the interests of public health or safety," to " is necessary in the interests of providing quality veteran health care and benefits."

The back pay provision in section 715(e) provides a modicum of protection for employees who ultimately have their suspensions or removals under this section reversed. However, VA recommends clarifying that the determination that triggers back pay can be made by the Department, the Secretary, or by the courts on appeal. As currently drafted, the back pay provision is limited to determinations made only by the Secretary. Finally, to clarify the Secretary's authority when section 715 is invoked, VA recommends adding the clause, "Notwithstanding any other provisions of law," to subsections 715(a), (b), and (c).

Section (2)(c) of S. 1856 would require the Inspector General to submit, no later than one year after S. 1856 is enacted, a report to Congress on the number of suspensions or removals taken pursuant to section 715. The Inspector General's report must include, among other things, the number of "suspensions or removals that the Inspector General considers to be retaliation for whistleblowing." VA recommends removing section 2(c)(2)(E), as the Inspector General is not involved in taking disciplinary actions under section 715 and, moreover, may not be able to make a finding of whistleblower retaliation.

Section 3 of S. 1856 would amend chapter 7 of Title 38 by adding in a new section 709A, which would require the Secretary to annually assess the performance of political appointees in a manner similar to the assessment of career Senior Executive Service employees.

Section 4 requires managers to determine, not later than 30 days before the end of the probationary period, whether the employee has demonstrated successful performance. Probationary employees can be terminated for performance or conduct deficiencies and as such, it is recommended that the language be amended to require managers to also determine if the employee's conduct warrants continued employment past the probationary period. It should be noted that some probationary employees may meet the definition of "employee" as outlined in 5 U.S.C. 7511, and if a probationer meets the definition of "employee," management can no longer terminate during the probationary period with limited due process and appeal rights. Therefore, in some cases, even if a manager were to determine that a probationary employee was not suitable for continued employment, an employee who is serving a probationary period but has completed more than 1 year of current continuous service would be entitled to due process, including, if applicable, a performance improvement plan or application of progressive discipline, 30-days advanced notice, a right to review evidence, application of mitigating and aggravating factors, etc., prior to separation.

Section 5 of S. 1856 requires that VA evaluate managers, as part of their annual performance plans, on actions that they have taken to address poor performance and misconduct among subordinate employees and steps that that the manager has taken to improve or sustain high-levels of employee engagement. VA is already committed to the principles of section 5 of S. 1856 and supports this section.

Section 6 of S. 1856 would require VA to provide all managers with periodic training on whistleblower rights and managing and motivating employees. VA already offers managers the training discussed in section 6. Moreover, some training, such as whistleblower rights and protections, is already required for all managers. Nevertheless, VA is committed to the principles of section 6 of S. 1856 and supports this section.

Section 7 of S. 1856 would require VA to develop a promotional track, which does not involve a transition to a management position, for employees who are considered technical experts. VA is committed to ensuring that its employees are allowed to advance in their careers, regardless of whether the employee wants to be a manager. Consequently, VA supports this section.

Section 8 of S. 1856 would amend Title 5 to expand the definition of "personnel action" under 5 U.S.C. 2302, which addresses prohibited personnel practices, to include performance evaluations under Title 38. VA is committed to ensuring that all performance evaluations are based on merit. Consequently, we do not have any legal or policy concerns with section 8.

Section 9 of S. 1856 would require that any VA employee who participated personally and substantially in a VA acquisition over $1,000,000 or held a key position relating to acquisition obtain a written opinion from an ethics counselor regarding restrictions on activities that the official may undertake on behalf of a VA contractor or subcontractor within a 2 year period beginning on the date that the employee terminates his or her employment with VA.

VA has some legal and policy concerns about section 9. The $1,000,000 threshold under section 9 would seemingly encompass a large number of VA's acquisitions. Moreover, this threshold falls below the $10,000,000 threshold set under the Procurement Integrity Act. To that extent, VA recommends that the acquisition threshold for section 9 be set at $10,000,000. Section 9, as currently drafted, would also encompass all acquisitions that an employee worked on during their career at VA. Because this number can be significant, VA recommends that language be inserted to section 9 that triggers the requirement under that section to acquisitions in which the employee participated during his or her last year of employment with VA. Limiting section 9 to the employee's last year of employment with VA also mirrors the criminal conflict of interest statute, 18 U.S.C. 207, which prohibits employees from representing any non-Federal parties in connection with any specific party matters that were under their official responsibility during the last year of employment. Assuming that VA's recommended changes to section 9 are incorporated, similar changes should also be made to section 10 of S. 1856.

Section 11 of S. 1856 stipulates that the Secretary may not place any covered individual on administrative leave for more than a total of 14 business days during any 365 day period without notification to the Committees on Veterans' Affairs of the Senate and the House of Representatives. A covered employee is one who is subject to investigation or for whom any disciplinary action is proposed or initiated. An investigation conducted by local VA employees typically takes a minimum of 60 calendar days to complete and 45 calendar days for Department employees from outside the local facility. Therefore, VA suggests that this language be modified to allow the Secretary to approve 30 business days of administrative leave under the circumstances described in this section.

In section 719(c)(1) and (2), administrative leave includes "leave to which an employee of the Department is otherwise entitled, or credit for time or service" and "includes any type of paid non-duty status." Based on this language, the Secretary would be required to report to Congress any annual leave, sick leave, leave without pay, credit hours, compensatory hours, or excused absence for weather related events, for example, taken by an employee in excess of 7 business days. Therefore, VA suggests modifying the in section 719(c)(1) to language used by OPM, which is "an administratively authorized absence from duty without loss of pay or charge to leave for which the employee is placed due to an investigation or for whom any disciplinary action is proposed or initiated." It is also suggested that section 719(c)(2) be modified to include the clause "without a charge to leave" to clarify the definition of administrative leave..

Section 12 of S. 1856 would amend chapter 73 of Title 38 by adding in a new section 7324A to Title 38, which would require, within 60 days of the date of enactment of S. 1856 and periodically thereafter, VA's Office of Medical Inspector (OMI) to submit "a report on any problems or deficiencies encountered by the Department in carrying out the programs and operations of the Veterans Health Administration, including any recommendations for corrective action." Under section 7324A, OMI's report must be submitted to the Secretary, the Under Secretary for Health, and Congress.

VA does not support section 7324A(a), as OMI's work would be duplicative of reports produced by VA's Office of Inspector General's (OIG), Office of Healthcare Inspection. OIG's Office of Healthcare Inspection routinely prepares reports on deficiencies within the Veterans Health Administration, and these reports include recommendations for corrective actions. OIG submits these reports to the Secretary and the Under Secretary for Health, in addition to both the House and Senate Committees on Veterans' Affairs.

However, VA supports section 7234A(b), which would require OMI to provide their reports to Congressional oversight committees, as this would promote transparency, ensuring that Members of Congress are apprised of the issues encountered in the conduct of OMI's investigations. It will also help to restore trust in OMI and in VHA's broader quality assurance mission.

However, only a small percentage of OMI's work in recent years consists of internal reviews requested by the Secretary or Under Secretary for Health, or so-called "blue cover" reports requested by Members of Congress. Approximately 95 percent of OMI's current work involves investigating whistleblower allegations that are referred to the Secretary by the U.S. Office of Special Counsel (OSC) for review. The Office of the Secretary releases VA's report of investigation to OSC, which then provides un-redacted copies (along with its determination whether each report meets statutory requirements) to the House and Senate oversight committees when OSC eventually closes the case.

VA also supports section 7234A(c), which requires protecting any medical or other personally identifiable information contained in its reports. Currently, VA redacts such information from reports before they are shared with the public.

If enacted, VA anticipates the cost for implementing section 7324A would be approximately $150,000 during the first year, $750,000 for the first 5 years, and $1,500,000 for 10 years.

Section 13 of the bill would require a report from the Comptroller General on the implementation of these provisions and as assessment of the effects of these provisions. We defer to the U.S. Government Accountability Office on this provision.

VA is unable to determine costs for the remainder of the legislation. However, there could be significant costs to VA to defend the Government in litigation over the legislation in courts.

VA also has policy concerns about the implementation of section S. 1856; however, these concerns are more limited than our concerns with other pending legislation. VA is concerned that the provisions in this bill would impede VA's ability to recruit, retain, reward, and manage world-class talent to lead and sustain a transformed VA.

The Secretary has made it clear that he intends to transform VA into an organization that focuses on Veterans. This transformation depends on a world-class workforce who are trained and motivated to contribute their talents to the VA and our Veterans in better, more effective ways. VA fully supports the concept that employees whose performance and conduct does not meet the standards our Veterans deserve must be held accountable. However, by singling out VA employees, many of whom are Veterans themselves, with legislation that provides them fewer protections and subjects them to greater scrutiny, a clear message is sent that VA employees are in a different, inferior class within the Federal workforce—a class that needs very close oversight with rapid and severe penalties for misdeeds or poor performance. This will hinder the Secretary's efforts to make the "VA class" of employees the very finest employees to serve our Veterans and ensure that they timely receive the benefits and care to which they are entitled.

S. 1938, CAREER READY STUDENT VETERANS ACT OF 2015

S. 1938, the "Career-Ready Student Veterans Act of 2015," would amend title 38, United States Code, to improve the approval of certain VA programs of education for purposes of educational assistance.

This bill would amend 38 U.S.C. 3676(c), pertaining to the approval of non-accredited courses, by adding new requirements to the criteria that must be met for State approving agencies to approve institutions' written applications for approval of non-accredited courses. First, in the case of a program designed to prepare an individual for licensure or certification in a State, the program would need to meet any instructional curriculum licensure or certification requirements of that State. Second, in the case of a program designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that would require approval or licensure, the program would need to be approved or licensed by such board or agency of the State.

The bill also would add subsection (f) to section 3676 to permit VA to waive the aforementioned requirements in the case of a program of education offered by an educational institution if VA determined:

- The educational institution was accredited by an agency or association recognized by the Department of Education;
- The program did not meet the requirements at any time during the two-year period preceding the date of the waiver;
- The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs;
- The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admis-

sion activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

Subsection (d) of the proposed legislation would add a new subsection to section 3679 of title 38 to require VA to disapprove a non-accredited course of education designed to prepare an individual for licensure or certification in a State or for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval or licensure, if the educational institution providing the course of education does not publicly disclose any conditions or additional requirements, including training, experience, or exams, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation.

Subsection (e) of this bill would amend section 3672(b)(2)(A)(i) to include the new approval requirements for non-accredited courses in the approval requirements for "deemed approved" accredited programs.

The bill would also amend 38 U.S.C. 3675, to apply the new requirements in section 3676(c), to the approval conditions for accredited courses offered by private for-profit institutions.

VA supports the intent behind this bill. However, we do not support the bill as currently drafted for a number of reasons.

If enacted, the bill would ensure that non-accredited courses pursued by GI Bill beneficiaries meet all of the State requirements for licensure or certification in a given occupation or career field and would be approved by the State board or agency that developed the standards. VA does not oppose the concept of additional criteria for the approval of non-accredited courses. However, we note that, as written, the bill would not allow the Secretary to waive the requirement for non-accredited courses, as the institution must be accredited in order to meet the criteria for a waiver. VA is unclear as to the reason why an accreditation requirement would be inserted in the approval criteria for non-accredited programs. In general, an institution's accreditation applies to all of the courses offered by the institution, and accredited courses have different approval requirements.

Additionally, the bill would ensure that accredited courses at private, for-profit institutions meet all State requirements for certification and licensure. VA supports efforts to ensure that Veterans and other GI Bill beneficiaries are well-trained and adequately equipped to obtain employment and achieve economic success. However, we note that the proposed licensure and certification requirements would not be applied to similar programs at public and private, not-for-profit institutions. Consequently, the bill does not ensure that all Veterans and beneficiaries would receive all of the training required for licensure or certification in their chosen occupational fields.

VA also has concerns about the language in the new section 3679(d), which would require the disapproval of waived programs if the educational institution does not publicly disclose the additional conditions or requirements needed in order to meet licensing or certification requirements. VA believes "the Secretary or the appropriate State approving agency" should be substituted for "the Secretary," as the State approving agencies are responsible for the approval of non-accredited courses. As State employees, they have subject matter expertise with regard to the specific State requirements for licensure or certification and, consequently, are better-positioned to determine the gaps in training or conditions that must be publicized. In addition, to be consistent with approval authorities in other sections of chapter 36, VA believes that both the Secretary and the SAA should have this authority.

VA is unclear as to the intent underlying the proposed amendment to 3672(b)(2)(A)(i). As written, it could be interpreted to include non-accredited programs in a "deemed approved" category. However, if the intent is to make the proposed paragraphs (14) and (15) of section 3676(c) apply to accredited programs at public and proprietary not-for-profit institutions of higher learning as well, then it should be reworded to read, "Subject to paragraphs (14) and (15) of section 3676(c) of this title, an accredited." In addition, we note that, as currently drafted, the licensure and certification requirements could not be waived for these programs. VA believes that the waiver authority should apply to accredited programs at public and proprietary not-for-profit institutions of higher learning as well as to accredited courses at private, for-profit institutions and non-accredited programs.

VA estimates that there would be no additional mandatory or discretionary cost requirements associated with the enactment of this bill.

DRAFT BILL REGARDING IMPROVEMENTS IN EDUCATIONAL ASSISTANCE

Section 1 of the proposed legislation would add a new section (3326) under subchapter III of chapter 33, title 38 U.S.C. Specifically, this section proposes to recodify the provisions of Public Law (Pub. L.) 110–252, section 5003(c), to bring those requirements into title 38, and it proposes a few amendments to those requirements.

The Post-9/11 GI Bill (or chapter 33) requires individuals to relinquish eligibility to some other VA education benefit, as applicable, in order to receive the chapter 33 benefits.

Subsection (a) of the proposed 38 U.S.C. 3326 would define the eligibility requirements for individuals to elect chapter 33 educational benefits. Individuals would be able to elect to receive chapter 33 benefits if, as of August 1, 2009, they were entitled to the MGIB-AD, MGIB—Selected Reserve (SR), or the Reserve Educational Assistance Program, and had some or all of their entitlement remaining under those programs. Individuals would be able also to elect chapter 33 if they are making contributions to receive MGIB-AD, or previously declined participation in the MGIB-AD program.

Subsection (b) of the proposed 38 U.S.C. 3326 would call for the cessation of contributions toward MGIB-AD if an individual elects to receive chapter 33 while still making contributions to MGIB-AD. The obligation to make contributions would cease the first month after the individual elects chapter 33 benefits.

Subsection (c) of the proposed 38 U.S.C. 3326 would address the revocation of remaining entitlement transferred to a dependent under MGIB-AD, if the individual who transferred the benefit elects to receive chapter 33 benefits instead. The proposed legislation would allow the transferor to revoke any unused benefits that have been transferred to a dependent. If the transferor revoked the transferred benefits from his or her dependent, then the remaining entitlement would be available for the transferor to use under chapter 33. If the transferor did not elect to revoke the transferred MGIB-AD benefits, then those benefits would remain available to the dependent under MGIB-AD.

Subsection (d) of the proposed 38 U.S.C. 3326 would state that individuals who make an election would be eligible for benefits under chapter 33, rather than under the relinquished benefit. It also would state that if individuals elected to receive chapter 33 in lieu of MGIB-AD, and had previously used entitlement under MGIB-AD, they would have eligibility under chapter 33 for the number of months of entitlement that were remaining under MGIB-AD, plus any entitlement that was revoked from a dependent in accordance subsection (c).

Subsection (e) of the proposed 38 U.S.C. 3326 would allow individuals who elect to receive educational assistance under chapter 33 to receive payments at the rate available under the relinquished benefit if their educational pursuit is authorized under the relinquished benefit, but not under chapter 33. Any entitlement used would be charged against chapter 33 in the same manner as it would be charged against the relinquished benefit.

Subsection (f) of the proposed 38 U.S.C. 3326 would outline additional chapter 33 assistance for members who made contributions toward the MGIB-AD program. A refund of MGIB-AD contributions would be issued to a qualifying Veteran as an increase to the last monthly housing stipend when benefit entitlement is exhausted. The amount of the refund would be calculated by taking the remaining months of entitlement under MGIB-AD, at the time of the chapter 33 election, plus the number of months, if any, of entitlement under chapter 30 that were revoked by the individual and dividing that number by 36. The result would be multiplied by the dollar amount that the Veteran contributed toward the MGIB-AD, and the resulting amount would be issued in conjunction with the final monthly housing stipend. This proposed legislation would also change the corresponding language currently contained in section 5003(c) of Pub. L. 110–252 by also authorizing refunds to individuals pursuing programs at non-degree granting institutions.

Subsection (g) of the proposed 38 U.S.C. 3326 would provide for continued entitlement to additional assistance for critical skills, specialty, and/or service (i.e., a college fund or kicker) to which an individual was entitled under MGIB-AD or MGIB-SR prior to relinquishing one of those benefits and establishing eligibility under chapter 33. The additional assistance would be paid in conjunction with the individual's monthly housing stipend.

Subsection (h) of the proposed 38 U.S.C. 3326 would provide VA with the authority to make an alternative election for an individual if the election submitted by the applicant is not in his or her best interest. If an individual elected to receive a benefit that would be clearly not in his or her best interest on or after January 1, 2016, VA would be able to change the election and would be required to notify the individual of the change within 7 days. The individual would be allowed 30 days from

the date he or she received the VA notification to modify or revoke the election made by VA. In addition, VA would notify the individual of the change of election by electronic means whenever possible. These provisions are not included in section 5003(c) of Pub. L. 110–252; therefore, they would constitute a new authority.

Subsection (i) of the proposed 38 U.S.C. 3326 would provide that any election made under section 3326 would be irrevocable.

Finally, this section would repeal subsection (c) of section 5003 of the Post-9/11 Veterans Educational Assistance Act of 2008 (Pub. L. 110–252; 38 U.S.C. 3301 note).

VA does not object to (a) through (g) of the proposed 38 U.S.C. 3326 because these provisions are, generally, identical to those that were enacted in section 5003(c) of Pub. L. 110–252, with the exception of one minor change in the proposed section 3326(f), which would also authorize refunds of MGIB-AD contributions to individuals receiving monthly stipend payments for pursuit of non-degree programs under 38 U.S.C. 3313(g).

However, VA has concerns with subsection (h) of the proposed 38 U.S.C. 3326, which would allow VA to make an alternative election on behalf of the Veteran that VA determines is in his or her best interests. As individuals' situations are different, elections made in the best interest of a Veteran would be highly subjective. While one claims examiner might view an election option as being the best, another might disagree. Therefore, VA recommends specific criteria for an election be added to the legislation that would eliminate subjectivity. For example, in some instances, a Veteran elects to relinquish MGIB-AD to receive chapter 33 benefits when he or she has only a few months of MGIB-AD entitlement remaining. If the individual has more than one qualifying period of service, it may be in that individual's best interest to finish 36 months of entitlement under MGIB-AD before beginning to receive chapter 33 benefits—the individual could then receive up to 12 months of entitlement under chapter 33. If this situation met the criteria in the legislation as enacted, the Veteran's claim would be processed under the chapter 30 program until his or her entitlement under that program ends.

VA also recommends that the proposed legislation include language to allow VA to make an election in cases where a Veteran or Servicemember applies for chapter 33 benefits and does not elect to relinquish any benefit. This would allow VA to maximize automation, improve processing times, and obviate the need to contact the Veteran for an election.

Further, VA has concerns with the impact this subsection would have on the automation of original claims using LTS. If VA has to make an alternative election under chapter 33 when a Veteran is eligible for more than one benefit, claims' examiners would have to review the majority of chapter 33 original claims. The need for this review would limit the number of original claims that could be automated through LTS without human intervention, increasing the length of time that Veterans would be waiting to receive their benefits.

VA estimates the cost of this section would be insignificant because subsections (a) through (g) of the proposed 38 U.S.C. 3326 are provisions that are already in place under section 5003(c) of Pub. L. 110–252 and, therefore, would result in no additional cost. In some cases, subsection (h) may result in a Veteran receiving a better benefit that would increase costs to VA. However, due to VA's current outreach efforts, such as the GI Bill Comparison Tool, and the amount of information available to assist Veterans in making informed decisions on education benefits, VA does not anticipate making a significant number of alternative elections. Therefore, anticipated costs to the readjustment benefits account are insignificant.

Section 2 would amend 38 U.S.C. 3684(a) to define the term "educational institution" to include a group, district, or consortium of separately accredited educational institutions located in the same State, and which are organized in a manner that facilitates the centralized reporting of their enrollments. This legislation would also amend section 3684(a) to include individuals enrolled under chapters 32 and 33.

The proposed legislation would apply to any reports of enrollment submitted on or after the date of enactment.

VA supports section 2. This legislation would allow each institution in a district/consortium to certify a student's enrollment regardless of where the student is matriculated. Furthermore, since school certifying officials at "District" institutions have access to student records and all courses have universal numbering, VA compliance visits could be done at any institution and records would be available for students who attend any of the institutions included in the group, district, or consortium.

There would be no additional cost for implementing this provision because the reporting fees would be paid to the school that is certifying the enrollment, regardless of the location of the institution.

Section 3 would amend subsection 38 U.S.C. 3313(c)(1)(A) to limit the benefits paid for pursuit of certain degree programs at a public institution of higher learning (IHL). It would limit the amount of tuition and fees payable for certain programs at IHLs, specifically those that involve a contract or agreement with an entity (other than another public IHL) to provide a program of education or a portion of a program of education, to the same amount per academic year that applies to programs at private or foreign IHLs. This section would be effective the first day of a quarter, semester, or term (whatever is applicable) after the legislation's enactment.

VA supports legislation that would limit the amount of tuition and fee payments at public IHLs that involve contracted training. VA is concerned about high tuition and fee payments for enrollment in degree programs involving flight training at public IHLs. Education benefit payments for these types of programs have increased tremendously with the implementation of Public Law 111–377, and in some cases, public institutions seem to be targeting Veterans for their flight-related training programs.

There has been a significant increase in flight training centers, specifically those that offer helicopter training, that have contracted with public IHLs to offer flight-related degrees. Sometimes these programs charge higher prices than those that would be charged if the student had chosen to attend the vocational flight school for the same training.

Additionally, VA has also noticed a growing number of VA beneficiaries are taking flight courses as electives. VA allows for "rounding out," whereby non-required courses may be taken to bring a student's course load up to full-time status in the student's last term. Based on anecdotal evidence, some schools are enrolling students in these very expensive flight courses when "rounding out" is applicable. In most cases, these courses are not specifically required for the Veteran's degree.

VA is still determining the costs associated with this provision.

Section 4 would add a new section 3699 to title 38, U.S.C., requiring VA to make available to educational institutions information about the amount of educational assistance to which a Veteran or other individual is entitled under chapter 30, 32, 33, or 35. This information would be provided to the educational institution through a secure information technology system accessible by the educational institution and updated regularly to reflect any amounts used by the Veteran or other individual.

VA supports the intent behind providing educational institutions with the number of months of educational assistance to which a Veteran is entitled. Currently, VA provides the amount of a Veteran's entitlement (original and remaining) and other information (i.e., the delimiting date) to the educational institution through the VA Online Certification of Enrollment (VA-ONCE) system. The educational institution in which the student is enrolled can view this information for individuals training under chapters 30, 1606, and 1607 after VA processes an award for education benefits. This functionality is not currently available for Veterans or other individuals training under chapters 32, 33, or 35; therefore, VA would need to make programming changes to VA-ONCE in order to make this information available as well.

VA recommends removing the requirement to provide information for individuals training under chapter 32 from the proposed legislation. Chapter 32 usage has decreased from 560 beneficiaries in FY 2008 to 2 beneficiaries for fiscal year 2015 through June 30, 2015. Because eligibility for chapter 32 ends 10 years after an individual's release from active duty, the majority of those with remaining entitlement are likely also eligible for benefits under chapter 33.

VA estimates the administrative costs for developing the functional requirements of this section to be $500,000, and the information technology (IT) costs associated with this section to be $5 million to make enhancements to VA-ONCE to provide newly required information to educational institutions.

Section 5 would amend 38 U.S.C. 3672(b)(2)(A) to authorize State Approving Agencies (SAA) to determine if a program of education is deemed to be approved for purposes of this chapter if the program is one of the following:

- An accredited standard college degree program offered at a public or not-for-profit proprietary educational institution that is accredited by an agency or association recognized for that purpose by the Secretary of Education.
- A flight training course approved by the Federal Aviation Administration (FAA) that is offered by a certified pilot school that possesses a valid FAA pilot school certificate.
- An apprenticeship program registered with the Office of Apprenticeship, Employment Training Administration, Department of Labor; or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (popularly known as the "National Apprenticeship Act;" 29 U.S.C. 50, et seq.).
- A program leading to a secondary school diploma offered by a secondary school approved in the state in which it is operating.

• A licensure test offered by a Federal, state, or local government

This legislation also would amend 38 U.S.C. 3675(a)(1) to substitute "A State approving agency, or the Secretary when acting in the role of a State approving agency" for "the Secretary or a State approving agency." Further, this legislation proposes to amend section 3675 to expand the approval of other courses by authorizing an SAA, or the Secretary when acting in the role of a SAA, to approve accredited programs (including non-degree accredited programs) not covered by section 3672 of title 38.

VA supports the clarification of the approval requirements codified in 38 U.S.C. 3672(b)(2)(A), as detailed in section 2(a) of the proposed legislation. To be "deemed approved," accredited programs must meet the requirements of a number of provisions in chapter 36 of title 38. Consequently, compliance with those provisions must be verified, which the proposed change will make more explicit. However, to be consistent with approval authorities in other sections of chapter 36, VA believes that both the Secretary and the SAA should have approval authority.

VA also supports the proposed change to 38 U.S.C. 3675 in section 5(b) of the bill, to make those approval provisions apply to accredited non-degree programs at public and private non-profit IHLs that are not covered by section 3672 or by any of the approval requirements currently contained in chapter 36 of title 38. However, VA does not support modifying the current language that grants approval authority to both the Secretary and the SAA. The Secretary was granted authority under Public Law 111–377 to approve those programs, if necessary. While VA has no plans to take over approvals of all educational programs, it does appreciate this flexibility of authority.

VA estimates there are no costs associated with this section.

Section 6 would amend 38 U.S.C. 3676(c)(14) as it pertains to the criteria used to approve non-accredited courses. Under the proposed legislation, VA, in consultation with the SAA and pursuant to regulations, would determine if additional criteria may be deemed necessary for the SAA to approve an institution's written application for a course of education. VA and the SAA must treat public, private, and private for-profit educational institutions equitably.

The legislation would also amend 38 U.S.C. 3675(b)(3) to include this requirement as part of the approval conditions for accredited courses offered by private for-profit institutions.

This change would apply with respect to criteria developed pursuant to 38 U.S.C. 3676(c)(14) on or after January 1, 2013, and an investigation conducted under 38 U.S.C. 3676(c) that is covered by a reimbursement of expense paid by VA to a state, pursuant to 38 U.S.C. 3674, on or after October 1, 2015.

While VA agrees with the intent underlining section 6, that the approval requirements for non-accredited courses should be applied equitably regardless of the type of institution providing the training, VA does not believe that it should be interjected into the SAA approval requirements applicable to educational institutions located in the state over which the SAA has jurisdiction. VA is not aware of any widespread concerns regarding unfair practices or unequal treatment with respect to additional SAA approval requirements. VA is concerned about the amount of resources that could potentially be involved in regulating the process, reviewing the SAA requirements, and making determinations regarding necessity and equity. In this instance, VA would have to coordinate with all 50 States, territories, and institutions of higher learning regarding policy and procedure changes. At this time, VA cannot quantify the level of effort required for coordination of this scope. Consequently, VA recommends adding the requirement that any additional criteria treat public, private, and proprietary for-profit educational institutions equitably, without requiring a formal process and a VA decision on each additional requirement. This would ensure the consistent application of additional SAA approval requirements, allow states to promulgate additional requirements for educational institutions located within their borders, and avoid the potentially burdensome administrative process proposed in this section.

At this time, VA cannot quantify the costs and level of effort required for coordination of this scope.

Section 7 would amend 38 U.S.C. 3693 by inserting a new subsection (a) that would require VA to conduct an annual compliance survey of educational institutions and training establishments offering one or more courses approved for enrollment of eligible Veterans or individuals, if at least 20 such Veterans or individuals are enrolled. VA would be responsible for:

• Designing the compliance surveys to ensure that such institutions or establishments, as the case may be, and approved courses are in compliance with all applicable provisions of chapters 30 through 36 of title 38;

• Surveying each of these educational institutions and training establishments not less than once during every two-year period; and

• Assigning not fewer than one education compliance specialist to work on compliance surveys in any year for each 40 compliance surveys required to be made under this section for such year.

Additionally, VA, in consultation with the SAAs, would annually determine the parameters of the surveys, and not later than September 1 of each year, make available to the SAAs a list of the educational and training establishments that would be surveyed during the fiscal year following the date of making such list available.

VA supports this section as it would improve the compliance survey process. VA recognizes the importance of compliance work in ensuring timely and accurate payments to Veterans and their families. As such, VA and the National Association of State Approving Agencies formed a joint committee, the Compliance Survey Redesign Working Group, to streamline and enhance the compliance survey process.

Currently, there are approximately 16,000 approved domestic and international IHLs and non-college degree institutions. Of the 16,000 institutions, there were 11,260 active institutions in calendar year 2013. During FY 2013 and FY 2014, VA and SAAs completed well over 10,000 surveys, with just over 5,000 surveys completed in FY 2014. VA anticipates completing a similar number of reviews in 2015. This work will be split roughly in half between VA and SAAs, as it has been for the last few years.

The statute requires VA to conduct annual surveys at 100 percent of schools with greater than 300 beneficiaries and non-college degree programs. Schools with high numbers of beneficiaries are more likely to have one or more full-time school certifying officials and may not need a visit annually. Institutions with a smaller number of beneficiaries are more likely to have school certifying officials who have other duties, and these institutions may not be as well-versed in school certifying official requirements, especially as they relate to the Post-9/11 GI Bill program.

This section would also create a new provision that would require the Secretary to consult with SAAs when determining the parameters of which institutions would receive a compliance survey each year. VA believes this provision is unnecessary as VA already consults with SAAs when determining where surveys will be conducted. With the implementation of section 203 of Public Law 111–377 (Post-9/11 Veterans Educational Assistance Improvements Act of 2010), VA was granted the authority to utilize SAAs to assist VA in conducting compliance surveys at GI Bill-approved institutions. Although VA can use the services of SAAs, VA continues to be ultimately responsible for conducting compliance surveys.

There are no mandatory costs associated with section 7, and there would be only minimal administrative costs associated with this provision.

Mr. Chairman, thank you for the opportunity to present our views on the legislation today and we will be glad to answer any questions you or other Members of the Committee may have.

Chairman ISAKSON. Thank you very much, Dr. Lynch.

Let me start out by asking you this question. You referred to the two accountability bills. You mentioned specifically the Blumenthal bill was, in your words, "less onerous," but you did not address S. 290 one way or another. I assume that is the other bill you are talking about.

Dr. LYNCH. Yes, sir.

Chairman ISAKSON. And what is your position on S. 290, the Moran bill?

Dr. LYNCH. Our position on S. 290 is that we do not support it.

Chairman ISAKSON. OK. Are you submitting for the record, or will you submit after this hearing your reasoning behind that?

Dr. LYNCH. The reasoning is included in our written testimony, Mr. Chairman.

Chairman ISAKSON. In your written testimony? Good.

My second question, you said you supported the intent of S. 1938, but you had some recommendations. Are those recommendations in the written testimony, as well?

Dr. LYNCH. Yes, sir.

Chairman ISAKSON. OK. Then let me ask the $64,000 question. You very casually referred to the discussion draft language with regard to educational assistance. I think you used one sentence. This is the flight issue, flight schools, helicopter training, pilot training. All that is swirling around in the Capitol the last couple of weeks. I have had a number of visits in my office, and I understand you all have had a number of visits, and there are a lot of opinions back and forth in terms of what Congress should or should not do.

The reason I put that subject on the agenda as a discussion draft is to start getting the information on the table. Would you care to elaborate on that issue?

Dr. LYNCH. We discussed that extensively in the written testimony. Mr. Worley would be happy to address the matter further.

Chairman ISAKSON. Mr. Worley.

Mr. WORLEY. Thank you, Mr. Chairman. We have been concerned for, really, the last 2 years that the significant rise in payouts specifically related to contracted flight programs, where they contract with a public institution of higher learning. Under the Post-9/11 GI Bill, that means that there is no statutory limit on the amount of money that could be paid to an individual in a program at an IHL that contracts with a flight program, or any other contracted program, for that matter.

We have seen the costs go up. For example, in fiscal year 2013, the number of beneficiaries in flight programs was about 1,700 and we paid out $42 million. In 1 year, the payout number went up to $80 million for about 1,900 beneficiaries, so an increase of 200 in the number of students and a nearly doubling of the costs.

As we look at these payouts in fiscal year 2013 and 2014, there were about 279 individuals who were individually paid $100,000 or over for their programs. It was our concern that that probably was not the intent of the Post-9/11 GI Bill, to pay out that kind of money, in some cases individuals receiving hundreds of thousands of dollars.

Chairman ISAKSON. Excuse me. Let me interrupt you.

Mr. WORLEY. Yes, sir.

Chairman ISAKSON. I want to make sure I understand what you are saying. You are saying individuals. Do you mean individuals who were veterans who were claiming the benefit got paid, or do you mean people training under the benefit got paid?

Mr. WORLEY. I am talking about the beneficiaries. The veterans who earned the benefit and were using the benefits in some cases have been paid $500,000, $600,000, $700,000 for pursuing flight programs that are associated with public IHLs.

Chairman ISAKSON. I want you to tell me how that works. I am going to take the Chairman's prerogative here and get a couple things on the record, if everybody does not mind, if that is OK with you.

When you tell me an individual got $100,000, you are talking about a veteran who was eligible for the program got $100,000 personally?

Mr. WORLEY. Yes, sir. Well—no——

Chairman ISAKSON. Whether or not they were trained?

Mr. WORLEY. No. They received the benefits. In the Post-9/11 GI Bill, as you know, Mr. Chairman, the tuition and fees gets paid to

the school and the housing, books, and supplies get paid directly to the veteran. I am talking about the sum total of the benefits either paid on behalf of the veteran or paid to the veteran is $100,000 or more, depending on the situation. Because they are in a flight program in these cases, that is a contracted program with a public IHL. There is no cap. We pay the in-resident rate at a public IHL. There is no limit on that.

Chairman ISAKSON. IHL, for your information, is institution of higher learning; correct?

Mr. WORLEY. Yes, sir.

Chairman ISAKSON. And that is a public school, right?

Mr. WORLEY. Yes, sir. Well——

Chairman ISAKSON. I apologize——

Mr. WORLEY [continuing]. There are private IHLs, but we are talking about public IHLs.

Chairman ISAKSON. And you have an 85/15 rule, is that correct?

Mr. WORLEY. Yes, sir.

Chairman ISAKSON. And that rule is designed to see to it that no more than 85 percent of the students in flight training are beneficiaries of the VA GI Bill and at least 15 percent have to be private pay?

Mr. WORLEY. Essentially, that is——

Chairman ISAKSON. Is that what the 85/15 rule means?

Mr. WORLEY. That is the 85/15 rule which is in statute. Yes, sir.

Chairman ISAKSON. That sounds like a pretty easy rule to enforce, but I read some of the articles in the *Los Angeles Times* and some other commentaries where it seemed like the enforcement of that rule varied from school to school.

Mr. WORLEY. I would say that it is a somewhat complicated rule and there have been times in the past where a more lenient application of the rule has happened. We have tightened that up through a significant focus on proper application of the 85/15 rule and enforcement. We reviewed all public schools that contract with flight programs to look at that, and some have been suspended as a result of violations of the 85/15 rule.

As you know, Mr. Chairman, the 85/15 rule is really designed to prevent institutions from targeting veterans purely for their benefits. So, a program should be attractive by at least 15 percent to other individuals, non-veterans.

Chairman ISAKSON. And in all cases of people who are paid benefits under that program, the VA ensures the 85/15 rule applies?

Mr. WORLEY. Uh——

Chairman ISAKSON. Let me restate, to make sure I am clear on the question. In all those cases where veterans have qualified for GI benefits for helicopter or fixed-wing training, in all those cases at public institutions, the 85/15 rule applied?

Mr. WORLEY. The 85/15 rule applies to——

Chairman ISAKSON. VA made certain at least 15 percent of the students were private pay, non-GI beneficiaries?

Mr. WORLEY. It is the responsibility of the school to ensure that the 85/15 rule is not broken, and the VA, through compliance survey work in partnership with the State-approving agencies, enforce that and review it.

Chairman ISAKSON. OK. For the membership, you are going to hear more about this issue later on. I wanted to get some things on the table. One of our members, Senator Moran, wanted to introduce a statement for the record, which I think the staff has, is that correct?

Mr. SHEARMAN. It is on its way.

Chairman ISAKSON. I would like to ask unanimous consent that the statement that is on its way from Senator Moran be entered into the record.

[The prepared statement of Senator Moran can be found in the Appendix.]

Chairman ISAKSON. I have gone through your testimony. I would like a precise VA evaluation of your position on this issue within a reasonable period of time. I do not know when it may come before us or whether it is going to come before us at all, but it has gotten enough publicity and there is enough angst in Congress on both sides of the issue where I want to make sure we do what is right as a Committee, which is why I took a little extra time, and I apologize to the Members for having done so.

With that said, I will recognize Ranking Member Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

I noticed that a number of your comments on S. 290—or, I am sorry, the bill that I have introduced requiring accountability, seem to focus on the difference between the way the VA does accountability and other agencies, as would be implemented under this bill. Is it not important to increase accountability in the VA so that maybe it provides a model for other agencies? And does this bill not strike you as better than some of the alternative measures that have been proposed?

Dr. LYNCH. I think, Senator, we acknowledge that the bill is perhaps less onerous than others, but I think we still have technical concerns regarding the bill, which Ms. Mitrano would be happy to address. I think from a clinical standpoint, my concerns would be that these bills may impair our ability to attract, recruit, and retain the best employees because of the more rigid accountability to which VA is held.

Senator BLUMENTHAL. Are you saying that the best and the brightest would be deterred by the provisions of S. 1856 because it is rigid and inflexible? Is that the point?

Dr. LYNCH. I think my concern is more toward S. 290. I think that concerns regarding the S. 1856 bill would be more on a technical basis, and I might turn to Ms. Mitrano to discuss that a little bit further.

Senator BLUMENTHAL. Well, the technical stuff, we can deal with off the record. We do not need to spend that time at this hearing. But, I would like your endorsement and support for the goals and basic concepts that are embodied in S. 1856. As I understand you, there may be some technical issues, but, basically, you feel it is a good idea.

Dr. LYNCH. My position is that I am concerned about some of the accountability that is imposed and the way it is imposed. I feel that it may, in fact, deter some individuals, good individuals who might want to come to work for the VA because of the requirements of the bill.

Senator BLUMENTHAL. Is there any empirical evidence to support that?

Dr. LYNCH. There is no empirical evidence. It is based on——

Senator BLUMENTHAL. Is there any evidence?

Dr. LYNCH [continuing]. Experience working in health care systems.

Senator BLUMENTHAL. I know for a long time, and I have seen it in other contexts, the fear has been raised that transparency and accountability in our health care system will somehow deter good doctors from coming forward, but I think that the evidence is, in fact, to the contrary, that in Connecticut and elsewhere, in fact, doctors welcome accountability—the good ones—because they are far from fearful that they will be held accountable, and I would think that management and managers are the same. They do not come to a place wondering what will happen to them if they do a bad job. The best people come to a potential opportunity hoping that there will be the flexibility so they can do a good job.

Dr. LYNCH. I do not argue that people come to a job with optimism. I think what has been seen in the VA over the past year and one-half, there have been a number of good people who have been grouped in with those who may not have performed satisfactorily. So, there has been a blanket judgment on VA employees and VA physicians. I think this leads people to be reticent to look at the VA as an opportunity because of what they have seen.

Senator BLUMENTHAL. My time has just about expired, but I agree with you completely in your assessment of what has happened to some degree over the past year, which, in my view, is the strongest indictment of the present system and the strongest evidence as to a need for reform and for flexibility for good judgments about people and holding accountable the ones who should be rather than, as you said, grouping them together and perhaps drawing too broad a brush. So, I really welcome your comments. I hope that we share the same goals and that we can work through the technical difficulties.

Thanks, Mr. Chairman.

Chairman ISAKSON. Thank you.

According to the early bird rule, the next four to question will be Senator Sullivan, Senator Brown, Senator Boozman, and Senator Manchin. Senator Sullivan, you are first.

HON. DAN SULLIVAN,
U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Mr. Chairman, and I want to thank you and Ranking Member Blumenthal for the authority to enable me to hold a field hearing and listening sessions with the Veterans' Affairs Committee in Alaska over the recess and to allow the staffers of this Committee to come to Alaska to see what some of the challenges— significant challenges—are, with regard to the implementation of the Choice Act in Alaska.

I also want to thank Dr. Lynch, Dr. Shulkin, and others of your team who spent almost a week in Alaska. I know we got a lot out of that trip. I appreciate you taking the time to come up, tour the facilities, go to the listening sessions, and hold the hearing that we actually had in my State.

I did want to mention Secretary McDonald was in Alaska before I was there, about a week before. I was actually in the great State of North Carolina doing Marine Corps training at Camp Lejeune while the Secretary was there.

I will say that one of the themes of his visit, a little bit was still this theme of "the problems in the VA are kind of caused by the Congress." I do not think that is helpful, and I think we need to just get rid of that whole line of—it is almost whining, right. We need to focus on addressing these challenges. There is a lot of blame to go around. But to have the Secretary come up to Alaska and kind of insinuate that it is really Congress's fault, it is not helpful and it is actually inaccurate. So, I will pass that message on to him, but I wanted to make sure that you all heard about that.

Dr. Lynch, I am sure that you would agree that we had a good result out there. In particular, I wanted to talk about from Dr. Shulkin's testimony, the six points that he made during the hearing we had in Alaska and to fix the huge problem in my State about the implementation of the Choice Act. I am sure that you saw it is quite a big problem.

I know that one of the things that you have been talking about is starting to implement a way to correct those problems based on his six priorities by November. I am actually not pleased with that date of November, so I would like to work with you, Dr. Shulkin, and other senior officials at the VA to move that up. You saw that it is an urgent need to address some of these problems.

What I want to do just briefly was talk about those six points and see from your perspective if those were required—if we needed additional legislation or through regulations we are able to address some of these. I do not know if you have those in front of you, but he talked, point one, about honoring the VA's agreements to ensure continuity of care for veterans seeking care with partners in the DOD, Indian Health Services, and tribal organizations. Do you have that authority, or do we need to do something legislatively?

Dr. LYNCH. We have that authority, Senator. Further, there is no question that we will continue to honor those agreements and look for ways that we can perhaps incorporate those into future Choice legislation. But there is no question——

Senator SULLIVAN. You have that authority now.

Dr. LYNCH [continuing]. That we have the authority to work with DOD and the tribal nations to provide health care.

Senator SULLIVAN. Because, again, what I want to do is work with you, work with Dr. Shulkin, to do what we all thought was very important when we were out in Alaska, is to fix this problem, and his six points were very helpful in that regard.

Dr. LYNCH. Absolutely. I do——

Senator SULLIVAN. Do you have those six points in front of you?

Dr. LYNCH. I do not have them in front of me, unfortunately.

Senator SULLIVAN. OK, because we can—I am going to run out of time here, but——

Dr. LYNCH. I will be happy to talk with you after the hearing——

Senator SULLIVAN. Yes, because what we want to know—if we want to be able to work with the Committee and with the VA to make sure that any authorities that are needed with regard to

those six points that he laid out in Alaska, I want to make sure we have the ability, hopefully to get through the Committee, to give you that legislative authority to fix those problems.

Dr. LYNCH. I can tell you that within about half a week of getting back, Dr. Tuchschmidt and I did meet with the network director, as well as the TriWest chairman, and we are moving ahead with the plan to integrate what had been a very successful care management system on the part of the Alaska Health Care System——

Senator SULLIVAN. Right.

Dr. LYNCH [continuing]. With individuals from TriWest.

Senator SULLIVAN. Let me ask you, on that November 2015 date that you or somebody had mentioned, I would like to accelerate that. We have real problems in my State. A lot of veterans are suffering. Can you commit to me to move that date up by several months or by a few months, at least, like this month? [Laughter.]

Dr. LYNCH. Well, we have already met with TriWest and the network and we are moving ahead with the process of integrating service to the veterans between TriWest and the VISN 19. I can commit to that, yes.

Senator SULLIVAN. OK.

Dr. LYNCH. The rest, I would like to speak to you a little bit to make sure we are on the same page.

Senator SULLIVAN. OK. Thank you. And thank you, Mr. Chairman, again, for the opportunity to hold that hearing up in Alaska. It was very important.

Chairman ISAKSON. Thank you for your leadership in doing so. Senator Brown.

HON. SHERROD BROWN, U.S. SENATOR FROM OHIO

Senator BROWN. Thank you, Mr. Chairman, and thank you for holding this really important hearing on a number of things this Committee should do.

I want to thank Ranking Member Blumenthal for his words in support of the Fry Scholarship Enhancement Act. I want to thank Senator Tillis for his work on it. It has been endorsed by a number of groups. I would just like to mention, a number of witnesses on the second panel, the VFW, the National Association of State Approving Agencies have supported it, the Military Officers Association of America, the IAVA have submitted testimony for the record supporting the bill. It has the support of Gold Star Wives, the National Military Family Association, the Tragedy Assistance Program for Survivors, the Student Vets of America, and the Paralyzed Vets of America. So, I thank all them.

I would like to ask Mr. Worley a series of pretty simple questions just to hear in your words an explanation of the importance, sort of the hole we face to fill. I think that from the discussions you have had with my staff, I think there is nobody better to explain it than you.

Please explain the Fry Act's significance and its targeted beneficiaries, if you would.

Mr. WORLEY. Thank you, Senator. The Fry Scholarship is a very important benefit. It came into effect around the same time as the Post-9/11 GI Bill. What it provides for is for children of military members who are killed in the line of duty and are on active duty

at the time the full Post-9/11 GI Bill benefit. That is, again, at the 100 percent benefit level. The Choice Act recently passed last year, Section 701 of that Act, as you well know, includes spouses into the Fry Scholarship benefit opportunity. So, it is a very important benefit for those family members that we are proud to administer and implement.

Senator BROWN. So, what is the glitch that necessitates this legislation, the Enhancement Act?

Mr. WORLEY. It is really, in my view, sir, an oversight in the last. The provisions for the Post-9/11 GI Bill provides for the opportunity to use Yellow Ribbon if a school offers that. The way the provision for the Fry Scholarship is put into the law, it just does not include the Yellow Ribbon opportunity. So, we welcome this correction, if you will, so that Fry Scholarship beneficiaries can use the Yellow Ribbon program.

Senator BROWN. So, let me repeat and make sure I get it. You are telling me that spouses and children of veterans who have died in combat since the September 11 attacks are treated less favorably under the law and this would correct it, or treated less favorably when it comes to educational benefits than are the spouses and children of veterans who did not die in combat.

Mr. WORLEY. That is correct, sir, according to the law.

Senator BROWN. Thank you. This gets to the core of why this Committee should move on the Brown-Tillis bill. I hope the Chairman will join the Ranking Member in supporting it. I look forward to working with Members of both parties on this.

Thank you, Mr. Chairman.

Chairman ISAKSON. In response to the statement, the Chairman has taken a position never to cosponsor legislation before the Committee. Therefore, there is no prejudice. But the Chairman always votes for the most intelligent proposal coming forward. [Laughter.]

Knowing the Senator from Ohio as I do—Tillis and Brown is a dynamic combo, I can tell you that.

Senator Boozman.

HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS

Senator BOOZMAN. Thank you, Mr. Chairman.

Dr. Lynch, the first thing I would like to ask you, and you might not have the answer to this—it is really important to the people of Arkansas—the Central Arkansas Veterans Health Care System has been without a director for a year now. Dr. Margie Scott has been Interim Director, but she was recently reassigned to be VISN 16 Chief Medical Officer. The Veterans Hospital in Fayetteville has been without a director since March 2015. What is the status of filling those slots?

We have really been blessed in Arkansas in having two excellent facilities. The reason for that is that we have had excellent leadership, and it really is important that we get those filled.

Dr. LYNCH. Senator, I do not have the specifics. I know we have been working very hard to begin recruiting and filling those positions. I can get that information for you in terms of where we are in that process.

Senator BOOZMAN. Good. That would be very helpful, if we could get that done——

Dr. LYNCH. Absolutely.

Senator BOOZMAN [continuing]. As far as some information fairly shortly.

Dr. LYNCH. Absolutely.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOHN BOOZMAN TO THOMAS LYNCH, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Response. VA's selection of Senior Executive Service (SES) leaders is a thorough and rigorous process. VHA conducts a comprehensive background check, which includes the verification of the nominee's credentials and references check. The nomination package is then submitted to VA's Corporate Senior Executive Management Office (CSEMO) for concurrence and to the VA Chief of Staff (COS) for final approval, on behalf of the Secretary of VA.

A nominee for the CAVHS Director position was identified, the clearances and reference checks are complete, and the nominee is currently going through the approval process.

Senator BOOZMAN. Like I say, we are blessed. We have got two excellent facilities that worked really hard to take care of veterans. But, again, that comes through leadership, and I think we have seen that all over the system.

In regard to Senator Moran and Senator Tester's legislation, the Physician Ambassadors Helping Veterans Act, in your testimony, I believe you said, basically, it was not needed because there was already a statute in place——

Dr. LYNCH. Yes, sir.

Senator BOOZMAN [continuing]. That would do the same thing. Do you feel like with the existing authority that you have now, is it used? Is it used appropriately?

Dr. LYNCH. We have about 4,000 physicians now who are performing services without compensation. They are predominately from our academic affiliates. We are initiating pilots at at least two sites, and probably more, to begin to look at expanding this to community physicians who may be willing to help the VA.

I think there are some things that we have to learn, moving forward. I think that we are understanding the credentialing and privileging process. I do not think that is an obstacle. I think we do need to learn a little bit about how we are going to train the community physicians in an efficient fashion to work in VA. I think we also have to learn how we are going to use the new processes of focused and ongoing professional reviews that are required by the Joint Commission and how we are going to apply those to volunteer physicians and how much work that is going to take. I think we are going to have to learn what is the best way to go out and recruit those physicians. Is it to work with a volunteer recruiter, or is it to actually look for a senior physician in the community who might be interested in working with the VA in the recruitment of those physicians.

I have actually been working on the pilot program. I have had interest from actually more than two sites. I will be meeting with them later this week. But those are the questions that really, I think, need to be asked before we move forward with a large-scale program.

Senator BOOZMAN. Sure. Is liability a problem?

Dr. LYNCH. Liability is not a problem.

Senator BOOZMAN. OK.

Dr. LYNCH. Those physicians would be covered for what they do while they are working for the VA.

Senator BOOZMAN. Mr. Worley, you mentioned—again, I was listening to the testimony about the flying situation. It is interesting. I had a couple of Air Force Colonels in earlier today and they were talking about the fact that the airlines were so aggressively hiring right now, and with fighter pilots being in a situation where they were not flying as much as they have sometimes in the past, that we are losing a lot of fighter pilots because the industry is snagging them up. So, it is good to provide that service. I mean, these are kind of jobs that we are looking for, good high-paying jobs for our veterans to acquire.

You mentioned that some were charging $500,000, $600,000, $700,000 for flight training. Does the veteran participating in the training have knowledge of that, of those fees, and should the State Approving Agency be authorizing payments of this magnitude? Does the VA have the authority to stop these bad actors?

Again, I am—do not misunderstand. I am totally against that, and I am sure that we have similar situations not only in flight training, but just in education in general. But, I guess, what I am saying is my concern is that in order to rectify and throw out a few bad apples, that we do not hurt people that are legitimately trying to pursue an excellent career.

Mr. WORLEY. Thank you, Senator. I would respond to that by saying that we, first of all, we certainly are not interested in the VA in restricting the benefits——

Senator BOOZMAN. I understand. Yes. I understand.

Mr. WORLEY. We are very supportive of the breadth of opportunities that the Post-9/11 GI Bill provides for veteran servicemembers and their families.

This is specifically a situation that I do not think was anticipated when the Post-9/11 GI Bill was passed, that a public institution of higher learning that does not have a cap on its in-resident rate would contract with another approved entity—these are GI Bill approved non-IHL institutions like flight schools—and end up paying those kinds of payouts. There really is not a comparable other contracted situation that we know of today. It is flight schools that are the primary concern.

With respect to that, we felt like it was necessary to support this legislation in recognition of our concern on the high amount of money that is going out, notwithstanding the great job market that is out there. But, if the cap that is proposed in the legislation—again, we support that cap as a way of just putting some limits on what is going on today. The 85/15 rule by itself is right now our only tool, but it is not sufficient to fix this problem.

Senator BOOZMAN. OK. My time is up. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Boozman.

Senator Manchin, Senator Rounds, Senator Hirono, and Senator Tillis.

Senator Manchin.

HON. JOE MANCHIN, U.S. SENATOR FROM WEST VIRGINIA

Senator MANCHIN. Thank you, Mr. Chairman, and thank you all for being here today.

Dr. Lynch, there are many reports that the VA is not holding people accountable for their actions, and that is in all agencies, I know. We get that from GAO and IG all the time. But in West Virginia, at the Beckley VA in West Virginia—I think I brought to your attention some time ago, it has been over 6 months now—there were allegations, which were substantiated by Special Counsel, that they were switching antipsychotic drugs based solely on cost, not on performance and not on results, solely on cost. They have been doing that for years. One of the recommendations by the investigator was to take appropriate actions against the leadership in that VA center and others, as warranted, in proving actions were not inconsistent with VHA policy.

I have asked for an update, I think for the last 6 months. I have not gotten anything yet. I do not know if you know about this, or——

Dr. LYNCH. Senator, I know that it is being looked at very carefully. I am reluctant to speak in public——

Senator MANCHIN. OK.

Dr. LYNCH [continuing]. About what I know.

Senator MANCHIN. OK.

Dr. LYNCH. But, I think I can assure you that the accusations are being looked at and are being assessed by VA——

Senator MANCHIN. Well, I think they have been verified—Special Counsel has verified they were accurate.

Dr. LYNCH. And they are now being looked at by our Office of Accountability review at this point——

Senator MANCHIN. To take action on the employees——

Dr. LYNCH [continuing]. To make decisions regarding the necessity for action, sir, yes.

Senator MANCHIN. Can we meet with you later on this, or maybe in private, so you can bring me up to speed? To be honest with you, the veterans themselves are concerned because they are not getting the right prescriptions that help them, and they found out about the switching, so now they have been substantiated saying that we were not getting the best medicine because they are making cost decisions, not based on performance or outcome. So, if you could help me with that, it would be greatly appreciated.

Dr. LYNCH. Yes, sir.

Senator MANCHIN. Let me tell you the other one I have a problem with, and the drug problem in my State and all over this country is just horrendous. It is the number 1 killer, prescription drugs. Now I see where the FDA has approved for children as young as eleven years old to be prescribed oxycontin. You all have been able to take care of dependent children. Are you all prescribing that? Will you be doing that or practicing that?

Dr. LYNCH. We do not treat dependent children in VA.

Senator MANCHIN. You do not?

Dr. LYNCH. We do not. So, that is not a VA issue.

Senator MANCHIN. I thought that there was a limited number of dependent children that were treated, but you are saying there are no dependent children?

Dr. LYNCH. Not that I know of, Senator.

Senator MANCHIN. I will check that out, then. OK. At least you do not have to answer that one, but——

Dr. LYNCH. I have been in the VA system for 30 years as a provider and I have yet to see a child.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOE MANCHIN TO THOMAS LYNCH, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question. Does VA treat dependent children? CHAMPVA?

Response. The statute governing the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Title 38 United States Code 1781, provides for health coverage to the dependents of a Veteran who has been rated permanently and totally disabled due to a service-connected disability. A child of a qualifying Veteran can be covered under CHAMPVA until the age of 18. Eligibility can be extended to the age of 23 if the child is a full-time student at an accredited school.

The Patient Protection and Affordable Care Act, Public Law 111–148, was signed into law on March 23, 2010. Included in the Public Law was Section 2714, Extension of Dependent Coverage, which extends health care coverage to dependent children up to age 26 through a parent's group or individual health insurance. CHAMPVA is not considered a group or individual health insurance, but a Federal Benefit Plan; therefore, Congressional legislation is required for CHAMPVA to extend eligibility for dependent children up to age 26.

As for treating dependent children in a VA health care facility, there is no statutory or regulatory restriction that precludes VA facilities from providing treatment to eligible CHAMPVA beneficiaries in VA facilities. Currently, both eligible children and adults access medical care in VA facilities through the CHAMPVA In-House Treatment Initiative also known as CITI. VA facilities are not required to participate in CITI. Participation is based on the facility determining that an excess capacity to provide medical care and services exist within the facility and have the resources to provide the needed care. However, VA facilities primarily provide treatment to adults and would have limitations on resources needed to provide pediatric and adolescent care to beneficiaries under CHAMPVA.

Senator MANCHIN. Well, let me follow up on this, then——

Dr. LYNCH. OK.

Senator MANCHIN [continuing]. Because of the addictive opiates that are on the market today, and there are many more coming out to consumers and you are using them.

Could you all—and I think you all would be the ones that would kind of change the culture of America if our veterans, VA, Medicare, Medicaid, things that we have oversight on, would not be prescribing opiates for pain relief. There are other ways to cure pain or, basically, to handle pain. Have you all considered—I know you have tried probably more alternatives than anybody else. How is that working?

Dr. LYNCH. Senator, the VA has what we call a three-step plan. The first step of treatment is by the primary care provider. If the primary care provider reaches a point where he or she no longer feels competent to work with this patient, that patient can be referred to a facility committee, which generally consists of an interdisciplinary group of specialists that might include pharmacists, physical therapists, psychologists, a number of individuals to meet with and work with the patient to develop a plan to help control that individual's pain. The third step is that each of the networks is putting in place a specialty inpatient program to begin helping

those patients who are most difficult to treat in terms of their pain and their use of opioid narcotics.

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOE MANCHIN TO THOMAS LYNCH, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Issue. Senator Manchin also requested a listing of the alternative therapies that were available at the VISNs in his state of West Virginia.

Response:

VISN 4—CLARKSBURG VAMC

• The VAMC provides the following: Pain Clinic, Physical Therapy, and a multidisciplinary pain management educational group on-site.

• The VAMC refers Veterans offsite for Chiropractic Care, Aqua Therapy, and Acupuncture as needed.

VISN 5—MARTINSBURG VAMC

• *Yoga*—Clinical Video Telehealth with Community Based Outpatient Clinics

Yoga is provided as a part of the DRS Chronic Pain clinic continuum of services. For those Veterans who reside within the catchment areas of our CBOCs, we are working on providing "tele-yoga," which occurs at the same time of the face-to-face sessions. We are currently awaiting approval for "ports" so that services will be simultaneous with those happening in the Heroes Health & Wellness Center. Tele-Yoga will be made available at Cumberland and Harrisonburg CBOCs, and then expanded to other CBOCs as appropriate.

• *Mindfulness*—Clinical Video Telehealth with Community Based Outpatient Clinics

Mindfulness Meditation is offered as a part of the holistic continuum of care within our Chronic Pain clinic. In hundreds of studies, researchers have examined meditation's effects, such as attention regulation, awareness of the body, depression, Post Traumatic Stress Disorder, addiction and pain. In these studies, meditation has been shown to help pain, sometimes significantly, though not cure it.

• *Guided Imagery*—Martinsburg VA Medical Center

Guided Imagery is another meditation technique. Chronic Pain affects every aspect of living. Guided imagery is an easy relaxation technique that can help manage stress and reduce. This modality relies on the concept that your body and mind are strongly connected. Meditation sends a quiet message to the muscles and mind to relax, draining the tension out of the body leading to a reduction in pain.

• *Biofeedback*—Martinsburg VA Medical Center

Provided in a one-on-one forum through our Behavioral Psychologist as part of an integrated model of care.

• *Acupuncture*—Offered in the community under fee-based

Due to vacated position, currently provided through Choice. Recruiting for vacant position of physiatrist with medical acupuncture certification.

VISN 6—BECKLEY VAMC

Veterans are provided the following via fee basis referrals to the community:

• Epidural injections
• Vertebral facet therapy
• Hydrotherapy
• Chiropractic
• Acupuncture

Veterans/residents of the CLC are offered additional options:

• Art Therapy (weekly or bi-weekly)
• Music Therapy (weekly)
• Creative Arts Therapy (weekly)
• Pet Therapy (weekly)
• Aromatherapy (2–3 times a week)
• BioFeedback (Snoezelen Therapy) (2–3 times a week)

VISN 9—HUNTINGTON VAMC

Complementary/ Alternative therapies offered at the VAMC Huntington, WV:

- Acupuncture
- Chiropractic therapy (through community referral)
- Art therapy
- Animal-assisted therapy

VA Medical Center Huntington has two Community Based Outpatient Clinics in Charleston, WV and Prestonsburg, WV. It also has two small Outreach Clinics in Lenore, WV and Gallipolis, OH.

Senator MANCHIN. Well, you know we have a tremendous addiction problem, right——

Dr. LYNCH. Yes.

Senator MANCHIN [continuing]. And a lot of our veterans, because of the service they have given to our country, have been overprescribed, if you will, and I get that complaint continuously from returning servicemembers in West Virginia. They can get any concoction of pills they want from VA.

Dr. LYNCH. I will also let you know, because I looked it up before I came down here this morning, how the West Virginia facilities are doing with respect to the Opioid Safety Initiative, which is VA's plan to help begin to control the use of narcotic opioid prescriptions. Statistically, all of the facilities are doing very well and some of them are actually performing better than the national average.

Senator MANCHIN. Mm-hmm.

Dr. LYNCH. So, I do not think that solves the problem, but I think it does give us a way forward and it tells us that your facilities in West Virginia are performing and taking this seriously.

Senator MANCHIN. Well, my time has run out. I would like to get with you personally on this and delve into it a little bit deeper, if you will.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOE MANCHIN TO THOMAS LYNCH, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Issue. Senator Manchin requested a review of how VA handles Opioid safety issues and how officials are dealing with the issue found that of a facility switched antipsychotic medications because of cost reasons.

Response:

PAIN MANAGEMENT WITH OPIOIDS

- After many years of promoting the aggressive treatment of pain with powerful opioid analgesics, the United States is in the midst of an epidemic of misuse and abuse of opioid analgesics. Misuse and abuse of opioids can result in overdose, dependency and other negative consequences.
- The safe and appropriate use of opioids is an especially important issue for VA due to the number of Veterans who have battlefield injuries and other conditions associated with chronic pain. Changing VA's patterns of opioid prescribing and consumption requires a significant cultural shift on the part of providers and Veterans alike and also requires that VA make other pain treatments available as it relies less on opioids. This cultural shift must be done in a careful and measured fashion to avoid the unintended consequence of Veterans receiving inadequate pain care.

VA OPIOID SAFETY INITIATIVE

- To address opioid use in Veterans, after conducting a pilot in several VISNs, in August 2013 VA implemented a system-wide Opioid Safety Initiative (OSI). The OSI is intended to augment VA's national pain management strategies, which among other things include, stepped care, complementary/integrative medicine and focuses of 4 key metrics:
  - The percent pharmacy users receiving an opioid analgesic

– The percent of pharmacy users receiving an opioid who are also receiving a benzodiazepine (combined use increases risk of an adverse event)

– The percent of pharmacy users receiving opioids for longer than 90 days who are also receiving a urine drug screen to monitor treatment

– The percent of pharmacy users who are receiving aggregate doses of opioids greater than or equal to a 100 morphine equivalent daily dose (MEDD)

• To monitor the impact of the OSI, quarterly OSI trending data is disseminated to VAMC and VISN OSI points of contact and to VHA senior clinical managers. Data outlier facilities are required to submit action plans to VA Central Office and continued follow-up is conducted until they are no longer outliers.

CLARKSBURG VAMC

The Clarksburg VA has made significant progress in the use of opioids, but like the VA system as a whole and in the United States in general, there will always be more work to do. From the fiscal quarter beginning in July 2012 to the fiscal quarter ending in June 2015:

• The percent of pharmacy users receiving an opioid decreased 22% (3,125 to 2,438 Veterans), while the national percentage decreased 17% (679,376 to 563,801 Veterans).

• The percent of pharmacy users receiving an opioid or tramadol who are also receiving a benzodiazepine decreased 30% (311 to 217 Veterans), while the national percentage decreased 31% (122,633 to 84,470 Veterans).

– The percent change for this metric must be considered within the context that Clarksburg has a significantly lower percentage of Veterans receiving an opioid or tramadol who are also receiving a benzodiazepine compared to the rest of VA.

• The percent of pharmacy users receiving opioids for longer than 90 days who also received a urine drug screen to monitor treatment increased 27% (1,259 to 1,722 Veterans), while the national percentage increased 35% (160,601 to 247,533 Veterans).

– The percent change for this metric must be considered within the context that Clarksburg has a significantly higher percentage of Veterans receiving opioids for longer than 90 days who also received a urine drug screen to monitor treatment compared to the rest of VA.

• The percent of pharmacy users who are receiving doses of opioids greater than or equal to 100 MEDD decreased 19% (132 to 107 Veterans), while the national percentage decreased 23% (59,499 to 45,768 Veterans).

MARTINSBURG VAMC

The Martinsburg VA has made significant progress in the use of opioids. From the fiscal quarter beginning in July 2012 to the fiscal quarter ending in June 2015:

• The percent of pharmacy users receiving an opioid decreased 8% (1,294 to 1,190 Veterans), while the national percentage decreased 17% (679,376 to 563,801 Veterans).

– The percent change for this metric must be considered within the context that Martinsburg has a significantly lower percentage of Veterans receiving an opioid compared to the rest of the VA.

• The percent of pharmacy users receiving an opioid or tramadol who are also receiving a benzodiazepine decreased 28% (376 to 272 Veterans), while the national percentage decreased 31% (122,633 to 84,470 Veterans).

• The percent of pharmacy users receiving opioids for longer than 90 days who also received a urine drug screen to monitor treatment decreased 13% (445 to 388 Veterans), while the national percentage increased 35% (160,601 to 247,533 Veterans).

– The percent change for this metric must be considered within the context that Martinsburg has a significantly higher percentage of Veterans receiving an opioid for longer than 90 days who also received a urine drug screen to monitor treatment compared to the rest of the VA and the number of patients on opioids for longer than 90 days has significantly decreased over time.

• The percent of pharmacy users who are receiving doses of opioids greater than or equal to 100 MEDD decreased 48% (145 to 75 Veterans), while the national percentage decreased 23% (59,499 to 45,768 Veterans).

BECKLEY VAMC

The Beckley VA has made significant progress in the use of opioids. From the fiscal quarter beginning in July 2012 to the fiscal quarter ending in June 2015:

• The percent of pharmacy users in Beckley receiving an opioid decreased 18% (2,632 to 2,171 Veterans), while the national percentage decreased 17% (679,376 to 563,801 Veterans).

• The percent of pharmacy users receiving an opioid or tramadol who are also receiving a benzodiazepine decreased 31% (1,054 to 729 Veterans), while the national percentage decreased 31% (122,633 to 84,470 Veterans).

• The percent of pharmacy users receiving opioids for longer than 90 days who also received a urine drug screen to monitor treatment increased 30% (612 to 869 Veterans), while the national percentage increased 35% (160,601 to 247,533 Veterans).

• The percent of pharmacy users who are receiving doses of opioids greater than or equal to 100 MEDD decreased 34% (91 to 60 Veterans), while the national percentage decreased 23% (59,499 to 45,768 Veterans).

HUNTINGTON VAMC

The Huntington VA has made significant progress in the use of opioids. From the fiscal quarter beginning in July 2012 to the fiscal quarter ending in June 2015:

• The percent of pharmacy users receiving an opioid decreased 20% (4,513 to 3,589 Veterans), while the national percentage decreased 17% (679,376 to 563,801 Veterans).

• The percent of pharmacy users receiving an opioid or tramadol who are also receiving a benzodiazepine decreased 34% (895 to 595 Veterans), while the national percentage decreased 31% (122,633 to 84,470 Veterans).

• The percent of pharmacy users receiving opioids for longer than 90 days who also received a urine drug screen to monitor treatment increased 60% (741 to 1,864 Veterans), while the national percentage increased 35% (160,601 to 247,533 Veterans).

• The percent of pharmacy users who are receiving doses of opioids greater than or equal to 100 MEDD decreased 31% (270 to 186 Veterans), while the national percentage decreased 23% (59,499 to 45,768 Veterans).

Senator MANCHIN. OK. Thank you, sir.

Chairman ISAKSON. On that point, I want to acknowledge the VA's action at Tomah, WI, and what you have done to deal with what was a very tragic situation, and thank Senator Manchin, Senator Baldwin, and Senator Johnson, who have all three been outstanding spokesmen on this opioid issue. I also appreciate Senator Manchin's leadership on the Committee to continue to bring it up, because we do need to bring it under control and make sure when meds are prescribed, they are only necessary and we are not acting like a candy store. So, I appreciate Senator Manchin raising that issue continually in all the hearings.

Senator Rounds.

HON. MIKE ROUNDS, U.S. SENATOR FROM SOUTH DAKOTA

Senator ROUNDS. Thank you, Mr. Chairman.

Dr. Lynch, with regards to the S. 564, the Veterans Hearing Aid Access and Assistance Act, the VA does not support the bill because there is a lack of standardized education or professional licensure requirements of hearing aid or instrument specialists, as I understand it. What type of certification would you like to see for these and other specialists before you could support this type of legislation?

Dr. LYNCH. First of all, I think VA does not feel it is required. We already are able to hire audiology technicians that work with our audiologists to provide care. They provide a broad range of services with respect to hearing aid evaluations, assessing patients

post-implantation or post-obtaining a hearing aid, and also dealing with hearing aid adjustments and problems.

So, VA thinks that we already have a model that we can use. Hearing aid specialists can be recruited into those positions, and actually, our audiology technicians, if they undergo certification by the Council on Accreditation in Occupational Hearing Conservation, can perform hearing tests within the VA.

Right now, community providers and the hearing aid specialists cannot perform the level of hearing tests that we require for C&P examinations and for our audiology examinations.

Senator ROUNDS. How far should a veteran have to travel? What is an appropriate maximum distance that a veteran should have to travel in order to get glasses or hearing aids?

Dr. LYNCH. I think the Choice legislation has said about 40 miles, sir.

Senator ROUNDS. Right now, I have got veterans in the Pierre-Fort Pierre area in South Dakota. They have to travel halfway across the State just to get a pair of glasses. I am interested in being able to provide some sort of certification that if we can provide for hearing aids, and—look, these folks, if they were not veterans, would be able to get adequate hearing aids locally. But if they want to access or assess VA services or at least get payments for hearing aids and glasses right now, they have to travel, literally, travel across the State to get eyeglasses.

I met one guy who is 83 years old. You do not want him driving halfway across the State without glasses to get glasses.

Dr. LYNCH. No, sir.

Senator ROUNDS. So, what I am suggesting is that there may be some middle ground here for some of those areas, particularly in the rural parts of the country, where veterans should have access to these services, and I am not so sure that they would agree with your assessment that it has to be according to a set of standards. A lot of other people get hearing aids and they do not have to wait and find someone with those specific great standards that the VA is expecting. I sure would at least like your consideration of some sort of minimum standards for those areas that may not be within your service area.

Dr. LYNCH. I am sure we would be happy to work with your office to look at that further and to see if we could identify whether or not there is a middle ground. I will let you know, interestingly, it may not solve all the problems, but VA is also beginning to use telehealth not only to do hearing testing, but also to fit hearing aids so that, particularly in the rural States like North and South Dakota—I am from Nebraska—before I left Nebraska, we were actually having our audiologist in Omaha work with patients in Central Nebraska to provide hearing aid placement, and it was actually very popular.

Senator ROUNDS. My point is, look, there has got to be a way to take care of these folks that are in these rural areas, and it is a fairly large part of the country that I think qualifies where we do not have those available right now, and I would just like to see it fixed. So, I will just take it that you will work with us and we will try to find a way around——

Dr. LYNCH. I will commit that we will be happy to sit down and work with you and see if we can come to a resolution.

Senator ROUNDS. Fair enough. I have one more question, and this will be for Mr. Worley. With regard to the flight training, I am just curious, you indicated that the IHLs were contracting with approved flight schools and that that may have been part of the problem that you had not anticipated. But, I know prior to 9/11, approved flight schools were still authorized and folks were getting GI benefits and basically picking up licensure, back in the 1970s, anyway. I am just curious, what happened and why is it that an IHL coordinating with an approved flight school is adding to the cost?

Mr. WORLEY. The difference in the example you use is, and this is true today, a vocational flight school—if I just go directly to a flight school, there is a cap built in that today, this year, is $12,000 a year. So, we cannot pay more than $12,000 for someone going to a vocational flight school to get a commercial license or whatever.

Senator ROUNDS. One more question, sir, if I could. I am out of time, but do you allow—will you allow for a commercial rating, a commercial and an instrument rating, or do you go all the way to an ATP under the flight school guidelines?

Dr. LYNCH. I would have to——

Senator ROUNDS. Do you know?

Dr. LYNCH. I would have to take that for the record, sir. I think any—if it is associated with a degree program at a public IHL, which is the scenario we are talking about here, it would be—if it is approved by the State Approving Agency or the VA, in that scenario, then it would probably cover any of those. But I would like to take that for the record to get a specific answer to you for all the ratings.

Senator ROUNDS. I would like that. Thank you.

Thank you, Mr. Chairman.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. MIKE ROUNDS TO THOMAS LYNCH, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Response. GI Bill benefits can be paid for FAA-approved vocational flight training programs offered by flight schools with a pilot school certificate issued under part 141 of the Federal Aviation Regulations, in addition to flight training required as part of a standard college degree program. Such programs include Commercial Pilot (fixed-wing, rotor-wing, etc.), Instrument, Multi-Engine, Flight Engineer, Airline Transport Pilot, Commercial Flight Instructor (fixed-wing, rotor-wing, ground, instrument, multi-engine, etc.), as well as type ratings for numerous commercial aircraft. Benefit payments are limited to the actual net cost of tuition and fees, up to a maximum of $12,048.50 for the current academic year, under the Post-9/11 GI Bill. Montgomery GI Bill beneficiaries receive reimbursement for 60% of the approved charges, subject to the availability of remaining benefit entitlement.

Chairman ISAKSON. Thank you, Senator Rounds.

On the question about eyeglasses and hearing aids, is it not true in some of the VISNs, they have contracted with Walmart to be the provider of optometry services?

Dr. LYNCH. I cannot confirm that. We may be talking about it, but I do not think we have come to an agreement, if it has been under discussion, not that I——

Chairman ISAKSON. In answer to Senator Rounds' question, where you have a reputable provider of that type of service that serves rural America, that would provide much easier access. I am not advocating for Walmart by any stretch of the imagination, but I believe in VISN 7 that has been approved in certain areas to be the provider of access, and you might check that out. That might help Senator Rounds out, as well.

Dr. LYNCH. Absolutely.

Chairman ISAKSON. Not for hearing aids, but for eyeglasses.

Senator ROUNDS. Mr. Chairman, in this particular case, we have got plenty of optometrists in the Pierre-Fort Pierre area that are clearly qualified, and yet they are not allowed to provide the glasses for our VA constituents. In order to get the glasses, you have got to go out to Sturgis to pick up the glasses, which is 170 miles away.

Dr. LYNCH. And just to be clear, that is an issue we are aware of and is being worked on. We would be happy to work with you.

Senator ROUNDS. Thank you.

Dr. LYNCH. I think it does not make sense and we need to figure out a better way to do it, and there have been conversations with respect to optometrists and how best for the veteran to obtain the glasses once they have had the examination.

Senator ROUNDS. Thank you. Thank you, Mr. Chairman.

Chairman ISAKSON. You ought to be able to figure out a way to make that work.

Senator ROUNDS. Yes, sir.

Chairman ISAKSON. Senator Hirono.

HON. MAZIE K. HIRONO, U.S. SENATOR FROM HAWAII

Senator HIRONO. Thank you, Mr. Chairman, for holding today's hearing and for following through on the commitment that you made during the Committee markup that we had in July that you would hear some of your members' bills, including my own.

I would like to say a few words regarding the three bills on the agenda that I introduced, and I would like to thank Dr. Lynch for acknowledging a couple of the bills that I had introduced, basically in support.

S. 1450, the Department of Veterans Affairs Emergency Medical Staffing, Recruitment, and Retention Act, S. 1451, the Veterans' Survivors Claims Processing Automation Act, and S. 1693, a bill to provide VA emergency care reimbursement for new VA enrollees.

S. 1450 relates to the restrictive requirements on minimum hours for full-time physicians and physician assistants. This bill is based on VA's proposal contained in its budget request for fiscal year 2016. As you testified, current statutory limitations make it difficult for VA medical centers to recruit and retain providers from the private sector, and, really, recruitment and retention is a huge challenge for VA, I know very well, speaking to the VA people in the State of Hawaii.

I also would like to acknowledge your willingness to work on the accessibility of issues for veterans who live far from providers, such as Senator Rounds' situation and also in Hawaii, where we have islands and it is really hard for our veterans to drive from one is-

land to another. In fact, you cannot. So, I acknowledge the willingness to really pay attention to the specific needs of our veterans.

So, getting back to S. 1450, this bill would make it easier for VA medical centers to recruit providers by giving the Secretary the flexibility to modify minimum hour requirements for full-time physicians and physician assistants and making it easier for VA to accommodate the irregular work schedules of emergency care physicians and hospitals, in particular. With this flexibility, VA could better accommodate the needs of these providers and better meet the needs of our veterans, ensuring that they have the care they need when they need it the most.

S. 1450 is supported by the American College of Emergency Physicians and the Veterans of Foreign Wars. Mr. Chairman, I would like to request that the letters of support from these two organizations be included in the record.

Chairman ISAKSON. Without objection.

[The letters of support from Senator Hirono follow:]

American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

August 6, 2015

The Honorable Mazie Hirono
United States Senate
330 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hirono:

On behalf of the American College of Emergency Physicians (ACEP), our 34,000 members and the more than 136 million patients we treat every year, I am writing to express ACEP's support for S. 1450, the "Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act."

Your legislation would provide the Veterans Health Administration (VHA) with the flexibility needed to address the intense, irregular shifts required to provide emergency medical care 24 hours a day, seven days a week. Emergency physicians typically work 12-hour shifts, but this is difficult to manage under the requirement that full-time employees work 80 hours per pay period since that would equate to an uneven number of shifts every two weeks. By aligning VHA policy more closely with the standards of the private sector, full-time employment within the VHA will be more appealing to my colleagues who choose to serve veterans as they have served this nation.

Veterans deserve to have access to quality emergency medical care at VA medical centers whenever those services are needed and this bill will help make that happen. I look forward to working with you to enact this important legislation.

Sincerely,

Michael J. Gerardi, MD, FAAP, FACEP
President, ACEP

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September 3, 2015

The Honorable Mazie K. Hirono
United States Senate
330 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hirono:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I am pleased to offer our support for S. 1450, the *Department of Veterans Affairs Emergency Staffing Recruitment and Retention Act*. This important legislation would grant Department of Veterans Affairs (VA) medical facility staff the ability to have flexible working hours that best suit the demand for health care by the veterans they serve.

In response to last year's access crisis, VA has made a full-fledged effort to increase access for veterans who rely on the VA health care system for their health care needs. In the past year, VA has completed 2.7 million additional appointments at VA medical facilities than previous years by expanding clinic hours, adopting best practices from the private sector, and increasing the number of health care employees by more than 12,000. Yet, VA continues to face numerous challenges in meeting the growing demand on its health care system.

One of those challenges is the statutory 40-hour work week limitation for title 38 employees. While most health care providers work a traditional 40-hour work week, hospitalist and emergency room physicians often work irregular schedules to accommodate the need for continuity of efficient hospital care. The VFW supports your efforts to eliminate this access barrier and improve VA's ability to recruit and retain high-quality hospitalist and emergency room physicians.

The VFW applauds your effort to improve the health care we provide those who have worn our nation's uniform. Your leadership on this issue is commendable. We look forward to working with you to pass this legislation.

Sincerely,

Raymond C. Kelley, Director
VFW National Legislative Service

NO ONE DOES MORE FOR VETERANS.

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Senator HIRONO. I do understand that the Office of Personnel Management has some questions regarding S. 1450 and I look forward to working with them and with you and with the Chair to enable this Committee to move S. 1450 along.

Regarding S. 1451, the Veterans' Survivors Claims Processing Automation Act, this bill would make it easier for survivors of veterans to access benefits. Current statutory limitations require survivors to file formal claims regardless of whether VA or the Federal agencies already have the information it needs to make determinations about benefits. It makes so much sense that where the VA already has this information, to make claimants go through the process of collecting information that you already have and then re-

quiring, I assume, the VA to then review this information really does not make any sense. So, I am glad that we are on the same page regarding this kind of flexibility, not to mention that we want to get the benefits to the people as soon as possible.

So, again, the VA has already requested this kind of authority and flexibility. Veterans groups, including The American Legion, Disabled American Veterans, Veterans of Foreign Wars, and Paralyzed Veterans of America have already supported this measure.

Turning to S. 1493, a bill that I introduced from last Congress to provide an emergency safety net to around 144,000 veterans waiting for VA care, I appreciate the continuing support of the VFW and the Iraq and Afghanistan Veterans of America, their support of this bill. This bill really addresses a catch–22 situation in current law that puts veterans who are new enrollees in the VA system at financial risk if they experience a medical emergency and they have not met the current law's requirement that they should have visited a VA facility within the past 24 months. The intent of this requirement is to encourage veterans to seek preventative care, which decreases the need for the more expensive emergency care.

I know you understand this particular catch–22 and it really flows from the inability of the veterans to get the kind of—the appointments that they needed, which I realize the VA is addressing very effectively in most places, including Hawaii, I would think, now. I know that you have some concerns about this particular bill as you are undergoing a review as to what would be involved in meeting the provisions of this bill.

So, the one question I would have is how long is your review process going to take?

Dr. LYNCH. I think we have a Congressional mandate to have a report back to Congress by November 1, which will deal with how we are going to integrate a number of non-VA care services into a unified package, and that is part of that discussion. So, I would suspect we should have some information back around November 1.

Senator HIRONO. Before the end of this year. I would appreciate that.

Mr. Chairman, I am rapidly—in fact, I seem to have gone over my time, but just very briefly, we are at the point of about 2 weeks away before a number of VA authorized measures, with regard particularly to the homeless veterans, will expire, and I know that you are well aware, as are a number of us, that we need to make sure that these programs continue beyond this fiscal year.

Thank you very much, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Hirono.

Senator Tillis.

HON. THOM TILLIS, U.S. SENATOR FROM NORTH CAROLINA

Senator TILLIS. Thank you, Mr. Chairman.

First, Mr. Chair, an update. Senator Tester and I met again with Secretary McDonald and many of his senior staff this week. We had a very productive discussion. I look forward to giving you an update on that and, hopefully, we can have a committee hearing

focused on some of the good things that I think the VA is doing in short order.

I want to go back. Senator Brown mentioned one of the two bills that I wanted to talk about. Going back to the Fry Scholarship Enhancement Act, I actually think it may be better termed the Fry Scholarship Correction Act, because I do not believe that any reasonable person thinks that we intended not to have somebody who was killed in the line of duty, to have their families or their dependents be entitled to this. So, I will not get into the specifics of that because I think that is one of these policies where we should have uniform support, and I would expect it.

I did want to get to some of the mechanics, though. I think that the 10-year cost of the benefit is estimated to be about $6.2 million. The cost to implement the underlying IT system is estimated to be $5 million, almost the equivalent of the 10-year cost of the benefit. So, this may be less of a question and more of a statement.

I think it may speak to some of the things that we need to fix at the IT level, when a program that is fundamentally bringing in a new class of recipients, and it only relates to the circumstances that led them there, would cost $5 million in a year before we could get it online. Please, if you would like to comment on that or comment on the merits of the bill, I would welcome anyone to speak.

Mr. WORLEY. Senator, I would just comment that in order to take care of this new aspect of the benefit, at least three of the IT systems that we use would be impacted: the one that the school certifying officials use to input the information; the what we call Benefits Delivery Network, BDN, which is a legacy system that actually is on the other end paying the benefits; and our long-term solution, which is essentially the Post-9/11 GI Bill automation.

We do not like it any more than you do, but it does take time to—and we—right now, the whole system is basically in sustainment, so we have to get a development contractor and go through that process. So, that is why it takes that amount of time and that amount of money.

Senator TILLIS. Yes. I just think it is a good example of how we have to become more agile so that when we fix what was obviously an oversight or an unintended consequence of the Fry Scholarship Program, that we get to a point where we allow other people who should have been entitled from the beginning to come on board, that the cost to do that almost equals the cost of the benefit we want to give them and delays the process of having the systems and process infrastructure in place by a year. So, I want to help remove those barriers, particularly if some of those barriers really relate to either statutory or other requirements that you must get through in order to do your job. I sincerely believe you all know we want to do this as quickly as possible for the families of fallen soldiers.

The other one I want to speak about is S. 1938, which I am a cosponsor on with Senator Blumenthal. I appreciate his work on this. It has to do with the Career-Ready Student Veterans Act. Again, when we have men and women in uniform coming back, they want to get skills that make them career ready. We want to make absolutely certain that they are putting their time and their

energy into education that is going to get them the kinds of certifications they need in the States where they intend to get work.

I was not able to be here during the opening comments. I do not know if you had any comments on this bill, whether or not you support it, but I would be interested in your feedback now.

Mr. WORLEY. Senator, we do support the intent of the bill. We agree with you 100 percent that a course of instruction should result in the credential that it is supposed to provide the opportunity for the veteran to take. We do have some questions and concerns about some of the language in the bill, specifically with respect to the waiver, applicability of the requirements to all types of schools, and applicability of the waiver requirements to all types of schools, and we would like to work with the Committee to help with that if——

Senator TILLIS. Well, I would like to do that, because I think it is critically important. I have personal experience where I helped a veteran who worked on my staff down in the legislature to make sure that he was investing his time, while he is working a full-time job, trying to get the skills that he needs to move into another position, to make sure that he is spending that money wisely and not finding out he worked really hard, worked nights, raised a family, and still got a—he thought he got something, but he really did not get something that would help him get the job he wanted. So, I look forward to working with the Ranking Member and with the Members of the Committee to move forward.

The last thing, it has nothing to do with the subject matter, but I do want to just mention, Mr. Chair, that the meeting with the VA, the Secretary and everybody, went well, but there is one thing that still nags at me that is not done, and that is getting a permanent replacement for the Inspector General. I think we are working on 20 months now. If you take a look at some of these programs that we want to do to really make you all more agile, make you more able to do the great things you want to do, we need somebody there who is looking at some of the systemic problems and issues that only an IG who is in the permanent position can do. So, I, for one, want to remind everybody that we need to get to that. Hopefully, the administration will agree and come forward with a nominee.

Thank you, Mr. Chair.

Chairman ISAKSON. Well, since you raised the question, 2 weeks ago, I talked to the Chief of Staff of the administration and made a recommendation on an applicant that they ought to interview, and in that conversation, I encouraged them, whomever they hire, they needed to get about doing it. It has gone far too long without having a designated IG.

Second, for the Veterans Administration itself, too many people in high positions of responsibility are titled "acting" and not permanently hired. I think that sends a bad signal all the way. We have got too many acting directors of VISNs, too many acting directors of departments. So, I am hoping that both the administration, as far as the IG is concerned, will make their appointment, but that the VA also will designate those people that are permanent as permanent and no longer as acting so we can move forward with the business of the VA.

I want to thank our panelists for their attendance, and if they will excuse themselves to the back, we will bring forward the second panel. [Pause.]

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON TO MR. ROBERT WORLEY, DIRECTOR OF EDUCATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. During the discussion on capping Post-9/11 GI Bill benefits for certain education programs, it was mentioned that very large dollar amounts had been paid out in benefits for students in flight degree programs.

a. i. What is the largest amount of cumulative Post-9/11 GI Bill benefits paid out to or on behalf of one individual for flight degree training since August 1, 2009?

Response. Since inception through July 31, 2015, the highest amount paid for a student in a flight degree program was $916,708.44.

ii. Was this an outlier or were other individuals paid similar amounts?

Response. Yes, VA paid similar amounts for students attending public institutions of higher learning (IHLs) with contracted flight programs. VA identified 29 students that were paid over $500,000 since the inception of the Post-9/11 GI Bill.

iii. Was this individual in an associate's or bachelor's degree program?

Response. The student was enrolled in an Associate of Science, Professional Pilot degree program at Mid-South Community College; however, the program was withdrawn in 2013. The student transferred to Southern Utah University to pursue a Bachelor of Science, General Studies with a concentration in flight studies.

iv. How many academic years did this enrollment span?

Response. The student attended 4 academic years. The first recorded academic term started on January 23, 2012. The last date of attendance was recorded on August 3, 2015. This student has 5 months and 28 days of entitlement remaining.

v. Did the student complete their degree?

Response. No, the student's education file does not show a data entry of graduating from any degree or certificate program.

vi. Is their last flight degree institution currently in compliance with the 85–15 rule? Were the amounts adjusted for this individual following a compliance survey, and if so, what were the changes?

Response. The flight program at Southern Utah University is currently suspended due to violation of the 85–15 Rule. Students who were enrolled at the time of the suspension can continue to complete their program. VA is still reviewing students' records to determine if adjustments need to be made.

b. Please provide the number of Post-9/11 beneficiaries in flight degree programs for whom benefits were paid out in the following dollar ranges for FY 2014:

i. $500,000 or more
ii. $300,000 to $499,999
iii. $100,000 to $299,999
iv. $50,000 to $99,999
v. $49,999 or less

Please include for each dollar range the number of students based on the initial reporting by IHLs as well as the corrected number of students after completion of the compliance surveys in 2015, if available.

Response. VA has not made corrections for excessive hours certified at this time. School catalogs are still under review to determine the total amount to be repaid.

Range of Expenditures Paid for FY 2014	Number of Trainees	Total Expenditure Paid
$500,000 or more	1	$534,881
$300,000 to $499,999	40	$14,522,676.28
$100,000 to $299,999	167	$27,773,854.13
$50,000 to $99,000	208	$14,460,999.39
$49,000 or less	1495	$22,524,789.79

Please note: This is the number and amount paid out and any adjustments are not reflected.

Question 2. VA reported that 10 flight degree programs were suspended from enrolling new students using VA benefits due to non-compliance with the 85–15 rule.

a. How many VA students were enrolled in these 10 flight degree programs for FY 2014?

Response. In FY 2014, there were 456 students enrolled at the 10 public IHLs with contracted flight programs.

b. What is the total amount of Post-9/11 GI Bill benefits paid out for the students in these 10 suspended flight degree programs for FY 2014? What is the corrected amount of benefits for these students following the compliance surveys in 2015?

Response. No compliance survey adjustments were made. When a school is suspended for the 85–15 Rule, current students are not impacted; however, no new enrollments are allowed.

In FY 2014, the total amount paid under Post-9/11 GI Bill benefits to students at the 10 suspended public IHLs with contracted flight programs was $41,016,171.21. Below is a table showing this information.

Name of institution	Location of institution	Number of trainees	Total cost
Big Bend Community College	Washington	30	$670,841.61
Chandler-Gilbert Community College	Arizona	1	$37,584.50
Delaware State University	Delaware	10	$124,643.30
Dodge City Community College	Kansas	12	$1,043,725.85
Dodge City Community College	Arizona	87	$11,207,646.61
Dodge City Community College—Provo	Utah	17	$1,559,787.88
Palm Beach State College-Central Campus Lake Worth	Florida	109	$2,968,309.95
Palm Beach State College-South Campus Boca Raton	Florida	0	$0.00
Palo Alto College	Texas	0	$0.00
Pulaski Technical College-N Little Rock	Arkansas	51	$1,023,719.25
Southern Utah University	Utah	68	$15,702,297.46
Tarrant County College	Texas	2	$41,485.00
Yavapai College	Arizona	69	$6,636,129.80
Total		456	$41,016,171.21

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. DEAN HELLER TO MR. ROBERT WORLEY, DIRECTOR OF EDUCATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

I have a few questions about a provision in the draft discussion related to flight training schools.

This draft will cap tuition rates at public institutions under the GI Bill—effectively keeping veterans from using their benefits for flight training school.

I think we know where some of the veterans groups, the VA, and the flight schools are at on this, but I'd like to share a letter from two of my constituents who wrote me on this issue.

Question 1. The first, from a grandmother whose grandson is in flight school:

> "The problem is that my grandson, as many other veterans, researched this through the VA. Why would he chose a school whose program would not meet the VA standards? The fact that the Congress would take away any benefits because the law was not 'clearly' written is inexcusable."

Response. Use of a cap is not in our view "taking away" any education benefits. The cap's purpose is not aimed at limiting Veterans' educational opportunities, but to improve the integrity of the education benefits program by limiting profits that VA believes are so excessive that they constitute abuse of the program. Veterans are still able to pursue a flight degree and use education benefits should they choose to do so.

Question 2. The second letter, from a 6-year Army veteran who recently separated after two deployments to Afghanistan:

> "The purpose of my message is to express my strong disagreement with the proposed changes to the G.I Bill * * *. This unrealistic cap practically crushes the dream of flight training for all veterans * * *.Instead of having the innocent pay for the guilty, your Committee should address the source of the abuse * * *."
>
> "Personally, I have always dreamed of pursuing a career in aviation. The G.I bill represented an opportunity to achieve that dream, it is truly a shame to have this taken away because of the greed of a few individuals."

So, before taking a drastic action to cutoff access to this program, I'd like to know what VA has done to weed out bad actors.

Question 3. Has VA conducted an audit of flight training schools?

Response. Yes, VA conducted compliance surveys of all (110) IHLs with contracted flight programs in April and May 2015. VA also conducted compliance surveys at all vocational flight schools in July 2015.

Question 4. What percentage of those schools were either overcharging or violating VA rules?

Response. Of the 110 IHLS surveyed in April and May 2015:

- 9% of the schools surveyed were in violation of the 85–15 Rule requirements;
- 2% of the schools were conducting training with flight schools that were not approved; and
- 36% of the schools were certifying hours in excess of those listed in the catalog.

Please note that some of the schools overlapped in the categories mentioned above.

For the vocational flights schools reviewed in July 2015, VA found no violation of its rules or overcharged amounts.

Question 5. What solutions, besides imposing a cap, would help weed out bad actors?

Response. VA has concluded that legislation which would set a reasonable cap for costs of contracted flight programs is the only effective means of curtailing the specific problem of excessive charges by flight schools.

Chairman ISAKSON. Let me welcome our second panel and thank you for your patience during the first one.

Our second panel includes Joseph W. Wescott II, Legislative Director of the National Association of State Approving Agencies; Roscoe G. Butler, the Deputy Director for Health Care of The American Legion; Aleks Morosky, Deputy Director of the National Legislative Service, Veterans of Foreign Wars; and Donald F. Kettl, Professor of the School of Public Policy, University of Maryland.

Welcome to all of you. We will begin with Dr. Wescott. I made you a doctor. You are a doctor? Well, that is good. I got it right.

STATEMENT OF JOSEPH W. WESCOTT II, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES

Mr. WESCOTT. Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee on Veterans' Affairs, I am pleased to appear before you today on behalf of the National Association of State Approving Agencies and appreciate the opportunity to provide comments on certain bills pending before this Committee. I am accompanied today by our Legislative Committee Vice Chair, Retired Sergeant Major Robert Haley.

The S. 1460 Fry Scholarship Enhancement Act, NASAA feels strongly that it is very much in keeping with the spirit and purpose of this important program to extend the Yellow Ribbon GI Bill Education Enhancement Program to cover the worthy recipients of the John David Fry Scholarship. As such, we strongly support this bill.

The S. 1938 Career-Ready Student Veterans Act, the primary responsibility of State Approving Agencies is to approve quality educational programming in which a qualified veteran or dependent can enroll while using the GI Bill, which will prepare them for employment in a satisfying career. Already, many SAAs require that certain degree programs be accredited by the programmatic accrediting agency. So, although this problem is seemingly not wide-

spread, one disappointed veteran is too many. NASAA supports this bill.

The discussion draft, a bill to make improvement in the laws administered by the Secretary of Veterans Affairs relating to educational assistance, we support the provisions of Section 1 of the discussion draft relating to the recodification and improvement of the election process for post-9/11 beneficiaries. We do not oppose Section 2, relating to centralized reporting of veteran enrollment, as long as individual campuses continue to maintain a contact person so as to provide support to the veteran population.

NASAA supports Section 3 of this bill, as it provides for clarification of assistance provided for certain programs of education, particularly contracted programs offered in conjunction with institutions of higher learning. It is important that we provide measures to improve cost control for specialized degree programs, such as aviation degrees offered by colleges and universities, which involve a contracted program which may or may not be approved by a State Approving Agency.

NASAA strongly supports, as well, the provisions of Section 4, which will provide updated information on the amount of educational assistance to which veterans or other individuals are entitled. This allows school officials to be in a better position to assist veterans in planning for and being successful in their educational programs.

NASAA strongly supports Section 5, relating to the role of State Approving Agencies, and sees these provisions as critical to the protection of our veterans and the fair and equitable administration of GI Bill educational benefits. This section seeks to clarify and codify State approval authority and oversight over all non-Federal facilities. In addition, since the passage of Public Law 111–377, there has been no statutory authority for the approval of accredited NCD programs at public or private not-for-profit institutions, a situation that Section 6 corrects.

NASAA does not oppose the section of the bill relating to additional reasonable criteria in that it requires that when the Secretary determines the review of that criteria is necessary, the Secretary must do so in consultation with the State Approving Agency, and the criteria must be necessary and treat all sectors of education within the State equitably.

Finally, Section 7 mandates appropriate changes to 38 U.S. 3693 compliance surveys, which would allow for flexibility to adjust resources to specific high-risk educational institutions as needs arise and allow SAAs to provide needed technical assistance and training visits to schools, as well. NASAA supports this section.

Mr. Chairman, today, 56 State Approving Agencies composed of approximately 175 professional and support personnel are supervising over 12,000 approved facilities with 100,000 programs. Last year, SAAs conducted more than 50 percent of all the compliance surveys accomplished. But even more impressively, we increased the number of education and training programs we approve by over 75 percent. This is just further evidence that we remain strongly committed to working closely with our VA partners, our VSO stakeholders, and educational institutions to ensure that veterans have access to quality educational programs.

Mr. Chairman, I pledge to you and this Committee that we will not fail in our critical mission and in our commitment to safeguard the public trust, to protect the GI Bill, and to defend the future of those who have so nobly defended us. I thank you again for this opportunity and I look forward to answering any questions that you or committee members may have.

[The prepared statement of Mr. Wescott follows:]

PREPARED STATEMENT OF DR. JOSEPH W. WESCOTT II, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES

INTRODUCTION

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee on Veterans Affairs, I am pleased to appear before you today on behalf of the 56 member state agencies of the National Association of State Approving Agencies (NASAA) and appreciate the opportunity to provide comments on bills pending before this Committee, particularly S. 1460, S. 1938, and the draft bill pertaining to improvements in the laws administered by the Secretary of Veterans Affairs relating to educational assistance and for other purposes. As a part of our review of these bills, we will also provide some additional comments that address the role of state approving agencies in approving and providing oversight of educational programs that provide for a secure future for our Nation's heroes and their families.

ROLE OF THE STATE APPROVING AGENCIES: PAST AND PRESENT

State Approving Agencies were established shortly after passage of the Veteran' Readjustment Act of 1944, or the GI Bill of Rights. Congress, recognizing that it was the responsibility of the states within our Federal system of government to oversee the education of its citizens, required that each state establish a "State Approving Agency" and the Governor of each state designated a state bureau or department as the SAA. The SAA was to be supported by reimbursement of its expenses by the US Department of Veterans Affairs (VA). Thus evolved a truly cooperative Federal-state effort that maintains the rights of the states while monitoring and protecting a federally-sponsored program administered under the terms and conditions of Federal law.

From a role of simply advising VA as to which educational and training programs were state-approved, State Approving Agencies have evolved to become the primary source of assuring institutional accountability. With specialized authorization under the Code of Federal Regulations and state statues, they exercise the state's authority to approve, disapprove and monitor education and training programs. SAAs also assist the states and VA with exposing fraudulent and criminal activity involving the payment of veteran's benefits.

In 1948, SAA representatives met to form a professional organization to promote high professional standards, create a forum for the exchange best practices, and to promote uniformity of purpose and practice. For almost seventy years now, NASAA has worked with our VA partners, the VSOs, and all agencies to ensure that the greatest numbers of quality programs are available to those eligible for education and training programs. We do this through our primary mission of program approval and our related efforts; compliance, training, liaison and outreach. Indeed, with the exception of Federal facilities, the State Approving Agencies are responsible for the approval of all programs of education and training within the Nation.

S. 1460, FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015

There are no more worthy recipients than those who receive the Marine Gunnery Sergeant John David Fry Scholarship. The scholarship is available to surviving children and surviving spouses of active duty members of the Armed Forces who died in the line of duty on or after September 11, 2001. Full tuition and fees are paid directly to the school for all public school in-state students capped at the statutory maximum amount per academic year equal to the post-9/11 G.I. Bill. However, unlike dependents of living veterans who are eligible for Transfer of Entitlement under the Post-9/11 GI Bill and who can participate in the Yellow Ribbon program, recipients of the Fry Scholarship cannot. NASAA feels strongly that it is very much in keeping with the spirit and purpose of this important program to extend the Post-9/11 G.I. Bill Yellow Ribbon Education Enhancement program to cover the recipients of this scholarship. As such, we support this bill.

S. 1938, CAREER READY STUDENT VETERANS ACT

The primary responsibility of state approving agencies is to approve quality educational programming in which a qualified veteran or dependent can enroll while using the GI Bill, which will prepare them for gainful employment and a satisfying career. While it is true that all persons that attend career schools, such as law or nursing, do not always seek or find satisfying employment in that particular career field, it is certainly not an unfair expectation for a veteran who graduates from such programs to be qualified to sit for the license or certification exam. Already, many SAA's require that certain degree programs be accredited by the programmatic accrediting agency, so although this problem is seemingly not widespread, one disappointed veteran is too many. NASAA does however believe strongly that this requirement should apply equally to public and not-for-profit institutions as well as proprietary for profit institutions and non-accredited schools. Of course, that requires that we be aware of the deemed approved programs, which we will address later in this statement. Given our role to safeguard the future of veterans and their families and to protect the integrity of the GI Bill educational program, NASAA supports this bill.

DISCUSSION DRAFT, A BILL TO MAKE IMPROVEMENTS IN THE LAWS ADMINISTERED BY THE SECRETARY OF VETERAN AFFAIRS RELATING TO EDUCATIONAL ASSISTANCE, AND FOR OTHER PURPOSES.

Though our primary role is to approve quality education programs and provide oversight of those programs at educational and training institutions, we understand well the importance of timely payment of benefits to veterans and the importance of veteran enrollment in the correct chapters of entitlement available to them. We often work with the VA Education Liaison Representatives in our states to help resolve difficult cases involving veteran payment issues and entitlement. As such we support the provisions of this bill in Section 1 relating to the recodification and improvement of the election process for Post-911 beneficiaries. NASAA does not oppose Section 2, relating to centralized reporting of veteran enrollment but would desire that even though reporting is centralized, that individual campuses must continue to maintain a contact person so as to provide support to their veteran population and local accountability to state approving agencies and VA personnel. NASAA supports Section 3 of this bill as it provides for clarification of assistance provided for certain programs of education, particularly contracted programs offered in conjunction with institutions of higher learning (IHLs). It is important that we provide measures to improve cost control for specialized degrees offered by colleges and universities, which involve a contracted program which may or may not be approved by a state approving agency. For example, some public higher education institutions have instituted extreme costs for aviation program fees as there are presently no caps in place for public IHLs. In some cases, benefits have been paid for aviation degree programs at public IHLs provided by a third-party flight contractor with no approval issued by the governing SAA. This was exacerbated by the implementation of 3672. And some students were taking flight classes as electives with no cost cap for flight fees. In those cases, students could foreseeably take flight classes as an "undeclared" student for up to two years. This section would limit Chapter 33 payments for aviation programs and similar contracted training at public institutions to the prevailing cap, presently $21,084.89. There would be no impact on the institutions' ability to access Yellow Ribbon funds. We feel strongly that veterans should continue to have access to quality contracted programs overseen by state approving agencies, but a reasonable cap is necessary to protect both our veterans and the integrity of the GI Bill.

NASAA supports as well the provisions of Section 4 which will provide through a secure information technology system to educational institutions offering SAA approved programs updated information on the amount of educational assistance to which veterans or other individuals are entitled. This allows school officials to be in a better position to assist veterans in planning for and being successful in their educational programs. We might add that we would also like to see changes and improvements made to VA information technology systems such that all original and supplemental chapter 33 claims, to the maximum extent possible, are adjudicated electronically, to include on-the-job training and apprenticeship programs, which are all still processed manually. Indeed, for the last two years, we have worked side by side with our VA partners to redesign the compliance survey process so that corrections to claims generated during those visits would be handled utilizing the VA Once automation system and not paper referrals. We continue to work with the VA to further refine the handling of these claim adjustments so that veterans may receive monies owed them as expeditiously as possible.

NASAA strongly supports Section 5 relating to the role of state approving agencies and sees these provisions as critical to the protection of our veterans and the fair and equitable administration of GI Bill educational benefits. This section seeks to clarify and codify State approval authority and oversight over all non-Federal facilities. It would accomplish this by identifying SAAs as the primary entity responsible for approval, suspension, and withdrawal. These proposed changes would ensure that an actual process for approval, suspension, and withdrawal will be adhered to (as opposed to our current scenario under the present often misunderstood "deemed approved" concept). The law does not do away with the concept that accredited degree programs at public and not for profit private institutions of higher education (IHLs) may be "deemed approved," rather, it would maintain the intent of the statute by adhering to an expeditious list of approval criteria for those programs that have been reviewed and/or endorsed by another appropriate entity. Furthermore, these changes would lessen the opportunity for third-party contracted training programs to be "deemed approved" with no review, in that SAAs would clearly possess the authority to review contracted training programs as a part of their annual evaluation of programs and policies.

In addition, since the passage of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (111–377) in January 2011, there has been no statutory authority for the approval of accredited NCD programs at public or private not-for-profit institutions. We estimate over 10,000 such programs are in existence today over which neither us nor the VA have existing statutory authority to maintain their approval. These programs include teacher certification programs, accounting certificates, dental assisting as well as graduate certificates not a part of a degree program. Section 6 expands 3675 to cover all accredited programs not already covered under 3672, while maintaining all previous approval criteria for private-for-profit institutions. We are concerned with the recent proliferation of transition and training programs at accredited institutions of higher learning, particularly community colleges, as well as certifications that may or not meet industry standards or have real earning power.

As the oversight of education within their borders remains both a key role and responsibility of the states, NASAA strongly supports "additional reasonable criteria" which are used to approve non-accredited courses. Examples of such criteria that states mandate within their borders include a requirement for licensing to operate an educational institution or requirements for health and safety regulations. Likewise, some states require additional attendance requirements or a careful monitoring of standards of progress. Such additional criteria are for the protection of the states and their residents and/or citizens. NASAA does not oppose the section of the bill relating to additional reasonable criteria in that it requires that, when the Secretary determines that if review of the state criteria is necessary, the Secretary must do so in consultation with the State approving agency and the criteria must be necessary and treat all sectors of education within the state equitably. Equitable application of statute is a shared value of our member agencies.

Finally, Section 7 mandates appropriate changes to 38 US 3693 (Compliance Surveys) to maximize the opportunity to protect the GI Bill while changing the manner in which we perform these surveys to reflect the changes that have occurred in higher education and training in the past three decades. The current statutory requirements for VA to conduct Compliance Surveys represent an almost impossible mission, given present resources. The statute requires an annual survey be conducted at each and every facility that offers anything other than a standard college degree as well as each and every institution enrolling at least 300 GI Bill recipients. This section makes changes in the law to allow for a manageable mission in which VA, with the assistance of SAA partners, can conduct compliance surveys on a regular scheduled basis at the majority of approved institutions, while allowing for continued waiver of those institutions with a demonstrated record of compliance. At the same time, NASAA feels strongly that no school should go without a visit of some kind for longer than three years. Such compliance surveys should be designed to ensure that the institution and its approved courses are in compliance with all applicable provisions of chapters 30 through 36 of this title, but should also allow for limited program review, interviews with veteran students and training for school officials. Plus, the changes should allow for flexibility to adjust resources toward specific high-risk educational institutions as specific needs arise, allowing both VA and SAAs to be nimble and proactive in response to risks identified through the new complaint system and will allow SAAs to provide needed technical assistance and training visits to schools. By amending the law to provide that "the Secretary will conduct a compliance survey at least once every two years at each institution or facility offering one or more courses approved for the enrollment of eligible veterans or persons if at least 20 veterans or persons are enrolled in such course or courses,"

we will make sure that schools that need a visit will receive one and will allow enough flexibility for SAAs to focus more on their primary roles of approval, training and technical assistance. We believe in the wisdom of preventing problems through carefully approving programs that provide jobs to veterans, not by creating debts or allowing veterans to go months without proper payment when such could and should be avoided.

CONCLUSION

Mr. Chairman, today, fifty-six (some states have two) and the territory of Puerto Rico, composed of approximately 175 professional and support personnel, are supervising over 12,000 approved facilities with 100,000 programs. Last year, we increased the number of compliance visits we conducted to 2,672 visits, an increase of 17% over the previous year and more than fifty (50) percent of the visits accomplished by state approving agencies and the VA. But even more impressive, we increased the number of education and training programs we approved by over 75% while expanding our outreach efforts to new institutions and veterans by 26%. I am also pleased to report that State Approving Agencies, through NASAA, have taken a leading role in assisting their individual states in becoming compliant with Section 702 of the Choice Act and because of that initiative 47 states are compliant with section 702 requirements and the others are working diligently to become so before years end. This is just further evidence that we remain strongly committed to working closely with our VA partners, VSO stakeholders and educational institutions to ensure that veterans have access to quality educational programs delivered in an appropriate manner by reputable providers. For we all share one purpose, a better future for our veterans and their dependents.

Mr. Chairman, I pledge to you that we will not fail in our critical mission and in our commitment to safeguard the public trust, to protect the GI Bill and to defend the future of those who have so nobly defended us. I thank you again for this opportunity and I look forward to answering any questions that you or committee members may have.

Chairman ISAKSON. Thank you, Mr. Wescott.

Mr. Butler.

STATEMENT OF ROSCOE G. BUTLER, DEPUTY DIRECTOR FOR HEALTH CARE, THE AMERICAN LEGION

Mr. BUTLER. Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee, on behalf of our newly elected National Commander Dale Barnett and over two million members of The American Legion, we thank you for the opportunity to testify regarding pending legislation.

There are several bills on the agenda for today and you have our full written remarks on the record. Therefore, I will focus on a couple of key concerns and then answer any questions you may have.

Accountability within VA is a concern to all veterans. Although we have seen VA move to react to last year's scandals, we know that veterans in the community are still frustrated about a perceived lack of consequences for those responsible for the failures. Last year's Veterans Access to Care and Accountability Act provided VA with some easier measures for firing executives within VA. Contrary to fears of draconian purges and a new spoils system, this authority has been scarcely used. Veterans need to see there are consequences for those who manipulate the system to their benefits and to the determent of the veterans they serve. The system should be simple and transparent, open for all to see.

We should not need new laws to terminate VA employees if they are committing crimes. VA should already have that authority. If a VA employee commits a crime, they should be prosecuted by special prosecutors, if necessary. We should not need to micromanage how VA handles their managers with quota rationing. Working to-

ward arbitrary quotas and numbers is perhaps what led to VA's problems in the first place.

VA can restore accountability by becoming directly accountable to the veterans in the community and engaging with them, showing them step by step the measures they are taking to right the mistakes when a medical system fails our veterans.

While The American Legion applauds the aims of S. 290 and S. 1856, we do think there is more work to be done to make sure we are not just adding more layers to a bureaucracy when layers need to be stripped away to enable more direct accountability.

S. 1450, the Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act, will provide much needed flexibility for staffing so VA facilities can implement staffing models more in keeping with current medical practices. This is especially necessary in terms of staffing emergency rooms. Doctors and nurses do not keep to the same schedules to a nine-to-five office workers, and, therefore, the government regulations about hourly staffing can make VA shift planning far more difficult than comparable civilian medical centers. This is a common sense fix that will help with staffing, particularly as emergency rooms have had to close because of staffing scheduling issues. It makes sense to staff VA facilities as you would other medical facilities.

Finally, S. 564, the Veterans Hearing Aid Access and Accountability Act, is a simple measure that could provide some help to VA in terms of relieving staffing burdens. According to VA's own figures, veterans attended over 903,000 appointments for audiology services in fiscal year 2014. This area of treatment is growing, and hearing loss and tinnitus are the two most prevalent service-connected disabilities, and yet not all required services need a full-time audiologist. In April of this year at an IOM presentation, it was estimated nearly half of patients awaiting care in VA were for audiology services.

Furthermore, treatment often requires multiple visits. Not all of these visits require an audiologist. This legislation would enable the hiring of hearing aid specialists who could take some of the workload off the audiologists and still deliver the needed care to veterans. This is a small fix, but could potentially have a big impact on this large and growing segment of the veteran population.

Thank you again, Mr. Chairman, Ranking Member Blumenthal, for turning the Committee's attention to getting this right. I appreciate the opportunity to present The American Legion's views and look forward to answering any questions you may have.

[The prepared statement of Mr. Butler follows:]

PREPARED STATEMENT OF ROSCOE G. BUTLER, DEPUTY DIRECTOR OF HEALTH CARE, NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION, THE AMERICAN LEGION

Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee, On behalf of our National Commander, Dale Barnett, and the over 2 million members of The American Legion, we thank you for this opportunity to testify regarding The American Legion's positions on pending legislation before this Committee. We appreciate the Committee focusing on these critical issues that will affect veterans and their families.

S. 290: INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY TO VETERANS ACT OF 2015

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

Reacting to the firing of Phoenix VA Healthcare System Director in November of last year, then National Commander of The American Legion Mike Helm noted:

> "This is one long-overdue step in a journey that is far from over. Unfortunately, as we all soon discovered after the story broke last April, this problem was not isolated to Phoenix. It was widespread, and we expect to see additional consequences, even criminal charges if they are warranted, for anyone who knowingly misled veterans and denied them access to medical services."[1]

The American Legion believes it is important to ensure there is accountability at all levels within VA and that the process is completely transparent. Where VA employees are found to have engaged in wrongdoing, The American Legion supports the appointment of a special prosecutor to be assigned to investigate and vigorously prosecute any VA employees engaged in fraudulent practices designed to improperly award bonuses or other financial or meritorious awards to the perpetrator.[2] While those in the Senior Executive Service (SES) can and should receive performance bonuses when their performance is exemplary, The American Legion believes any bonuses need to be tied clearly to quantitative and qualitative measures.[3] There must be an open process for determining these awards that all stakeholders can examine to determine the propriety of the awarded bonuses.

This legislation addresses some of the concerns of The American Legion. Our organization supports increased accountability, and those employees found guilty of having committed crimes at the expense of the veterans entrusted to their care should never profit from those crimes. To receive bonuses based on manipulation and lies undercuts any trust with the veterans' community. Requiring additional transparency about SES performance outcomes is also laudable and supported by The American Legion.

While The American Legion understands the intent of over hauling the VA's performance appraisal system, The American Legion has concerns with the proposed changes. We believe there must be a system that is clear, transparent and tied to observable quantitative and qualitative goals. However, the level of specificity and the quota rationing may be too constrictive to VA's ability to manage. This should be worked out in collaboration between Congress and VA to ensure the system remains an effective management tool.

The American Legion recognizes the importance of reforming the bonus system and indeed the management culture within VA, and applauds the initial efforts by VA Secretary Robert "Bob" McDonald to begin that process, as well as the diligence of this Committee to direct oversight efforts toward that task. This legislation has great intentions, and the portions related to adding transparency to the system and preventing employees from profiting at the cost of veterans is important. With further work, perhaps more of the legislation could be supported, and The American Legion looks forward to working with this Committee to ensure impactful legislation is passed toward this end.

The American Legion generally supports this legislation, but believes additional work as noted above may be necessary to support the entire legislation.

S. 563: PHYSICIAN AMBASSADORS HELPING VETERANS ACT

To amend title 38, United States Code, to establish the Physician Ambassadors Helping Veterans program to seek to employ physicians at the Department of Veterans Affairs on a without compensation basis in practice areas and specialties with staffing shortages and long appointment waiting times

S. 563 would increase the timeliness and quality of care for veterans enrolled in the VA healthcare system. The Physicians Ambassadors Helping Veterans Act would direct the VA to use its existing authority to promptly offer privileges to physicians who volunteer to serve at least 40 hours per year at VA medical centers. This bill would eliminate the barriers for licensed physicians who are not employed by the Department of Veterans Affairs to volunteer their time and expertise for the purpose of getting veterans the medical care they need in a timely and efficient manner.

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[1] "Legion: VA director's overdue firing applauded"—Nov. 24, 2014
[2] Resolution No. 107—Aug. 2014
[3] Resolution No. 128—Aug. 2014

The American Legion supports this legislation.

S. 564: VETERANS HEARING AID ACCESS AND ASSISTANCE ACT

To amend title 38, United States Code, to include licensed hearing aid specialists as eligible for appointment in the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes

Many veterans throughout the country are experiencing long wait times and having to travel long distances for audiology appointments. The increased use of hearing aid specialists used by VA would lead to decreased wait times, provide more convenient care, and increase follow-up audiology services for several thousand enrolled veterans.

Recently, The American Legion reached out to the VA regarding wait times for audiology appointments. According to VA figures, as of July 2015, there were 12,910 new enrolled patients and 4,351established patients who were waiting longer than 30 days for an audiology appointment. Currently, under the Veterans Choice Program any veteran waiting over 30 days is given the option to seek care in the private sector. Nevertheless, the Denver Acquisition and Logistics Center (DALC) reported that there were no backlogs in processing hearing aids for veterans. The American Legion believes VA already has the authority to address this problem through the outsourcing of care, however outsourcing care ultimately distances VA from its mission of caring for the veteran. Ultimately, VA's own resources should be built up to address these problems in-house.

The American Legion supports the hiring and utilization of hearing aid specialists to perform hearing aid testing, fitting, and dispensing services.[4] Such additions would augment VA's capacity in-house without necessity for creating an overabundance of full audiologists. VA would be able to better manage their workload and maximize their ability to deal with the easier problems, freeing up audiologists to deal with more serious medical issues.

The American Legion supports S. 564.

S. 1450: VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT AND RETENTION ACT

To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs

The Veterans Affairs Medical Staffing Recruitment and Retention Act would give the Veterans Health Administration (VHA) the ability to address the unbalanced work schedules that are often associated with providing emergency room health care. Since 2003, The American Legion through the "System Worth Saving Program" has been actively tracking staffing shortages at VA medical centers across the country. The American Legion's 2014 System Worth Saving report entitled " Past, Present, and Future of VA Health Care" found that several VA medical centers continue to struggle to fill critical positions across many disciplines within the healthcare system.

The American Legion believes the Veterans Health Administration must continue to develop and implement staffing models for critically needed occupations.[5]

The American Legion supports S. 1450.

S. 1451: VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to adjudicate and pay survivor's benefits without requiring the filing of a formal claim, and for other purposes.

Eligibility for survivors' benefits can often be easily obtained either by evidence held by VA or through items such as a death certificate. For example, if a veteran received 100 percent service connection for 10 years prior to their death, the surviving spouse is entitled to Dependency and Indemnity Compensation (DIC). DIC benefits could also be awarded based upon a service-connected condition either causing or contributing to the veteran's death. This information could easily be extracted from a death certificate.

S. 1451 strives to reduce the burden for many grief-stricken surviving spouses. If evidence obtained by VA clearly indicates the veteran's death was caused or contributed to by military service or a previously service-connected condition, then the award should be granted. The American Legion supports VA discovering more effec-

[4] Resolution No. 64—Sept. 2015
[5] Resolution No. 101—Sept. 2015

tive and efficient methods to administer its disability benefits, provided those methods do not strip away due process from veterans.[6] The American Legion strongly believes S. 1451 would assist in reducing the burden on surviving spouses and allow VA to adjudicate claims in a more efficient manner.

The American Legion supports S. 1451.

S. 1460: FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015

To amend title 38, United States Code, to extend the Yellow Ribbon G.I. Education Enhancement Program to cover recipients of the Marine Gunnery Sergeant John David Fry scholarship, and for other purposes.

S. 1460 would expand the Yellow Ribbon G.I. Education Enhancement Program (public-private contributions for educational assistance in addition to post-9/11 educational assistance) to the child of an individual who, on, or after September 11, 2001, dies in the line of duty while serving on active duty.

The American Legion currently has no position on S. 1460.

S. 1693: VETERANS EMERGENCY HEALTH SAFETY NET EXPANSION ACT OF 2015

A bill to expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment, and for other purposes.

Under current law, Title 38, United States Code (U.S.C.) 1725 and 1728 VA is permitted to make payment and reimbursement to a claimant for emergency treatment provided to service- connected and nonservice-connected veterans with a timely filing limit for unauthorized inpatient or outpatient care claims (two years from the date of care for service-connected veterans and 90 days for nonservice-connected veterans). Several veterans have reported to The American Legion that delayed payments for emergency care treatments by the VA to non-VA providers have resulted in numerous credit issues for those veterans who received emergency care treatments.

Veterans who have not been seen at the VA medical center in 24 months have to pay out of pocket if they receive emergency medical treatment outside the VA healthcare system, and will not be reimbursed by the VA. Under this bill the burden of that cost would shift from the veteran to the VA. This legislation includes a provision that would prevent insurance companies from denying and/or limiting reimbursements to the VA for medical care rendered to veterans who have insurance on the basis that VA is not an in-network provider. According to VA, this provision is estimated to enable the VA to have the ability to collect an estimated $98 million in 2015, or $1.1 billion over 10 years, from insurers who would no longer be able to list VA hospitals as out-of-network.[7]

The American Legion believes VA should promptly pay non-VA providers for emergency care furnished; furthermore, VA should conduct outreach to veterans regarding the effect of delayed payments of claims for emergency medical care furnished by non-VA medical providers.[8]

The American Legion supports S. 1693.

S. 1856: DEPARTMENT OF VETERANS AFFAIRS EQUITABLE EMPLOYEE ACCOUNTABILITY ACT OF 2015

A bill to provide for suspension and removal of employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety and to improve accountability of employees of the Department, and for other purposes.

This legislation attempts to address the issues of accountability within the Department of Veterans Affairs. The lack of accountability has been a consistent problem dating back long before the health care access crisis came to the forefront in Phoenix last year. Even so, when manipulation of the scheduling system was brought to light, and it was apparent that the secret wait lists were in use in at least 70 percent of VA facilities examined, only one employee connected to the scandal has been fired, and for offenses unrelated to the wait time scandal.[9] [10]

Secretary Bob McDonald has publically commented on the Byzantine and arduous process, noting on 60 Minutes last year that "[I] can't punish or fire a thousand peo-

[6] Resolution 28—May 2015
[7] KSNT.com—June 12, 2014
[8] Resolution No. 100—Sept. 2015
[9] *Washington Times*—June 9, 2014
[10] *Arizona Central*—December 23, 2014

ple right now, [I'm] discovering how different the Capitol is from capitalism. To fire a government manager he has to put together a case and prove it to an administrative judge * * * . So we propose the action, the judge rules and the individual has a time to appeal. That's why we have a lot of people on administrative leave."[11]

This legislation proposes to make it easier to remove VA employees in certain circumstances, however in doing so may actually create more bureaucracy, rather than less needed to efficiently clean up the VA. It's staggering to think that VA currently does not have the authority to rapidly remove employees if:

- Their supervisor has reasonable cause to believe the employee committed a crime that could lead to imprisonment
- The employee is believed to be a threat to themselves or others
- The employee is engaging in behavior that may result in loss or damage of government property

Yet these are the provisions the legislation puts forward as criteria for expedited firing. These are provisions that should already be baseline, yet there are other actions outside immediate threat to physical health or crimes that should still lead to dismissal. Shunting a veteran to a secret wait list may not directly lead to physical harm, a lawyer for the employee certainly can tie up a firing with that argument, but that kind of culture that puts gaming the system above the veterans' best interests is exactly what all of the stakeholders are trying to fix.

The American Legion does not support this legislation at this time, although we recognize the intent to attempt to improve accountability. The American Legion believes we will get more accountability with a more streamlined system to remove bad actors from the system, not by adding more layers of bureaucracy and conditions.

The American Legion does not support this legislation.

S. 1938: CAREER READY STUDENT VETERANS ACT

To amend title 38, United States Code, to improve the approval of certain programs of education for purposes of educational assistance provided by the Department of Veterans Affairs, and for other purposes.

It is important to keep in mind that there are different types of accreditation, including institutional accreditation and program accreditation. Institutional accreditation is typically done by regional and national accreditation bodies. Programmatic accreditation is for specific programs offered within an educational institution. Programs are typically accredited by specialty organizations. An example would be the American Psychological Association (APA) and the American Bar Association (ABA) which are programmatic accreditation bodies, respectively.

It is common for licensing and certification agencies to require institutional accreditation and/or program accreditation. In Virginia, for example, to be licensed as a clinical psychologist:

> The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which was accredited by the APA within four years after the applicant graduated from the program, or shall meet the requirements of subsection B of this section.[12]

This does not make effective use of GI Bill benefits if an individual uses the benefit to prepare for a licensed or certification occupation, but the program does not meet licensure requirements. This would include the requirement that a program be accredited by a programmatic accrediting agency.

The American Legion urges the requirement apply equally to institutions of higher education, as well as non-accredited schools. This always means the Congress should not exclude deemed approved degree programs, and ensure that State Approving Agencies (SAAs) can have adequate oversight of all institutions of higher learning.

The American Legion also believes if this task should fall as a responsibility of the SAA, the proposed legislation should incorporate how the Department of Defense (DOD) determines program approval for usage of Tuition Assistance (TA). Questions remain as to if the legislation would only cover meeting the licensure or certification standards in the respective state where the institution is located. If that is the case, it is troubling for those veterans who do not plan to practice in the state where the school is located or individuals taking distance learning courses. The legislation should make clearer who will determine the requirements for these programs in all states.

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[11] 60 Minutes—November 9, 2014

[12] LIS Virginia Law

If the intent of the Congress is to add to the existing workload of the SAAs, which are already spread thin, then Congress should give great consideration and revaluation of the existing budget of the SAAs, to include increasing such budgets to ensure the SAA's are able to take on their current workload, as well as the possibility of this new add-on. The American Legion believes there is validity in the underlying reason for the proposed legislation and supports S. 1938. However, we also believe there are a few items that need to be fleshed out.[13]

The American Legion supports this legislation, with some revisions, and we look forward working with the Committee.

DISCUSSION DRAFT: A BILL TO MAKE IMPROVEMENTS IN THE LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS RELATING TO EDUCATIONAL ASSISTANCE, AND FOR OTHER PURPOSES

Section by section analysis:

Sec 1. Recodification and improvement of election process for Post-9/11 Educational Assistance Program

Section 1 represents another administrative improvement to the processing of the Post-9/11 GI Bill. The American Legion is pleased to participate in and recognize ongoing efforts like this to improve the Department of Veterans Affairs' products, services and processes. The American Legion supports the Senate's efforts to streamline how VA approves initial claims for Post-9/11 GI Bill beneficiaries. Currently, claims processors must go through a time-intensive back-and-forth with potential student-veterans who accidentally revoke the wrong GI Bill benefit before they can properly enroll them in Chapter 33. This bill would allow VA to make a reasonable effort to contact the veteran to enroll them in the best education benefit that suits their needs. This section goes further in also adjusting how VA reimburses veterans eligible for the Montgomery GI Bill (Chapter 30) and who have paid into the benefit, but elect to use Chapter 33 instead. Currently, Chapter 30-eligible veterans who elect to use Chapter 33 must wait until they have finished using their benefits before the VA can repay them for their Chapter 30 contribution. Under this law, the Chapter 30 contribution would be prorated and added into living stipend payments while the veteran is enrolled in Chapter 33. The American Legion supports this section of the discussion draft proposed legislation

Sec 2. Centralized reporting of veteran enrollment by certain groups, districts, and consortiums of educational institutions

This section amends veterans' educational assistance program reporting requirements under which enrolled veterans (or eligible persons) and educational institutions must report enrollment information to the Secretary of Veterans Affairs (VA). It requires individuals and educational institutions participating in the post-Vietnam era and post-9/11 veterans' educational assistance programs to report to the Secretary such enrollment and any updates on interruption or termination of the education (thereby making the enrollment reporting requirements for the post-Vietnam and post-9/11 programs consistent with other veterans' educational programs).

Finally, it defines "educational institution" to permit the inclusion of groups, districts, or consortiums of separately accredited educational institutions located in the same state that are organized in a manner facilitating the centralized reporting of enrollments. Increasing program consistency and streamlining reporting requirements are often desirable administrative improvements. In this case, for example, community college districts in a state that have multiple schools would be allowed to centralize their veterans' educational assistance program reporting information and submit only one report for the district as a whole rather than having to submit multiple reports for each school. The American Legion is pleased to participate in and recognize ongoing efforts like this to improve the Department of Veterans Affairs' products, services and processes. The American Legion supports this section of the discussion draft proposed legislation

Sec 3. Clarification of Assistance provided for certain programs of education

The American Legion supports measures to improve cost control in the case of a program of education at any institution of higher education (IHL) that enters into a contract or agreement with an entity to provide such a program of education to servicemember or veteran students using GI Bill. Some institutions of higher learning (IHL) have instituted extreme costs for certain programs as there are presently no caps in place for certain contracts between IHL's and third party providers. The American Legion agrees with the senate discussion draft legislation that cost control

[13] Resolution No. 312—Aug. 2014

is needed and strongly supports this section of the discussion draft proposed legislation.

Sec 4. Provision of information regarding veteran entitlement to educational assistance

Allowing higher education institutions to access their respective student-veteran body education benefits in real time will allow for school certifying officials and institution to better provide academic and financial advising to those beneficiaries about other financial aid opportunities and programs available to them prior to the semester beginning. This section also falls in line with President Obama's 2012 Executive Order, Establishing Principles of Excellence for Education Institutions Serving Servicemembers, Veterans, Spouses, and Other Family members, section 2(g), which states:

> "Provide educational plans for all individuals using Federal military and veterans educational benefits that detail how they will fulfill all the requirements necessary to graduate and the expected timeline of completion."

However, without this provision of the draft legislation, it is too difficult for higher education institutions and their staff to properly advise their respective GI Bill beneficiaries in this way, as well as ensure their success in higher education.

Sec 5. Role of State Approving Agencies

While The American Legion applauds the expansion of the GI Bill applicability, we find it problematic that State Approving Agencies (SAAs) have been removed from a large portion of the approval process. SAAs focus explicitly on the GI Bill and serve to protect it, and, by extension, the veterans using it. They ensure that programs meet certain eligibility criteria, in order to see that the funds are not wasted, but are put to the best use possible. Their unique focus on how GI Bill funds are spent makes their mission distinct from all other oversight and approving bodies. Furthermore, as federally authorized arms of their respective state governments, SAAs are in a unique position to evaluate programs that are offered in their state, given their proximity. This arrangement also maintains the federalism required by the Constitution.

Therefore, The American Legion supports the SAAs, and believes that they should have a role in reviewing, evaluating, and approving all educational and training programs for GI Bill use. While some may argue that the work that the SAAs do is redundant to the work of accrediting bodies, The American Legion believes that SAAs approval is, in fact, unique. This is because the charge of the SAAs is to specifically focus on protecting GI Bill funds. While traditional accreditation provided by Department of Education-recognized accrediting bodies does a significant portion of work toward ensuring quality programs, SAA approval should work in tandem with that accreditation, rather than the stark division that is represented in the current statute.

However, under Pub. L. 111–377, SAAs lack the statutory authority to inspect many questionable programs that have sprung up since the passage of the Post-9/11 GI Bill at not-for-profit institutions. Given that the original mandate of the SAAs was to protect GI Bill funds from being squandered in unscrupulous programs, it seems reasonable that SAAs should be allowed to inspect all suspicious programs, even if they are housed in not-for-profit institutions. As such, The American Legion supports the portion of the legislative proposal submitted by NASAA that would statutorily make SAAs the primary approving body for all programs approved for GI Bill use. Programs may still be deemed approved, but at the discretion of the SAAs, not the VA secretary.

As the author of the original G.I. Bill and one of the biggest driving forces behind the creation and implementation of the Post-9/11 G.I. Bill, The American Legion has long been at the forefront of supporting and developing legislation that improves higher education benefits for servicemembers.[14] This legislation helps to address some of the legitimate concerns about how some aspects of higher education funding for veterans are administered, and will improve the higher education process for all veterans.

The American Legion supports this draft legislation.

CONCLUSION

As always, The American Legion thanks this Committee for the opportunity to explain the position of the over 2 million veteran members of this organization. For

[14] Resolution No. 312: Ensuring the Quality of Servicemember and Veteran Students' Education at Institutions of Higher Learning—Aug. 2014

additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861–2700 or wgoldstein@legion.org.

Chairman ISAKSON. Thank you very much, and please pass on our regards to the new Commander and thank him for his service.

Mr. Morosky.

STATEMENT OF ALEKS MOROSKY, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. MOROSKY. Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, on behalf of the Veterans of Foreign Wars of the United States, I would like to thank you for the opportunity to testify on today's pending legislation.

In the interest of time, I will comment briefly on each of the bills on the agenda. For VFW's complete testimony, I refer you to our written statement.

The VFW strongly supports the Increasing the Department of Veterans Affairs Accountability to Veterans Act. We believe this bill will prevent Senior Executive Service (SES) employees who are under investigation for serious crimes from being able to retire with full benefits if they are subsequently found guilty. Veterans cannot understand why, and they should not have to accept that a VA executive can commit a crime and opt to retire without any consequence. We also support other sections of this bill which would reform the SES performance appraisal system and limit the amount of time SES employees may be placed on administrative leave.

The VFW supports the Physician Ambassadors Helping Veterans Act, which seeks to streamline the VA credentialing process for volunteer physicians. We believe that the current VA policies that require volunteer doctors to go through a similar process as permanent employees is overly cumbersome and inhibits volunteerism. That said, we believe that placing a 60-day deadline on the VA to credential volunteer doctors is overly prescriptive. As such, we encourage the Committee to amend this bill to require VA to develop a more streamlined credentialing process for volunteer doctors.

The VA does not support the Veterans Hearing Aid Access and Assistance Act, which would authorize VA to hire hearing aid specialists as full-time employees at Department facilities to provide hearing health services alongside audiologists and hearing health technicians. Although we appreciate the bill's intent to increase hearing aid health access, the VFW believes that VA has the ability to address that issue under its current hiring authority.

The VFW supports the VA Emergency Medical Staffing Recruitment and Retention Act, which would grant VA medical staff the ability to have flexible working hours that best suit the demand for health care by the veterans they serve. We believe this bill will put VA on par with the rest of the health care industry.

The VFW supports the Veterans' Survivors Processing Claims Automation Act, which would allow VA to pay benefits to veterans' survivors who have not filed formal claims, so long as there is sufficient evidence in the veteran's record to establish eligibility. We also believe, however, that the survivor should have the oppor-

tunity when providing notification of the veteran's death to submit necessary documents that may be contained in the record, such as the death certificate, also without the need to file a formal claim.

The Fry Scholarship Enhancement Act of 2015 extends the Post-9/11 GI Bill Yellow Ribbon Program to cover recipients of the Fry Scholarship. The VFW strongly supports the bill, believing that in no instance should dependents of servicemembers who paid the ultimate sacrifice receive less than any other beneficiary.

The VFW supports S. 1693, which would authorize VA to reimburse veterans for emergent care who were unable to receive care within a 24-month period. The current policy is particularly problematic for newly enrolled veterans, many of whom have not been afforded the opportunity to receive a single VA appointment due to appointment wait times. The VFW strongly believes that this should never prevent veterans from seeking emergent, possibly life-saving care that they may need.

The Department of Veterans Affairs Equitable Employee Accountability Act provides many provisions aimed at improving accountability at VA. The VFW supports the vast majority of those provisions, but has concerns with its proposed employee suspension and removal process. The bill outlines a process for the suspension and removal of employees for performance or misconduct that is a threat to public health or safety. The VFW suggests that the reasons for removal be broadened to include gross mismanagement, gross waste of funds, and abuse of authority, in addition to clear and direct threat to public health and safety that are already covered by the bill. This would allow the Secretary to quickly remove an employee based not only on the harm they bring veterans, but also on the harm that they bring to other employees and to VA.

While the VFW supports the provision for immediate removal of employees without pay, the remaining procedures for removal and the appeals process have considerable differences with H.R. 1994, which the VFW already supports. Our membership insists that a prompt removal process be developed to give the Secretary broader authority to remove bad employees. The VFW looks forward to working with the Committee and finding common ground to remove bad actors from VA's workforce.

Finally, the VFW supports a discussion draft which offers a variety of enhancements to the way the GI Bill benefits are processed. This bill strengthens the authority of State Approving Agencies, improves the information available to student veterans about their benefits, and makes a favorable adjustment in the way that veterans are reimbursed for Chapter 30 contributions, among many other improvements. The VFW was one of the main proponents of the Post-9/11 GI Bill and we thank the Committee for its dedication in continuing to improve this critically important benefit.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or other Members of the Committee may have.

[The prepared statement of Mr. Morosky follows:]

PREPARED STATEMENT OF ALEKS MOROSKY, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United

States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

S. 290, THE "INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY TO VETERANS ACT OF 2015"

One of the greatest needs within the Department of Veterans Affairs (VA) is culture change. Like most places, VA employees work in an environment that rewarded specific outcomes based on specific performance standards. Unfortunately, over time, these outcomes became unattainable. But instead of evaluating why standards could no longer be met, VA leadership put pressure on employees to achieve the unattainable. This left employees with two options—be a poor performer or find a way to do the impossible. All too often, the doing the impossible was the wrong thing to do.

Now VA is left with an employee-base that has been trained to believe that doing the wrong thing is right. To change this paradigm, VA needs the authority to take quick and decisive actions against those senior managers who perpetuate doing wrong and ensure they have proper training so they will be the leaders VA needs them to be. S. 290, takes steps to do both.

Section 2 will allow the Secretary to reduce a Senior Executive Service (SES) retiree's annuity payment when the SES employee is found guilty of a felony, for the period of time the felony occurred. Simply put, if an SES employee is under investigation for that crime, and they choose to retire, VA will be able to reduce that employee's retirement annuity by the number of months or years that employee committed the crime.

Veterans cannot understand and they should not have to accept that a VA executive can commit a crime and opt to retire without any consequence. The VFW supports Section 2.

Section 3 redefines the SES performance appraisal system and ensures SES employees have quality training. Accountability goes much further than firing employees. Quality training and job performance evaluations provide employees with a clear understanding of their job expectations and how to best execute their duties, as well an annual opportunity to honestly review that performance. Section 3 limits the number of SES employees who can receive "outstanding" level to 10 percent of employees and allows 20 percent to receive "exceeds fully successful" level evaluation. This will prevent the practice of making every employee outstanding; leaving the employee to believe there is no room for improvement. The second part of this section establishes a review of the current SES training program, ending with a report on any areas that need to be improved. The VFW supports Section 3.

Section 4 limits the period of time VA can place an SES employee on administrative leave, but provides VA the ability to extend that period of time if they report to Congress why that employee's administrative leave lasts longer than 14 days. The VFW sees this provision as more of a congressional oversight role than a disciplinary tactic. Congress should know why executives are on extended administrative leave and what VA is doing to either bring that employee back to work or removed from service. The VFW supports Section 4 of this legislation.

S. 563, THE "PHYSICIAN AMBASSADORS HELPING VETERANS ACT"

This legislation would streamline the process health care providers undergo when applying to volunteer at VA medical facilities. The VFW supports this legislation and would like to offer suggestions to strengthen it.

VFW members and their families embrace the spirt of volunteerism. Every year, more than 10,000 VFW and Auxiliary members volunteer their time at VA facilities throughout the country. With their assistance and the support of more than 66,000 additional volunteers, VA is able to maintain vital programs that help veterans reintegrate back into civilian life, provide much needed aide and services to homeless veterans, organize recreational activities that improve patients' quality of life, and expand access to care for veterans. Unfortunately, the process volunteers are required to undergo is often cumbersome, especially for physicians who wish to volunteer their time at VA medical facilities. Such physicians must go through processes that were designed for health care providers being hired by VA medical facilities, to include the credentialing process.

This legislation seeks to streamline that process by establishing at 60-day deadline for VA to complete the credentialing process for volunteer physicians. While the VFW supports expediting the approval process for volunteer physicians, we do not support establishing an arbitrary deadline for the VA credentialing process. While it may be grueling at times, the credentialing process serves to ensure the safety of those under VA's care and should not be unduly rushed. We also fear such a man-

date would result in VA medical facilities prioritizing volunteer physicians over new hires in an effort to meet statutory requirements, further delaying VA's lengthy employment process. That is why we urge the Committee to amend this legislation and require VA to develop a new hiring process specifically tailored toward volunteer physicians. The new process must not impede a medical facility's ability to process applications for new hires. It should, however, reduce or eliminate requirements that may not be necessary for volunteer physicians, such as requiring a minimum of three references from previous employers.

As the demand on the VA health care system continues to grow, opportunities for new volunteers will also grow. However, not all VA medical centers have staff dedicated to recruiting volunteers, developing volunteer assignments, and maintaining a program that formally recognizes volunteers for their contributions. That is why the VFW supports requiring each VA medical center to have at least one volunteer coordinator to establish a relationship with local organizations, recruit new volunteers, and serve as the initial point of contact for persons seeking to volunteer at VA medical facilities. However, volunteers must not be considered a solution to VA's staffing shortages. The VFW continues to believe that the only way VA can provide veterans the timely access to the care they have earned and deserve is by ensuring VA has the resources and tools necessary to maintain appropriate staffing levels at each VA medical facility. Volunteers are a vital force multiplier, but VA cannot rely on volunteers to meet the health care needs of our Nation's veterans.

S. 564, THE "VETERANS HEARING AID ACCESS AND ASSISTANCE ACT"

This legislation would authorize VA to hire hearing aid specialists as full time employees at department facilities to provide hearing health services alongside audiologists and hearing health technicians. Hearing aid specialists would assume many responsibilities currently performed by technicians and audiologists. Although we appreciate this bill's intent to increase hearing health access and reduce wait times for hearing aids and repairs, the VFW believes that VA has the ability to address these issues under its current hiring authority.

The VFW strongly believes that VA must improve timeliness in issuing and repairing hearing aids. A February 20, 2014, VA Office of Inspector General (VAOIG) report revealed that 30 percent of veterans were waiting longer than 30 days to receive new hearing aids, and repairs took an average of 17 to 24 days to complete, far exceeding VA's timeliness goal for those services. According to the report, the long wait times were attributed to a steadily increasing work load, which will likely continue to increase as the veteran population grows older. This problem is compounded by the fact that many audiology clinics are not fully staffed. Additionally, VAOIG found that the Denver Acquisition and Logistics Center, which performs major hearing aid repairs for VA medical centers nationwide, lacked an adequate tracking system for the devices it receives.

However, adding a new class of provider whose scope of practice overlaps that of existing employees does not get to the root of the problem. To fully address these issues, VA must develop and periodically evaluate the staffing levels and scope of practice for audiologists, hearing health technicians and other health care professionals to ensure VA audiology clinics have the staff necessary to meet timeliness standards.

S. 1450, THE "DEPARTMENT OF VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT AND RETENTION ACT"

The VFW supports this legislation, which would grant VA medical facility staff the ability to have flexible working hours that best suit the demand for health care by the veterans they serve. In response to last year's access crisis, VA has made a full fledged effort to increase access for veterans who rely on the VA health care system for their health care needs. In the past year, VA has completed more than 2.7 million additional appointments at VA medical facilities than previous years by expanding clinic hours, adopting best practices from the private sector, and increasing the number of health care employees by more than 12,000. Yet, VA continues to face numerous challenges in meeting the growing demand on its health care system.

One of those challenges is the statutory 40-hour work week limitation for title 38 employees. While most health care providers work a traditional 40-hour work week, hospitalist and emergency room physicians often work irregular schedules to accommodate the need for continuity of efficient hospital care. The VFW supports efforts to eliminate this access barrier and improve VA's ability to recruit and retain high-quality hospitalist and emergency room physicians.

S. 1451, THE "VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT"

The VFW supports the intent of this legislation, which would allow VA to pay benefits to veterans' survivors who have not filed formal claims, so long as there is sufficient evidence in the veteran's record to establish eligibility. Covered benefits would include Dependency and Indemnity Compensation (DIC), Death Pension, funeral expenses, and accrued benefits. This would allow expedited access to benefits for survivors, while also giving VA an additional tool to reduce the claims backlog by issuing decisions more quickly. Often, veterans' records already include the documents necessary to grant benefits to his or her survivors. Such documents may include DD Form 214, service-connected disability ratings, medical records, and household income information. The VFW believes that survivors should not be made to fill out unnecessary paperwork or resubmit evidence when adequate documentation is already on file. We do believe, however, that the survivor should also have the opportunity when providing notification of the veteran's death to submit necessary documents that may not be contained in the record, such as the death certificate, without the need to file a formal claim. Additionally, we believe that this legislation should require VA to issue a report on how many survivors are granted benefits under this authority, in order to ensure that it is properly utilized at all VA Regional Offices and Pension Management Centers.

S. 1460, THE "FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015"

The VFW supports this legislation, which extends the Post-9/11 GI Bill Yellow Ribbon Program to cover recipients of Marine Gunnery Sergeant John David Fry Scholarship.

The Fry Scholarship is available to surviving children and surviving spouses of active duty members of the Armed Forces who died in the line of duty on or after September 11, 2001. The scholarship provides full tuition and fees paid directly to the school for all public school in-state students capped at a statutory maximum amount per academic year equal to the post-9/11 G.I. bill.

Currently, dependents of living veterans who are eligible for Transfer of Entitlement under the Post-9/11 GI Bill may participate in the Yellow Ribbon Program, which covers additional costs for out-of-state tuition or private colleges and universities. Recipients of the Fry Scholarship, however, are not eligible for the Yellow Ribbon Program. The VFW believes this must be corrected. In no instance should the dependents of those who made the ultimate sacrifice receive a lesser benefit than others.

S. 1693, TO EXPAND ELIGIBILITY FOR REIMBURSEMENT FOR EMERGENCY MEDICAL TREATMENT TO CERTAIN VETERANS THAT WERE UNABLE TO RECEIVE CARE FROM THE DEPARTMENT OF VETERANS AFFAIRS IN THE 24-MONTH PERIOD PRECEDING THE FURNISHING OF SUCH EMERGENCY TREATMENT.

The VFW supports this legislation which would authorize VA to reimburse veterans who were unable to receive VA care within a 24-month period for emergent non-VA care. The strict 24-month requirement is problematic for newly enrolled veterans, many of whom have not been afforded the opportunity to receive a VA appointment due to appointment wait times, despite their timely, good faith efforts to make appointments following their separation from military service.

Currently, VA does not have the authority to reimburse veterans if they experience medical emergencies during such a waiting period. This barrier to access has caused undue hardship on veterans who are undergoing the difficult transition from military service back to civilian life and has resulted in veterans receiving unnecessarily large medical bills through no fault of their own. VA is aware of this problem and has requested the authority to make an exemption to the 24-month requirement for veterans who find themselves in this situation. The VFW strongly supports this legislation and believes that long appointment wait times should never prevent veterans from seeking the emergent, possible life-saving, care they need.

S. 1856, THE "DEPARTMENT OF VETERANS AFFAIRS EQUITABLE EMPLOYEE ACCOUNTABILITY ACT OF 2015"

This bill provides a long list of provisions aimed at improving accountability within VA. The VFW supports the vast majority of these provisions, but has concerns with its proposed employee suspension and removal process.

Section 2 of the bill would amend Chapter 7 of title 38 by including a new paragraph that outlines the suspension and removal of employees for performance or misconduct that is a threat to public health or safety. While it is critically important to ensure the safety and health of veterans, the narrow definition of performance

or misconduct this provision provides would be limited to health care providers and only in cases when negligent care is involved. This leaves out a vast majority of employees and situations when removal should take place.

The VFW suggests that reasons for removal be broadened to include gross mismanagement, gross waste of funds, abuse of authority, as well as the clear and direct threat to public health and safety that are current in the legislation. This will allow the Secretary to quickly remove an employee based not only on the harm they bring to veterans but also the harm they bring to other employees and VA.

While the VFW supports your proposal for immediate removal of employees without pay, the remaining procedures for removal and appeal process have considerable differences with H.R. 1994, which the VFW supports. Our membership insists that a prompt removal process be developed to give the Secretary broader authority to remove bad employees. The VFW looks forward to working with both parties to find common ground and a final solution to removing bad actors from VA's workforce.

The VFW supports the remaining sections of this bill, as they provide clearer guidelines on evaluating job performance and personnel actions, improve management training, provide promotion opportunities for technical careers and improve medical oversight, among other provisions. Each of these will improve overall accountability and sustainability of a quality workforce.

S. 1938, THE "CAREER-READY STUDENT VETERANS ACT"

The VFW supports this legislation to ensure that education programs in fields that require licenses and credentials offer the proper programmatic accreditation necessary for employment in each state as a condition of GI Bill approval.

Some schools offer degrees that do not provide graduates the needed credentials to qualify for certain professions. Worse yet, many of these schools offer prospective students unclear information about programmatic accreditation and the requirements for professional certification. Some schools use terms like "fully accredited," which in theory may be true for the institution, but in reality do not offer the programmatic accreditation needed to secure employment. Unfortunately, student-veterans often fall prey to misleading recruiting sales tactics. We believe that student veterans need to be given the resources to be informed shoppers when deciding how best to use their education benefits.

DISCUSSION DRAFT

The VFW supports this draft bill, which offers a variety of enhancements to the way GI Bill benefits are processed.

Section 1 would streamline how VA approves initial claims for Post-9/11 GI Bill (Chapter 33) beneficiaries. Although improvements have been made in recent years, we remain concerned that it still takes too long to approve initial claims, due to outdated business practices. Currently, claims processors must go through a time intensive back and forth with potential student-veterans who accidentally revoke the wrong GI Bill benefit before they can properly enroll them in Chapter 33. This bill would allow VA to make a reasonable effort to contact the veteran to enroll them in the most advantageous benefit.

The section also adjusts how VA reimburses veterans eligible for the Montgomery GI Bill (Chapter 30) and who have paid into the benefit, but elect to use Chapter 33 instead. Currently, Chapter 30-eligible veterans who elect to use Chapter 33 must wait until they have finished using their benefits before VA can repay them for their Chapter 30 contribution. Under this legislation, the Chapter 30 contribution would be prorated and added into living stipend payments while veterans are enrolled in Chapter 33, granting them a faster system of reimbursement while they are still in school and need it most. The VFW fully supports this section.

Section 2 would allow educational institutions to report enrollments to VA as groups, districts or consortiums. The VFW supports this, believing it will bring consistency across the different chapters of GI Bill benefits, making it easier for VA to determine beneficiary status and track student-veterans as they seek to accomplish their academic goals.

Section 3 places a cap on the amount of tuition and fees that may be paid under the Post-9/11 GI Bill for programs of education in which a public institution of higher learning enters into an agreement with another entity to provide such education. The cap would be set at the same amount allowable for private and foreign institutions of higher learning.

Currently, third party training programs that contract with public schools are able to charge unlimited fees since public schools have no set dollar amount cap. The law states only that the Post-9/11 GI Bill covers the actual cost of in-state tuition and fees. Last year, it came to light that some contracted flight training pro-

grams were charging exorbitant fees, which far exceeded the cost of an average in-state education. The VFW believes this is a loophole that must be closed by placing reasonable caps on these sorts of training programs.

Still, we believe that veterans should have a path to receive the training necessary to enter highly technical, high demand fields like aviation, which offer good paying jobs to those who are qualified. We also recognize that it may not be realistic for certain flight schools to provide that training within a $21,235.02 cap per academic year. For this reason, we encourage the Committee to further examine this issue in order to determine what reasonable caps might be for flight training and similarly contracted training in other high demand fields, so that veterans can continue to have access to these kinds of programs, but that such programs offer transparency in their fee schedules and cannot simply charge the government an arbitrary rate. This is why the VFW also continues to support strict enforcement of standing VA policies, like the 85/15 rule, which ensures that third party contractors and their partner schools are charging appropriate fees, while continuing to offer high quality training to veterans.

The VFW supports section 4, which would require VA to make available to institutions of higher learning, by secure internet Web site, information on the amount of education benefits each student-veteran has remaining. This will allow schools to provide better counseling to veterans on how best to maximize their remaining benefits to achieve their academic goals.

Section 5 would codify the authority of State Approving Agencies (SAAs) to inspect and approve non-college degree (NCD) programs at not-for-profit institutions of higher learning to validate their quality. This is an authority previously held by SAAs, but rescinded by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010. As a result, some not-for-profit schools developed NCD programs of questionable value. Although the VA Office of Economic Opportunity issued guidance allowing the SAAs to inspect NCD programs in subsequent years, the VFW still believes that this policy should be strengthened by statute.

Section 6 would require VA to apply the same reasonable criteria standard when approving education programs across all types of institutions of higher learning: public, private, and proprietary for-profit. The VFW believes this is equitable and supports this section.

Section 7 makes changes to the way VA and the SAAs must conduct compliance surveys every year. Under current law, VA must conduct compliance surveys annually on all facilities reporting at least 300 enrolled GI Bill recipients. The VFW believes that this is an impossible mission, which will cause some smaller schools to go years without a compliance survey, as VA and the SAAs struggle to satisfy the requirement to survey schools with large veteran populations. Such a requirement can hinder both VA's and the SAAs' response to at-risk programs that may enroll far fewer veterans, while wasting significant time and resources inspecting perennial top performers who happen to have large student veteran populations. This section would correct that problem by requiring that compliance surveys be conducted once every two years at each educational institution or training establishment that enrolls at least 20 GI Bill recipients.

Mr. Chairman, this concludes my testimony and I will be happy to answer any questions you or the Committee members may have.

Chairman ISAKSON. Thank you very much.

Professor Kettl.

STATEMENT OF DONALD F. KETTL, PROFESSOR, SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND

Prof. KETTL. Mr. Chair and Ranking Member Blumenthal and Members of the Committee, I want to thank you very much not only for the opportunity to testify here today, but more importantly, for your sustained and careful attention to the need to try to provide for our veterans the care and benefits they have so richly deserve and for which they have worked and sacrificed so much.

I want to speak in particular in favor of S. 1856, but before doing that, I want to talk about the broad problems of performance that the VA must—absolutely has to try to find ways of resolving, trying to find ways, in particular, of improving the accountability and performance of the Department of Veterans Affairs. We have talked a

lot already today and have talked more broadly about the issue of trying to improve accountability and performance by making it easier to fire employees and to increase accountability; we surely want to be able to remove people who have performed poorly.

But, the question is, how much of the problem would we solve if, in fact, we did that? My own guess is that would be somewhere in the neighborhood of 5 percent, perhaps, of the VA's problems. But suppose even that it was as high as 50 percent, ten times higher than what my best guess would be. What are we going to do to solve the other 50 percent of the performance and accountability problems that the VA faces?

The lesson from the best managed private companies is that you cannot fire your way to success and that success and performance really must build on other strategies that try to build the people power inside organizations to deliver results, and I want to look at five things in particular that are important about that.

The first is the question of inadequate resources. It is clear from testimony that we have heard already that the VA in too many places is simply short-staffed. There are 41,500 staff vacancies as of June of this year, including 5,000 physicians and 12,000 nurses. In some cases, vacancy rates are as high as 20 percent. It it clear that the VA is not going to be able to perform better unless it has the staff in place to be able to do so.

And that gets into the second topic, which the Chair, Senator Isakson, mentioned just a little while ago, the importance of vacancies in key areas. Twenty-five percent of the medical director positions in VA facilities are vacant. Among the vacancy rate leaders are the Department's Veterans Integrated Service Networks, which are responsible for coordinating care; the vacancy rate is 43 percent. Those simply are much too high, so we have to fill those positions if we expect to be able to solve the problems.

The third point is that it is very clear that these vacancies hurt the Department's performance. It is not surprising that I have data in my testimony that show across the board for those units of the VA that are operating under an acting or vacant manager, that the level of performance by employees and the level of employee morale is substantially lower than it is when there is a manager—not surprising, because, in fact, the VA's own surveys demonstrate that.

On top of that, it is also clear that the more morale in the VA suffers, the more the staff members within the VA feel under attack, the higher the level of vacancies are likely to be. The Partnership for the Public Services Best Places to Work in the Federal Government has surveyed Federal agencies and according to the survey, it turns out that both the lowest level of employee satisfaction and the biggest drop in satisfaction in 2014 were: the lowest was the Department of Homeland Security; next after that is the Department of Veterans Affairs. So, it is unlikely we are ever going to be able to solve the problem of performance unless we can find a way to try to improve employee morale.

I come now to the fifth point that I want to talk about, which is the rate at which the VA actually fires employees. If you look carefully at data for the Office of Personnel Management, which I included in my testimony, it turns out that layoffs and discharges in the private sector amount on an annual basis to about 1.1 per-

cent of the workforce. In the Federal Government overall, it is about 0.4 percent. That is substantially lower. But in the VA, it is more than 1.5 times higher than it is in the rest of the Federal Government, approaching the levels of what it is in the private sector.

So, it is not clear not only that increasing the rate of firing would solve the problems of performance in VA, because there are many other problems that we have to solve, but more fundamentally, it is not clear that the rates of firing in the VA are substantially out of line with what is the case in the private sector, according to the Federal Government's own statistics.

So, what we need to do is to focus much more on solving the real underlying problems, and that is why I am here today in support of S. 1856. It would hold the Department's top managers more accountable. It develops stronger performance rubrics and measures to try to ensure that managers are held accountable. It would require managers to make an affirmative decision at the end of the probationary period of employees to retain them. But, most importantly, it would also create a strong employee development system within the Department to try to ensure that the best managers which we need for the future are managers that we cultivate now.

There are important human capital strategies that the VA needs to focus on much more carefully. In particular, since the VA has now been placed on the High-Risk List of the Federal programs most prone to waste, fraud, abuse, and mismanagement by the GAO, it is an opportunity for this Committee, in particular, to conduct intensive oversight to ask the top VA officials about what the VA plans to do to remove itself from that list.

Our Nation's veterans have given so much to this country and the country has made promises to them. It is a sacred obligation to make good on those promises and it is going to require improved management, especially better management of the people within the VA, to make good on the promises that our Nation has made.

Thanks very much to the Members of the Committee and I look forward to answering any questions that you might have.

[The prepared statement of Prof. Kettl follows:]

PREPARED STATEMENT OF DONALD F. KETTL, PROFESSOR, SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND

Let me thank the Committee for the opportunity to testify today on the important issues facing our Nation's veterans and the care they're earned from the Department of Veterans Affairs. It is always a great privilege to speak before a congressional committee. It is an even greater privilege to speak about such an important issue.

I am Donald F. Kettl, a professor at the University of Maryland School of Public Policy. I have devoted my professional career over the last 40 years to exploring how best we can ensure that government serves our people. I have written and researched extensively on issues of public management. I have consulted broadly for government agencies in the United States and abroad, and I have chaired two blue-ribbon commissions in Wisconsin. I want to draw on that experience today to explore how we can best serve the Nation's veterans.

In my testimony before you today, I want to speak in support of S, 1856, "The Department of Veterans Affairs Equitable Employee Accountability Act." It provides a strong and sensible strategy for solving many of the VA's most important problems. Before speaking directly to the act's provisions, however, let me first talk about the broad problems of performance that the VA faces.

There is one thing on which we can all agree: The Department of Veterans Affairs is not now performing at the level that we—the Nation and its veterans—expect.

As the Government Accountability Office has repeatedly documented, the VA's health care system is struggling to deliver timely, high-quality, cost-effective health care. Those problems, in fact, have put the VA's health care system on the GAO's list of 32 high-risk programs especially prone to fraud, waste, abuse, and mismanagement.[1] The problems are large. They must be solved.

Some reform proposals have focused squarely on the VA's managers, both at the highest levels and at the department's middle levels. These proposals have begun with a singular diagnosis of the problem—that the VA is troubled by the poor performance of these managers—and a singular solution to the problem—that Congress must make it easier for the department to fire poor-performing managers and that Congress should then pressure the Department to ensure that this happens. The department has certainly been troubled by serious management problems, and poor performing managers certainly should be fired. More broadly, the Nation's human capital system, for both political appointees and civil service, has fallen out of sync with the challenges it faces, and the system needs fundamental reform.

Before examining the legislation pending before this Committee, we need to step back and ask three questions. First, how many of the VA's problems would be solved by making it easier to fire poor-performing managers? Second, would proposals focusing solely on making it easier to fire these managers actually help? Third, what other steps can we take to improve care for veterans.

UNDERSTANDING THE VA'S PROBLEMS

No one knows for sure just how many of the department's problems flow from the difficulty in firing poorly performing managers. My best guess is that it is probably about 5 percent. But suppose it's far, far higher—higher, in fact than I believe anyone realistically supposes. Let's assume that the problem of firing poor performers is as high as 50 percent of the problem.

Can we fire our way to success in solving any of the VA's issues? And, even if we could, what should we do to solve the other 50 percent of the problem? The answer to this question requires working through a series of puzzles.

1. Inadequate resources. In part, the VA's problems flow in part from not enough resources, in both money and people. A July 23, 2015 report in *USAToday*, based on a Freedom of Information Act request, showed that the VA had 41,500 staff vacancies in June of this year, including 5,000 physicians, almost 12,000 nurses, and more than 1,200 psychologists. In some locations, one of five positions was vacant.[2] The VA can't provide the care that veterans deserve if it doesn't have the resources to do so. Part of the answer requires providing the VA with more money, but many Members of Congress are understandably reluctant to do so without assurance that the money will be spent well.

2. Critical management vacancies. In addition to problems in providing sufficient staffing for front-line care, the VA has been struggling to recruit managers. As Chairman Johnny Isakson pointed out in a July 23, 2015 letter to VA Secretary Robert McDonald, the department has a vacancy rate of 25 percent among its medical directors. Among the leaders of the department's Veterans Integrated Service Networks, which are responsible for coordinating the care for veterans, the vacancy rate is 43 percent.[3]

3. Vacancies hurt the department's performance. These vacancies have created severe problems for managing the turnaround that the VA needs. As the department's Undersecretary for Health, David Shulkin, has pointed out, "How can you possibly make the changes that we are doing unless you have the right leadership in place?"[4] Moreover, vacancies badly hurt employee performance and morale. In the VA's All Employee Survey, facilities with a vacancy in the director position in FY 2015 had lower scores across all survey questions.

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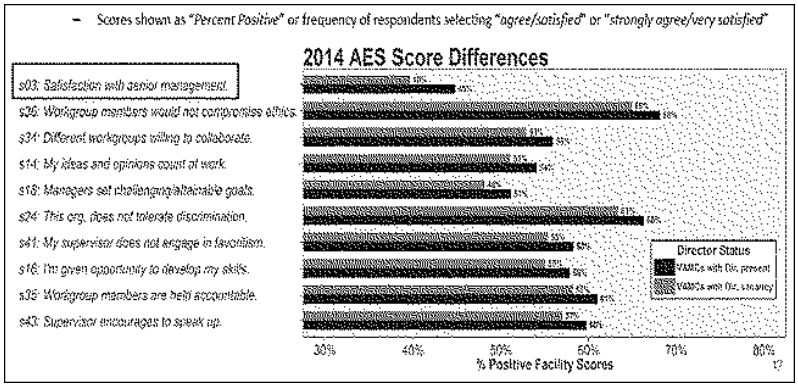
[1] U.S. Government Accountability Office, *High-Risk Series: An Update*, GAO 15–290 (February 2015), at https://docs.google.com/viewer?url=http%3A%2F%2Fwww.gao.gov%2Fassets%2F670%2F668415.pdf

[2] Meghan Hoyer and Gregg Zoroya, "VA has 41,500 unfilled medical jobs, forcing vets into costly private care," *USAToday* (July 23, 2015), at http://www.usatoday.com/story/news/nation/2015/07/23/va-has-41500-unfilled-medical-jobs-forcing-vets-into-costly-private-care/30504525/

[3] Sen. Johnny Isakson to Secretary Robert McDonald (July 23, 2015), at http://www.veterans.senate.gov/newsroom/majority-news/isakson-to-va-secretary-fill-vacant-va-leadership-positions-now

[4] Scott Maucione, "VA's top health official's five ways to transform access to health care," FederalNewsRadio.com (September 4, 2015).



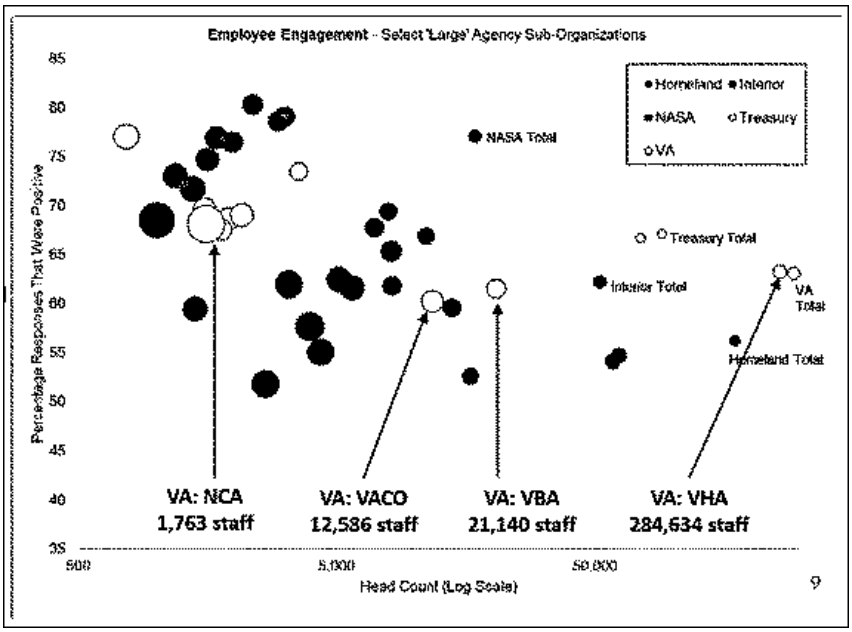
Source: Department of Veterans Affairs, 2014 All Employee Survey (AES).

This evidence makes clear that vacancies in key VA senior management positions hurt the department's performance.

4. A focus on increasing the firing of senior managers increases the number of vacancies. Firm survey evidence is hard to come by, but the accumulated analysis of reporters for the media and anecdotal evidence from the field makes one thing clear: VA employees feel under assault, and that is vastly complicating the challenge of filling critical vacancies throughout the department. The Partnership for Public Service's "best places to work in the Federal Government" shows that the VA is second-lowest in employee satisfaction and had the second biggest drop in satisfaction in 2104, in both cases after the Department of Homeland Security.[5] It's one of the most troubled departments in the Federal Government, and continued attacks on the department aren't making it any better.

In fact, the Office of Personnel Management's 2014 Federal Employee Values Survey shows that the VA is among the Federal Government's most troubled departments. Its employee engagement score is low. The fact that it has so many employees only multiplies the problem.

[5] Partnership for Public Service, "Best Places to Work Agency Rankings" (2015), at http://bestplacestowork.org/BPTW/rankings/overall/large

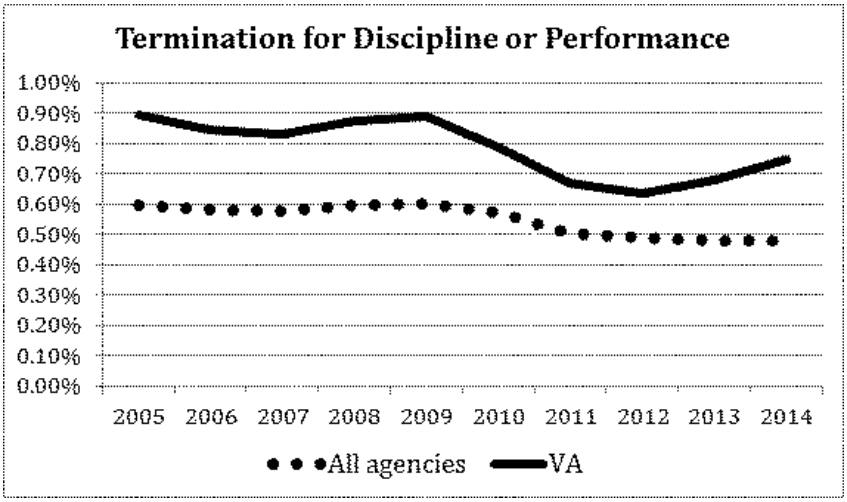


Source: Department of Veterans Affairs, based on 2013 Office of Personnel Management Federal Employees Viewpoint Survey.

Secretary McDonald has pointed out that the attacks on the department are making it harder to hire. He has said, "We can't hire the people [we need] when Members of Congress are going to somehow differentiate the VA versus other departments in government. That doesn't cause people in government to want to work for the VA."[6]

5. The rate at which the VA fires employees for cause is already above the Federal average. The underlying assumption of many debates about the VA is that poor performers are allowed to continue in their positions. There is a question about whether we ought to adjust the balance of employee rights and managerial flexibility. But a careful look at the rate at which the VA terminates employees for disciplinary or performance reasons shows that it terminates employees at a rate more than one and a half times the Federal Government's average.

[6] Quil Lawrence, "Some Veterans Affairs Reforms Undermine Medical Recruitment Efforts," *NPR.com* (August 31, 2015), at http://www.npr.org/2015/08/31/436377436/some-veterans-affairs-reforms-undermine-medical-recruitment-efforts



Source: Office of Personnel Management, FedScope.

The question is often raised—rightly—about whether government jobs in general enjoy more employment security than in the private sector. In July 2015, for example, the Bureau of Labor Statistics found that layoffs and discharges in the public sector occurred at a rate of 0.4 percent of the workforce, compared with 1.1 percent of the workforce in the private sector. However, the public and private comparisons include both termination for cause and layoffs for strategic and economics reasons; the BLS data do not separate them. The private sector has a higher rate of layoffs because the nature of its functions and business models are more variable.

It seems very likely, therefore, that public employees are terminated for cause at a lower rate than in the private sector, but the gap is smaller than is often believed. Moreover, since termination for disciplinary or performance reasons is higher in the VA than throughout the rest of government—0.75 percent of VA employees in 2014—it is likely that the gap between termination for cause in the VA compared with the private sector is not as large as usually assumed.

What does this mean? The VA is in trouble, but a singular focus on firing bad performers:

- Won't help the department hire the managers it needs.
- Will further damage the department's performance.
- Won't deal with most of the department's biggest problems, which lie beyond the performance of some poor department managers.

STEPS TO REAL REFORM

The firing process unquestionably needs to be improved. There's no place in the Federal Government for bad managers and bad management. But:

- We need to find the right balance between firing poor performers, and other disciplinary actions, on the one hand, and providing the protections that employees need to prevent political interference in their work, on the other. The Nation's civil service original civil service act was the product of a partnership between a Democratic Senator, George Pendleton (Ohio), and a Republican President, Chester Arthur (New York). It's evolved since through bipartisan support of both parties.
- We need to find the right balance between these disciplinary actions and the fundamental talent management requirements of the Nation's veterans care system.
- We need to find the right balance between these talent management needs and the mission of serving the Nation's veterans.
- We can't expect to solve any of these problems by dealing with the VA in isolation, especially in changing the balance on any of these issues.

LEGISLATIVE RECOMMENDATIONS FOR IMPROVING VETERANS CARE

Let me explore the two principal pieces of legislation now before the Committee.

S. 290. The "Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015," S. 290, would take steps to impose greater penalties on poor-performing employees, toughen the standards for employee performance ratings, mandate the reassignment of Senior Executive Service employees every five years, and restrict the Secretary's ability to place employees on administrative leave.

On a broad level, placing restrictions on employee benefits for those convicted of a felony makes sense. We need improvements in the employee rating system, although mandated distribution of ratings rarely works well. The SES originally anticipated that the Federal Government would create a corps of senior executives who would move among Federal managerial assignments. However, mandating reassignment within the VA without fixing the SES's broader issues would surely not prove effective. Finally, no one wants employees to be placed on administrative leave any longer than necessary, but due-process standards need to dictate the length of an administrative leave, not an arbitrary period.

More fundamentally, S. 290 does not deal with the fundamental issues facing the VA, and it would not get at the core problems that must be solved if we are to serve our veterans well.

S. 1856. The "Department of Veterans Affairs Equitable Employee Accountability Act," S. 1856, would significantly advance the Nation's efforts to strengthen health care for its veterans. In particular:

• It provides the Secretary with greater power to suspend without pay and remove an employee found to behave in ways that do not serve the needs of veterans. More managerial flexibility is clearly a good step.

• It establishes reasonable procedures to ensure that employees suspected of posing such a threat are provided with due process, in the best bipartisan traditions of the Nation's civil service policies.

• It clearly holds the department's top officials accountable for the department's management. In particular, it focuses on the importance of recruiting employees, motivating them, training them for their roles, and holding them accountable. The VA is a people-based business. Better people policies are essential to better performance. Key managers need to be subject to an annual performance plan that provides a game plan for effective management.

• It focuses the performance plan for managers squarely on the department's human capital needs. It cannot fulfill its mission without planning for the people it needs, recruiting them, training them, retaining them, and developing them for future leadership advances. Every great private company follows these steps. The nation owes its veterans nothing less.

• It requires managers to make an affirmative decision to keep employees at the end of the probationary period. Too often, it's been easy for low-performing employees to slip through to permanent status. A government position ought to be earned through demonstrated successful performance. It is the responsibility of the manager to review each employee during the probationary period to ensure that the employee's work rises to that level—and to conduct regular reviews and to provide career help afterwards to ensure that the employee's contributions continue to advance.

• It puts training at the center of the VA's career development work. The most essential component is helping employees learn how best to motivate, manage, and lead. We are now not only trying to solve the serious problems that plague the department today. We are also building the foundation on which its future service to veterans depends. The only effective way to avoid future crises is to build—now—for the capacity the department will need tomorrow.

• It provides a separate promotional track for technical experts outside of the management track. As the Nation's largest health care system, the VA will need.

• It engages the department directly with the GAO. That is a valuable step in improving the department's performance.

OVERSIGHT RECOMMENDATIONS FOR IMPROVING VETERANS CARE

In addition, the Committee could significantly improve its oversight of the department's care for veterans through its oversight functions. A regular, sustained strategy for reviewing the following issues would prove especially effective, through the Committee's hearings and through the staff's field investigations:

• *Removal and due process*. Reviewing the balance between efforts to identify, suspend, and remove employees who have shown themselves unworthy of the public trust, on the one hand; and the due-process protections afforded them under the law and Constitution, on the other. In the United States, there's always been a balance between sanctions and due process. The VA is at the frontier of an important effort

to re-set this balance. That is an important effort, and the Committee could support that effort through its oversight.

• *Accountability*. Solving the department's problems will require developing a performance plan for the department and ensuring that its managers understand their own contributions to the department's performance. The Committee could advance this effort through regular oversight of the department's overall performance plan, as well as its efforts to bring managers' work into alignment with this plan.

• *Human capital*. The VA's success will ultimately depend on planning for the employees it needs, recruiting them, hiring them, training them, retaining them, and developing them. The Committee could advance this effort through oversight of the department's strategic human capital management.

• *High-risk progress*. In 2015, GAO placed the VA's health care programs on its high-risk list of programs most prone to fraud, waste, abuse, and mismanagement. GAO has identified core problems in the department's management; improving care for veterans will require solving these problems. The Committee could advance the department's performance through regular oversight of the department's plan for getting off the high-risk list and of the progress in can demonstrate in doing so. In particular, it would be useful to ask the department's senior managers to testify, on a regular basis, about the steps they are taking to develop a plan for improving the department's performance and how they will close the gap with the best-performing departments and agencies in the Federal Government.

Our Nation's veterans have given so much to the country. The country has made promises to them, and it is a sacred obligation to make good on those promises. Nothing could be a more fundamental measure of the greatness of our Nation. The VA's problems now are significant, but they are eminently solvable. Through its work, this Committee has the potential to help the department make the big steps that are needed.

Chairman ISAKSON. Professor, you are a gem. [Laughter.]

I hope everybody, particularly the VA folks that are here today, paid close attention to your testimony, particularly the references to the temporary nature of so many appointees in responsibility, acting appointees, vacancies that are there, and the fact that the VA has really suffered from a cultural depravity, if you will, within its own organization of a bad attitude that has kind of perpetuated itself.

I say that to say this. I personally think Secretary McDonald is making a Herculean effort to change that culture. A lot of the things that we see that are negative about the VA today are historical references to something that happened two, three, four, five, six, seven, eight, 10 years ago. I know that the Secretary is trying to motivate upper management and leadership and to enter into training to try to really change the whole paradigm at the VA. I think he is moving in the right direction, but I am going to make sure he reads your testimony because I have never heard it said better.

Prof. KETTL. Well, thank you, Senator. I appreciate that. I think there is an incredibly unusual opportunity here with the strong support of this Committee, with the commitment of the Secretary, and with the opportunity that is presented by having the VA being placed on the High-Risk List from GAO, which means there are specific items for action that GAO has identified and analytical horsepower that comes from the GAO to be able to do that, which creates, in that conversation, opportunities to lay out a strategic plan for the Nation's future, for the VA's future, to be able to solve these problems. There is tremendous opportunity here in the way that all these forces are coming together.

Chairman ISAKSON. Well, your testimony added a lot to this meeting and I am going to make sure the Secretary and Deputy

Secretary Gibson get it. I appreciate very much your insight. You are right on target.

Mr. Wescott, the members of your organization, are those people like SACS, Southern Association of Colleges and Schools; or what is your membership made up of?

Mr. WESCOTT. Our membership is made up, Mr. Chairman, of the State Approving Agencies. There is a State Approving Agency generally set up by a Governor in each State and we are responsible for approving programs so that a veteran can enroll in that program and use his GI Bill benefits, so——

Chairman ISAKSON. This is just for veterans programs?

Mr. WESCOTT. That is correct, sir.

Chairman ISAKSON. OK. You knew Pete Wheeler, I guess, from Georgia.

Mr. WESCOTT. I know of him, sir, yes.

Chairman ISAKSON. Unfortunately, he just passed away a couple of months ago, but served 63 years as Veterans Commissioner in Georgia and did an outstanding job.

Mr. WESCOTT. Indeed.

Chairman ISAKSON. A great guy.

Mr. WESCOTT. Yes. Yes. I did meet him.

Chairman ISAKSON. On your testimony on Section 3—and this is not a trick question by any stretch of the imagination, but you were supportive of Section 3 in this discussion draft the way it is written?

Mr. WESCOTT. Yes, indeed, sir, we are.

Chairman ISAKSON. And prior to 9/11/2001, flight training schools available for GI benefits were capped at $21,085 maximum benefit per year, is that correct?

Mr. WESCOTT. Prior to——

Chairman ISAKSON. Somebody is shaking their head back there behind you, but——

Mr. WESCOTT. Prior to 9/11, the cap for the private flight training was $10,000, so——

Chairman ISAKSON. OK.

Mr. WESCOTT. And I think that cap has been adjusted for inflation today until it is somewhere a little over $12,000. And that is for private stand-alone flight schools.

Chairman ISAKSON. Did a private school have to affiliate with an institution of higher learning that was public?

Mr. WESCOTT. No, sir, they did not.

Chairman ISAKSON. That was a new add-on with the new GI Bill, is that right?

Mr. WESCOTT. Yes. What happened with the new GI Bill, and then also Public Law 111–377, was that IHL programs, degree programs within those institutions, were declared to be deemed approved. So, there was not as close oversight by the SAAs over those deemed approved degree programs. Then, some flight institutions and IHLs came together to provide that training because, as opposed to the individual private stand-alone flight schools, there was no cap in place on the fees and tuition that could be charged.

Chairman ISAKSON. There is a lady behind you who has either got a bad headache or she is wagging her head to the side that you are not telling me the truth, or what you said was not right. So,

if you will give me a statement as to what you are—amplification might be, I would appreciate it.

AUDIENCE MEMBER. Do you want me to give you a written statement?

Chairman ISAKSON. I do.

AUDIENCE MEMBER. OK.

Chairman ISAKSON. A written statement because you are not on the official panel, but I acknowledge anybody who has a comment, and I could tell you had one, so——

[Laughter.]

AUDIENCE MEMBER. I do. They are not talking about Chapter 30.

Chairman ISAKSON. OK. Thank you.

[Written statement from Ms. Lois Reid, Chief Executive Officer, Upper Limit Aviation, is in the Appendix.]

Chairman ISAKSON. Mr. Butler, thank you for your service and what you do. Do you have any comment on the flight question that has been raised or was referred to in Section 3?

Mr. BUTLER. Other than we support that particular provision, as well. We support any educational program that would benefit our veterans, so we are in support of that provision.

Chairman ISAKSON. Mr. Morosky, did you have a—I think in your comments, you were supportive, as well, is that correct?

Mr. MOROSKY. Mr. Chairman, we support a cap. The only caveat that we had in our testimony was we are not sure what that cap should be and whether it should be different than the current private school, international school cap. The way the code is set up, it covers public schools, it covers private international schools, it covers vocational programs. There is nothing in Chapter 33 that talks about a private entity that contracts with a public school, so maybe there should be and maybe the cap should be different. It is something that we should take a look at. What we do not want to do is set a cap that shuts all veterans out of flight training and, therefore, the opportunity to pursue this, but at the same time, not allow the loophole to continue where schools can charge exorbitant fees.

Chairman ISAKSON. My time is up.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you. I want to join the Chairman in thanking you, Professor Kettl, and all the witnesses who are here today, but I particularly appreciate Professor Kettl accepting our invitation to be here today. I can tell you the Chairman, in my experience, has never before called any witness a gem. [Laughter.]

Chairman ISAKSON. First time for everything.

Senator BLUMENTHAL. And he does not use four-letter words, I can tell you, at least in my presence.

I do want to follow up on a couple of your comments which I thought were tremendously insightful and important. I just met with the CEO of a major American corporation about an issue completely unrelated to this hearing, yet, I thought to myself as you were testifying, if I said to that CEO, our solution for improving the performance and personnel in your company is to figure out a better way of firing people, he would look at me as though I were crazy.

Now, the difference in the public sector is that the measurements for good performance often seem indistinct or indecipherable or difficult to discern, because unlike his company, the end of quarter revenue, profit, performance, and so forth are not measured the same way. So, one of the questions I would welcome your thinking about is not only—and, by the way, I really welcome and thank you for your support for the bill S. 1856—but also how the VA can attract the doctors and nurses and others to fill those 41,000 positions, because a lot of them are health care positions and a lot of those skills are in short supply. As you know, there is a shortage of primary care doctors in the country, generally, and that is reflected in some of those vacancies.

So, I would like very much not only to submit your testimony to Secretary McDonald, but perhaps ask you to undertake an assignment for us. I figure that I am more in the category of student than professor. Very rarely does a student give a professor an assignment. But, if you could be involved, and maybe we can involve you in heading a team to consider this issue, because I said at the beginning of this hearing, and I believe it is true, that there are so many, many, many hard working, proficient professionals who come to work every day. They work long hours. They do not punch clocks. They are there for patients or veterans who need their help. They really care. And there has been this broad brush that has tarred them.

How do we keep them? How do we reward them? How do we attract them? That is kind of a long-winded way of asking a question, but if you have thought any more about this issue, I would welcome your comments.

Prof. KETTL. Senator, this is something that really is going to require a lot more work, because it is a very complex and, unfortunately, a very deep-rooted problem. And let me say that not only would I certainly welcome the chance to be able to continue working with the Committee on this issue and with the Department, as well, but my students would appreciate the irony of being handed a homework assignment myself.

Two points, if I might. The first is that if you step back and ask about the opportunity to be able to recruit people for a mission of this sort, what area of medicine could possibly be more valuable and something that would be easier to motivate people for than trying to take care of the veterans who have given so much to this country. If you cannot motivate people and recruit people on that basis, I do not know what would be the possible basis for recruitment. There is nothing that is more central to the public interest, it seems to me, than that, and it needs to begin with a central statement reinforcing the Department's mission.

But then the second piece is that it is very clear, and unfortunately, if you look across the board, and I have some of the data in my testimony about the Federal Employee Value Survey results, unit by unit by unit within the VA, and the one lesson, unfortunately, that comes through very clearly is that the VA sits almost at the bottom in every single one of its units. But, on the other hand, you look at NASA and NASA sits at the very top. What is it that NASA is doing that the VA is not? What is it that is pos-

sible to discover that what NASA is doing could be transferred to the VA?

That is something that we can identify, learn from. There is data that the Office of Personnel Management has where people have done in-depth research, including the Partnership for Public Service. There are leaders and managers at NASA who would be available to tell us what it is that they do to motivate people. And there are people inside the VA who are receptive to this message.

If I could just add one other piece to this. NASA is doing an incredible job, as one example on this, but NASA is also at a point where their mission is under fundamental assault, perhaps, or at least fundamental reexamination, and they are under tremendous pressure from private sector competition at the same time. But despite that, they have employees who are as motivated as any within the Federal Government.

On the other hand, you would think that within the VA you would have one of the easiest jobs of motivating employees, given the nature of the mission, yet we are falling short. That tells us that we have the opportunity to be able to solve this problem, but it requires strong and effective leadership from the top and the ability to be able to learn from what others are doing, from what the Partnership for Public Service is doing, from what the Government Accountability Office is discovering, from what we can discover from the data that the Office of Personnel Management has.

The information is there and that would provide a game plan for figuring out what to do, and this Committee has an opportunity by then engaging in an ongoing dialog with the top leadership of the Department by saying, you are now on the GAO High-Risk List. What is your plan for getting off?

Senator BLUMENTHAL. Thank you very, very much.

Chairman ISAKSON. Senator Boozman, followed by Senator Tillis.

Senator BOOZMAN. Thank you, Mr. Chairman.

Mr. Wescott, in regard to the really high charges that are being charged by some of the schools so inappropriately, so you all do not have any inability to approve or disapprove or——

Mr. WESCOTT. Let me——

Senator BOOZMAN [continuing]. When something stands out so much, right——

Mr. WESCOTT. Thank you so much for that question, Senator. What happened was back in 2011, 111–377 was passed by the Congress and it changed some of the roles between the State Approving Agencies and the VA, and degree programs became deemed approved at the public and not-for-profit privates. So, at that point, the oversight, especially given the interpretation of some of the leadership of the VA at that time, of those degree programs was removed from the State Approving Agencies. One of the things we seek in this law is to return some of that oversight and correct that condition.

I can say that due to the new leadership that came in with the VA, Education Service Director Rob Worley and Deputy Under Secretary Coy, we have been able to, starting in fiscal year 2015, to begin to look some at those programs. But, again, during the time when these large amounts of tuition and fees began to be assessed

against veterans, we were not in an actual oversight position over the schools.

Senator BOOZMAN. Is a one-size-fits-all—I guess I think Mr. Morosky summed it up well. You know, we want to make it such that certainly nobody is cheating the system at all. On the other hand, we do not want to make it such that an individual is not allowed to pursue a profession that we would aspire our veterans to be in, if that is what they would like to be in.

But, I guess fixed-wing versus helicopters, fuel costs make a huge difference in flight training and things generally. Are you comfortable with just saying, it is this dollar figure?

Mr. WESCOTT. I am certainly amenable to looking at the dollar figure that is chosen. But I certainly feel like we need to find some dollar figure that will take care of this issue. It is my understanding that the highest payout for a single veteran in a flight program is somewhere in the neighborhood of $913,000. Somewhere between $20,000 and $900,000, we need to find a cap to——

Senator BOOZMAN. No, and I agree. I guess our concern is, you know, why that did not immediately set off red flags, that we are all very, very concerned about it——

Mr. WESCOTT. Right.

Senator BOOZMAN [continuing]. And fix that problem.

Prof. Kettl, you talked a lot about accountability, which is so important. There are various ways of doing that. I was struck in your written testimony, you talked about oversight recommendations for improving the situation, which, again, directly relates to us. So, could you go through some of those and kind of point out to us how you think we could do a better job of providing oversight to hold people accountable.

Prof. KETTL. Senator, I think, first of all, it is important to recognize that you have identified one of the most important issues here, which is that this Committee has an important role on an ongoing basis to, on the one hand, keep the VA's feet to the fire, but on the other hand, provide positive incentives for leadership in the right directions on this. I do not for a second want to defend the right of people who have performed badly to continue to hold their jobs. We need to root them out. But, what do we do with the rest of the problem, and the rest of the problem is most of the problem, and most of the problem has to be done through the people process.

So, I think it requires, in part, an effort and a strategy to ask the VA directly, what is your plan for solving this problem? What is your strategic human workforce plan to try to identify what kind of people you need and how you are going to get them, how you are going to motivate them? How are you going to hold them accountable? How are you going to try to develop a performance plan that links the Department's strategic goals to its objectives? How are you going to ensure that you can fill the vacancies in these strategically important areas that are in greater need with the greater levels of vacancy in some places around the country than others? Do you need greater flexibility in some cases, or is it a matter of recruiting? How are you going to lead people to try to deal with the underlying problems of motivation that exist there?

In particular, how are you going to work with the Committee and with the GAO to develop an action plan for the future, over the

long haul, that will stretch across administrations to ensure that you get off the High-Risk List? No agency wants to be on it. There now are 32 different programs that are on the High-Risk List. Over the course of time, 24 programs have gotten off of it. There is no reason why the VA cannot be one of them, and this Committee can play an important role in helping the VA develop such a plan and hold them accountable for enforcing it.

Senator BOOZMAN. Very good. Thank you, Mr. Chairman.

Chairman ISAKSON. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair.

Dr. Wescott, it is good to see you.

Mr. WESCOTT. Good to see you, sir.

Senator TILLIS. Thank you for your service to the State and in your national legislative role. Thank you for your service as a combat officer in the Army.

Mr. WESCOTT. Thank you, sir.

Senator TILLIS. I want to congratulate you. After working really hard at Wake Forest, you finally were able to get admitted to N.C. State for an advanced degree. [Laughter.]

I want to go back to the two bills that I am working with Ranking Member Blumenthal and Senator Brown on. We will go with maybe the Fry Scholarship Enhancement Act. I am not going to restate what I said earlier except that it really does look like we are making a correction to what was clearly an oversight. So, I understand, I think, for most of the panelists, you support it. Professor Kettl, I do not know that you would have a position on that, but it seems like the other members of the panel support, as did the prior panel, and that we can move forward with that, hopefully, in an expeditious manner.

Then I can move to the Career-Ready Student Veterans Act. Dr. Wescott, tell me some areas about that that you had either some questions or concerns with respect to the discussion draft.

Mr. WESCOTT. Well, certainly, one of the areas is—the primary concern that I had and our association had would be that it would be applied to all sectors of education, not just unaccredited, but accredited institutions, as well. When we issue an approval for even an accredited institution, we run into cases where a program will not yet be accredited programmatically, so what I will do on in that case is I will exclude that program.

In fact, someone called me the other day and suggested that one of our nursing degree programs at one of our for-profit institutions was not approved by the Nursing Board. I can tell you that within an hour, I had accreditation documentation from the institution, because if in North Carolina I had a degree program like that on the books, we would have suspended that program immediately.

So, we are very supportive of this. We understand that there may be other States where this is an issue and we certainly would like to see this legislation passed.

Senator TILLIS. Well, thank you for that. Mr. Butler or Mr. Morosky, did you have any comment on that?

Mr. MOROSKY. Senator, we would be more than happy to look at any tweaks that Mr. Wescott may have. We support the intent of the bill entirely. You know, all too often, the issue of credentialing and veterans not being able to translate their military skills comes

to bear. That is bad enough. It is even worse when they get civilian training and then they are still not able to get the credentialing after all that. So, we certainly support everything that this bill is trying to do.

Mr. BUTLER. The Legion, likewise. The only concern or comment we had, that if we are going to add additional workload or responsibility to SSA, then there should be corresponding budgetary consideration as to that additional increase in workload.

Senator TILLIS. I think that is a good point. When you consider the unemployment rate among veterans, and some of that has to link back to just having the right deployable skills, and when they go to school, making sure that they can go out and get the jobs that they were studying for. I look forward to working with you all and I appreciate the Ranking Member's leadership in moving this forward. I look forward to working with you all.

The last topic, actually, is that I want to associate with the comments of the Chair and the Ranking Member with respect to Professor Kettl's comments. I have spent a lot of time down in the VA facilities in North Carolina. The vast majority of the people in those facilities are good people. Half of them are veterans. The other half, many of them left good paying jobs or deferred good paying jobs in the private sector because they may not have served in the military, but they want to serve those veterans out of respect for them.

I am reminded sometimes with the commentary that we hear of a "Dilbert" cartoon from years ago that says, "The floggings will continue until morale improves."

We have got to make sure that we get to the underlying cause that is precipitating the morale problems and other things for good hard working people and still hold those who are accountable, or those who are responsible for unacceptable behavior accountable and terminate them. And I think the Department has terminated some 1,400 people since Secretary McDonald has come in; probably appropriately so.

But, we do have to focus on the underlying challenges that we have there that do not make this the best place in the Federal Government to work. As I told Secretary McDonald the other day, I not only want them to rank highest among Federal Government agencies, I want them to beat many of the Fortune 50 companies as the best places to work. They have got a great product. They are providing great services for men and women that deserve it.

So, we should not lose sight of the fact that the vast majority of them are good people. We are here to help them.

Thank you, Mr. Chair.

Chairman ISAKSON. Thank you, Senator Tillis.

Ranking Member Blumenthal, do you have any other comment?

Senator BLUMENTHAL. I do not. Thank you, Mr. Chairman.

Chairman ISAKSON. I would like to thank all of our witnesses for their testimony today.

We will leave the record open for 7 days for any information that is to be submitted to the Committee.

The Senate Veterans' Affairs Committee stands adjourned.

[Whereupon, at 4:25 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. JERRY MORAN, U.S. SENATOR FROM KANSAS

As a Member of the Senate Veterans Affairs Committee, I appreciate the opportunity to collect views from key stakeholders regarding numerous pieces of important legislation. However, some entities with varying views do not always have the opportunity to voice their opinion, specifically as it relates to a perspective that I share regarding draft legislation that would place caps on professional aviation training. This is a circumstance where close examination is necessary to make certain that subjective caps do not create unnecessary burdens and consequences on the institutions and veterans seeking this specialized training.

I understand there are extreme examples of abuse and cost overruns occurring in some professional aviation training programs for veterans. I agree that controlling cost and eliminating waste and abuse of veterans' educational benefits is critical as stewards of taxpayer dollars and for the sustainment of the GI benefit program.

The overwhelming majority of student-veterans who enter these programs and the institutions that provide aviation training are honest actors who play by the rules. The examples of waste and abuse are deplorable but they do not represent all flight training programs and I fear that those who conduct honorable and superior programs are unnecessarily caught in the fray.

Should this bill be further considered, I will offer amendments to remove the offending provisions and should that effort fail I will vigorously oppose this legislation.

Before we negatively impact institutions with professional aviation programs that are properly serving veterans utilizing GI education benefits, the VA should take a closer look at enforcing and upholding its own policies. Part of the issue is mismanagement and poor decisions made from within the VA system.

I would urge my colleagues, the VA, and other interested parties to address the core problems in the way this program is managed and administered instead of addressing the symptoms. I look forward to discussing ways in which we can improve oversight on the implementation of GI educational benefits and avoid a circumstance that would diminish or eliminate professional aviation training programs across the country.

PREPARED STATEMENT OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

Chairman Isakson, Ranking Member Blumenthal, Members of the Committee, thank you for the opportunity to present the views of the American Federation of Government Employees, AFL–CIO and its National Veterans Affairs Council (AFGE) regarding pending legislation. AFGE represents over 670,000 Federal employees, including more than 220,000 employees of the Department of Veterans Affairs. AFGE's representation of non-management, front line employees working in virtually every non-management position in the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA) allows us to share a unique perspective with the Committee. AFGE also greatly appreciates the efforts by Members of this Committee to solicit the views of our AFGE local officials and the employees they represent in settings where they feel free to share their concerns and recommendations without reprisal.

S. 1856

AFGE strongly supports S. 1856 and applauds Ranking Member Blumenthal for his leadership in introducing meaningful and comprehensive accountability legislation. S. 1856 would provide highly effective tools for increasing VA accountability

while preserving essential protections against retaliation and prohibited personnel practices. Accountability will only be achieved when managers utilize the tools provided to them to properly manage their workforces. S. 1856 enhances VA management training and evaluation to ensure that managers make full use of the accountability tools available to them through current law and this important legislation.

S. 1856 will achieve the accountability improvements that S. 1082 can only promise. In fact, whereas S. 1856 increases protections for whistleblowers and other vocal employees, and takes a multi-prong approach to reducing mismanagement, S. 1082 decreases protections for these employees and does not create any new tools for addressing mismanagement.

Section 2: Current law requires managers to provide the following due process protections before a termination or other adverse action becomes final:

- 30 days advance written notice;
- 7 days to respond and present evidence;
- Right to secure representation;
- Right to examples of performance problems; and
- Written decision with specific reasons.

Current law provides for an exception to the 30 day notice provision when the supervisor has reasonable cause to believe that an employee committed a crime which could lead to imprisonment (5 U.S.C. 7513). Supervisors may also suspend an employee without pay if the agency considers it necessary in the interest of national security (5 U.S.C. 7532). In addition, supervisors may also reassign the employee or place the employee on paid, nonduty status if his or her continued presence in the workplace during the notice period "may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests" (5 CFR 752.404).

Section 2 of S. 1856 provides supervisors with an additional flexibility: the immediate suspension without pay of an employee who presents a clear and direct threat to public health or safety rights. Notice and other due process rights apply after suspension and before removal. The employee also retains full MSPB appeal rights. The employee is entitled to back pay for the post-suspension period if the Secretary determines that the termination is not justified.

Section 3: As noted earlier, accountability can only be achieved if managers use the tools they are given in current law and new legislation to properly manage the workforce. The requirement in Section 3 of the bill for annual performance plans for VA political appointees addresses this problem through the following critical performance measures:

- Hiring, selection and retaining well-qualified employees;
- Engaging and motivating employees;
- Training and developing employees for leadership roles;
- Holding every manager accountable for employee performance problems.

Section 4: This section also ensures that managers will fulfill their workforce-related responsibilities by requiring that each manager provide feedback to probationary employees and assess whether the employee is suitable for permanent status, especially in light of findings in the August 2015 MSPB report, Adverse Actions: The Rules and The Reality, that supervisors are reluctant to terminate poor performers in both management and non-management positions during probationary periods.

Section 5: Similar to the evaluation requirements for political appointees in Section 3, this section increases accountability by requiring that all managers be evaluated for addressing poor performance and misconduct, and their abilities to improve employee engagement.

Section 6: This section addresses growing evidence that VA managers have not been receiving sufficient training on workforce management. It enhances accountability by mandating manager training in key workforce management areas: whistleblower rights, employee motivation and managing poorly performing employees.

Section 7: This section provides the VA with a valuable new workforce retention tool: the ability to promote high achieving employees to technical expert positions when that is more suitable or desirable than a management track position.

Section 8: AFGE has seen a number of whistleblowers, especially those in licensed medical and behavioral health professions suffer great harm to their careers as a result of retaliatory negative performance evaluations. Current law does not provide clear Office of Special Counsel jurisdiction over Title 38 employees filing such complaints. Section 8 of the bill closes this major gap in the law.

Sections 9 and 10: These comprehensive "revolving door" provisions that safeguard against conflicts of interests between acquisition personnel and other personnel involved in sourcing decisions, and contractors doing business with the VA.

Contracts based on self-interest rather than need or merit have been a longstanding problem in VHA, VBA and NCA, at both the local and national level.

Section 11: This section halts the abuses of extended paid administrative leave that have wasted taxpayer dollars and prevented VA employees from being put back to work to serve veterans. This section also mandates the collection of data on the use of administrative leave that is sorely needed to separate rhetoric from actual practice. Excessive use of administrative leave has been another symptom of VA management's reluctance and inability to use current law and policy to manage the workforce properly.

Sections 12 and 13: AFGE also supports new reporting requirements for the Office of the Medical Inspector and an assessment of the impact of new SES personnel rules, in light of reports of high vacancy rights.

S. 1451

As the exclusive representative of VA employees processing survivor benefits, AFGE supports S. 1451. AFGE greatly appreciates Senator Hirono's efforts to bring additional attention to survivor benefits and the Senator's efforts to streamline this process.

Based on feedback from our membership, AFGE shares the concerns addressed in S. 1451 with the current backlog for processing survivor benefits. AFGE believes that "non-rating" claims are not provided with adequate attention from the Veterans Benefits Administration (VBA). As of August 2015, the non-rating total workload was just shy of 415,000 claims with over 265,000 claims pending for 125 days. AFGE members are proud of their success with VBA in reducing the disability claims backlog, now below 100,000. However, AFGE believes VBA has not adequately prioritized the non-rating claims, worsening the backlog. AFGE believes the inadequate attention on non-rating claims also created problems elsewhere, such as the current backlog of dependency claims. Unfortunately, VBA has once again turned to the quick fix of contracting out even though contractor work on the dependency claims has wasted taxpayer dollars that would be better spent hiring additional claims processors. Contracting out also increases inaccuracies that increase the workload for VBA employees. Therefore, AFGE urges Congress and VBA to place additional attention on the non-rating backlog, including survivor benefits, by increasing in-house capacity as opposed to relying on contractors.

Thank you for the opportunity to testify on these important legislative issues.

PREPARED STATEMENT OF BETH MOTEN, LEGISLATIVE AND POLITICAL DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

J. David Cox, Sr.
National President

Eugene Hudson, Jr.
National Secretary-Treasurer

Augusta Y. Thomas
National Vice President
for Women and Fair Practices

September 22, 2015

The Honorable Johnny Isakson
Chairman
Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
Senate Committee on Veterans' Affairs
825A Hart Senate Office Building
Washington, DC 20510

RE: September 16, 2015 Legislative Hearing: Request to include AFGE Letter of Support for S. 1450 in Hearing Record

Dear Chairman Isakson and Ranking Member Blumenthal:

On behalf of the more than 220,000 employees represented by the American Federation of Government Employees, including many thousands of VA physicians, physician assistants, and hospitalists, I want to express our support for S. 1450, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act. This legislation provides much needed scheduling flexibility for emergency medicine physicians and physician assistants, as well as hospitalists. These scheduling changes will increase veterans' access to care, improve efficiency, and aid in the recruitment and retention of health care professionals to our VA medical facilities.

Thank you for including AFGE's views on this important legislation in the record for the Committee's September 16, 2015 legislative hearing.

Sincerely,

Beth Moten

Beth Moten
Legislative and Political Director

cc: Senator Hirono

(00350595.DOCX.)

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PREPARED JOINT STATEMENT OF AIRCRAFT OWNERS AND PILOTS ASSOCIATION, GENERAL AVIATION MANUFACTURERS ASSOCIATION, HELICOPTER ASSOCIATION INTERNATIONAL, NATIONAL ASSOCIATION OF STATE AVIATION OFFICIALS, NATIONAL BUSINESS AVIATION ASSOCIATION

Collectively, our five aviation associations represent hundreds of thousands of individuals and companies from all segments of the general aviation community, including flight schools, pilots, aircraft owners, operators, businesses that utilize aircraft, mechanics, and manufacturers. We welcome and thank the Committee for this opportunity to offer a written statement for the record.

The industry is extremely concerned about language in Section 3 of the discussion draft of the bill to amend 38 U.S.C. 3313. We believe that language will create for many veterans a Hobson's choice requiring them either to select a program that will severely limit the availability of funds that they were told they were entitled to when they elected to serve their nation or severely restrict the number of fully funded programs available to them.

The need for this provision is, as yet, unknown. The Department of Veterans Affairs (VA) has in place rules and regulations intended to ensure that market forces hold the cost of flight training in check. Specifically, the rule known as the 85/15 rule, requiring that no more than 85 percent of students enrolled in a flight training degree program can have their education paid for with VA funds, is designed to hold prices in check under the theory that the price sensitivity of the remaining 15 percent who are using private or alternate sources of funding would hold flight training costs down.

Unfortunately, the enforcement of this rule across VA regions can be most charitably described as uneven. According to one flight school operator whose operations fall under the jurisdiction of two VA regional offices, the school routinely gets differing interpretations from each office. In one instance, a single VA official changed the interpretation of the 85/15 rule four times in one conversation.

The original legislation introduced in the House of Representatives (H.R. 475, the GI Bill Processing Improvement and Quality Enhancement Act of 2015) was based upon a request from the Department of Veterans Affairs and state authorizing agencies, and was intended to protect the U.S. taxpayer from a relatively small number of instances of flight schools and public institutes of higher learning charging significantly higher fees than normal to achieve the FAA certificates necessary to work in the aviation industry.

The aviation industry had raised concerns with members of the House of Representatives that the proposed solution in their legislation—capping funds available to veterans enrolled in flight training degree programs at public colleges and universities—would leave veterans with far too little money to achieve their educational goals and is discriminatory because only flight training degree programs would be subject to the cap. In attempting to address the discriminatory nature of the House proposal, the Senate has instead created a provision that is destined to harm even more of the very people the Post-9/11 GI Bill was intended to help—veterans of the United States' Armed Forces—and yet will fail to address the discriminatory nature of the provision. To the best of industry's knowledge, flight training is the only degree program for which colleges and universities normally contract such programs of education.

According to the Congressional Budget Office cost estimate for H.R. 475, an estimated 600 veterans would be denied full access to the benefits promised them by the American people. The report further states that the first year the cap is in place, each affected veteran will lose approximately $30,000 in payments. The amount lost is expected to grow in each subsequent year.[1]

The aviation industry's concern about H.R. 475 and the Senate's discussion draft relates to veterans' ability to earn a college degree in aviation that includes, as part of the course of study, flight training that leads to the Federal Aviation Administration (FAA) certificates considered necessary to be employable as a commercial pilot.

While fair treatment of veterans must, of course, be the first priority of this Committee, it is worth noting that legislation that would severely restrict flight training benefits for veterans would have enormous detrimental impact on the aviation industry—and especially the helicopter sector. The helicopter industry is in the midst of a worsening pilot shortage. Veterans separating from the military are seen as highly valued employees and a vital potential pool of new pilots. Further, reducing

[1] Congressional Budget Office, *H.R. 475 GI Bill Processing Improvement and Quality Enhancement Act of 2015*, cost estimate report as ordered by the House Committee on Veterans' Affairs, August 26, 2015, 6, https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr475.pdf.

the pool of new pilots ultimately hurts the veterans because fewer pilots will cause the industry to contract, leaving fewer openings for those veterans seeking other careers in the helicopter industry such as maintenance technicians, dispatchers, or business managers.

Under the current language of the Post-9/11 GI Bill (Public Law 110–252), public colleges and universities are allowed to partner with flight schools to offer aviation degree programs that lead to FAA pilot certifications and careers in the aviation industry. The law allows flight training expenses, which include hourly aircraft rental fees and the instructor's hourly rate, to be treated as course fees.

The Senate's discussion draft affects the entire flight training industry. However, due to significantly higher fixed operating costs (primarily maintenance-related) for helicopters, it has a disproportionate effect on helicopter flight training. In addition, the Department of Veterans Affairs initially raised its concerns with regard to fees charged at certain helicopter flight schools. Therefore much of the industry research has focused on helicopter flight training.

HAI worked closely with the staff of the House Veterans' Affairs subcommittee on economic opportunities to provide an understanding of the costs associated with flight training. Since one of the goals of the Post-9/11 GI Bill is to provide veterans with the education and training necessary to enter their chosen career field, employability within the aviation industry was defined and used as a benchmark for entry-level pilot jobs. As the predominant entry-level position in the industry is as a helicopter flight instructor, we defined "employable" as a commercially rated pilot holding certificated flight instructor (CFI) and certificated flight instructor-instrument (CFII) certificates from the FAA.

FAA regulations require a pilot to hold, at a minimum, a commercial pilot certificate in order to conduct revenue flights such as an instructional flight. A pilot must also receive additional training and be certificated as a flight instructor in order to give instruction. And in today's flight instruction industry, flight instructors are expected to be able to teach pilots how to fly in poor visibility weather, known as instrument conditions. In order to give that instruction, flight instructors require additional training and certification. Therefore a commercial pilot certificate with CFI and CFII is considered the minimum credentials required to be employable.

HAI polled flight schools providing helicopter flight training through public colleges and universities to determine an historical average cost to achieve employability under the following assumptions: the minimum number of hours required by the FAA to achieve each level of certification; the least expensive helicopter available to rent at the flight school appropriate to the type of training and environmental conditions.

HAI surveyed 15 flight schools affiliated with public colleges and universities. Thirteen responded. The results indicate that flight training alone (not counting academic tuition, books, or other fees) costs $112,500 (±5%) in a four-year college aviation degree program, and $107,500 (±5%) in a two-year college aviation degree program.

Based on HAI's survey results, the total cost for tuition and flight training at a four-year college aviation degree program is approximately $212,500, while the total cost for a two-year program is approximately $122,500.

Both the Senate's discussion draft and the flight training amendment to H.R. 475 seek to impose the same caps on flight training degree programs at public institutes of higher learning as are currently in place for all degree programs at private colleges and universities—currently $20,240 per year, or slightly less than $81,000 for a four-year college career. That clearly falls far below the cost of the required flight training, let alone flight training plus tuition, books, and other related expenses.

Proponents supporting an amendment to cap flight training benefits have argued that there would remain additional funds available through the Department of Veterans Affairs' Yellow Ribbon program. According to the Department's own information,

> [t]his program allows institutions of higher learning (degree granting institutions) in the United States to voluntarily enter into an agreement with VA to fund tuition expenses that exceed either the annual maximum cap for private institutions or the resident tuition and fees for a public institution. The institution can contribute up to 50% of those expenses and VA will match the same amount as the institution.[2]

[2] U.S. Department of Veterans Affairs. "Education and Training: Yellow Ribbon Program." Created Nov. 21, 2013. Last Reviewed July 9, 2015. http://www.benefits.va.gov/gibill/yellow_ribbon/yellow_ribbon_info_schools.asp

However this ignores the economic reality that the amount forgiven for a veteran student can be amortized across scores or even hundreds of students in a lecture class setting; it is impossible to amortize the cost of flight training with one student and one instructor in a two-seat training aircraft. Based on HAI's survey, the average combined cost to rent a helicopter with instructor is $349 per flight hour. That cost is driven primarily by the cost of required maintenance and does not change. The assumption in the HAI survey was that it will require 210 flight hours for a pilot to achieve all the certificates necessary to be employable.

Margins at flight schools are very thin. Therefore, for a flight school to bill only half the price of an instructional flight is to guarantee a loss on every flight. It is unreasonable to expect any college or university to discount the cost of fuel and equipment by as much as 50 percent in order to continue to operate a flight training degree program under VA's Yellow Ribbon program.

The aviation industry strongly believes that Congress should direct the Department to adopt uniform enforcement of market force regulations and allow those market forces to exert their influence before adopting a legislative solution.

As associations representing the broad spectrum of the general aviation industry, we urge the Committee to remove section 3 from the discussion draft document and continue to fulfill the promises made to America's veterans in the Post-9/11 GI Bill.

Further, we request that the Department of Veterans Affairs be directed to enforce its own regulations uniformly—specifically the 85/15 rule—allowing market forces to regulate flight training prices, as the rule is intended to do, and to convene a working group of flight training industry leaders and associations to examine the costs necessary to train veterans to meet both FAA requirements and employability standards for professional careers in the aviation industry.

Finally, we request the Committee direct the Government Accountability Office (GAO) to conduct a study of the flight training industry and the associated costs for a commercial rotorcraft certificate with IFR, CFI and CFII ratings. The study should examine course completion rates, the need for additional safety-related training, the needs of potential employers, and the private student loan market, and should include a cost/benefit analysis of training in piston aircraft vs. turbine aircraft, and its effect on employability. It should examine the value of creating benchmarks and their potential beneficial effect on reducing excessive expenditures on courses that are being frequently retaken by veterans. Because stand-alone flight school programs are less costly than combined academic/flight school programs, the study should examine the benefits of creating an accreditation program that would grant accredited flight schools parity with flight training programs associated with academic institutions. As a subset of the study, the GAO should examine the costs borne by the United States Department of Defense in training military pilots to the same level of proficiency as veterans that receive commercial flight training.

We do not dispute that there were some instances of the VA being charged far more than is necessary for some veterans' flight training. We agree that, while within the law, such charges exceed the intent of the Post-9/11 GI Bill and should be addressed. But we firmly believe the best way to keep flight training fees in line with the costs to train veterans to employable status as a pilot is for the aviation industry, the Department of Veterans Affairs, and state authorizing agencies to work together. We look forward to working with the Committee to find the solution that best serves the needs of both the veteran and the taxpayer.

Veterans have given the nation their very best. They deserve the very best from the nation in return.

Submitted very respectfully,

MARK R. BAKER,
President and CEO,
Aircraft Owners and Pilots Association.

PETER J. BUNCE,
President and CEO,
General Aviation Manufacturers Association.

MATTHEW S. ZUCCARO,
President and CEO,
Helicopter Association International.

GREG PRINCIPATO,
President and CEO,
Natl. Association of State Aviation Officials.

ED BOLEN,
President and CEO,
National Business Aviation Association.

PREPARED STATEMENT OF DIANE M. ZUMATTO, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Distinguished members of the Senate Veterans' Affairs Committee, on behalf of the 23 million American Veterans in this country, AMVETS, a leader since 1944 in preserving the freedoms secured by America's Armed Forces and providing support for Veterans, Active Duty military, the National Guard/Reserves, their families and survivors, it is my pleasure, to offer this 'Statement for the Record' concerning the following pending legislation:

S. 290, INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY ACT OF 2015

Even though AMVETS made a conscious decision to elevate the issue of VA accountability to the very top of our list of legislative priorities, we do not believe that this bill is goes far enough to the do the necessary job.

While there are a couple of provisions which we approve of in this bill, we cannot endorse limiting the number of annual "Outstanding" or "Exceeds-Fully-Successful" performance ratings, as this seems counter-productive. The last thing VA should do is "punish" their best employees through the application of this provision; instead AMVETS would recommend focusing more on the ill-performing employees.

As far as the provision for reassigning SES employees "at least once every five years * * * to a position at a different location that does not include the supervision of the same personnel or programs", AMVETS sees both positive and negative outcomes.

- On the positive side: this would ensure that SES employees have a broad range of both personnel and programmatic experiences which could conceivably be beneficial.
- On the negative side: this would seriously curtail any form of institutional memory and the development of any real expertize in any specific area.

AMVETS believes that if, or until, each and every VA employee, not just SES personnel as stipulated in S. 290, can be held accountable for their actions or lack thereof, the VA system will remain broken, unsatisfactory and unsafe. AMVETS believes that H.R. 1994, while perhaps not perfect, is currently the best option available to address the VA accountability problem.

S. 563, THE PHYSICIAN AMBASSADORS HELPING VETERANS ACT

While AMVETS doesn't doubt the good intentions of this legislation, we do not believe that it will have a substantive effect on VA patient wait times or quality of care.

S. 564, THE VETERANS HEARING AID ACCESS & ASSISTANCE ACT

We heartily offer our support for this legislation which would allow licensed hearing aid specialists to provide hearing aid services to veterans as VA providers.

Many of the wounded veterans who have returned from the conflicts in Iraq and Afghanistan sustained sensory injuries, including hearing loss and tinnitus, the treatment of which may require the use of hearing aids or other prosthetic items to help those injured rebuild their lives and gain independence.

This much needed legislation would improve hearing healthcare access, service and outcomes for veterans, as well as:

- reduce treatment and follow up costs;
- improve quality of life;
- shorten appointment wait times;
- strengthen the VAs hearing healthcare team; and
- shorten veteran travel time by providing access in rural and urban settings.

As a hearing impaired veteran myself, both AMVETS and I would like to take this opportunity to thank Senator Moran and Senator Tester for introducing this important piece of legislation and for all you do in support of American Veterans

S. 1450, THE DEPARTMENT OF VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT & RETENTION ACT

AMVETS supports this legislation, but believes this is might be more appropriately a policy, rather than a legislative issue.

S. 1451, THE VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015

AMVETS supports this legislation which would take the burden of filing a claim for benefits from the surviving spouse of a recently deceased veteran and, if there is sufficient evidence in the record to warrant such payment, would automatically pay those benefits.

S. 1460, THE FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015

AMVETS supports this legislation which seeks to extend the Yellow Ribbon G.I. Education Enhancement Program to cover recipients of the Marine Gunnery John David Fry Scholarship.

S. 1693, A BILL TO EXPAND ELIGIBILITY FOR REIMBURSEMENT FOR EMERGENCY MEDICAL TREATMENT TO CERTAIN VETERANS THAT WERE UNABLE TO RECEIVE CARE FROM THE VA IN THE 24-MONTH PERIOD PRECEDING THE FURNISHING OF SUCH EMERGENCY TREATMENT

AMVETS thinks this bill is too limiting and that during a medical emergency, a veteran should be able to seek care at the nearest facility regardless of whether it is a VA facility or not and if that facility is a non-VA hospital, the veteran should be reimbursed for their expenses without the 24-month caveat.

S. 1856, THE DEPARTMENT OF VETERANS AFFAIRS EQUITABLE EMPLOYEE ACCOUNTABILITY ACT OF 2015

AMVETS cannot fully support this bill because it only calls for the suspension or removal of VA employees if their performance or misconduct is a threat to public health or safety. What about instances of unethical, fraudulent, improper or poor performance which isn't a threat to public health or safety? AMVETS also believes that all employees should be held accountable for their behavior and actions, or lack thereof, not just managers.

AMVETS does, however like the provision that would require an annual performance plan for political appointees and, though as already stated, we think all employees need to be held accountable, we are glad to see some added accountability for hiring well-qualified people and improved training for managers.

S. 1938, THE CAREER-READY STUDENT VETERAN ACT OF 2015

AMVETS support this legislation.

DRAFT LEGISLATION, TO MAKE IMPROVEMENTS IN THE LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS RELATING TO EDUCATIONAL ASSISTANCE

AMVETS is completely and utterly opposed to this draft legislation which claims it would make improvements in the laws administered by the Secretary of Veteran Affairs relating to educational assistance.

AMVETS strongly believes that since veterans "earn" their G.I. Bill benefits, no one, neither Congress, nor the VA should be able to control, how those benefits are utilized. Unfortunately, this appears to be nothing more than an ill-conceived, unjust and prejudicial attempt to reduce our veterans' earned benefits and curtail their freedom to pursue aviation training.

Additionally, if this bill gets signed into law, it will be the start of a very "slippery slope". Down the road I can see the law being expanded to add further limits on how educational benefits may be utilized. Maybe the next cap will apply to medical school and the next might be for law school, etc.

The only purpose I can attribute the drafting of this legislation to, is cost savings for the VA. This situation highlights, what to AMVETS is one of the biggest problems with the VA—and that is that there seems to be more focus on VA employees and what's good for them, than on the needs of veterans. If cost-savings truly is the impetus behind this bill, I can suggest a number of other options which would bring about the same end result.

Before we start legislating what veterans can and cannot study with their G.I. Bill benefits, let's review and eliminate all inconsistencies, inefficiencies and duplications in VA's educational policies and procedures. Additionally, we *must* require continuity throughout the VA so that policy is appropriately and equitably applied and enforced throughout the country. We also should look for consistency in all the schools, to ensure that we're comparing apples-to-apples.

Some additional cost saving suggestions, include:

- require some form of pre-enrollment qualification and testing to ensure student success. Think of how this is done in the military, many apply and would love to get into military flight schools, but very few are accepted and even fewer successfully complete their programs;
- limit the number of times a class can be repeated;
- require successful, on-going progress throughout the program; and
- allow schools to issue short-term "incomplete" grades to students who are within a number of flight hours

Perhaps the most important point I'd like to make, is that there are three individual components involved in this situation:

- the VA;
- the School; and
- the veteran

Let's make sure we deal with the first two, before we take anything away from our veterans.

This completes my statement at this time and I thank you again for the opportunity to offer our comments on pending legislation. I will be happy to answer any questions the Committee may have.

PREPARED JOINT STATEMENT OF THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION (ASHA), THE ACADEMY OF DOCTORS OF AUDIOLOGY (ADA), AND THE AMERICAN ACADEMY OF AUDIOLOGY (AAA)

The American Speech-Language-Hearing Association (ASHA), the Academy of Doctors of Audiology (ADA), and the American Academy of Audiology (AAA) respectfully submit this joint statement for the record in opposition to S. 564, the Veterans' Access to Hearing Health Act of 2015. The bill would authorize the Secretary of the Department of Veterans Affairs (VA) to appoint hearing aid specialists under Title 38 of the United States Code as professionals eligible to provide healthcare to veterans in the Veterans Health Administration. While we appreciate and support the intent of the bill sponsors to ensure appropriate access to hearing health services by our Nation's veterans, we strongly believe that S. 564 would not in any way advance this effort.

Hearing loss is one of the top service related disabilities for veterans and requires complex and comprehensive treatment. While noise-induced hearing loss is common, veterans frequently present with complex audiology and vestibular pathologies that may be exacerbated by tinnitus, Traumatic Brain Injury, or Post Traumatic Stress Disorder. This complexity is further intensified by the increased number of veterans with combat-related hearing loss.

The provision of hearing aids is neither simple nor straight forward—especially when addressing the complex needs of veterans. As with all technologies, the technology of hearing aids is becoming increasingly more complex and the options beyond hearing aids, such as streaming capabilities, direct audio input, or Bluetooth coupling, are becoming more numerous. Coupled with advances in understating

complex ear brain interactions, the provision of hearing aids requires advanced education and training to effectively service our veterans.

Audiologists are doctoral-level professionals who undergo a rigorous four year post-graduate program that includes academic education, clinical training, and a required national exam. They are qualified to evaluate the effects of acoustic trauma and ear injuries on hearing; to detect underlying medical conditions; and to diagnose and treat tinnitus, hyperacusis, vestibular issues, auditory processing disorders, and hearing loss. Audiologists provide a complete diagnostic evaluation to veterans in need of hearing healthcare services. As you know, veterans frequently present with complex auditory and vestibular pathologies that may be exacerbated by tinnitus, Traumatic Brain Injury, or Post Traumatic Stress Disorder. They require and deserve the highest standard of care.

Hearing aid specialists are trained in the fitting of hearing aids. While some states require a college-level associates degree as a minimum educational requirement to become a hearing aid specialist, many states still require only a high school diploma. Further, there are no national standards or dedicated curricula that outline the core competencies of a hearing aid specialist. In testimony before the U.S. Congress, the VA has expressed concern that the lack of standardized education for hearing aid specialists could lead to fragmented hearing healthcare services and limit delivery of comprehensive care.

Timely access to care in the VA should not come at the expense of diminished access to high quality services provided by the most highly trained individuals. Given the minimal training required to become a hearing aid specialist in comparison to the extensive education and training of an audiologist, hearing aid specialists are ill-equipped to provide the quality hearing health services that our Nation's veterans require and deserve.

VA HIRING AUTHORITY

Another career classification for hearing aid specialists as proposed by S. 564 is unnecessary and administratively burdensome. The VA does not need additional legislative authority to hire hearing aid specialists. Both Title 5 of the U.S. Code and Pub. L. 113–146, the Veterans Access, Choice and Accountability Act (Choice Act), provide the VA the necessary authority to hire hearing aid specialists within the VA and to contract out to these individuals, as appropriate, in the fee-for-service market. The VA has established policies for hearing healthcare services that are intended to ensure best practices and to provide the highest level of care for veterans by emphasizing the need for a care team lead by an audiologist. We believe that the current VA model is appropriate to address the complex hearing healthcare needs of veterans.

Further, S. 564 would add hearing aid specialists to the list of professionals eligible to provide healthcare services to veterans under Title 38 of the U.S. Code. Hybrid Title 38 is not the appropriate statutory authority under which to define the scope of practice for hearing aid specialists. The VA's hiring authority for these individuals should remain under Title 5. With the exception of positions created specifically for the VA, all other professionals listed under Hybrid Title 38 have higher education requirements (at least two years of college) and national standards for certification, and/or requirements to pass a national exam in order to establish standardized core competencies. While hearing aid specialists are licensed in each state to fit and dispense hearing aids, there is no uniformity among states in their standards. (See www.asha.org/uploadedFiles/State-Licensure-Trends-Hearing-Aid-Dispensing.pdf)

Hearing aid specialists are currently hired under the Health Aid and Technicians Series 0640 of Title 5. The level of education and training for hearing aid specialists is consistent with the knowledge, skills, and abilities of health technicians who work in the VA audiology clinics under the supervision of an audiologist. Many VA audiology health technicians are hearing aid specialists. VHA Handbook 1170.02. Section 1170.02 defines the role of the audiology health technician in part, to increase productivity by reducing wait times, to enhance patient satisfaction, to reduce costs by enabling health technicians to perform tasks that do not require the professional skills of a licensed audiologist. The job of these technicians includes, for example, checks of hearing aids and other amplification devices, trouble shooting and minor repairs to hearing aids, ear molds and other amplification devices, and electroacoustic analysis of hearing aids. No modification of existing law is needed for the VA to hire or contract with the hearing aid specialist consistent with their scope of practice.

The VA also has the capability to contract services for hearing aid specialists through its fee-for-service program "where timely referral to private audiologists or

other VHA facilities is not feasible or when the medical status of the veteran prevents travel to a VHA facility or a private audiologist." VHA Handbook 1170.02, Appendix A.

DEPARTMENT OF LABOR (COS)

We believe that the VA is appropriately using hearing aid specialists in their role as technicians. This classification is supported by the Department of Labor Standard Occupational Classification (COS), which defines hearing aid specialists under "Broad Occupation: 29–2090 Miscellaneous Health Technologists and Technicians." This falls under a broader category of "Health Technologists and Technicians" (29–2000), and the major heading is "Healthcare Practitioners and Technical Occupations" (29–0000). (See www.bls.gov/soc/2010/soc292092.htm) Occupation Code 29–2092 provides that a hearing aid specialist may:

> "Select and fit hearing aids for customers. Administer and interpret tests of hearing. Assess hearing instrument efficacy. Take ear impressions and prepare, design, and modify ear molds. Excludes "Audiologists" 29–1181)."

Currently, hearing aid specialists can be hired by the VA as health technicians and work appropriately under the supervision of audiologists. According to the VA Handbook, technicians perform tasks that do not require the professional skills of a licensed audiologist. This is an appropriate model of care given the complex needs of veterans and the required level of care.

S. 564 WILL LEAD TO FRAGMENTED CARE

We remain deeply concerned that the legislation could lead to fragmented care due to the lack of uniformity in education and training required for the licensing of hearing aid specialists. Additionally, individuals seeking a dispensing license are not required to be trained, educated, or credentialed as health care professionals unless they choose to pursue an Applied Science Degree in Hearing Instrument Science. According to the International Hearing Society (IHS) Web site, there are currently seven programs offering an associate's degree in Hearing Instrument Sciences. A quick review of these programs shows no uniformity in program requirements. (See www.ihsinfo.org/IhsV2/education/collegeprograms.cfm)

Most states require hearing aid specialists to sit for an exam prior to getting their license; however, there is no uniformity among exams. Some require both practical and written exams, while some are written or practical only. Some require the IHS exam, while others devise their own. In order to sit for the exam, the individual must meet requirements that vary from state-to-state.

In most states, hearing aid specialists are only required to have a high school diploma or general education diploma (GED) and training. Eleven states require hearing aid specialists to complete two years of college or post-secondary education in any field of study prior to applying for a license. Some states also require the completion of a distance learning program prior to taking the exam. A list of requirements by state can be found on ASHA's Web site at www.asha.org/uploadedFiles/State-Licensure-Trends-Hearing-Aid-Dispensing.pdf.

Those interested in obtaining a hearing aid dispensing license can obtain experience either by attaining an associate's degree in Hearing Instrument Science or gaining experience through an apprenticeship program. Many of these apprenticeship programs are run by hearing aid manufacturers who have a vested interest in selling their product. In most instances, hearing aid specialists acquire their training through apprenticeships and mentoring from other licensed hearing aid specialists. There is no uniformity in the continuity of practice and no real basis in science.

We would like to bring to your attention an article that was published in the December 2013 edition of "The Hearing Professional," which provides information on the two paths toward hearing dispensing licensure. This illustrates the fragmented and disparate nature of hearing aid specialist training. (See https://ihsinfo.org/IhsV2/hearing_professional/2013/oct-dec/THP%20Q4%202013%20R2%20Low-Res%20Web.pdf)

We encourage you to review the desirable skills of an apprentice, which can be found on page 23. These skills do not reference education and training in healthcare, but rather emphasize characteristics, such as being good at your job, being driven, and being a salesman who stays on top of technology. Our veterans deserve healthcare practitioners dedicated to staying on top of science, research, and best practices, not the latest features of a hearing aid. In comparison, audiologists are doctoral-level professionals with education in the health sciences as well as extensive externship requirements.

The VA is required to develop uniform standards and qualifications for professions identified in Hybrid Title 38. Given the disparity in licensure and education requirements that range from an associate's degree to a two year apprenticeship with a GED, it would be difficult for the VA to develop uniform standards and qualifications that are not based on the lowest level of education and training. This could result in the decrease in access to the highest quality of care.

INTENT OF THE LEGISLATION

S. 564 would permit the VA to hire hearing aid specialists to independently deliver hearing healthcare services that currently can be provided only by licensed audiologists. While the stated intent of the legislation is to ensure that veterans have access to quality care, the reality is that the hearing aid specialists, represented by the IHS, are pursuing an expanded scope of practice through the VA system. Their primary goal is to achieve parity with audiologists both at the Federal and state levels. (See The Hearing Professional, Volume 62, No. 4 October—November—December 2013, page 34). To this end, the hearing aid specialists are also advancing apprenticeship standards through the Department of Labor that go well beyond their scope of practice as defined in state licensing laws.

S. 564 would permit hearing aid specialists to work independent of audiologists in the VA. While hearing aid specialists play an important role in the VA in support of audiologists, their training and education does not prepare them to work independently with veterans who frequently present with complex medical needs. The education and training of hearing aid specialists are not parallel to that of an audiologist, and Federal legislation should not be used to bolster the status of a profession.

In sum, S. 564 has the potential to inappropriately elevate hearing aid specialists to a higher level of professional recognition, beyond their current education levels and Department of Labor classification as health technicians. Their training and education do not merit parity, through recognition under Hybrid Title 38, with audiologists or other health care professionals who have college and doctoral level degrees.

S. 564 AND PERCEIVED WAIT TIMES

S. 564 is not a simple fix to alleviate wait times for the VA audiology services. The VA has specific requirements related to the delivery of hearing aids and related services. Prescriptions for hearing aids are based on a complete (not basic) diagnostic audiology evaluation, which is not within the scope of practice of hearing aid specialists, as well as a hearing aid evaluation, which is within the scope of a hearing aid specialist. Not all veterans are eligible for hearing aids. In addition, eligibility must be determined by an audiologist before the veteran schedules an audiologic evaluation.

The argument that the hearing aid specialists can remove the burden of dispensing hearing aids from the VA audiologists' workload runs contrary to current policies of the VA, which require the best practice of both a compete audiologic evaluation and a hearing aid evaluation prior to the dispensing hearing aids. (See VHA Handbook 1170.07 Appendix A www.va.gov/vhapublications?ViewPublication.asp?pub_ID=2397)

IMPLEMENTATION OF CHOICE ACT AND OIG RECOMMENDATIONS

ADA, AAA, and ASHA are aware that the VA Office of Inspector General (OIG) report dated February 20, 2014, found that the VA was not timely in issuing new hearing aids to veterans or in meeting timely goals to complete hearing aid repair services. We understand that the VA is currently working to implement the recommendations of this report.

Additionally, our members are reporting that—since the implementation of the Choice Act—the VA is now contracting with more audiologists. It is our understanding that wait times that may have been in existence when the Act was first introduced three years ago have been reduced. We also strongly encourage the Committee to contact the VA to discuss the VA's plans for staffing and what the VA is currently doing to ensure timely access to hearing health services. We remain committed to working with the Committee to ensure quality, appropriate, and timely hearing healthcare services in the VA. As outlined above, S. 564 does not advance this effort. It simply furthers the interests of the hearing aid specialists in their attempt to practice audiology without the proper education, training, clinical experience, verification of knowledge, or license to practice. We urge you to table further discussion of S. 564 until the VA has had the ability to fully implement the Choice

Act and recommendations made by the OIG, which we believe are the most appropriate means to improve access to hearing health services.

The American Speech-Language-Hearing Association is the national professional, scientific, and credentialing association for 182,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students. ASHA supports its members through professional development, research, advocacy and public awareness of communication, hearing and balance disorders.

The Academy of Doctors of Audiology is dedicated to the advancement of practitioner excellence, high ethical standards, professional autonomy and sound business practices in the provision of quality audiologic care.

The American Academy of Audiology is the world's largest professional organization of, by, and for audiologists. The active membership of more than 12,000 is dedicated to providing quality hearing care services through professional development, education, research, and increased public awareness of hearing and balance disorders.

PREPARED STATEMENT OF THE CHILDREN OF VIETNAM VETERANS HEALTH ALLIANCE

Thank you for holding a hearing on S. 564, the Veterans' Hearing Aid Access and Assistance Act. Children of Vietnam Veterans Health Alliance (COVVHA) stands in strong support of this badly needed legislation, which would increase veterans' access to hearing healthcare services by enhancing the Department of Veterans Affairs' (VA) ability to utilize hearing aid specialists.

COVVHA is committed to serving as a voice for the children of Vietnam veterans, including second and third generation victims of Agent Orange and Dioxin Exposures worldwide. We believe in empowering each other to hold the companies and governments responsible for causing so much devastation and suffering to our generations.

In April, the VA, in a statement to the Institute of Medicine, highlighted that nearly half the Veterans waiting for appointments at that time were waiting for audiological appointments.

It is particularly troubling that the VA has not created an appropriate staffing model to meet the ever growing need for hearing services amongst veterans. With hearing loss and tinnitus continuing to be the most prevalent service-connected disabilities affecting veterans who receive disability compensation, failure to adjust staffing is unacceptable.

S. 564 would allow the VA to hire hearing aid specialists—an ability the VA currently does not have the authority to do—and ask that the VA report back to Congress on an annual basis regarding wait times and the number of audiologists, hearing aid specialists, and hearing technicians hired by the VA. It truly is a common sense piece of legislation that would help deal with the current backlog faced by many of our Nation's veterans.

As you may be aware, COVVHA expressed our support for S. 564 in a letter addressed to Senators Moran and Tester following the bill's introduction in the 114th Congress and we continue to strongly support the bill. We believe that passage of this bill will help those Veterans in need of hearing aids, who are unable to access them due to physical limitations, long distances to VA facilities, and long wait times for appointments.

We encourage the Committee to continue to advance this bill, and Members of the Committee to support S. 564.

PREPARED STATEMENT OF CONCERNED VETERANS FOR AMERICA

S. 290 (MORAN), THE INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY TO VETERANS ACT OF 2015

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

In the wake of last year's VA scandals, Congress approved a measure allowing for VA Senior Executive Service (SES) officials to be more easily removed from VA employment. However, more accountability is needed. This bill would make strides toward increasing accountability for SES officials by requiring that a removed employee's covered service not be considered for the calculation of the annual annuity for the individual, and by allowing the Secretary to order that the covered service of an employee who retires prior to a final determination not be considered for the annuity. Additionally, it further clarifies the criteria for yearly performance apprais-

als for SES employees, as well as restricts the amount of administrative leave—or any other paid non-duty status—on which a given employee may be placed to 14 days in any 365-day period.

CVA SUPPORTS this legislation.

S. 563 (MORAN/TESTER), THE PHYSICIAN AMBASSADORS HELPING VETERANS ACT

To amend title 38, United States Code, to establish the Physician Ambassadors Helping Veterans program to seek to employ physicians at the Department of Veterans Affairs on a without compensation basis in practice areas and specialties with staffing shortages and long appointment waiting times.

This legislation would establish a volunteer program that would allow qualified physicians to provide assistance on a no-compensation basis at VA medical centers that are experiencing staffing shortages, or in practice areas or specialties that exceed wait time goals established by the Department of Veterans Affairs. While this is no substitute for more comprehensive reform that addresses the issues faced by VA in a more systemic way, CVA believes that marshalling the resources of the community to serve veterans in need is an important short-term step toward addressing the issues of an understaffed VA, which often results in extended wait times for veterans in need of care.

CVA SUPPORTS this legislation.

S. 564 (MORAN/TESTER), THE VETERANS HEARING AID ACCESS AND ASSISTANCE ACT

To amend title 38, United States Code, to include licensed hearing aid specialists as eligible for appointment in the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes.

CVA has NO POSITION on this legislation.

S. 1450 (HIRONO), THE DEPARTMENT OF VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT AND RETENTION ACT

To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs.

Current VA practices regarding schedule management for medical professionals are misaligned with best practices that are being utilized in the private sector. This legislation would provide statutory authorization to allow flexibility in scheduling that mirrors private sector practices, which will assist in recruiting and retention of medical professionals. CVA stands by its call for comprehensive VA reform, but we regard movement toward alignment with industry best practices as progress.

CVA SUPPORTS this legislation.

S. 1451 (HIRONO), THE VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to adjudicate and pay survivor's benefits without requiring the filing of a formal claim, and for other purposes.

CVA has NO POSITION this legislation.

S. 1460 (BROWN/TILLIS), THE FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015

To amend title 38, United States Code, to extend the Yellow Ribbon G.I. Education Enhancement Program to cover recipients of the Marine Gunnery Sergeant John David Fry scholarship, and for other purposes.

CVA has NO POSITION on this legislation.

S. 1693 (HIRONO)

To expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment, and for other purposes.

Under current law, in order to be eligible for reimbursement for emergency for care at a non-VA facility, enrolled veterans must have have received VA care within the preceding 24 months. In some cases, veterans have been denied this reimbursement despite the fact that they have requested and scheduled a new patient examination, though excessive wait times have prevented them from receiving the examination. This legislation would provide VA the flexibility to provide reimbursement to these veterans, who number as many as 144,000 by some estimates. CVA believes

this is a common-sense measure, particularly at a time when wait times remains a persistent problem in VA care access.

CVA SUPPORTS this legislation.

S. 1856 (BLUMENTHAL)

To provide for suspension and removal of employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety and to improve accountability of employees of the Department, and for other purposes.

While CVA appreciates this attempt to improve accountability for incompetent VA employees, we believe that the standard employed in this legislation sets the bar too low. It goes without saying that VA employees who threaten public health or safety should not be granted safe haven in VA. CVA, however, is concerned that this legislation would fail to hold accountable employees who fail to live up to their responsibilities to veterans, even if their actions do not rise to the level of threatening public health and safety. As such, we cannot support this legislation, and we instead urge support of S. 1082, the VA Accountability Act.

CVA OPPOSES this legislation.

S. 1938 (BLUMENTHAL/TILLIS), THE CAREER READY STUDENT VETERANS ACT

To amend title 38, United States Code, to improve the approval of certain programs of education for purposes of educational assistance provided by the Department of Veterans Affairs, and for other purposes.

CVA has NO POSITION on this legislation.

DISCUSSION DRAFT

To make improvements in the laws administered by the Secretary of Veterans Affairs relating to educational assistance, and for other purposes.

CVA has NO POSITION on this legislation.

PREPARED STATEMENT OF ADRIAN M. ATIZADO, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of this legislative hearing, and to present our views on the bills under consideration. As you know, DAV is a non-profit veterans service organization comprised of nearly 1.3 million wartime service-disabled veterans. DAV is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 290, INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY TO VETERANS ACT

This bill would make significant changes to the status, working conditions, incentives, and environment of work of members of the Senior Executive Service (SES) who work in the Department of Veterans.

Section 2 of his bill would impose reduction in retirement benefits of a removed member of the SES of the Department of Veterans Affairs (VA) if that former member were convicted of a felony, provided the felony influenced the individual's performance while employed in the previous VA position. The bill would establish a number of procedures to govern and regulate the retirement reduction and its amount, and would define the pertinent terms associated with this authority.

Section 3 would establish a new performance appraisal system to be used in VA for its SES members, and would cap the rating levels of "outstanding" and "exceeds fully successful" in any year not to exceed 10 percent and 20 percent of the members of the VA SES whose performance is appraised, respectively.

This section also would require SES performance evaluations to include review and consideration of relevant information from the VA Inspector General (IG), Government Accountability Office (GAO) and the Equal Employment Opportunity Commission, related to any facility or program managed by the SES member whose performance is being evaluated and rated.

This section would also require each member of the VA SES to relocate each five-year period to a different location that would exclude the supervision of the personnel or programs managed in the prior position. The Secretary could waive this requirement in individual cases by providing notice and explanation to the Committees on Veterans Affairs of the House and Senate.

This section would require VA to make an annual report to Congress on SES appraisals and related information, and require VA to contract with an outside entity

to review the SES management training program in use in VA, compared to that of other agencies and private sector organizations, and to make associated reports to the VA Secretary and to Congress.

Section 4 of the bill would impose a 14-day limit on the use of administrative leave for VA SES members, and would require VA to make an annual report to Congress on the use of administrative leave by SES members.

The delegates to our most recent National Convention approved Resolution No. 214, calling for the imposition of meaningful employee accountability measures in VA, but with due process for employees targeted for such sanctions, to strike a balance between accountability and VA's need to employ the best and brightest to serve veterans. Thus, we support the sanctions embedded in section 2 of the bill in the wake of a criminal conviction by a member or former member of the VA SES. This policy should be made applicable to all Federal agencies.

Regarding section 3 of the bill, we understand the desire to make VA's performance bonus system more meaningful by statutorily limiting the number of senior executives eligible to receive top performance ratings and thus qualify for performance bonuses. However, the VA is but one of all Federal agencies competing to attract high performing senior executives; it is important that VA's performance bonus structure remain comparable to that of other Federal agencies, many of which award executive bonuses at significantly higher rates than VA. Any changes to VA's SES compensation structure must properly balance these sometimes competing concerns to ensure that VA is able to recruit and retain the most highly qualified executives and managers.

In addition, the mandatory relocation provision in this bill is vague with respect to defining "a different location." We caution against forcing individuals and their families to move every five years, a requirement that may serve as a disincentive for even high performing employees to continue their careers with VA.

S. 563, PHYSICIAN AMBASSADORS HELPING VETERANS ACT

This bill would require the VA Secretary to employ certain physicians without regard to civil service or classification laws, rules, or regulations, on a without-compensation basis in any VA practice area or specialty for which the average waiting time for veterans seeking an appointment with a physician exceeds the VA's waiting time goals, or, at any VA medical facility where the physician would be employed has demonstrated certain staffing shortages.

The bill would require each VA medical facility to designate a coordinator of volunteer physicians to establish relationships with medical associations serving the area, recruit physicians for uncompensated employment at the VA facility, and serve as the initial point of contact for physicians seeking uncompensated employment.

The bill would require a physician volunteer to commit to providing a minimum of 40 hours for the initial year as a condition of receiving credentials and privileges to practice in a VA facility, and the bill would require the Secretary to decide whether to grant an uncompensated physician's request for credentials and privileges to practice in the VA facility within 60 days of a filed application.

The bill would require the director of a VA medical facility to approve, and accept the uncompensated services of, any physician who has made the requisite service commitment and receives credentials and privileges to practice in the facility.

DAV has received no resolution on this specific matter, but would offer no objection to enactment. Nevertheless, given VA's struggles over the past several years in recruiting and employing clinical and other personnel, but especially physicians, for both full- and part-time appointments, and considering the priority and resource diversion this act would impose on VA's limited human resources activities, we question whether the administrative burden might be too heavy, given that these physician ambassadors would be committing so little time to their practices in VA facilities. Also, the credentialing and privileging procedures are complex and time consuming, and would be as complicated for these volunteers as they are for full- or part-time VA physicians. For these reasons, we ask that the Committee carefully consider the practicality of this bill versus VA's need to ramp up human resources improvements physician hiring indicated recently by VA Secretary Bob McDonald, to be one of VA's top priorities.

S. 564, VETERANS HEARING AID ACCESS AND ASSISTANCE ACT

This bill would add authority under title 38, United States Code, to VA's current authority under title 5, United States Code, to employ licensed hearing aid specialists. In addition, the measure would require VA to submit to Congress an annual report on the timely access of veterans to VA's specialized hearing health services,

and on VA's contracting policies regarding the provision of specialized hearing health services to veterans in non-VA facilities.

In a previous Congress, VA testified on a similar bill authorizing hearing specialists to be employed by VA. During that hearing, VA indicated that direct employment of hearing aid specialists would potentially fragment VA's well-established national audiology program. In addition, VA asserted a pre-existing statutory authority to employ hearing aid specialists should they be determined to meet an unmet need.

The VA Office of Inspector General's (OIG) 2014 audit of VA's specialized hearing aid services described the delays in providing such services as attributable to inadequate staffing to meet an growing workload, due in part to the large number of veterans requiring compensation and pension (C&P) audiology examinations. We understand that these C&P examinations typically take priority over other appointments, such as those to issue hearing aids, in order for VA to process C&P claims as timely as possible.

Accordingly, the waiting time report required by this bill would include the average waiting time for a veteran to receive an appointment for a disability rating evaluation for a hearing-related disability. This time would be measured beginning on the date the veteran made the request.

The vast majority of C&P audiology examination appointments in the VHA are not made at a veteran's request but rather at the request of the Veterans Benefits Administration. We believe the no-show rate is much higher in these instances where an appointment is made without regard to the veteran's preference.

We recommend amending these provisions to ensure the information being reported is more meaningful and provides greater granularity, particularly if VA policy continues to place a higher priority on C&P examinations over other hearing health appointments.

Moreover, the bill's required reporting of staffing levels and performance measures related to appointments and specialized hearing health within VHA should be considered in light of VHA's audiology productivity standards (due to commence in fiscal year 2016) to provide a more accurate depiction of utilization rates of audiologists and hearing aid specialists in and outside of the VA health care system.

We laud the bill's efforts to create more transparency in VA performance to provide specialized hearing health services; however, the Committee must also ensure that sufficient funding is appropriated commensurate with the increase in services this measure would intend to provide. DAV has not received a resolution from our membership dealing with the specific matter taken up by this bill; however, DAV takes no issue with Congress encouraging VA to use all professional avenues available in order to address the backlog and improve care for veterans as long as it does not diminish the quality of care and the capacity to provide such care within the VA health care system itself.

S. 1450, DEPARTMENT OF VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT AND RETENTION ACT

The proposed authority would align VA practice with the private sector, facilitating the recruitment and retention of emergency physicians and the recruitment, retention and operation of a hospitalist physician system in VA medical centers.

To accommodate the need for continuity of efficient hospital care, emergency medicine (EM) physicians often work irregular schedules. This measure would modify the hours of employment for a full-time physician or physician assistant to more or less than 80 hours in a biweekly pay period provided the employee's total hours of employment in a calendar year would not exceed 2,080. Consequently, VA medical centers would gain the ability to implement flexible physician and physician assistant work schedules that could accommodate hospitalist and EM physicians' schedules and practices.

DAV does not have a resolution calling for this specific legislation; however, because of the measure's beneficial nature, we would not oppose its favorable consideration.

S. 1451, VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015

This bill would authorize the VA Secretary to pay benefits to a qualified survivor of a veteran who did not file a formal claim, provided the veteran's records contained sufficient evidence to establish entitlement to survivor benefits to a qualified survivor. Additionally, the bill would require VA to associate the date of the receipt of a claim under this authority as the date of the survivor's notification to VA of the death of the veteran.

Providing a reasonable exemption from standard form-filing requirements is one way to streamline the claims process, as well as ease some of the processing burdens a survivor would otherwise experience. DAV supports this bill in accordance with Resolution No. 091, adopted at our most recent National Convention. This resolution calls on Congress to support meaningful reforms in the Veterans Benefits Administration's disability claims process, and this bill is consistent with that goal.

Furthermore, DAV testified before the Disability and Memorial Affairs Subcommittee of the House Veterans' Affairs Committee on June 24, 2015, in support of H.R. 2691, the Veterans' Survivors Claims Processing Automation Act of 2015, a companion measure.

S. 1460, FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015

This bill would amend title 38, United States Code, to extend the Yellow Ribbon Post-9/11 G.I. Bill education enhancement program to cover eligible recipients of the Marine Gunnery Sergeant John David Fry Scholarship.

Currently, surviving spouses and children are eligible to receive Post-9/11 G.I. Bill benefits in cases when a servicemember's death occurs in the line of duty, on or after September 11, 2001, and while serving on active duty as a member of the Armed Forces. Yellow Ribbon eligibility currently does not apply to the surviving spouse or child, but this bill would extend this benefit to the fallen servicemember's eligible survivor(s).

DAV does not have a resolution pertaining to this issue, but we would not oppose this legislation.

S. 1693, A BILL TO EXPAND ELIGIBILITY FOR REIMBURSEMENT FOR EMERGENCY MEDICAL TREATMENT TO CERTAIN VETERANS THAT WERE UNABLE TO RECEIVE CARE FROM THE DEPARTMENT OF VETERANS AFFAIRS IN THE 24-MONTH PERIOD PRECEDING THE FURNISHING OF SUCH EMERGENCY TREATMENT

Section 1725, title 38, United States Code, was enacted in the Millennium Health Care and Benefits Act, Public Law 106–117, and took effect on May 29, 2000. The statute authorizes the Secretary to reimburse an eligible, non-service-connected veteran the reasonable value of emergency treatment furnished in a non-Department facility.

To be considered an active Department health-care participant at the time of the emergency treatment, a veteran must be enrolled in the VA health care system and have received care under chapter 17 of title 38, United States Code, within the 24-month period preceding the furnishing of the emergency treatment.

DAV has a long-standing resolution to eliminate the provision that requires enrolled veterans to have received care from VA within the 24-month period prior to the date of the emergency care. However, we note Congress has passed legislation over the years to address numerous issues veterans with which veterans have had to contend due to rules limiting eligibility to VA's emergency care benefit. While we support the intent of this legislation, this approach allows many other existing restrictions to remain in place. These restrictions force veterans to choose between seeking life-saving emergency care or facing financial hardship.

It is for this reason the delegates to our most recent national convention adopted DAV resolution No. 125, calling for a more comprehensive legislative solution to integrate emergency care as part of VA's medical benefits package and allow veterans to receive the full-continuum, including emergency care, of holistic patient-centered services. Thus, DAV supports this bill.

S. 1856, A BILL TO PROVIDE FOR SUSPENSION AND REMOVAL OF EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS FOR PERFORMANCE OR MISCONDUCT THAT IS A THREAT TO PUBLIC HEALTH OR SAFETY AND TO IMPROVE ACCOUNTABILITY OF EMPLOYEES OF THE DEPARTMENT

If enacted, this bill would establish new procedures to govern the suspension and removal of employees of the VA for performance or misconduct that is determined to be a threat to public health or safety, or, to suspend or remove an employee in the interests of public health or safety.

Section 2 of the bill would empower the VA Secretary on a discretionary basis to suspend or remove an employee in the above circumstances, without pay; the employee so affected would be provided a written statement of charges, and would be given not less than seven days to provide a response to them. A suspended employee pending removal would be entitled to a formal review by a designated VA official, and could be represented by an attorney or another party. In the case of an affirmed removal recommendation, the Secretary would be required to review the case, and VA would provide the employee a written statement of the Secretary's decision.

An individual suspended or removed under this authority would be entitled to appeal to the Merit Systems Protection Board (MSPB), and would retain the right to seek judicial remedy of MSPB's decision.

The bill would provide back pay restoration to an employee suspended or removed whose case was later determined to be not warranted or constituted a prohibited personnel practice as that term is defined by law, rule, regulation, or collective bargaining agreement.

The bill would require an annual report by the VA Inspector General (IG) to Congress on VA's use of this authority, its various elements, and any associated IG recommendations made to the VA Secretary.

Section 3 of this bill would create a requirement for the VA Secretary to establish performance plans for political appointees similar to those which already exist for career appointees.

Section 4 would require all VA managers who supervise probationary employees to provide them not less than 30-day notices on whether they have demonstrated successful performance during their probationary periods. This section would also require VA to add to the performance plans of all managers of probationary employees a requirement to provide effective feedback to probationary employees, and to make timely determinations regarding these employees' probationary status.

Section 5 of the bill would require VA to include in all VA managers' performance plans measures that focus on taking action in the case of poor performance and misconduct, as well as improving performance and sustaining employee engagement.

Section 6 would require VA to provide periodic training to all managers in dealing with their employees, including training in the rights of whistleblowers, motivating and rewarding employees, and effectively managing poor performers.

Section 7 of the bill would establish a requirement for VA to create a new career field of "technical experts," who would gain the means to advance their careers without needing to become VA managers.

Section 8 of the bill would add performance evaluations of VA employees to the definition of "personnel action" as described in section 2302 of title 5, United States Code.

Sections 9 and 10 of the bill would restrict recently terminated VA employees who had previously made or influenced significant acquisition decisions in employment with VA contractors under certain circumstances, and would place additional requirements on such contractors who hire these former VA employees.

Section 11 would impose a 14-day limit on the use of administrative leave for certain VA employees, and would require VA to make an annual report to Congress on the use of administrative leave.

Section 12 of the bill would require the Office of Medical Inspector to provide an annual report to Congress, as well as to provide Congress individual reports of problems or deficiencies in the Veterans Health Administration observed and reported internally by the Medical Inspector.

Section 13 of this bill would require the Government Accountability Office to report to Congress on the implementation of section 713 of title 38, United States Code (enacted in Public Law 113–146), focused on performance and accountability of VA employees, and on recruitment and retention of Senior Executive Servicemembers in the VA.

Delegates to our most recent National Convention approved Resolution No. 214, calling for the imposition of meaningful employee accountability measures in VA, but with due process for employees targeted for such sanctions. Parts of this bill meet the intent of DAV's resolution; therefore, DAV supports enactment of sections 2 through 6. Nevertheless, with respect to section 2, DAV recommends that the term "public health" and "public safety" either be defined in bill language or be reconsidered as the foundation for the authority proposed.

The World Health Organization defines public health as "* * * refer[ring] to all organized measures (whether public or private) to prevent disease, promote health, and prolong life among the population as a whole. Its activities aim to provide conditions in which people can be healthy and focus on entire populations, [emphasis added] not on individual patients or diseases. Thus, public health is concerned with the total system and not only the eradication of a particular disease. The three main public health functions are:

- The assessment and monitoring of the health of communities and populations at risk to identify health problems and priorities.
- The formulation of public policies designed to solve identified local and national health problems and priorities.
- To assure that all populations have access to appropriate and cost-effective care, including health promotion and disease prevention services."

Public safety carries a looser definition but generally means the responsibility of a state, Federal or local governmental subdivision that protects the safety of the public. Those who work in public safety are typically members of organizations such as emergency medical services, police and fire departments, and other governmental functions that are intended to keep the public safe.

By these definitions, arguments could made that, except in a few instances (biomedical researchers handling hazardous toxins, or armed VA police officers, for example) VA employees play no role in public health or public safety—rather, VA employees work in, conduct, and manage programs to deliver services and benefits to a fraction of the public. On the other hand, perhaps these terms could be applied to any number of activities or events in which VA employees might have been involved or managed, and could be held accountable (contaminated food; poor water quality; inadequate snow removal from parking lots; wet or slick waxed floors that constitute a falling hazard, etc.).

We believe the Committee should clarify the intent of the bill with respect to the use of the concepts of public health and public safety, to avoid misinterpretation or misapplication of its meaning if this bill is advanced. We suggest consideration of concepts adapted from the Uniform Code of Military Justice such as "gross negligence," "incompetence," and "willful misconduct" as actionable behaviors. These terms might serve as a stronger foundation to reflect the intent of this measure to root out VA employees who should not be serving veterans for specific and justifiable reasons.

S. 1938, CAREER READY STUDENT VETERANS ACT

This bill would ensure that VA education benefits are paid for duly recognized educational and employment programs and courses.

VA and state approving agencies are authorized to approve applications of institutions providing veterans non-accredited courses. Approval is authorized when institutions and their non-accredited curricula are found to meet criteria specified in law.

This bill would add two new standards for such approvals. First, approval could be granted in cases of programs designed to prepare individuals for licensure or certification in a state when programs meet any instructional curriculum, licensure or certification requirements of the state concerned. Second, approval could be given in cases of certain programs if they are designed to prepare individuals for employment.

The bill also would provide the Secretary with waiver authority when warranted and also require the Secretary to disapprove certain courses, unless the educational institution providing the course of education publicly discloses any conditions or additional requirements, such as training, experience, or examinations required to obtain licenses, certifications, or approval for which the course of education is designed to provide preparation.

On June 2, 2015, DAV testified before the Economic Opportunity Subcommittee of the House Veterans' Affairs Committee regarding H.R. 2360, the Career-Ready Student Veterans Act, the companion bill. At that hearing, we noted DAV did not have a resolution from our membership on this particular issue, but would not oppose passage of this bill; our position remains unchanged.

DISCUSSION DRAFT, TO MAKE IMPROVEMENTS IN THE LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS RELATING TO EDUCATIONAL ASSISTANCE

This bill seeks to make changes in educational programs authorized in title 38, United Stated Code. If enacted into law, these changes would affect the Post-9/11 GI Bill program and require additional reporting and survey responsibilities. The legislation also addresses when certain entities petition the VA for recognition as a qualified program of education for VA benefits purposes. Furthermore, the bill would make changes to the amounts payable to certain public institutions, including institutions of higher learning when specific contractual agreements are formed.

DAV does not have a resolution pertaining to the issues outlined within this bill and takes no position on the proposed legislation.

Mr. Chairman and Members of the Committee, this concludes DAV's testimony. We thank the Committee for inviting DAV to submit this testimony for the record of this hearing. DAV is prepared to respond to any further questions by Committee Members on the positions we have taken with respect to the bills under consideration.

PREPARED STATEMENT OF JOHN L. STONECIPHER, PRESIDENT AND CEO, GUIDANCE AVIATION

Statement by Mr. John L. Stonecipher, President and CEO, Guidance Aviation

Guidance Aviation has been training pilots for over 18 years. The overwhelming majority of our graduates have gone on to successful careers as helicopter pilots throughout the industry. I am proud of the scores of Veterans that have gone through our collegiate programs. These men and women served their country and used the GI Bill (they earned) to train as Commercial Pilots. Our graduates have achieved high-paying jobs with unprecedented levels of career placement. Flight training is a valuable and financially rewarding career option for Veterans.

Legislation currently in front of Congress will dramatically reduce Veteran's benefits for those who plan to become professional pilots.

The cost of flight training in a 2-year program is reasonable when compared to a 4-year University degree. An August 26, 2015 CBO Cost Estimate for H.R. 475 found that "In 2014, VA paid an average of $42,000 [per year] in tuition and fees for all beneficiaries enrolled in flight-training programs at public institutions."

Given the high demand and high salaries for helicopter pilots, I believe the cost of training is easily justified. For example, an April 2015 study completed by Elliott D. Pollack & Company stated: "...the median pay for helicopter pilots is significantly higher than the median earnings of persons with a bachelor's degree." "While most helicopter training is a two-year program which coincides with an associate's degree, the resulting salaries of helicopter pilots more closely resemble that of an earner of a more advanced degree."

Pollack & Company went on to state: "The additional income paid to helicopter pilots provides many benefits throughout the national, state and local economies. The average wage of a helicopter pilot is estimated at $85,000 per year compared to $44,616 for the average wage of a private sector employee. This additional income results in higher federal income tax payments and higher sales tax revenue to state and local governments from additional consumer spending."

By its very nature, flight training is expensive. Initial aircraft purchase costs and direct operating costs such as fuel and maintenance are high. Another factor contributing to high flight training costs is the one-on-one instructor requirement. Most college courses place thirty or more students in a classroom, whereas flight training requires one instructor and one student per aircraft.

The Yellow Ribbon Program will not work for collegiate flight training. The Yellow Ribbon Program only works at colleges where the Veteran is added to an existing class. This is because the incremental cost for adding a student to an existing class is minimal. Conversely, the incremental cost for adding a student into an aircraft with a flight instructor is cost prohibitive. Looking at the VA's Yellow Ribbon website, none of the current private institutions under the existing cap of $20,000 per year allow the

Yellow Ribbon Program to cover flight training. Public colleges cannot and will not absorb these added costs under the Yellow Ribbon Program.

Federal financial aid and student loans are simply not available to cover college tuition plus flight training.

Reducing Veterans benefits for flight training is counter to the intent of the GI Bill's mission to provide meaningful education and training programs for Veterans. Furthermore, it is unfair to discriminate against Veterans who have planned to use their benefits to become professional pilots.

The Post 9/11 GI Bill is the only reasonable option for a Veteran to fund an education to become a professional pilot. Veterans depend on the Post 9/11 GI Bill to be reintegrated into the workforce. With the proposed limits on flight training, the ability for Veterans to pursue an aviation career would be essentially eliminated.

Rather than imposing an unreasonable and arbitrary cap on flight training, the VA should focus on stopping abuses and impose real cost savings measures such as requiring extensive use of simulation and eliminating excessive course repeats.

John L. Stonecipher
President/CEO, Guidance Aviation

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PREPARED STATEMENT BY ELIZABETH WELKE, J.D., LEGISLATIVE ASSOCIATE, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

Bill #	Bill Name or Subject	Sponsor	IAVA Position
S. 290	Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015	Sen. Moran	Supports
S. 563	Physician Ambassadors Helping Veterans Act	Sen. Moran/Tester	Supports
S. 564	Veterans Hearing Aid Access and Assistance Act	Sen. Moran/Tester	Supports
S. 1450	Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act	Sen. Hirono	Supports
S. 1451	Veterans' Survivors Claims Processing Automation Act of 2015	Sen. Hirono	Supports
S. 1460	Fry Scholarship Enhancement Act of 2015	Sen. Brown/Tillis	Supports
S. 1693	A Bill to Expand Eligibility for Reimbursement for Emergency Medical Treatment to Veterans	Sen. Hirono	Supports

Chairman Isakson, Ranking Member Blumenthal and Distinguished Members of the Committee, on behalf of Iraq and Afghanistan Veterans of America (IAVA) and our more than 425,000 members and supporters, we would like to extend our gratitude for the opportunity to share our views and recommendations regarding these pieces of legislation.

While there are many important bills before the Committee today, the most pressing topic our members and the veteran community continue to urge action on is accountability at the Department of Veterans Affairs (VA).

Just under a year and a half ago, whistleblowers revealed a wait-list at the Phoenix VA hospital that rocked the veterans community and the Nation. It was revealed some employees engaged in the manipulation of wait times. The scandal did not stop in Phoenix; 110 VA facilities across the country also kept secret lists in order to hide wait times. Congress responded with the Veterans Access, Choice and Accountability Act (VACAA) in order to empower VA to clean up its personnel problems.

In addition to VACAA, IAVA supported the House-passed VA Accountability Act (H.R. 1994), which expands the firing authority authorized in VACAA from SES employees to the greater VA workforce. IAVA believes the vast majority of VA employees perform their job properly and to the utmost of their ability, but it is the occasional bad actor that needs to be held accountable so our veterans do not have to endure another Phoenix-like episode again.

In a recent health care survey, 50 percent of IAVA members reported utilizing VA services, so IAVA understands the need for reform at the VA, and we believe reform begins with accountability of all VA employees. Ranking Member Blumenthal's bill (S. 1856) is a step in the right direction in getting VA accountability legislation passed in the Senate. However, IAVA takes no position on this bill at this time because we believe certain provisions of this bill lack the strength necessary to actually hold VA employees accountable.

The removal of employees under this bill can only be authorized by the VA Secretary if the employee's performance or misconduct is a "clear and direct threat to public health or safety." This standard is extremely high and vague; few could possibly meet this standard, maybe not even those employees who were responsible for the heinous actions that occurred at the Phoenix VA. The VA Secretary needs real authority and the ability to remove actual bad employees, not just those deemed "a clear and direct threat" to the public.

While S. 1856 is not as aggressive as IAVA prefers, we do recognize value in this bill as a path forward on VA accountability in the Senate. IAVA is concerned the Senate may come to an impasse when it comes to VA reform and this bill, and others relating to VA accountability, will be used as political fodder in the upcoming election cycle. This would not only be a mistake, it would be a huge disservice to our Nation's veterans. As a community, we have to find a strong middle ground going forward when it comes to accountability at the VA, or our veterans will suffer the consequences.

While accountability at the VA is a top priority for IAVA, defending the Post-9/11 GI Bill continues to be of high importance for IAVA and our members. According to IAVA's 2014 Member Survey, 62 percent of respondents indicated either they or their dependent have used the Post-9/11 GI Bill and 42 percent of respondents also indicated they are currently enrolled in a degree, certification or training program.

IAVA was a leader in driving the passage of the Post-9/11 GI Bill in 2008 and championed upgrades in 2009 that expanded eligibility to more than 500,000 veterans. Despite the enormous success of this piece of legislation, there is a continuous need to protect against fraud, waste and abuse.

An example of such waste and abuse is in regards to helicopter and fixed wing flight schools. A loophole in the Post-9/11 GI Bill allows flight schools to work as contractors for public institutions and train veterans completely at the expense of the government and at twice the amount non-veterans pay, which amounts to tens of millions of taxpayer dollars each year. According to a VA investigation, it costs $1,800 per hour of flight training and students are required to train for 200 to 300 hours. For one veteran to receive training it could cost up to $500,000 in Post-9/11 GI Bill benefits, as reported by the L.A. Times. If this is not an abuse of the VA benefits system, then there is not much else that will be considered waste.

On March 24, 2015, IAVA testified in front of the House Veterans' Affairs Committee Economic Opportunity Subcommittee, where we strongly supported Chairman Wenstrup's GI Bill Quality Enhancement Act (H.R. 476), which caps flight school training fees at $20,235 per year in order to prevent exorbitant costs for high-end training programs.

Unfortunately, the Discussion Draft put forth at today's legislative hearing only serves to further the abuse of Post-9/11 GI Bill benefits as it places caps on certain programs but purposefully leaves out flight school programs. IAVA strongly supports capping pay for flight schools and a bill that leaves out a provision for such obvious waste does a disservice to all veterans and weakens the intent of the Post-9/11 GI Bill.

At IAVA, we believe our members, and all veterans, deserve the very best our Nation can offer when it comes to fulfilling the promises made to them upon entry into the military. There is no doubt every Member of this Committee has the best interests of our veterans in mind when drafting legislation. But we do hope you take into consideration and implement what we, and our fellow veteran service organizations, have had to say on these pieces of legislation today.

Thank you for your time and attention. IAVA is happy to answer any questions you may have.

PREPARED STATEMENT FROM THE INTERNATIONAL HEARING SOCIETY

S. 564, THE VETERANS HEARING AID ACCESS AND ASSISTANCE ACT OF 2015

Chairman Isakson, Ranking Member Blumenthal, and esteemed Members of the Committee: International Hearing Society thanks you for the opportunity to comment on S. 564. IHS stands in full support of the bill, which would create a new provider class for hearing aid specialists within the Department of Veterans Affairs (VA), thereby enabling the VA to hire hearing aid specialists to help deliver hearing aid services to Veterans. The bill would also require the VA to report annually to Congress on appointment wait times and the utilization of providers for hearing-related services, which would make the VA's efforts to address the backlog more transparent and provide much needed data to inform Congress about Veterans' experiences in accessing hearing aid services through the VA.

The International Hearing Society, founded in 1951, is a professional membership organization that represents hearing aid specialists, dispensing audiologists, and dispensing physicians, including the approximately 9,000 hearing aid specialists who practice in the United States. IHS promotes and maintains the highest possible standards for its members in the best interests of the hearing-impaired population they serve by conducting programs in competency accreditation, testing, education and training, and encourages continued growth and education for its members through advanced certification programs.

The VA continues to see a dramatic rise in the demand for audiology services. According to the VA the number of unique Veterans that received VA audiology services in FY 2014 was 903,075, an increase of 19% since 2011, with 52,138 new Vet-

erans in 2014 alone (a 5.8% increase)[1 2]. The number of hearing aids ordered per year by the VA has also dramatically increased with more than 800,000 ordered in 2014,[3] up 34% since 2011.[4] With tinnitus and hearing loss being the two most prevalent service-connected disabilities for veterans receiving Federal compensation combined with the aging Veteran population, the demand will continue to rise. And despite clinical audiologist-hiring within the VA following a similar growth track with a 26% increase in staffing between 2011 and 2015,[5 6] the high demand and subsequent backlog continue to affect the VA's ability to deliver timely and high-quality hearing healthcare.

IHS and its members have a great deal of respect for VA audiologists. They provide a wide variety of critical services to our Veterans, including compensation and pension exams (over 151,000 performed in 2012[7]), programming and providing support for cochlear implant implantation and use, vestibular (balance) disorder services, tinnitus services, hearing conservation, hearing aid services and assistive device use, and advanced hearing testing. They also partner with several medical disciplines and are part of the Traumatic Brain Injury and Polytrauma teams, addressing balance and auditory issues. Further, VA audiologists also responsible for training and supervising audiology health technicians.

The high demands on VA audiologists' time and expertise means that the VA is not currently able to meet all Veterans' needs for hearing healthcare services. To that point, in February 2014, the VA Inspector General released a report, "Audit of VA Hearing Aid Services" that found that "during the 6-month period ending September 2012, VHA issued 30 percent of its hearing aids to veterans more than 30 days from the estimated date the facility received the hearing aids from its vendors." The audit also found that deliveries of repaired hearing aids to Veterans were subject to delay partially due to "inadequate staffing to meet an increased workload, due in part to the large number of veterans requiring C&P audiology examinations." Further, in an April 2015 presentation to the Institute of Medicine's Committee on Accessible and Affordable Hearing Health Care for Adults, VA Rehabilitation and Prosthetic Services Department Chief Consultant, David Chandler, Ph.D., cited that "nearly half of all patients awaiting care in the VA are for audiology services."

In a practical sense, as a result of the backlog and delays, many Veterans are experiencing long wait times for appointments, shortened appointments, and limited follow-up care and counseling. Hearing aid specialists are observing an increase in the number of Veterans who seek care in their private offices as well. These Veterans request hearing aid specialists' help with hearing aid adjustments and repairs, oftentimes because they do not want to wait for the next available VA appointment, which may be months away, or because the distance to the closest VA facility that offers audiology services is too far to travel. There are also many Veterans who choose to purchase hearing aids at their own expense through a private hearing aid specialist, rather than using the benefits they've earned and are entitled to, because they want to work with someone local who they trust and ensure their hearing aids are properly programmed, address their loss, and can be adjusted or repaired in a timely fashion. This relationship also enables them to obtain support from their hearing professional on demand, which is important to those with daily commitments or who are employed, and is especially critical to those who are new users of hearing aids. For a point of reference, in the private market, a new user would typically see their hearing aid specialist 4–6 times in the first three to six months to help them to adapt to a hearing world and optimize their success with hearing aids.

Considering the safety risks involved as well as the impact untreated hearing loss can have on one's personal relationships and mental well-being, the VA needs an immediate solution to deal with the backlog and get Veterans the help they need. We also know that our working-age Veterans are anxious to contribute to society through employment, and properly fit and programmed hearing aids are necessary for their success in obtaining and maintaining meaningful employment.

S. 564 provides the VA a much needed solution by creating a new provider class for hearing aid specialists to work within the VA. Hearing aid specialists can help

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[1] David Chandler, Ph.D., "Perspective from Department of Veterans Affairs," Presentation to the Institute of Medicine's Committee on Accessible and Affordable Hearing Health Care for Adults, April 27, 2015

[2] Lucille Beck, Ph.D., "Meeting the Challenges of VA Audiology Care in the 21st Century," presentation to the Association of VA Audiologists, March 19, 2012

[3] Chandler, "Perspective from Department" (see footnote 1)

[4] Beck, "Meeting the Challenges" (see footnote 2)

[5] Chandler, "Perspective from Department" (see footnote 1)

[6] Beck, "Meeting the Challenges" (see footnote 2)

[7] VA Office of Inspector General, "Audit of VA's Hearing Aid Services," February 20, 2014

the VA hearing healthcare team by providing hearing aid evaluations; hearing aid fittings and orientation; hearing aid verification and clinical outcome measurements; customary after care services, including repairs, reprogramming and modification; and the making of ear impressions for ear molds—just as they are currently authorized to do in the VA's fee-for-service contract network.

By adding hearing aid specialists to the audiology-led team to perform these specialized hearing aid services independently, audiologists will be able to focus on Veterans with complex medical and audiological conditions, as well as perform the disability evaluations, testing, and treatment services for which audiologists are uniquely qualified to provide—thereby maximizing efficiency within the system and supporting the team-based approach, a common model in the private market. Adoption of the hearing aid specialist job classification at this juncture will also be advantageous given the fact that VA Audiology and Speech Pathology Service management will be developing staff and productivity standards as a result of the Inspector General's audit and recommendations,[8] and would be able to consider the use of hearing aid specialists as they develop their model.

Also, by virtue of the report language in S. 564, which would shine a light on the VA's utilization of hearing aid specialists in its contract network, it is our hope that the VA would take better advantage of this willing and able provider type to help address the need for hearing aid services. To open up additional points of access, the VA can and should eliminate unnecessary policy restrictions that impact VA clinics' abilities to utilize hearing aid specialists in the contract network.

Hearing Aid Specialist Qualifications

Hearing aid specialists are regulated professionals in all 50 states and in the non-VA market, hearing aid specialists perform hearing tests and dispense approximately 50% of hearing aids to the public. They are licensed/registered to perform hearing evaluations, screen for the Food and Drug Administration (FDA) "Red Flags" indicating a possible medical condition requiring physician intervention, determine candidacy for hearing aids, provide hearing aid recommendation and selection, perform hearing aid fittings and adjustments, perform fitting verification and hearing aid repairs, take ear impressions for ear molds, and provide counseling and aural rehabilitation.

Training for the profession is predominantly done through an apprenticeship model, an accepted and appropriate path given the hands-on and technical skill involved in the profession. And while licensure requirements vary from state to state, in addition to the apprenticeship experience, candidates generally must hold a minimum of a high school diploma or an associate's degree in hearing instrument sciences. These requirements merely create a floor, evident in the fact that 87% of hearing aid specialists have obtained some college coursework, or an associates or higher academic degree.[9] In nearly every state, candidates must pass both written and practical examinations, and in many states a distance learning course in hearing instrument sciences is required or recommended. Ultimately, when making hiring decisions, the VA will have the ability to determine which candidates meet their needs.

Hearing aid specialists are already recognized by several Federal agencies to perform hearing healthcare services. The Standard Occupational Classification (SOC) identifies hearing aid specialists within the Healthcare Practitioners and Technical Occupations category (29–2092), and the Federal Employee Health Benefit program and Office of Policy and Management support the use of hearing aid specialists for hearing aid and related services. And while Medicare does not cover hearing testing for the purpose of recommending hearing aids (a policy that applies to all dispensing practitioners), hearing aid specialists provide hearing testing, hearing aids, and related services for state Medicaid programs around the country. Further, most insurance companies contract with hearing aid specialists to provide hearing tests and hearing aid services for their beneficiaries.

Finally, evidence shows that there is no comparable difference in the quality and outcomes of hearing aid services based on site of service or type of provider (audiologist or hearing aid specialist). A well-respected industry study found that instead the best determinant of patient satisfaction is whether the provider used best practices like fit verification, making adjustments beyond the manufacturer's initial set-

[8] VA Office of Inspector General report "Audit of VA's Hearing Aid Services," February 20, 2014

[9] International Hearing Society, Health Policy and Payment Survey, June 2013

tings, providing counseling, and selecting the appropriate device for one's loss and manual dexterity.[10]

VA Strategies to Address Demand

To address the demand for audiology and hearing aid services, the VA has been relying on the use of teleaudiology, audiology health technicians, and contract audiologists outside the VA setting. While IHS applauds the VA for its efforts to better serve the needs of Veterans, each of these strategies has its limitations. Though teleaudiology can make audiological services more available in remote settings, the cost of staffing and facilities are needlessly high, especially given that hearing aid specialists have fully-equipped offices, oftentimes operate in rural settings, and perform home and nursing home visits. Audiology health technicians have a very limited scope of duties, which does not include hearing aid tests or the fitting and dispensing of hearing aids, and they must be supervised by audiologists. Hiring hearing aid specialists to work as health technicians, as the VA currently does, significantly limits their role and effectiveness. Finally, increased reliance solely on audiologists may also limit access as there are not enough audiologists to fill the current and future need for hearing care services. In order to fill the need, the number of licensed audiologists needs to double in size within the next 30 years to 32,000; however only about 600 are entering the profession annually. Even the best case scenarios for increasing the number of graduates and reducing attrition still fall short.[11]

In a June presentation, VA Deputy Chief Patient Care Services Officer for Rehabilitation and Prosthetic Services, Dr. Lucille Beck, Ph.D., cited several barriers to the delivery of hearing health care services for the VA, including "Some VA sites having space constraints that challenge expansion of current audiology services," "Some veterans are very old or sick and cannot travel outside of the home," and "Lack of developed hearing health care networks and standards for VA to partner with the community." In each of these areas, hearing aid specialists, both internally and through their expanded use in the fee-for-service network can help.

As the Federal Government seeks to become more efficient and cost-effective, we urge the Subcommittee to pass S. 564, which will round out the VA hearing healthcare team to mirror the private-market model, and increase Veterans' access to care, improve overall quality, and reduce cost. Again, using hearing aid specialists as health technicians is not the answer; this limits service delivery and underutilizes the skills and expertise hearing aid specialists can offer to the VA hearing healthcare team. Now is the time to embrace hearing aid specialists in the role they are trained and licensed to play to help meet the hearing healthcare needs of our Veterans, which will only continue to rise in the coming years.

Thank you for your consideration and for your service to our Veterans. With questions, please contact government affairs director Alissa Parady at 571–212–8596 or aparady@ihsinfo.org.

STATEMENT FROM TRAVIS WARTHEN, VICE PRESIDENT, LEADING EDGE AVIATION, INC.

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee: Thank you for the opportunity to provide a statement for the record regarding Leading Edge Aviation's position on H.R. 475 and the current Discussion Draft as it relates to flight training programs under the GI Bill.

Leading Edge Aviation (LEA) has been providing flight training services for Central Oregon Community College (COCC) since 2006. We currently have 128 Veterans enrolled in flight programs at COCC and our overall ratio is 76% Veterans. The COCC program was the first to enroll students in flight programs using the Post-9/11 GI Bill and has successfully graduated many veterans who are now enjoying very lucrative careers in professional aviation. The cost of this program has only increased incrementally (an average of 5%/year), which is consistent with the costs associated with providing this training. Our program has, and always will be, completely focused on the best interests of the student. Our company is owned and run by Veterans and we strongly believe these men and woman have earned the right to choose the career that best fits their personal interests. We believe both H.R. 475

[10] MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success, *The Hearing Review*, Vol 17 (No.4), April 2010, pp. 12–34

[11] Demand for Audiology Services: 30-Yr Projections and Impact on Academic Programs, Journal of the American Academy of Audiology, Ian A. Windmill and Barry A. Freeman, 24:407–416, 2013

and the Discussion Draft, as written, threatens the ability of Veterans to continue to afford this level of education.

ISSUE

The Post-9/11 GI Bill became available for eligible Veterans on August 1, 2009. This new GI Bill allowed Veterans to receive fees associated with a degree which allowed those public schools with aviation degree programs to incorporate flight training fees into their program.

In order for any degree program to receive VA benefits the State Approving Authority (SAA) must approve that degree program. The approval criteria between different SAA's varies greatly across the country and the Oregon SAA established conditions for approval for flight training degree programs in 2010. In Oregon, the institute of higher learning seeking approval for a flight training degree has to clearly show how they are in compliance with all the applicable laws and regulations in order to receive VA benefits.

PROBLEM

Due to lack of VA oversight, and inconsistent conditions for approval from the SAA's, some schools have received approvals for programs that are not in compliance with existing laws and regulations. The costs of these programs have increased exponentially, raising concerns inside the VA regarding the overall cost of these programs. Based on VA's own internal audit of the program, the national average annual per student cost for flight training programs is now nearly $240,000/year, far exceeding rational cost/student milestones (nearly one fourth that amount).

In recent months, due to external scrutiny by the press and increased congressional pressure, the VA has finally begun to enforce the existing regulations and has capped enrollment of several schools that were found to be non-compliant with one of the two following criteria for the program:

(1) 38 CFR § 21.4201—*Restrictions on enrollment; percentage of students receiving financial support*—clearly establishes an enrollment limit of no more than 85% veterans in any degree program. It requires programs be delineated by "educational or vocational objective" and the 85/15 ratio be calculated separately; and

(2) 38 CFR § 21.9600—*Overcharges*—prohibits the institution of higher learning from charging an individual an amount for tuition and fees that exceeds the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course

The intent of both of these regulations is to ensure costs are equitable for Veteran and non-Veteran students and at a level the market will support. If costs escalate to the point a school cannot attract the 15% non-Veteran students the ability to receive Veteran benefits will be suspended until the ratio is within the limitations.

The schools who are abusing the system have grouped together a large pool of students in a very generic degree with several different education objectives, which do not include flight training and are not calculating the ratio separately as required by the regulations. They are also allowing the student to choose the type of aircraft they fly, creating a sometimes-significant cost differential for Veteran and non-Veteran students.

Another potential challenge with the regulations is many students participating in the non-compliant programs are being trained in very expensive aircraft which comes with its own set of challenges: (1) it further skews the cost of an already non-compliant program; and (2) it undermines the intent of the program in that when trained in this aircraft, Veterans lack the necessary experience to find a job in the field without further training, experience and expense.

CURRENT CONGRESSIONAL APPROACHES

H.R. 475—Equates degree programs from public institutions that include flight training to that of private institutions, thereby establishing an annual cap for tuition and fees, which adjusts annually.

- The cap is just over $20,000/year, far below a reasonable average cost/student and limiting the opportunity for flight operators to continue to serve the Veteran population as they do today.
- Veterans would have to self-fund (or apply for loans) to make up the difference in programmatic costs.

Senate Bill Draft Language—Public institutions who contract educational services with private entities will be subject to tuition and fee cap of a private institution.

- Unlike H.R. 475, this draft does not limit the scope to just flight training. Therefore there is less opportunity to adjust the cap to address the over 1,800 vet-

erans enrolled in flight training programs without greatly increasing the expense to the VA for all private institutions.

• The Draft would require public institutions to outlay significant funds for capital expenditures to continue to offer degree programs which currently include some element of contracted educational service.

• The draft fails to address the lack of State Approving Authority/VA oversight for programs that have had considerable cost increases, well above industry standards.

A BETTER SOLUTION

While it is clear the current flight training program has fallen victim to a few unscrupulous providers, the overly-punitive nature of the current language in H.R. 475, and now the follow-on Discussion Draft serves only to disenfranchise students who may seek to pursue a flight program at a public institution. Instead of officially managing the cap under which operators have to operate, one of the two following Congressional solutions would ensure that "bad actors" are disallowed from abusing the program AND the viability of future flight programs is maintained:

(1) Make clear to VA, either legislatively or publicly, that renewed oversight WILL be exercised by Congress in the area of flight training programs and that continuous internal cost analyses will be required as well as a timeline developed for their delivery to Congress. This will ensure that overall costs will begin to migrate to the middle, preventing outlier flight operators from escaping scrutiny and enforcement actions; and/or

(2) Establishing a cap closer to the median cost of a two-year flight program ($50,000–60,000 per year). This will, almost by natural selection, "weed out" the operators who have historically abused the program for their own financial gain, AND allow those committed to the program to continue to provide opportunity for those who have rightly earned it.

Establishing an unrealistic cap for flight training programs punishes Veterans who are enrolled in schools that are in compliance with the regulations and providing a viable option for our men and women who have earned these benefits. Since the VA has started to enforce the existing regulations, we believe time should be given for these rules to work and ensure sufficient enforcement action is taken by the VA when operators run afoul.

Let's not take this option away from our veterans and give them every opportunity to re-enter the civilian workforce at a living wage with opportunities for real, sustainable long-term success.

Thank you again for the opportunity to present our position on these important issues and please consider Leading Edge a resource as you continue your deliberations on these issues.

PREPARED STATEMENT OF MILITARY OFFICERS ASSOCIATION OF AMERICA

CHAIRMAN ISAKSON, RANKING MEMBER BLUMENTHAL: The Military Officers Association of America (MOAA) is pleased to present its views on the following legislative measures under consideration at the legislative hearing of September 16, 2015.

MOAA does not receive any grants or contracts from the Federal Government.

S. 1938. CAREER-READY STUDENT VETERANS ACT OF 2015 (Senator Blumenthal, D-CT and Senator Tillis, R-NC). S. 1938 is a much needed bi-partisan bill that would:

• Modify the requirements for approval of courses for enrolled veterans using Department of Veterans Affairs (VA) educational assistance by requiring that educational programs meet instructional curriculum licensure or certification requirements of the state.

• Require that programs are approved by the appropriate board or agency in a state if an occupation requires approval or licensure.

• Authorize the VA Secretary to waive this requirement only under limited, clearly defined circumstances.

Under the legislation the VA would be required to disapprove a course of education unless the educational institution providing the course publicly discloses any conditions or additional requirements, including training, experience, or exams, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation.

Institutions of higher learning (IHLs) may meet regional or national accreditation standards. But some IHLs do not meet programmatic requirements that enable

graduating veterans to meet state criteria for licensing or certification in a specific field of study.

Degree programs that require state-level approval include, for example, teaching, nursing, criminal justice and dental assistant. Specialized or programmatic accrediting is required for professional qualification in fields such as law and psychology.

S. 1938 closes a gap that has left some veterans "holding the bag"—veterans who believed they were studying toward proficiency in a field of study and who graduated or completed the required coursework only to learn they could not sit for the licensure exam or meet the certification requirement because the program failed to meet state, regional or programmatic requirements.

S. 1938 BUILDS ON THE NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FY 2014. The Fiscal Year 2014 NDAA, Public Law 113–66, established new requirements for colleges and universities that wished to continue participation in certain Defense Department (DOD) educational assistance programs including military tuition assistance (TA) and My Career Advancement Account (MyCAA) for military spouses.

In reporting out the NDAA, the Senate Armed Services Committee recommended a provision that became Section 541 of the final bill noting that schools that wished to continue to participate in TA or MyCAA must "comply with program participation agreements under Title IV of the Higher Education Act, and to meet certain other standards." The Secretary of Defense could waive these requirements in certain cases.

Section 541 was intended to address the growing concern in DOD that some IHLs were promising civilian credentials to military members when in some cases, the program of study being offered was not approved by an appropriate accrediting body.

The result was a wasted investment in professional development for the military member and an adverse impact on morale and promotion potential.

MOAA strongly supported the NDAA provision. Since enactment MOAA has met with officials in the Defense Department who oversee policy for DOD tuition assistance programs to receive updates on the implementation of the statute. (In our view, DOD has done a commendable job in developing and promulgating policy for Section 541 of the NDAA for FY 2014).

THE CAREER-READY STUDENT VETERANS ACT OF 2015 addresses the same need for transparency and accuracy regarding the actual outcomes that IHLs propose to deliver for students using VA GI Bill programs after separating from military service. The proposed provisions in S. 1938 are similar to those contained in Section 541 of Public Law 113–66.

DOD and the VA have a common objective in ensuring that military and veteran students become "career ready" in a wide variety of civilian disciplines that require a license or certification.

Some military members begin the journey toward civilian licensure while still in uniform and complete the requirements when they separate or retire using GI Bill eligibility.

Numerous lawsuits brought by states' Attorneys General and the Federal Trade Commission against certain proprietary IHLs point to the need for common sense, practical rules that simply say schools must deliver on what they promise.

For example, in May, the Federal Trade Commission (FTC) announced a settlement with Ashworth College for misleading students about programs that "failed to meet the basic educational requirements set by state licensing boards for careers or jobs" in numerous states because they lacked the proper accreditation. FTC noted that Ashworth's programs were eligible for GI Bill dollars, but not for Federal student loans, and that Ashworth targeted veterans and servicemembers for recruiting, including through recruiters posing as "military advisors."

At a press conference announcing the introduction of the Career-Veterans Student Veterans Act of 2015 on August 5, 2015 Senators Blumenthal and Tillis emphasized that their bi-partisan bill is intended to protect the investment made by our Nation in the future employment of our veterans.

Senator Blumenthal said, "Only accredited school programs should receive GI benefits, because our Nation's heroes deserve the best, not the dregs, of American education. Federal funding for substandard programs is a disservice to veterans as well as taxpayers—and this safeguard is long overdue. Valid, approved education and training are necessary for veterans to have the right credentials required by employers."

MOAA strongly supports S. 1938, the Career-Ready Student Veterans Act of 2015.

S. 1460, THE FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015 (Senators Sherrod Brown, D-OH and Tillis, R-NC). S. 1460 would ensure that surviving spouses and children of service women and men who have died in the line of duty receive the same educational benefits as the family members of servicemembers who elect to transfer their benefits.

Private colleges and universities who volunteer to participate in the Post-9/11 GI Bill "yellow ribbon" matching program may elect to offset some or all of the difference in tuition and fees between their schools and public colleges and universities in the same state. The VA matches up to half of any delta in cost that a private college agrees to match.

Unfortunately, however, Yellow Ribbon matching is not authorized for dependent children who lost a parent in the line of duty since Sept. 10, 2001 and who thereby become eligible for the Gunnery Sergeant John D. Fry Scholarship program.

MOAA worked very closely with lawmakers in the Senate and House to advance enactment of the Fry Scholarship program for surviving spouses and their children.

MOAA is very pleased to extend our full support for enactment of S. 1460, the Fry Scholarship Enhancement Act of 2015.

S. 1451, VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015 (Senator Hirono, D-HI). S. 1451 would authorize the Secretary of Veterans Affairs to expedite the payment of benefits to a survivor of a veteran who has not filed a formal claim if the Secretary determines there is sufficient evidence to establish the survivor's entitlement to such benefits.

The intent of this legislation as we understand it is to permit the VA to process and pay survivor benefits to survivors of military members who die in the line-of-duty. In such cases, the official announcement of the death of the servicemember by the military service department should be sufficient prima facie evidence that survivor benefits should be processed promptly. Requiring such survivors to apply to the VA for their survivor benefits is burdensome, time-consuming and unnecessary.

MOAA supports S. 1451 the Veterans' Survivors Claims Processing Automation Act of 2015.

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT FOR THE RECORD
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

on

Pending Health Care and Benefits Legislation

September 16, 2015

Thank you for the opportunity to provide this statement for the record related to the September 16, 2015 Senate Committee on Veterans' Affairs hearing on pending health care and benefits legislation. In its letter of invitation, the Committee noted particular interest in hearing the U.S. Office of Personnel Management's (OPM) views on S. 1450, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act, but also requested OPM to provide written testimony on each agenda item for which OPM has a position or an interest. We appreciate the opportunity to share OPM's views.

In reviewing the legislation on the Committee's agenda, OPM would like to express concerns about S. 1450, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act; S. 290, the Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015; S. 1856, the Department of Veterans Affairs Equitable Employee Accountability Act of 2015 and two other bills that impact personnel matters. OPM would like to work with the Committee in order to address our concerns, and we welcome further discussions.

S. 1450, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

S. 1450 would give the Secretary of Veterans Affairs broad authority to allow irregular work schedules greater than or less than 80 hours in a biweekly pay period for physicians and physician assistants who would otherwise be assigned to work 80 hours on a full-time basis. This seems to imply that the physicians and physician assistants would be considered to still be full-time while on these irregular schedules, but it is not clear. Under the provisions of the bill, total hours of employment for an employee in a calendar year could not exceed 2080 hours, but there would be no minimum amount of hours in a calendar year. It is unclear why this authority is

needed. The proposal does not include any criteria establishing the circumstances under which the Secretary should use this broad authority. It is also unclear what effect is intended with regard to benefit programs. For example, the bill does not expressly state whether a physician or physician assistant would be considered to be full-time under the retirement law. Special retirement annuity computations apply to part-time employees. For retirement computation purposes, there are limited but well-defined exceptions to the requirement that employment on full-time basis is a tour of 80 hours in a biweekly pay period. In addition, contributions for health insurance premiums for part-time employees are prorated based on the Federal Employee Part-Time Career Act. It is unclear whether this bill would override this requirement under the law. Clarity on this issue becomes more important as employers are required to offer full-time employees (work more than 30 hours a week) affordable coverage under the Affordable Care Act or pay a penalty. It is also unclear whether all hours worked would be included in the calculation of FEGLI basic insurance amount. The provisions of the bill should clearly express the intended effects with respect to benefit programs. There are similar concerns with physician and physician assistant leave benefits under the bill. Although VA physicians are excluded from coverage under the title 5 leave system by 5 U.S.C. § 6301(2)(v), physician assistants are not excluded and are therefore covered by the title 5 leave system, which requires proration of annual, sick, and other leave for part-time employees.

As a matter of policy, we would be concerned if the bill would have the effect of treating a part-time employee as a full-time employee for retirement, health insurance, and leave purposes.

S. 290, the Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015

Section 2 creates a new 38 U.S.C. § 715, which provides for the reduction of annuities for removed senior executive employees. Existing law (subchapter II of chapter 83 of title 5, U.S.C.) provides for loss of annuity based upon having been convicted of one of a number of felonies for national security offenses (or if indicted for them, for leaving the country to avoid prosecution). These are all major offenses and are clearly articulated in statute. The legislation here does not provide such clear articulation. Additionally, 5 U.S.C. § 8312(d)(2) provides for methods of review should an individual be found guilty of certain offenses necessitating the reduction of the individual's annuity. No such review is laid out in this legislation.

OPM questions whether the legislation as drafted would be sufficient to make a loss of a CSRS or FERS annuity under its provisions defendable by VA and OPM. Subchapter III of chapter 83 and chapter 84 of title 5 provide for a right to retirement benefits. Clearly, a decision by OPM to reduce an individual's annuity under section 715(b)(3), or a decision by the Secretary of the VA under section 715(a), would be an action or order that would be subject to appeal to the Merit Systems Protection Board (MSPB) and judicial review (see 5 U.S.C. § 8347(d) and 5 U.S.C. § 8461(e); 5 U.S.C. § 7703). If an individual subject to the loss of retirement benefits under the

legislation appealed to the MSPB (or to the courts), it is by no means clear OPM could successfully defend the matter since it would have had no involvement in the underlying substantive determinations involved.

Before service credit could be terminated, OPM would have to be able to prove what the elements of the offense were, when each element occurred, and that each directly related to the performance of the individual's official duties as a senior executive at the VA. The vagueness of the substantive standard for reduction of the annuity – "convicted of a felony that influenced the individual's performance while employed in the senior executive position" – would make this a far more complex task than faced by a prosecutor. Furthermore, it is unclear what Congress intends to cover with "influenced the individual's performance." Since Congress's intended targeted behavior is not clear, the application of the standard could result in unfair punishment. Reduction of an existing annuity could also result in an overpayment of annuity that OPM would have to attempt to recover; however, OPM may not be able to successfully recover such overpayments in every case if the overpayment recovery is contested. Finally, we note that the provision could be challenged as an *ex post facto* law since it imposes an additional punishment for past misconduct and past crimes.

Other portions of the legislation are also troubling. For example, the proposed 38 U.S.C. § 717 in section 3 ignores the needs of agencies in assessing and evaluating their own workforce, and it imposes an assessment and evaluation system by statute that will be very difficult to modify in the future if adopted. Additionally, the language in the proposed Sec. 717(a)(2) would undo a regulatory prohibition against assigning candidates to categories based on percentages. The intended effect behind this regulation is to ensure executives are not being ranked against each other, as a set of prescribed percentages would require, but each executive is rated against the standards to which he or she is being held.

Sec. 717(a)(3) provides that the Secretary shall take into consideration a complaint or report submitted by the Inspector General, the Comptroller General, the Equal Employment Opportunity Commission, or any other appropriate person or entity related to any facility or program managed by the individual in evaluating the performance of senior executives. Most of the named entities have their own appeal and review process. It is important to ensure an individual is not being punished inappropriately. A complaint can be unfounded, and it is important the Secretary of the VA not allow the wrong information to unnecessarily cloud his or her independent assessment and review of the senior executive's performance. Providing that the Secretary "shall take into consideration" any complaint or report, including pending reports, not only from the named entities but from "any other appropriate person or entity" without regard to verification or final resolution seems to imply that a senior executive's appraisal should be adversely affected by any assertion or allegation, unless the Secretary determines otherwise.

Finally, section 4 proposes a new 38 U.S.C. § 719, which imposes limitations on administrative leave, or any other type of paid non-duty status, for employees of the VA. OPM, through regulations promulgated pursuant to chapter 75, has already made it clear that the usual practice is that an employee who is the subject of an adverse action proceeding will remain in a duty status in his or her regular position during the advance notice period. OPM recommends agencies use administrative leave as a last resort only after exhausting alternatives that require the employee to remain in a duty status. Agencies have no incentive to place employees on excused absence unless they have already made a determination that the employee's continued presence poses a significant concern thus the total amount of administrative leave should not be limited. The VA should be allowed to utilize the option of placing an employee on administrative leave where an employee's continued presence in the workplace poses a threat to the employee or others, results in loss of or damage to government property or otherwise jeopardizes legitimate government interests. Also, please be aware that "any other type of pay non-duty status" could encompass many types of excused absences, such as excused absence granted in weather or other emergencies that prevent an employee from working or the five days of excused absence that are provided to reservists returning from active duty in a contingency operation. We question whether this is the actual intent of the bill drafters and recommend the bill be clarified.

S. 1856, the Department of Veterans Affairs Equitable Employee Accountability Act of 2015

Similarly, OPM has concerns about S. 1856. This legislation also creates a new 38 U.S.C. § 715, under which an individual may be suspended or removed if the Secretary determines the employee's performance or misconduct is a clear and direct threat to public health or safety. This is a very broad standard without context of what constitutes a clear and direct threat. The Secretary may remove someone "after such investigation and review as the Secretary considers necessary." This language does not provide any clarity on who will be conducting the investigation and review or how the Secretary will determine what is necessary. Once the Secretary takes an action under this authority, it appears the legislation would inadvertently create a situation where a bargaining unit employee may pursue both an appeal to the MSPB as well as through the negotiated grievance procedure instead of electing one or the other as what happens today under existing law. Finally, it is unclear why the legislation creates a new avenue for back pay when most Federal employees are already covered by the Back Pay Act when a suspension or removal is found to have either not been warranted or to have constituted a prohibited personnel practice. Accordingly, OPM recommends revising the legislation to provide that the payment of back pay is subject to 5 U.S.C. 5596.

Similarly, the language in the proposed new 5 U.S.C. 715(b), providing procedures for suspension and removal, is unclear. While subsection (a) provides that the Secretary suspends the employee, (b) further provides that "after suspension" the employee is entitled to notice and review of the case by the same Secretary who has suspended the employee. In this language,

there does not appear to be any room for anything between a suspension and a removal, and it is also unclear how a Secretary would determine suspension is appropriate, but a removal is unwarranted with reinstatement and back pay.

The language in the proposed 5 U.S.C. 715(b) would also impose administrative burdens. This section permits the Secretary of the VA to suspend an employee based upon the employee's poor performance or misconduct constituting a clear and direct threat to public health and safety; and to then allow the Secretary, within a 30-day time limit following the suspension, to initiate a removal action against the employee, subject to advance notice, an opportunity for a response, and a departmental hearing prior to the final removal action. Please note that each action would give rise to a separate MSPB appeal.

Section 2 creates a new section 38 U.S.C. 715(d), which provides "[t]he authority provided under this section shall be in addition to the authority provided by . . . title 5 with respect to disciplinary actions for performance or misconduct." However, Chapter 75 is not "authority" for taking an action. Instead, it is a limitation on what would otherwise be an agency's plenary authority to remove or discipline employees. The standard for removal or suspension, as contemplated by the legislation, is a determination that the action is "a clear and direct threat to public health or safety" and "necessary in the interests of public health or safety." This should not be referenced as an "authority." The language of the legislation should instead reference "procedures" to make it parallel with prevailing, longstanding legal principles.

Sec. 4 of S. 1856 provides that "with respect to any employee of the Department of Veterans Affairs that is required to serve a probationary period at a position in the Department, the Secretary of Veterans Affairs shall require the manager of such employee to determine, not later than 30 days before the end of the probationary period, whether the employee has demonstrated successful performance and should continue past the probationary period before allowing the employee to continue at that position after the end of the probationary period." Under current regulation, agencies are already required to notify in writing the intent to terminate an employee during probation when performance or conduct impacts the employee's ability to demonstrate his or her fitness or qualifications for continued employment. This same requirement applies to the intent to terminate an employee during probation for conditions that arise before the initial appointment. Therefore, managers are already required to assess and verify the fitness and qualifications of competitive service appointees near the conclusion of a probationary period. Sec. 6 requires improvements to training for managers, including how to effectively motivate, manage, and reward employees, and how to manage employees who are underperforming. The language of this section seems redundant in light of 5 U.S.C. § 4121. Specifically, existing law requires agencies to "establish . . . a program to provide training to managers on actions, options, and strategies a manager may use in . . . relating to employees with unacceptable performance; mentoring employees and improving employee performance and productivity; and conducting employee performance appraisals."

Sec. 7 proposes a career track for high-performing technical experts to advance their careers without having to take on management functions. However, under present law, there's no requirement that a GS-14 or a GS-15 be a manager. 5 U.S.C. § 5104 provides that, to be a GS-15, a position can simply require one "to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities" or "to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications." There's no need to create a promotional track when there's no requirement that one be a manager in order to be promoted. Additionally, this track is not necessary given that VA can place these individuals in Senior Level positions. Most Senior Level employees are in non-executive positions whose duties are broad and complex enough to be classified above GS-15.

Finally, the newly proposed 38 U.S.C. § 719 in section 11, with its limitations on the use of administrative leave raise the same concerns here as they do in S. 290.

Other Legislation Impacting Personnel Matters

- S. 563, the Physician Ambassadors Helping Veterans Act, creates a new 38 U.S.C. 7405A, which authorizes VA to employ physicians on a without compensation basis.

- S. 564, the Veterans Hearing Aid Access and Assistance Act, amends title 38 to include licensed hearing aid specialists as eligible for appointment in the Veterans Health Administration, and for other purposes.

- As previously discussed, S. 1450 amends 5 U.S.C. 7423 to modify hours of employment for VA physicians and physician assistants.

Title 5 provides OPM with the authority to delegate to other Federal agencies the discretionary use of certain VA personnel authorities regarding pay, hours of work, classification and qualifications provided under chapter 74 of title 38 to help recruit and retain employees in health care occupations. (See 5 U.S.C. 5371.) Currently, OPM has delegated the authority to use such title 38 provisions to the Departments of Defense, Health and Human Services, Homeland Security, and Justice, and the Armed Forces Retirement Home. If enacted, it is possible that OPM could delegate the above noted provisions in S. 563, S. 564, and S. 1450 to these other Federal agencies.

As a broader observation, we do ask the Committee to be mindful of the fact that the Civil Service Reform Act was enacted to replace the existing patchwork quilt with a comprehensive system, especially with respect to appeals of adverse and performance-based actions. Specifically, it is OPM's view that Chapter 75 of title 5 covers the waterfront of misconduct, and we urge care in amending this framework. In addition, OPM supports the merit system principles codified in 5 U.S.C. 2301, and we recognize adherence to these principles is a responsibility shared by all in Federal employment.

Further, in addition to the above concerns on these bills, OPM has a number of additional technical concerns. OPM welcomes the opportunity to discuss these additional concerns in greater detail with the Committee.

Thank you again for the opportunity to provide OPM's views.

PREPARED STATEMENT OF MAX STIER, PRESIDENT AND CEO, PARTNERSHIP FOR PUBLIC SERVICE

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, thank you for the opportunity to provide a statement for the record on important legislation pending before this Committee. I am Max Stier, President and CEO of the Partnership for Public Service, a nonpartisan, nonprofit organization dedicated to revitalizing the federal civil service and transforming the way government works. I appreciate the chance to share the Partnership's views on the *Department of Veterans Affairs Equitable Employee Accountability Act of 2015* (S. 1856) and the *Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015* (S. 290).

This Committee is right to be concerned about accountability at the Department of Veterans Affairs (VA), given recent management failures. The Partnership shares your concern and is one of the most vocal and passionate proponents of reforming our civil service system and ensuring that our federal government operates effectively and efficiently to provide the results the American public expects and deserves. We issued a report[1] last year outlining a framework to improve the management and performance of the federal workforce across government. I shared many of these recommendations when I testified before you on June 24, 2015.

As you consider legislation pending before this Committee, we urge you to consider whether the changes you are pursuing will achieve your desired end goal – improved services for our nation's veterans. For some of the changes being proposed, we believe the answer is no. The reforms being promoted in the *Department of Veterans Affairs Accountability Act of 2015* (S. 1082), for example, may have unintended consequences including diminished protection for whistleblowers and diminished incentive for talented and experienced people to seek employment in the Department.

Rather than simply finding ways to fire federal employees faster, the focus of legislative reform must be on how we can serve our veterans better. There are a number of ways to reform our system and improve service to the veteran community, but moving to an "at-will" employment system for the Department is not one of them. VA must ensure it hires high-quality talent at all levels, provides developmental opportunities to position employees for success and holds career and political leaders accountable for their performance. With this in mind I offer my feedback on S. 1856 and S. 290.

S. 1856

We are very pleased that Ranking Member Blumenthal has championed the *Department of Veterans Affairs Equitable Employee Accountability Act of 2015* (S. 1856), legislation that would address accountability as well as critical management challenges at VA. The Partnership strongly supports this bill and encourages Congress to act quickly and pass it.

As introduced, the bill provides the Secretary with an additional authority to remove employees for performance or misconduct that is a threat to public safety or health, while providing for due process to ensure the law is constitutional and enforceable. We understand there is some concern that this language may not apply to individuals responsible for recent mismanagement at VA. This concern can be addressed by revising the standard. For example, the bill could provide for removal for performance or misconduct that "adversely impacts the healthcare, services, or benefits provided to veterans and their families" rather than if the employee's performance or misconduct is a "threat to public health or safety." We also recommend clarifying that VA employees under this section are entitled to appeal a decision to the Merit Systems Protection Board (MSPB).

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[1] Partnership for Public Service and Booz Allen Hamilton, *Building the Enterprise: A New Civil Service Framework*, April 2014, http://ourpublicservice.org/publications/viewcontentdetails.php?id=18.

In addition to providing this added removal authority, the bill takes a number of steps to address management challenges at VA and, hopefully, prevent substandard performance that has undermined confidence in the Department from happening in the future.

First, the bill creates a separate promotion track for technical experts so they can advance in their careers without having to go into management positions for which they are ill-suited. Too often we hear that supervisors promote their employees into management positions as the only way to advance them, even when the employees are technical experts who may be uninterested or unskilled in managing people.

Second, the bill ensures managers are fully using the probationary period to develop high-potential employees and to evaluate and remove someone if they are not the right fit for the position. The probationary period is a continuation of the assessment process and gives managers the chance to determine an individual's fitness for the position. Individuals who have not demonstrated the competencies needed to perform well can be removed more easily during this period. Too often, however, employees pass their probationary period due to inaction of managers.

S. 1856 would require managers to make an affirmative decision as to whether an individual who serves in a probationary period has demonstrated successful performance and should continue past the probationary period. It also requires new supervisors to demonstrate management competencies, in addition to technical skills, in order to remain in a management position. We encourage Sen. Blumenthal to tweak the language to make it clear that a manager must make a decision whether to pass an employee through the probationary period "within" rather than "no later than" the 30 days prior to the end of the probationary period. We also recommend clarifying what happens if no action is taken by the time the probationary period ends and suggest the employee is either removed or falls back to a nonsupervisory role.

Third, S. 1856 requires periodic training for managers on the rights of whistleblowers and how to address an employee allegation of a hostile work environment, reprisal or harassment; how to motivate, manage and reward employees effectively; and how to manage employees who are performing at an unacceptable level. In addition, VA managers are held accountable in performance plans for taking action to address poor performance and misconduct and for taking steps to improve or sustain high levels of employee engagement. We regularly hear from agencies that many of the performance-related issues could be addressed if there was better training for managers, if they were held accountable for dealing with poor performers and if they had support from leadership.

Sen. Blumenthal's bill would hold senior political leaders accountable in performance plans for recruiting and selecting the right people for employment at the agency, engaging and motivating employees, training and developing employees and holding managers accountable for making difficult performance decisions. Accountability for management in government starts at the very top and this provision will ensure all leaders, career and political, are held accountable.

Finally, the legislation requires GAO to study the implementation of Section 707 of the *Veterans Access, Choice, and Accountability Act of 2014*, which was enacted last year, to understand its impact on performance, accountability, recruitment and retention at VA, particularly at the executive level. The provision would also require GAO to review VA's internal policies for dealing with performance issues and make recommendations for how the Department could expedite the process for addressing performance and misconduct administratively. This report will give members of the Committee and Congress valuable information that can inform future policy decisions at VA and across government.

S. 290

The *Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015* would make a number of changes to the Senior Executive Service (SES) at VA, some of which we believe are primarily punitive in nature. Instead of focusing on reducing annuities for a handful of current or former federal employees convicted of certain crimes, the Partnership believes it is more advantageous to focus on ensuring agencies are selecting and developing the very best executive talent.

For example, we are pleased to see the provision that would expand mobility at the Department. The Partnership has long supported greater mobility in the federal government, particularly at the executive level, as we believe diversity of experience strengthens leadership. The SES was designed to be a mobile corps, yet more than 50 percent of senior executives at VA have never changed positions since joining the SES.[2] Sen. Moran's bill would require the Secretary to "reassign each individual employed in a senior executive position to a position at a different location that does not include the supervision of the same personnel or programs." To alleviate any concerns about forcing executives to uproot their families and move to a new location, we suggest striking "at a different location." In addition, it is important that reassignments be made strategically and in a way that will help VA achieve its mission.

We support the ability of the Secretary to waive the mobility requirement but do not believe the Secretary should be required to go to Congress before issuing a waiver. We recommend giving the Secretary the discretion, as part of broader workforce management, to issue a waiver as long as he or she submits an annual summary report to Congress with the number of executives who have remained in their position for more than five years and a brief explanation as to why the waiver was granted. The Secretary might also do a review at that point to determine whether those positions should be designated as Senior Level (SL) or Senior Technical (ST) positions.

We do have concerns, however, about the provision that would reform the performance appraisal system and create a forced distribution for executives at VA. Under this legislation, no more than 10 percent of executives could receive an "outstanding" rating and no more than 20 percent could receive a rating that "exceeds fully successful." Such a provision seems arbitrary. Further, there is no compelling research that demonstrates that a multi-level, forced distribution performance appraisal system results in improved employee performance. In fact, it could do the opposite, and a number of successful private sector companies are moving away from such systems. A better alternative might be a requirement for a review of the Department's performance management system with an objective of ensuring that it encourages ongoing feedback, includes clear performance measures that are aligned with organizational outcomes, and identifies opportunities for employee development. The Department's performance management system must also identify the small percentage of employees who will not or cannot perform successfully and take action to separate them.

S. 290 also requires the Secretary to submit to the House and Senate Veterans Affairs Committees a report on the performance appraisal system, and the report is to include detailed information about every executive's performance appraisal. Any report on the outcomes of the performance appraisal system should maintain the privacy of the individual executive absent any compelling need to provide that information.

Finally, S. 290 also includes a provision setting limits on the length of paid administrative leave available to employees. The provision is similar to language in S. 1856. The Partnership believes all agencies

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[2] Office of Personnel Management analysis of the Central Personnel Data File (now called EHRI-SDM) for career senior executives employed at VA on March 31, 2011.

should be entitled to use administrative leave in certain instances (e.g., a doctor's appointment, voting, weather emergency, etc.) but we are generally supportive of placing some limits on the length of time someone can remain on administrative leave, particularly when they are on leave pending possible removal or discipline based on their performance or conduct. In addition, we understand the desire for greater transparency but are concerned about the administrative burden on VA if the agency is required to submit a quarterly report to Congress with the names of every individual who has been on administrative leave for longer than seven days during the quarter. Instead, we suggest requiring an annual summary report, which should be sufficient.

In addition to pursuing statutory changes, we hope you will continue to work with leaders at the Department and encourage them to take action administratively to address performance and accountability. It is our belief that VA has the ability to address many of these issues on its own. For example, VA could provide better information to managers on how to take a performance-based action and how to fully utilize the probationary period. In addition, they could improve internal communication between senior leaders and the Office of Inspector General about performance based actions to provide greater transparency and to try and resolve issues more quickly.

Conclusion

Thank you for the opportunity to share my views on pending legislation. As legislation moves through the Committee and to the floor we hope you will stay focused on the outcome you hope to achieve – better care for our nation's veterans. To bring about real reform at VA, it is not enough to get rid of a few bad apples; the Department must fundamentally change the way it manages its talent.

PREPARED STATEMENT OF PARALYZED VETERANS OF AMERICA

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on legislation pending before the Committee. We appreciate the Committee focusing on these critical issues that will affect veterans and their families.

S. 290, THE "INCREASING THE DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY TO VETERANS ACT"

PVA understands the intent of S. 290, the "Increasing the Department of Veterans Affairs (VA) Accountability to Veterans Act of 2015." This legislation would presumably give the Secretary more leverage as he continues his campaign to improve the VA health care system. This legislation would allow the Secretary to reduce benefits of Senior Executive Employees that have been convicted of certain crimes.

However, we believe that Section 3, the Reform of Performance Appraisal System for Senior Executive Service Employees, establishes a troublesome precedent. This section limits the recognition of employees that have contributed more than a position requires while maintaining a personal goal of improving service to veterans. While the forced distribution of the various levels in performance evaluations would seemingly limit the number and amount of bonuses paid to senior employees, we believe these provisions would punish those employees that are overachievers. Similarly, we believe that mandating that no more than a certain percentage of SES employees receive a given rating in a year ignores the important work that these individuals produce on a daily basis. We believe this circumstance will severely limit the number of individuals who are willing to consider SES employment at VA. Last, we believe that forcing SES employees to move every five years is unnecessarily punitive. We do not believe it makes sense to move management employees simply for the sake of doing it, particularly if they are doing an outstanding job.

S. 563, THE "PHYSICIAN AMBASSADORS HELPING VETERANS ACT"

PVA has no official position on S. 563, the "Physician Ambassadors Helping Veterans Act." As we understand it, this bill would presumably direct the VA to allow volunteer physicians to serve in VA medical facilities struggling with wait times or staff shortages. It is our understanding that this is an authority the VA already exercises and that in areas where volunteer support is limited, physicians have chosen not to navigate the cumbersome administrative process that allows them to become

a volunteer physician. The VA also often fills gaps through direct hire authority rather than rely upon volunteer support. We appreciate the interest of those physicians who are willing to volunteer to cover the access gaps that may exist in VA facilities.

S. 564, THE "VETERANS HEARING AID ACCESS AND ASSISTANCE ACT"

PVA supports S. 564, the "Veterans Hearing Aid Access and Assistance Act." This legislation would amend title 38, United States Code, to clarify the qualifications of hearing aid specialists of the Veterans Health Administration of the Department of Veterans Affairs. Hearing loss and tinnitus are the most common service-connected disabilities treated by VA healthcare. Demand for hearing services has increased, dramatically, over recent years. This is due to the large cohort of aging veterans compounded by a newly returned veteran population from the most recent conflicts. With limited resources VA cannot meet the demand in a timely manner. Currently, hearing aid specialists are not authorized by VA as an approved care provider, and as such, VA can only procure hearing services from an audiologist. Authorizing hearing aid specialists would expand VA's network of providers and reduce veterans' need to travel long distances.

S. 1450, THE "DEPARTMENT OF VETERANS AFFAIRS EMERGENCY MEDICAL STAFFING RECRUITMENT AND RETENTION ACT"

PVA also supports S. 1450, the "Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act." This bill would allow the Secretary to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs. Currently, VA emergency room physicians work inflexible 12-hour shifts within the required 80 hours per pay period that denote full-time status. This rigidity does not exist in the private sector. Irregular work schedules are needed to provide high quality patient care. Additionally, the Veterans Health Administration (VHA) antiquated system interferes with recruitment and retention efforts.

S. 1451, THE "VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015"

PVA supports S. 1451, the "Veterans' Survivors Claims Processing Automation Act of 2015." The legislation allows VA to pay benefits to a survivor who for whatever reason didn't file a claim as long as sufficient evidence of record existed to grant the claim. For example, in the case of a veteran who was known to have been exposed to Agent Orange and died of lung cancer, the VA could establish entitlement to DIC in the absence of a properly filed claim. In such a case the notification of death would become the date of claim. While this may not be the intent of the legislation, this could protect a date of claim which could otherwise be untimely and will ensure the survivor receives benefits their loved one earned. This is appropriate legislation that will pay benefits to a veteran's survivor as quickly as possible and streamline the process. In many cases, the benefits a disabled veteran receives may be the only family income.

One change that PVA would like to see in the language is in Section 2(B)(ii) that states "* * * the date on which a survivor of a veteran notifies the Secretary of the death * * *" As in many cases with legislation, PVA believes this should read "survivor or duly appointed representative" to ensure it is clear that veteran service officers or others that may be assisting the survivor can act on their behalf. It may also be appropriate to include language referencing VA learning of the death from another Federal agency such as the Social Security Administration or the Internal Revenue Service before a survivor may notify VA. Limiting notification to the survivor strikes PVA as being too narrowly defined. However, this being said, VA has already initiated a process to automatically begin payment of DIC to the spouse of record in cases where the veteran has been rated at 100% for ten years, without a requirement for the widow to file a claim. This legislation would better establish that process into law.

S. 1460, THE "FRY SCHOLARSHIP ENHANCEMENT ACT OF 2015"

PVA strongly supports S. 1460, the "Fry Scholarship Enhancement Act of 2015." The Marine Gunnery Sergeant John David Fry Scholarship provides Post-9/11 GI Bill benefits to the surviving spouses and children of servicemembers who have died in the line of duty while on active duty after September 11, 2001. This legislation would also expand eligibility for the Department of Veterans Affairs' Yellow Ribbon Program, which helps students avoid out-of-pocket tuition and fees for education programs that cost more than the allowance set by the Post-9/11 GI Bill.

S. 1693

PVA supports S. 1693, a bill "to amend title 38, United States Code, to expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment, and for other purposes." Currently, a veteran who receives emergency care at a non-VA facility can be reimbursed for those costs only if the veteran had also received care at a VA facility in the preceding 24 months. This legislation would authorize VA to reimburse veterans for emergent non-VA care who were unable to receive care at VA within the 24-month period because of wait times. The strict 24-month requirement is an unfair burden for rural veterans and those near facilities with long wait times. For newly separated veterans, should they have a medical emergency prior to being seen at a VA facility, their claim for reimbursement will be denied. Veterans are then burdened with crushing medical bills through no fault of their own. No veteran should have to choose between receiving care and financial hardship.

S. 1856

PVA understands the intent of S. 1856. This legislation is meant to provide greater employment and due process protections for employees who are suspended for performance. The bill targets individuals whose actions represent a "threat to public health or safety." We find it hard to believe that the VA does not currently have the authority to remove individuals when the conditions covered by "threat to public health or safety" are met. We also believe that the language in Section 2 should at the very least cover removal for malfeasance or misconduct that is "detrimental to the operations of the Department," assuming such a circumstance does not already exist. Ultimately, we are not wholly convinced that this legislation will achieve actual accountability that ensures that health care is delivered better or more efficiently.

We appreciate the focus on improving management training. Too many of the problems identified across the VA health care system in recent years have stemmed from ineffective, or simply poor, management. This is not to suggest that all of the problems have been the fault of bad management. We know that there has been substandard performance at every level of the employee ladder in the VA. Change begins at the top with management, but it also requires a commitment to doing the right thing from all employees, a proposition that we believe has not been enforced strong enough across the VA.

S. 1938, THE "CAREER READY STUDENT VETERANS ACT"

PVA supports S. 1938, the "Career Ready Student Veterans Act." This legislation would provide protection for veterans using their GI Bill benefits as they prepare for a career. Since the passage of the Post-9/11 GI Bill, hundreds of training programs and career schools have appeared in every state with the intention of securing the veterans GI Bill funds with little concern for producing a qualified career-ready prospect. These institutions rely on deceptive marketing and false promises to recruit veterans. S. 1938 provides protection for veterans by prohibiting schools lacking appropriate programmatic accreditation from receiving GI Bill benefits. Although some schools may have developed a complete training program, the program they promote may lack appropriate programmatic accreditation, or fail to meet state-specific criteria required for certification or licensure. This legislation will protect veterans from squandering their GI Bill benefits while being mislead about future career possibilities.

DRAFT LEGISLATION ON EDUCATIONAL ASSISTANCE

PVA supports the changes provided in this draft legislation which makes adjustments, modifications and some necessary limitations of the benefits provided to veterans within the educational programs provided by the VA. Most changes have been previously discussed and approved in the House Committee on Veterans Affairs.

Once again, we thank you for the opportunity to submit for the record. We look forward to working with the Committee to see these proposals through to final passage. We would be happy to take any questions you have for the record.

LETTER FROM CAROL A. BONOSARO, PRESIDENT,
SENIOR EXECUTIVES ASSOCIATION

SENIOR EXECUTIVES ASSOCIATION,
Washington, DC, September 14, 2015.

Hon. JOHNNY ISAKSON
Chairman
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

Hon. RICHARD BLUMENTHAL,
Ranking Member,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN ISAKSON, RANKING MEMBER BLUMENTHAL, AND MEMBERS OF THE COMMITTEE: As you know, the Senior Executives Association (SEA) represents the interests of career Federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. On behalf of the Association, and of the SEA members who serve at the Department of Veterans Affairs (VA), I write to share the Association's perspective on two pieces of legislation before the Committee, S. 290 the Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015, and S. 1856 the Department of Veterans Affairs Equitable Employee Accountability Act of 2015.

In 2014, Congress and the Nation awoke to the realities of access issues facing the VA with the public revelations from the VA's Phoenix Medical Center. While the agency Inspector General and the Government Accountability Office (GAO) had well documented the VA's problems with access to care and waitlists dating back to the late 1990s, Congress chose not to act to remedy these well-documented problems until the eruption of a major "scandal."[1] The reaction to that scandal was to pass a hastily and poorly crafted bill that contained what SEA warned lawmakers to be counterproductive and unconstitutional provisions relating to VA Senior Executives.

Since that time, Congress has still not demonstrated an understanding of and an ability to seriously address the complex issues facing the VA. Instead, lawmakers continue to promote largely talking-point legislation centered on Congress' current favorite platitude—accountability. Accountability is certainly needed for the VA workforce, but passing statutes with punitive provisions will do nothing to drive the cultural transformation necessary to turn the VA and its workforce around.

S. 290

SEA has long called for reforms to the SES performance management system to ensure it is utilized to incentivize the best performance. Those reforms have included ensuring greater transparency, timeliness of establishing performance plans and conducting performance appraisals and communicating their results, and ensuring political appointees who often supervise career senior executives understand the system and their obligation to making it work properly. Problems with the SES performance management system are highlighted in SEA's report, *Deteriorating Pay for Performance Adversely Impacting Morale and Retention Within the Federal Career Senior Executives and Professionals Corps.*[2]

As you know, the SES is a governmentwide cadre. Consequently, SEA has concerns about creating a distinct framework for a single agency, which balkanizes that governmentwide system and creates challenges in maintaining consistency and providing for appropriate oversight by OPM.

Furthermore, we are concerned that the forced distribution of ratings at the outstanding and exceeds fully successful levels challenges an underpinning factor of the SES system that agencies make meaningful distinctions in performance. Senior Executives face a high barrier of entry into the corps; therefore a normal distribution of performance should not be expected nor imposed.

The VA Secretary has authority to sign-off on every SES performance appraisal. Complaints or reports from various oversight bodies are already taken into account in assessments of executive performance. Inspectors General are already consulted prior to issuance of performance awards. Yet it is important that only substantiated complaints or reports are used in such assessments—it is unfair for an individual's

[1] http://www.nytimes.com/interactive/2014/05/29/us/reports-on-va-patient-wait-periods.html?_r=1

[2] https://seniorexecs.org/images/documents/Deteriorating_Pay_for_Performance.pdf

performance to be negatively affected by unconfirmed allegations. It is not unusual that executives seeking to improve performance may find themselves the subjects of union grievances or EEO complaints which are later found to have no merit.

SEA does not believe Congress should be in the business of micromanaging agencies by reviewing every performance appraisal. However, if the Committee persists in seeking this authority, then any information on performance appraisals provided to Congress should also be provided to the employee, along with notice that the information has been provided to Congress. Additionally, SEA strongly believes that protections should be put in place that prevents the public release of such sensitive personnel records by Congress along with strict penalties for doing so.

SEA suggests adding language under Section 3, subsection (3)(b), to require that before embarking on any rotations, the Secretary must develop a comprehensive human capital plan that ensures that rotations are appropriate, serve a business purpose, and won't negatively impact agency operations. On a related note, in subsection (b) of the same Section (review of SES Management Training) SEA also recommends language be added to include a review of the VA's talent development pipeline and training programs for rising leaders in the agency, as well as for training of noncareer executives, including political appointees.

Regarding Section 2 of the bill, SEA agrees that should an employee be convicted of a felony related to their job duties, then they should not receive service credit toward their pension for the year or years in which the felony was committed. This provision should be narrowly tailored to ensure that the felony conviction is final (no pending appeals) and that the conviction is tied to the employee's job (e.g. embezzlement of agency funds). The legislation should also make clear that the pension claw back is only for the time period in which the felony is committed, as determined by the courts and not the Secretary.

Regarding Section 4 of the bill, SEA shares the concern of many Members of Congress about the misuse of administrative leave at the VA and across the government. Yet this bill does not put an end to the ability of agencies to abuse administrative leave, but rather simply creates new reporting and tracking requirements. SEA is currently crafting a bipartisan legislative solution with Senators Grassley and Tester to address the issue of administrative leave abuse.

S. 1856

Last year when Congress passed the Choice Act, very few Members expressed concern for the constitutional rights of VA Senior Executives. Neither did President Obama, who welcomed the authority to more easily terminate VA SES in his signing statement for the bill. With new legislation (S. 1082/H.R. 1994) broadening the application of the section 713 authority to the entire VA workforce, albeit in a far less onerous manner, many lawmakers and the President are now expressing concern for the constitutional rights and protections afforded to employees working at the VA.

Yet, Section 2 of this legislation maintains the section 713 authority pertaining to VA SES, while affording a completely distinct standard for suspension and removal, and more robust due process, including the ability to appeal to the full Merit Systems Protection Board (MSPB) and judicial review of a MSPB decision. Such a position sends the wrong message to the workforce, and to the American people, namely, that there are two classes of Federal employees (citizens) in the eyes of congressional representatives—those in unions and those who are not, and that those represented by unions receive more favorable attention by lawmakers.

If the cosponsors to S. 1856 believe there are provisions contained in S. 1082/H.R. 1994 which are unconstitutional and violate the rights of Federal employees, then SEA implores you to work to retroactively repeal the far more onerous provisions contained in Section 707 of the Veterans Access, Choice, and Accountability Act of 2014 that applied to VA Senior Executives (i.e. the section 713 authority), and not rely on the courts to mend the errors of congressional action.

Furthermore, rather than waiting on passage of this legislation, SEA urges the supporters of this legislation to immediately submit to the Government Accountability Office (GAO) a request consistent with Section 13 of the bill. At a time when authority similar to that of section 713 is being considered for the rest of the VA workforce, it is imperative that Congress and the VA understand the effects of section 713 on the VA SES as soon as possible.

SEA appreciates the intent of Section 3, that political appointees have performance plans by which they can be held accountable. However, SEA cautions against micromanaging the elements to be included in such performance plans, as doing so may restrict needed agency flexibility to tailor performance plans based on position.

SEA generally supports Sections 4, 5, 6, 7, 8, 9, 10, and 12 of the bill. Regarding Section 4, it is important that the probationary period be used appropriately, and SEA supports managers pro-actively certifying that employees have completed their probationary period. In Section 5, SEA has concerns with legislating performance management. In particular, the inclusion of (2) on employee engagement can well be perceived to be an effort by the Partnership for Public Service, creator of the annual "Best Places to Work in the Federal Government," to derive business based on a legislative mandate.

While SEA agrees with Congress that abuse of administrative leave must be addressed, SEA is concerned that Section 11 may be unconstitutional. The House and Senate VA Committees are not the personnel office of the VA. As indicated above, SEA is currently crafting a bipartisan legislative solution with Senators Grassley and Tester to address the issue of administrative leave abuse.

CONCLUSION

The singular focus of Congress on providing punitive authorities to address the issues at the VA belies fundamental truths that all good employers understand, and which Congress, as the board of directors of the Federal Government, has an imperative to understand—when employees know how their job contributes to an organization's mission, their contributions are recognized and rewarded, and their supervisors and leaders listen to concerns and feedback and act on it, that the organization will see heightened employee engagement, and as a result, improved organizational performance.

Punitive measures and authorities and creating new, unnecessary bureaucracies will not result in improved organizational performance or services to our Nation's veterans. Legislation cannot change organizational culture, nor do culture changes come about quickly. Sufficient legislative authority already exists to deal with poor performance and misconduct of VA employees.

What is needed at the VA is a sustained, positive investment by the Congress in the organization's strongest asset—its people. Employees need to have the training, resources, and knowledge necessary to fulfil their duties, whether those duties are providing front-line service to veterans or managing the workforce. This is an important area for congressional attention, sorely lacking in the debate around the VA. If left unaddressed, no amount of new accountability authorities, whistleblower protections, or any other provisions of these bills will make a dent in the issues at the VA.

It's time for Congress to move beyond its current focus—accountability—and have a real conversation with all stakeholders, including employee groups, about the significant issues facing the VA and its workforce in order to chart a realistic path toward reform together. SEA stands ready to work with Members to pursue meaningful, constitutional reforms to improve the VA and its workforce.

Sincerely,

CAROL A. BONOSARO,
President.

PREPARED STATEMENT OF DR. SCOTT WYATT, PRESIDENT, SOUTHERN UTAH UNIVERSITY

Chairman Isakson, Ranking Member Blumenthal, and Distinguished Members of the Committee: Thank you for the opportunity to weigh in through this written statement on the issue of the proposed aviation education tuition and fee caps within the Post-9/11 GI Bill program.

As President of Southern Utah University, I am proud that our public institution of higher learning offers students from all over the world the opportunity to receive professional aviation training as part of a 4-year bachelors degree program. We are one of the few public universities in the country to offer this combination of high-quality education and training, and we are especially proud that so many veterans chose our school and our aviation program to continue their education after completing their military service.

Unlike many post-secondary degree programs today, aviation is one of the few fields of study and training that enjoys very high placement rates and leads to significantly higher than average starting salaries for students who complete the program and acquire the requisite number of training hours desired by employers in the industry. This is especially true of turbine-engine rotor-wing (i.e., helicopter) training.

The education and training required to become a professional helicopter pilot is certainly more costly than the education and training required to become a teacher, a mechanic, a banker, or many other professions that college graduates may pursue. However, rotor-wing aviation is also a field in which the investment in education and training yields a very high return on that investment, a qualification for a high-demand job market, and the potential for graduates to realistically build a stable career and a better life for themselves and their families post-service.

Because those who serve in the military are exposed to the various subfields of aviation in the course of their service at a much higher rate than are civilians, many veterans either have or develop an affinity for the field of aviation, and subsequently desire to pursue a post-service education and career in aviation with the help of their VA education benefits.

Veterans have used their GI Bill benefits for professional flight training for decades, dating back to the old Montgomery GI Bill benefit. As with most post-secondary undergraduate degree programs, the Post-9/11 GI Bill program, passed by Congress in 2008 and improved upon with further expansions of the benefit in 2010 and 2014, covers the full cost of aviation education at public institutions of higher learning.

Veterans who have served honorably, and especially those who have borne the burden of fighting the longest wars in our Nation's history, deserve to take full advantage of this benefit that they have earned, and many chose to use it to pursue their dream of a career in professional aviation. This field has always been covered by the GI Bill program, and it being covered fully at public institutions under the New GI Bill program is in line with and consistent with the intent of that benefit program to cover the full cost of a new veteran's chosen undergraduate program at any public college or university.

Because there have historically been some entities and even some students that have abused various VA education benefit programs, Congress and the VA long ago implemented various statutory and regulatory safeguards that were designed to control the quality and cost of programs of education without placing arbitrary caps on those programs or trying to artificially legislate market prices. Instead, Congress has allowed free market principals to dictate the value of programs of education to consumers.

Oversight mechanisms such as the 85/15 Rule, the 90/10 Rule, the Two-Year Rule, and others have effectively and consistently controlled the cost and quality of higher education programs for decades, including with aviation education and training programs like the one at Southern Utah University. However, in the past two years, the implementation of these long-effective oversight mechanisms by the Department of Veterans Affairs (VA) has deteriorated. They have recently been inconsistently and arbitrarily applied and reinterpreted, often by unaccountable regional and local bureaucrats far removed from VA Central Office and leadership.

These failures on the part of VA to properly and consistently enforce these long-standing and highly effective program oversight regimes have, naturally, recently resulted in several examples, however rare, of eye-popping tuition and fee bills for flight training, the fault and responsibility for which have been deflected away from VA and improperly and erroneously laid at the feet of the public institutions of higher learning who offer this training.

One example of the frustrations that public institutions such as Southern Utah University have had in dealing with the VA relates to satisfactory academic progress. VA is supposed to follow institutional policies on satisfactory academic progress, in other words on the number of times a student is allowed to fail and then re-take a course. However, in several cases VA officials have overruled our institutional policy, designed to protect institutional resources and student education benefits, and compelled us allow student veterans who have repeatedly failed helicopter skills flight labs to repeat those skills labs four, five, and even six times.

With professional flight training already being one of the more expensive programs of education, it is not hard to see how five or six repeats of one single course can quickly drive up a tuition and fee bill and drain a student veteran's GI Bill entitlement. However, as in the case of the above-referenced student veteran (who has become the subject of recent unfair, unbalanced, and incomplete media reporting as well), these unreasonably high tuition and fee bills are actually the result of VA deviating from long-established cost-control policies and not the fault of the institution.

Another example relates to the use of "incompletes" to allow a student to succeed in a course in the most economical way. Most institutions of higher learning, including ours, allow students to receive a grade of incomplete at the end of a course if they need a little extra time to complete an assignment, take an exam, or master a skill in order to satisfactorily complete a course. In aviation training, this would

mean that a student might need an extra two or three hours of practice on a particular maneuver in order to be able to pass the FAA Practical Exam for that course.

If a student is approaching the end of a semester or course period, our institutional policy allows students to receive an incomplete in that course, spend a few additional flight hours practicing or taking a brief tutoring lab, then take and hopefully pass the FAA Practical Exam for that course. However, in several cases VA has disallowed the use of incompletes, required our instructors to fail the student, and required the student to repeat the 40- or 45-flight-hour course in full. And when students have to pay for use of aircraft by the hour, one can see how forcing him or her to pay for an additional 35–40 hours of unneeded flight time is highly wasteful.

Schools like ours do not want students taking up precious flight time and occupying expensive aircraft unnecessarily. Aviation training equipment, especially our aircraft, is expensive and in limited supply, and our desire and goal is to educate and train our students as efficiently and safely as possible so that other students whose dream is also to become a professional helicopter pilot are able to use the equipment to train without unnecessary delays. If the VA were to go back to following their own well established policies and deferring to our institutional policies when appropriate, the outlier tuition and fee bills that have raised red flags and resulted in over-reactive legislation like Congress is considering again today would simply not exist.

Solutions already exist to control the cost of programs of education, ensure the quality of those programs, make sure a student veteran's GI Bill benefit is being properly utilized, and safeguard the taxpayer investment in these veterans' careers and futures as a reward for their honorable service. Legislating additional arbitrary and misguided burdens and caps on these high-quality programs that have served as facilitators of veterans' upward socio-economic mobility for decades is simply unnecessary.

Mr. Chairman, again I thank you for the opportunity to share with you these views, concerns, and recommendations from the perspective of a public institution of higher learning with a highly successful track record of offering professional aviation education and training and of serving many of America's finest veterans. We are eager and stand ready to further engage with you, your staff, and the wider stakeholder community to further educate and work with you on this complex and highly consequential issue.

Thank you.

PREPARED STATEMENT OF WILLIAM HUBBARD, VICE PRESIDENT OF GOVERNMENT AFFAIRS, STUDENT VETERANS OF AMERICA

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Chairman Isakson, Ranking Member Blumenthal and Members of the Committee:

Thank you for inviting Student Veterans of America (SVA) to submit our testimony on various legislative proposals and discussion drafts currently before the Committee. With over 1,200 chapters across the country, we are pleased to share with this committee the perspective of those most directly impacted by several of these important topics.

Established in 2008, SVA has grown to become a force and voice for the interests of veterans in higher education. With a myriad of programs supporting their success, which includes rigorous research, development-seeking ways to improve the landscape, and advocacy throughout the nation, we place the student veteran at the top of our organizational pyramid. As the future leaders of this country, nothing is more important than the success of student veterans in school as they prepare for productive and impactful lives.

We would like to highlight our position, the legislative intent, and potential considerations for the Committee regarding S. 1460, the *"Fry Scholarship Enhancement Act of 2015"*; S. 1938, the *"Career Ready Student Veterans Act of 2015"*; and the *"Discussion Draft, a bill to make improvements in the laws administered by the Secretary of Veteran Affairs relating to educational assistance, and for other purposes"*.

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S. 1460, the *Fry Scholarship Enhancement Act of 2015*

Last year, SVA publicly declared strong support for Section 701, the *"Expansion of Marine Gunnery Sergeant John David Fry Scholarship"* of the *"Veterans Access, Choice, and Accountability Act of 2014"* (Choice Act). Over the past decade, and even more prominently over the past several years, military families have demonstrated an integral function of support for our servicemembers. As a reflection of this support, the Post-9/11 GI Bill maintains transferability to spouses and dependents as a recognition of the role they play in the life of all veterans. The transferability option provides precedent that the Fry Scholarship is more than appropriate, given the sacrifices of those families who lost members of their family to service.

It is clear to us that the transferability option additionally provides precedent for the application of the Yellow Ribbon Program. We believe this change is consistent with the intent of congress under the Post-9/11 GI Bill and the Choice Act. Application of the Yellow Ribbon Program is both a natural extension of the benefit as well as economically advantageous to taxpayers; to be able to complete degrees or certificates without debt allows gold star families to progress in their careers unhindered by loan repayments, thereby allowing them to re-invest sooner in the economy and their communities. For SVA, this is an obvious fix and provides a simple measure of appreciation that should already exist.

S. 1938, the *Career Ready Student Veterans Act of 2015*

When young men and women enter the armed forces, many know they can count on the promise of furthering their lives through their lessons in leadership and the opportunity to go to school on the Post-9/11 GI Bill. Unfortunately, some come to find out that their hard work and studying does not produce what they had hoped, due to the lack of programmatic accreditation of their school. All GI Bill dollars must tie to programs with the proper certifications and licensures required for proper accreditation.

This proposal will enforce what many of us take for granted—an open and honest expectation that hard work will yield results. When some programs sell their courses as a path to a viable career, only to leave students short from their goals, the benefit of the GI Bill is wasted. It is our sincere intent to ensure that all GI Bill dollars produce the highest return on investment for our student veterans and the taxpayers. This legislation is necessary to ensure that all forms of educational assistance utilized by student veterans meets the instructional curriculum licensure or certification requirements of the state. Courses that do not follow this standard are setting up our veterans for failure.

Moreover, we support the requirement that the appropriate board or agency approve programs in a state when the career path requires such approval or licensure. With these requirements in-mind, we accept that there will be unique cases and support the Secretary's authorization to wait these requirements, but only under limited and clearly defined circumstances. We also hope to see this proposal applied evenly across all sectors of education. In some cases, there is an over-emphasis on the for-profit, non-profit or public sector, thereby allowing issues to go unnoticed elsewhere. It is necessary to apply the advantages of this proposal to all actors in higher education.

Discussion Draft, a bill to make improvements in the laws administered by the Secretary of Veterans Affairs relating to educational assistance and for other purposes

Since 2008, various proposals have sought to adjust course with the Post-9/11 GI Bill as we learned lessons through practical application of the benefit. As SVA has supported previous legislative fixes, we are also supportive of this discussion draft and we will identify our position on the various sections.

- *Section 1, "Recodification and improvement of the election process for the Post-9/11 Educational Assistance Program"*

  As we are seeing this fall semester, the Department of Veterans Affairs (VA) has significant challenges to processing the volume of veterans enrolling in school as they transition out of the military. Current backlogs estimated at several weeks, and any additional delays would be a further hindrance for veterans. In the case of Section 1 of this proposal, we believe the clarification of the business processes will be a benefit to the veteran, VA, and the taxpayers.

It is our intention to push for the timely distribution of funds at every opportunity, as we believe the process should not be a barrier to education for veterans. We are pleased about the thoughtful approach taken with this section, in particular the inclusion of Subsection 3326.(F)(3)(h)(2), *"Notice"*. This section will decrease redundancies with the typical processes, but still allow for modification. We would like similar proposals to take an equally measured approach.

- *Section 2, "Centralized reporting of veteran enrollment by certain groups, districts, and consortiums of educational institutions"*

  SVA is supportive of efforts that would streamline the ability of VA to perform reporting and real-time research on the student veteran population. A consistent challenge to accessing the most recent data is the consolidation of information, and we support this effort.

- *Section 3, "Clarification of assistance provided for certain programs of education"*

  Last November, SVA testified to the House Veterans Affairs Subcommittee on Economic Opportunity regarding the ability of schools to contract out certain programs for exorbitant fees. This issue results in the government covering the costs of programs well-beyond the market norm for some flight programs or electives. With the intent of creating a clear and reasonable solution, SVA accepted the National Association of State Approving Agencies (NASAA) proposal to reasonably cap such programs consistent with other courses of education.

  Many of these flight programs existed before the establishment of the Post-9/11 GI Bill; alleging that cutbacks will prevent them from properly operating is a false threat. Additionally, it is important to recognize that countless numbers of flight schools effectively operate at levels well below the proposed cap. Our concern is partly based on the observation of pricing for many of these programs increasing as much as 80%, despite only 30% increases in enrollment, following the passage of the Post-9/11 GI Bill. This precedent is a hazard to the overall impact of the Post-9/11 GI Bill and we believe this section presents a reasonable option.

  We believe abuses by actors willing to view the Post-9/11 GI Bill as the core feature of their business model is the true risk to the longevity of the benefit, and not the installation of reasonable standards that ensure the endurance of the benefit. SVA is also in favor of additional protective measures such as proper enforcement of the 85-15 rule—coordination of the two policies are critical to the integrity of the program.

  SVA maintains serious concerns over the costs associated with this loophole. For example, one university in Utah collected a total of $15,702,297 last fiscal year, while only preparing 68 students for flight careers, according to VA data. To say that the training or equipment is costly is not an excuse for gross abuse of the generous education benefits afforded by the Post-9/11 GI Bill, and we are pleased that this Congress seeks to address this issue.

- *Section 4, "Provision of information regarding veteran entitlement to educational assistance"*

  SVA is encouraged by the prospect of a secure information technology infrastructure between institutions of higher learning (IHL) and VA. While some programs and infrastructure currently exist, a clean interface with the ability to share up-to-date information—specifically regarding the remaining benefits of each individual veteran—would be very powerful. We believe this would aid in proper counseling of student veterans and have a direct impact on their success.

- *Section 5, "Role of State Approving Agencies"*

  Recent changes to the role of the State Approving Agencies (SAA) has affected the allocation of finite resources, shifting them from the areas where they need resources most. Then, in 2011, Public Law 111-377 affected how the SAAs operate. Responsibility for performing approvals split, to include the Secretary of VA, while the SAAs were to increase their role in compliance measures. This shift in resources away from the significant duty to perform approvals has diverted specialized resources away from mission-critical functions. The SAAs bring an implicit capability that should receive greater emphasis: their capacity for judicious discretion.

  The SAAs across the country have the ability to call for a review of a school, even if the IHL triggers no specific standards. The goal of the SAAs, in our view, should be to have their success go unseen by the student veteran; if the SAAs perform their job well, the true beneficiaries will remain unaware. The clarification of the SAAs authority is critical to their ability to maximize effectiveness. We believe the approval process to be the preventative medicine for issues that would otherwise stem from low-quality programs underserving the interests of student veterans. This proposal would establish the SAAs as the primary body for program review, and SVA is supportive of this section.

- *Section 6, "Criteria Used to Approve Courses"*

  As previously stated, SVA urges Congress to consider all sectors of higher education when crafting legislation. We have concern that that focusing on individual sectors of education allows other schools to avoid proper oversight practices. This section establishes an increasingly uniform standard with similar expectations for all schools. To establish a reasonable standard for all schools is well-within reach, and we support this section.

- *Section 7, "Compliance Surveys"*

  The streamlined collection and consolidation of data efforts is a priority issue for SVA, as noted in our comments regarding Section 2. While conducting the *Million Records Project* last year, we found the expansive need to collect additional data on student veterans through more efficient means. This section facilitates the collection of critical data on an annual basis, and SVA supports this section.

Our Final Thoughts

The intent of the Post-9/11 GI Bill, formally referred to as the *"Veterans Educational Assistance Act of 2008"* is clear: education opportunities for veterans. We have always recognized that while not every veteran will take advantage of this opportunity, it should always be there for those who served our country. Our veterans have earned this education benefit and it is up to our nation protect the integrity and longevity of the program.

Previous bills with similar components as the modern Post-9/11 GI Bill have demonstrated remarkably high returns on investment for the taxpayers. It is our goal to repeat similar and improved outcomes for this generation of veterans, and we thank those who work tirelessly on their behalf for their ceaseless efforts.

We are appreciative of the opportunity to comment on S. 1460, the *"Fry Scholarship Enhancement Act of 2015"*; S. 1938, the *"Career Ready Student Veterans Act of 2015"*; and the *"Discussion Draft, a bill to make improvements in the laws administered by the Secretary of Veteran Affairs relating to educational assistance, and for other purposes"*. The proposals reviewed under this committee represent an important step forward for veterans, their families and the impact of the Post-9/11 GI Bill.

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We thank the Chairman, Ranking Member, and the Committee members for your time, attention and devotion to the cause of veterans in higher education. As always, we welcome your feedback and questions and we look forward to continuing to work with the Senate Committee on Veterans' Affairs and the entire Congress to ensure the success of all generations of veterans through education.

PREPARED STATEMENT OF MICHAEL SAUNDERS, NATIONAL DEPUTY LEGISLATIVE DIRECTOR, THE RETIRED ENLISTED ASSOCIATION

The Retired Enlisted Association (TREA) believes that it is very possible that Section 102 of H.R. 475 will slash veteran benefits for degree programs that include flight training at public colleges and universities. Section 102 of H.R. 475 seeks to cap the tuition for flight training at a number that is significantly below the actual cost to provide the number of flight training hours that are required by the industry to secure employment.

Although the Department of Veterans Affairs (VA) consistently lists aviation as a high demand career, its proposal to Congress that is included in H.R. 475 would essentially serve as a financial impediment for veterans seeking a career in the aviation industry while the U.S. faces of one of the worst pilot shortages in history.

Apparently the sponsors of Section 102 in the House of Representatives believed that imposing a cap on flight training education for veterans would generate sufficient savings to pay for other favored legislative initiatives. However, based on CBO's subsequent score of the overall bill, those assumptions were grossly inaccurate and the assumed savings from rolling back this benefit fell short by nearly $150 million.

Finally, we believe Section 102 may also be duplicative and unnecessary, as the 85–15 and Two-Year rules are already valid and effective tools for reigning in abusers within this program of education. There is simply no need for additional legislative action on this topic. Instead, the VA needs to consistently enforce the longstanding and valid statutes currently in place that already deal with this issue.

PREPARED STATEMENT OF SUSAN TSUI GRUNDMANN, CHAIRMAN,
U.S. MERIT SYSTEMS PROTECTION BOARD

Chairman Isakson, Ranking Member Blumenthal and distinguished Members of the United States Senate Veterans' Affairs Committee ("Committee"). Thank you for the opportunity to present written testimony on behalf of the United States Merit Systems Protection Board ("MSPB"), an independent, quasi-judicial agency in the executive branch of the federal government. As the Chairman of MSPB, I am pleased to present written testimony for the record for this hearing on health care and benefits legislation pending before the Committee. Chairman Isakson has asked that MSPB present written testimony on each agenda item for which MSPB has a position or an interest and that "of particular interest to the Committee is MSPB's views on S. 1856 and any constitutional concerns."

As an initial matter, as I have stated in previous written testimony for the record to this Committee, under statute, MSPB is prohibited from providing advisory opinions on any hypothetical or future personnel action in the executive branch of the federal government. 5 U.S.C. § 1204(h) ("The Board shall not issue advisory opinions."). Accordingly, this testimony should not be construed as an indication of how I, any other presidentially-appointed, Senate confirmed Member of the three-Member Board at MSPB Headquarters in Washington, D.C. ("Board"), or an MSPB administrative judge would rule in any pending or future matter before MSPB. Instead, I would respectfully request that the Committee consider this testimony technical in nature.

Also, I note that as a quasi-judicial agency, MSPB does not have the legal authority to determine the constitutionality of federal statutes. The Civil Service Reform Act grants both MSPB and federal courts with authority to review certain adverse personnel actions taken against employees in the federal government. However, with respect to the question of whether a statute itself is constitutional, MSPB's primary responsibility is to develop a record, take evidence, and find

facts that could assist a federal court in determining that question. *Elgin v. Treasury*, 132 S.Ct. 2126, 2138 (2012). Thus, consistent with the Committee's request, while I am happy to provide my personal views and/or concerns regarding the constitutionality of one of the bills pending before the Committee, I stress that the ultimate determination of any such question would need to be made by a federal court and would likely depend on the facts and circumstances of a particular case.

A. MSPB's Interest in S. 1856, The "Department of Veterans Affairs Equitable Employee Accountability Act of 2015"

MSPB's interest in S. 1856, the "Department of Veterans Affairs Equitable Employee Accountability Act of 2015," introduced by Ranking Member Blumenthal, derives from its statutory responsibility to adjudicate appeals filed by federal employees in connection with certain adverse employment actions. As I have previously explained to the Committee, generally, after a federal agency imposes an adverse personnel action upon a federal employee, such as removal or demotion, and the federal employee chooses to exercise his or her statutory right to file an appeal with MSPB, MSPB will begin the adjudication process. In the case of a federal employee who is removed from his or her position, that individual is no longer employed by the federal government, and is not receiving pay, at the time he or she files an appeal with MSPB or at any point during the subsequent MSPB adjudication process.

Once an appeal is filed, an MSPB administrative judge[1] in one of MSPB's regional or field offices will first determine whether MSPB jurisdiction exists over the appeal. If jurisdiction does exist, the MSPB administrative judge may conduct a hearing on the merits and then issue an initial decision addressing the federal

[1]MSPB administrative judges are federal employees under the General Schedule System employed by MSPB. They are not "administrative law judges" appointed under 5 U.S.C. § 3105 nor federal judges.

agency's case and the appellant's defenses and claims. Thereafter, either the appellant or the named federal agency may file a petition for review of the MSPB administrative judge's initial decision to the Board, which will review that decision and then issue a final decision of the MSPB. Both the Board and MSPB administrative judges adjudicate appeals in accordance with statutory law, federal regulations, precedent from United States federal courts, including the Supreme Court of the United States and the United States Court of Appeals for the Federal Circuit, and MSPB precedent.

B. S. 1856 – The "Department of Veterans Affairs Equitable Employee Accountability Act of 2015"

In pertinent part, S. 1856 would provide the Secretary of the Department of Veterans Affairs ("Secretary" and "Department") with the authority[2] to:

1. Suspend without pay an employee[3] of the Department if the Secretary determines the performance or misconduct of the employee is a clear and direct threat to public health or safety; and

2. Remove an employee suspended in the manner referenced above if the Secretary determines that removal is necessary in the interests of public health or safety.

After suspension, but prior to removal, a covered employee is entitled to the following rights under S. 1856:

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[2] The authority provided to the Secretary in S. 1856 is "in addition to the authority provided under section 713 and subchapter V of chapter 74 of [title 38 of the United States Code] and with title 5 [of the United States Code] with respect to disciplinary actions for performance or misconduct." Thus, if S. 1856 were enacted into law, it would provide the Secretary with an alternative procedure with which to take disciplinary action, but that procedure would not be mandated.

[3] S. 1856 defines an employee as "any individual occupying a position within the Department under a permanent or indefinite appointment and who is not serving a probationary or trial period."

1. Not later than 30 days after the date of the suspension, a written statement of the charges against the employee;

2. A reasonable opportunity, but not less than 7 business days, to answer the charges orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

3. At the request of the employee, not later than 15 business days after such request, a formal review by a Department authority where the employee may be represented by an attorney or other representative;

4. A review of the case by the Secretary before a final adverse decision against the employee is made;

5. As soon as practical, a decision of the Secretary with respect to the charges against the employee; and

6. A written statement of the decision of the Secretary that includes the specific reasons for the removal.

S. 1856 further provides that in the event that the Secretary determines that the suspension or removal is either not warranted or constitutes a prohibited personnel practice, the employee shall receive back pay "equal to the total amount of pay" that the employee would have received during the period that the suspension or removal was in effect, minus any compensation earned by the employee through other employment.

Finally, S. 1856 would allow an employee suspended or removed to appeal the final decision of the Secretary to the Merit Systems Protection Board, "under section 7701 of title 5" and to "obtain judicial review of a final order or decision of the Merit Systems Protection Board under [5 U.S.C. § 7703]. " S. 1856 provides no limitation on the manner in which MSPB may review an appeal[4].

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[4] S. 1082 and S. 1117, legislation similar to S. 1856, would prohibit the three-member Board, which consists of presidentially-appointed, Senate confirmed political appointees, from reviewing appeals filed at MSPB by covered employees. Specifically, MSPB administrative judges (career federal employees), and not Senate confirmed political appointees, would be in a position to make a final determination on behalf of an executive branch agency. As I noted in my previous

C. MSPB's Views on The "Department of Veterans Affairs Equitable Employee Accountability Act of 2015"

1. Due Process Considerations

On June 23, 2015, MSPB submitted written testimony to this Committee presenting views on S. 1117, The "Ensuring Veterans Safety Through Accountability Act of 2015," which Senator Johnson introduced, and S. 1082, The "Department of Veterans Affairs Accountability Act of 2015," which Senator Rubio introduced. Both bills generally provide the Secretary with expanded authority to remove or demote employees at the Department and also provide limited MSPB appeal rights to those employees and no right to judicial review.

In my view, the primary difference between S. 1856 and the two bills referenced above is that S. 1856 would *require* the Department to provide an employee who is suspended with the right to notice and an opportunity to respond *prior to his or her ultimate removal.* I note that S. 1856 does not require that a covered employed be provided with these rights *prior to his or her suspension without pay*[5]. The language of S. 1856 tracks the language of 5 U.S.C. § 7532, the statutory provision that allows the head of an agency to suspend employees

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testimony, an identical provision of law enacted in 2014 is currently being challenged at the United States Court of Appeals for the Federal Circuit on the grounds that, by prohibiting the Board members from participating in the MSPB adjudicatory process, the law violates the Appointments Clause contained in Article II, Section 2 of the United States Constitution.

[5] In *Gilbert v. Homar*, 520 U.S. 924, 933-34 (1997), the Supreme Court concluded that, under the circumstances of that case, a public employee's right to due process was not violated when he was suspended without advance notice. It noted, however, that "[o]nce the [suspension] charges were dropped, the risk of erroneous deprivation [of due process rights] increased substantially." *Id.* at 935. Accordingly, it remanded the case to the court of appeals to determine whether, under the facts of the case, the hearing was sufficiently prompt to satisfy the requirements of due process. In other words, the lesson of *Homar* is that basic due process is situationally dependent on the facts of each case.

without pay when it is determined that such action is necessary *in the interests of national security.* (This is different from the standard set forth in S. 1856: a threat to, or in the interest of, "the public health or safety.") After the employee is afforded similar post-suspension rights as required under S. 1856, he or she may be removed. 5 U.S.C. § 7532(b) and (c). In *Dep't of Navy v. Egan*, 484 U.S. 518, 532-33 (1988), the Supreme Court stated that the procedure established under 5 U.S.C. § 7532 is "harsh and drastic for both the employee and the agency head." I am not aware, however, of any decision by a federal court concluding that the procedure provided for in 5 U.S.C. § 7532 is unconstitutional on its face.

As I noted in my previous written testimony to the Committee, in May 2015, MSPB released a study[6] entitled *What is Due Process in Federal Civil Service Employment?* The report provides an overview of current civil service laws for adverse actions and, perhaps more importantly, the history and considerations behind the formation of those laws. It also explains why, according to the Supreme Court of the United States, the Constitution requires that any system which provides that a public employee may only be removed for specified causes must also include an opportunity for the employee – prior to his or her termination –to be made aware of the charges the employer will make, present a defense to those charges, and appeal the removal decision to an impartial

[6] In addition to adjudicating appeals filed by federal employees, MSPB is required under statute to:

Conduct, from time to time, special studies relating to the civil service and to the other merit systems in the executive branch, and report to the President and to Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected. 5 U.S.C. § 1204(a)(3).

adjudicator. We encourage Members of the Committee and their staff who have interest in these issues to read this report[7].

In the landmark decision of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) the Supreme Court held that while Congress (through statutes) or the president (through executive orders) may decide *whether to grant protections* to employees, they lack the authority to decide whether they will grant due process rights *once those protections are granted.* Stated differently, when Congress establishes the circumstances under which employees may be removed from positions (such as for misconduct or malfeasance), employees have a property interest in those positions. *Loudermill*, 470 U.S. at 538-39[8]. Specifically, the *Loudermill* Court stated:

> Property cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in public employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without the appropriate procedural safeguards.

Id. at 541.

The Supreme Court explained that the "root requirement" of the Due Process Clause is that "an individual be given an opportunity for a hearing before he is deprived of any significant property interest," and that "this principle

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[7] This report can be found at: http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=1166935&version=1171499&application=ACROBAT

[8] The *Loudermill* case involved a state employee, not a federal employee. Nevertheless, while the Federal Government is covered by the Fifth Amendment and the states by the Fourteenth Amendment, the effect is the same. *See Lachance v. Erickson,* 522 U.S. 262, 266 (1998); *Stone v. Federal Deposit Insurance Corp.*, 179 F.3d 1368, 1375-76 (Fed. Cir. 1999).

requires some kind of a hearing prior to the discharge of an employee who has a constitutionally protected property interest in his employment." *Id.* at 542.

According to the Supreme Court, one reason for this due process right is the possibility that "[e]ven where the facts are clear, the appropriateness or necessity of the discharge may not be; in such cases, the only meaningful opportunity to invoke the discretion of the decisionmaker is likely to be before the termination takes effect." *Id.* at 542. The Supreme Court further held that "the right to a hearing does not depend on a demonstration of certain success." *Id.* at 544.

I also noted in my previous testimony that the requirements of the Constitution have shaped the rules under which federal agencies may take adverse actions against federal employees, as explained by the Supreme Court, U.S. Courts of Appeal, and U.S. District Courts. I suggested that should Congress consider modifications to these rules, many of which have been in place for more than one hundred years, it should ensure that the discussion surrounding those changes be an informed one, and that all Constitutional requirements be considered. By considering S. 1856 as an alternative to S. 1082 or S. 1117, I believe the Committee is ensuring that an informed discussion take place.

2. Additional Considerations

Moreover, as stated above, S. 1856 defines an employee as "any individual occupying a position within the Department under a permanent or indefinite appointment and who is not serving a probationary or trial period." I believe this definition would include Department employees with positions listed in 38 U.S.C. § 7401. Generally, these positions involve employees who provide health care services at the Department. It is my understanding that the Department currently employs nearly 190,000 health care professionals. Under existing law, a significant number of these employees do not possess the right to appeal adverse personnel actions to MSPB. Instead, they are subject to a separate internal disciplinary procedure provided for at 38 U.S.C. § 7461, *et seq.* Under that

procedure, health care professionals at the Department may appeal adverse personnel actions to internal disciplinary appeal boards at the Department and thereafter to a United States federal court. Thus, if S. 1856 were enacted into law, similar to S. 1082 and S. 1117, it would provide the Secretary with the discretion to invoke a disciplinary process that would provide MSPB appeal rights to a significant number of employees who currently do not possess those rights.

This concludes my written testimony for the record. I am happy to address any questions for the record that Members of the Committee may have.

PREPARED STATEMENT OF MICHAEL MOWER, CHIEF OPERATING OFFICER, UPPER LIMIT AVIATION

Thank you for the opportunity to submit a written statement on the draft legislation related to VA education benefits for flight training that is the subject of this legislative hearing today.

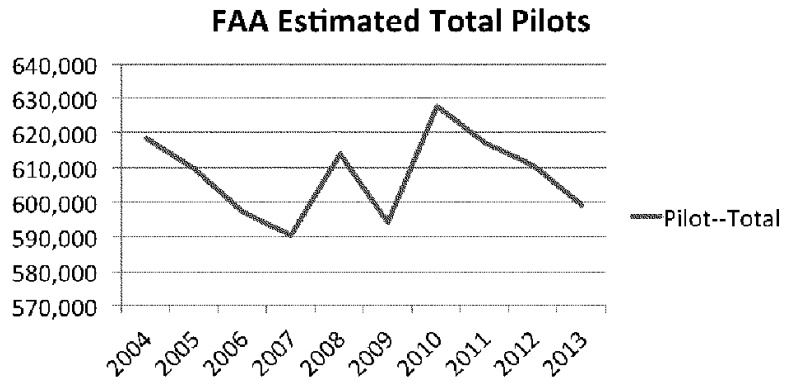
Put simply, the draft bill before you today will slash veteran benefits for degree programs that include flight training at public colleges and universities. This bill, as currently written, would cap the tuition for flight training at a number that is significantly below the actual cost to provide the training. Although the Department of Veterans Affairs (VA) consistently lists aviation as a high demand career, this proposal would essentially serve as a financial impediment for veterans seeking a career in the aviation industry while the U.S. faces one of the worst pilot shortages in history.

The intent of this bill is to prevent schools from taking advantage of GI Bill reimbursements. However, it is ill-conceived and duplicative, since valid and effective rules and regulations already exist that curtail potential abuses by schools seeking to take advantage of student veterans and the taxpayers. In the end, this legislation will destroy well-planned degree programs at public institutions of higher learning across the country that offer flight training to deserving veterans and will eliminate aviation careers for veterans in an industry that is in desperate need of well-trained pilots.

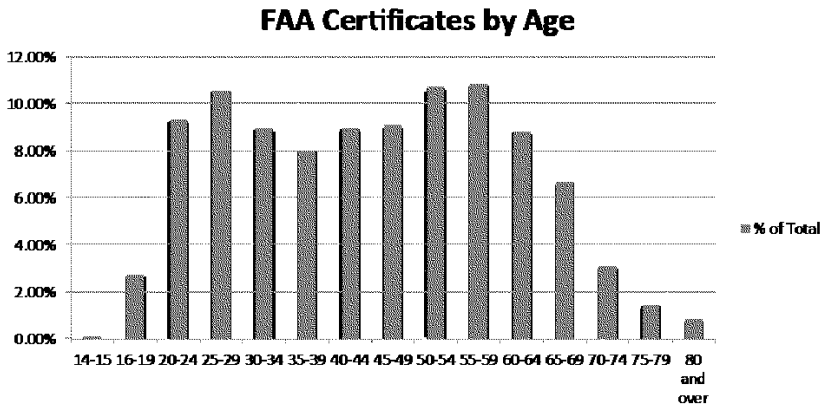
PILOT SHORTAGES

Demand for pilots will increase at a rapid pace over the next several decades, as the United States is currently facing its worst pilot shortage since the 1960's.[1] As global economies expand and tens of thousands of new aircraft come online, the aviation industry will need to supply more than 500,000 new pilots by 2033.[2]

Nevertheless, total pilots holding Federal Aviation Administration (FAA) certificates fell at a CAGR of 0.36% from 2004–2013 (see chart, "FAA Estimated Total Pilots").[3] In 1989, a total of 110,541 FAA flight tests were conducted in the United States, compared to only 42,440 FAA flight tests in 2014.[4] Adding to the pilot shortage will be the aging U.S. pilot population, as pilots over the age of 50 years old currently hold approximately 42% of FAA pilot certificates (see chart, "FAA Certificates by Age").[5]



[1] Wall Street Journal
[2] Boeing Study
[3] FAA Airmen Certificate Statistics, http:/www.faa.gov/data—research/aviation_data_statistics/civil_airmen_statistics.
[4] FAA Designated Pilot Examiner (DPE) Program Under Watch
[5] FAA Airmen Certificate Statistics,



Moreover, a study conducted by a subgroup of collegiate aviation researchers, including professors from Embry Riddle and 5 other universities, explains that a sharp increase is occurring in the training of foreign pilots in the United States.[6] Using data provided by the FAA's certification branch, the study determined that in 2004 the ratio of U.S. citizens to foreign citizens training in the United States for their commercial pilot certificate was 4.80 to 1.00. In 2012, that ratio had dramatically declined to 1.19 U.S. pilots trained to every one foreign pilot trained (see chart, "US and Foreign Citizens Completing the Commercial Written"). This fact is staggering because many of these foreign pilots will take jobs outside of the U.S., further intensifying the current pilot shortage.

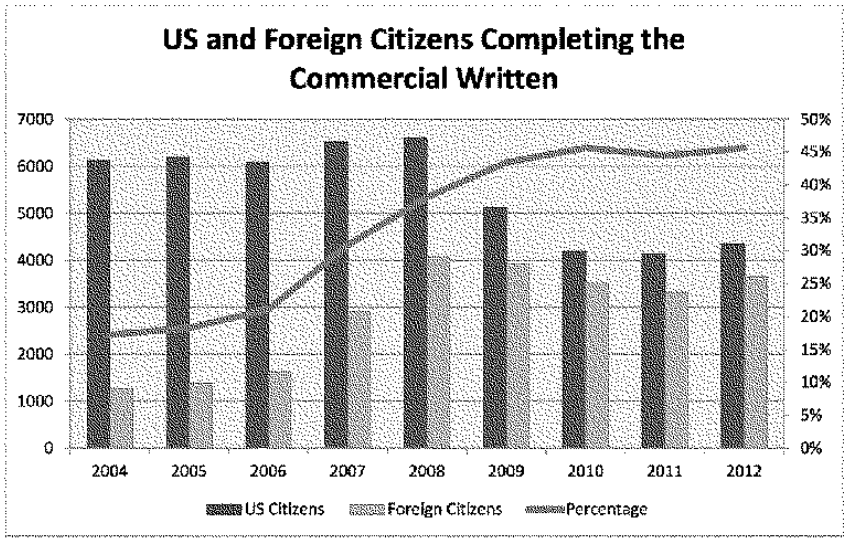


Figure 5. Commercial Pilot Written Examinations by Citizenship

THE 85—15 AND TWO-YEAR RULES

The "85–15" and "Two-Year" Rules are valid exercises of Congress' power intended to curtail abuses by schools seeking to capitalize on veterans and American taxpayers. While the Two-Year Rule bars VA education dollars from going to institu-

[6] An Investigation of the United States Airline Pilot Labor Supply,

tions that have been open for less than two years, the 85–15 Rule prohibits VA education dollars from going to schools unless at least 15% of enrolled students are not using GI Bill funds to pay for the cost of their education at the school. These rules have been in place for decades, and when enforced correctly and consistently by the VA, the rules effectively allow the open market to determine worthwhile and valuable programs—and program prices—for veterans. This bill, which seeks to artificially and arbitrarily legislate a cap on flight training, is unnecessary and flies in the face of the longstanding and legitimate purposes of the 85–15 and Two-Year Rules.

CONGRESSIONAL BUDGET OFFICE (CBO) REPORT

The sponsors of this legislation in the House of Representatives believed that imposing a cap on flight training education for veterans would generate sufficient savings to pay for other favored legislative initiatives. However, based on CBO's subsequent score of the overall bill, those assumptions were grossly inaccurate and the assumed savings from rolling back this benefit fell short by nearly $150 million.

The same CBO cost estimate for the bill also recognized that aviation training necessarily has a high cost of delivery, stemming from the costs of aircraft, fuel, insurance, and rigorous FAA-imposed safety standards. CBO itself determined that reasonable flight training costs averaged out to around $62,000 per year, per student. But the cap proposed by this draft is nearly one-third of the real cost for student veterans to receive this type of advanced professional aviation training.

CONCLUSION

Mr. Chairman, this bill as currently proposed will not only eliminate benefits and aviation career opportunities that were earned through honorable service by veterans, but it will also exacerbate one of the worst pilot shortages in the history of the United States. The bill is also duplicative and unnecessary, as the 85–15 and Two-Year rules are already valid and effective tools for reigning in abusers within program of education.

There is simply no need for additional legislative action on this topic. The VA merely needs to consistently enforce the long-standing and valid statutes and regulations currently in place that already effectively deal with the issues and concerns that have been raised.

Thank you again for the opportunity to share our views with the Committee.

UPPER LIMIT AVIATION,
Salt Lake City, UT, September 20, 2015.

Hon. JOHNNY ISAKSON,
Chairman,
Senate Committee on Veterans' Affairs
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the opportunity to submit to you a written statement, as verbally requested by you at the recent Senate Veterans' Affairs Committee hearing on pending and draft legislation, regarding some of the inaccurate, false, and misleading information about veterans education benefits and professional aviation education and training that was put out to you and other Members of the Committee in oral and written testimony at this hearing.

We, like you, firmly believe that the only way to properly evaluate policy proposals and changes is to do so with proper due diligence, comprehensive and accurate information, and fully informed views from all of those who may be impacted or have a stake in a given issue. Thus, as we expressed to you the week prior to the hearing at our dinner together in Atlanta and the day before the hearing in your office, the premature consideration of the proposal to degrade the Post-9/11 GI Bill benefit by essentially slashing professional aviation training from the program by way of a cap is of grave concern to us all.

As evidence of the premature nature of some of the positions that were offered at this hearing, several of the organizations represented by those testifying at the hearing never sought out the input of either their members or of those who are experts in the aviation education industry and who could weigh in on the impact of this proposal on the programs for which thousands of servicemembers and veterans aspire to use their hard-earned and well deserved Post-9/11 education benefit. In fact, while one organization represented on the panel had previously taken a meeting and spoken to a representative of those who would be affected, another had not

had an opportunity to do so until only three hours prior to the hearing and yet another had not spoken to those who would be impacted at all. In addition, other organizations who submitted written testimony in support of degrading the Post-9/11 GI Bill did not seek out expert, industry, or their members' views, and at least one appears to have even misread the nature of the draft proposal in its entirety.

Furthermore, the Department of Veterans Affairs (VA) itself had not sought the input of experts in aviation education or of those who would be impacted by this proposal prior to the development of their position, and one of the VA witnesses had only engaged with experts and industry representatives for the first time just five hours prior to the hearing.

As you can surely understand from the above circumstances at the time of the hearing, Mr. Chairman, the positions thus presented to you and other Members of the Committee were certainly not developed pursuant to due diligence, with comprehensive and accurate information, nor were they fully informed. As evidence of this, there are consequential differences in the positions submitted by witnesses in written form days before the hearing and the positions to which they testified both at a previous hearing in the House and even orally at the Senate hearing. Whereas some organizational representatives testified solidly in favor of the horrendously misguided and uninformed House version of the proposal, those same organizations backed off on those positions in their written testimony on the Senate side after learning more and/or backed off even further on those positions in their oral testimony before you just days later.

But beyond the critical issue of the views presented at the hearing being premature and still in development at the time, let me speak to some of the outright misinformation that was presented orally at the hearing to you and to other Members of the Committee.

VA TESTIMONY

In my opinion and experience, as someone who has been intimately involved in the provision of professional aviation education and training to veterans for more than a decade, the testimony of the VA witnesses was particularly egregious and irresponsible. In fact, the VA itself is the direct cause of many of the issues about which it is coming before your Committee and complaining, and about which many stakeholder organizations and even suppliers of professional aviation training like us, are upset.

For example, the cost overruns that have resulted in the sky-high tuition and fee bills for a very limited number of students are the result of two primary failures on the part of the VA to consistently enforce its own policies to help control Post-9/11 GI Bill costs. The VA is supposed to respect the policy of educational institutions with respect to satisfactory academic progress in courses, yet VA representatives themselves out in the VA's regional offices (in our case the Muskogee Regional Office) have verbally told schools' certifying officials that schools must override their policy on course repeats allow veterans to re-take repeatedly failed courses using their remaining GI Bill entitlement.

Similarly, the VA is supposed to respect institutions' policies on the use of "incompletes," which it has not in many cases. In programs of education that are expensive to being with, forcing a student veteran to repeat an entire course and re-paying for that entire course and associated lab fees -instead of simply allowing the veteran to take an incomplete, top off their skills training with a few hours of extra practice or a brief remedial lab, and then taking the final exam and receiving their final grade—is unnecessarily costly, wasteful, in violation of institutional policy, in violation of VA's own policy of deferring to institutional policy on "incompletes," and simply irresponsible.

Our schools do not want to be forced to recycle students over and over again who are clearly not cut out to be pilots and whose presence in our limited aircraft with our instructors is both dangerous to our staff and wasteful of the limited time and equipment we have for other students who are making reasonable satisfactory progress in their training. Nor do we want to be putting students through an entire course again who we know can master a required course skill in only a few more hours and move on. Mr. Chairman, it is in our interest also—and reflects on our statistics—to ensure the safety of our students and staff, ensure the most efficient use of our equipment, and ensure that our students complete their courses and our program as quickly (and safely!) as possible.

In addition, the comments within VA's oral testimony regarding the inability of VA to properly enforce the 85/15 rule was contrary to reality and practice. In fact, VA completes 85/15 compliance audits on a per-semester basis. Our school had a stellar record of 100% compliance for eight consecutive years since our founding,

until just two years ago when VA began the first of several arbitrary and capricious changes, some again in violation of its own policies and regulations, to its interpretation of the 85/15 rule.

The truth is, Mr. Chairman, the 85/15 Rule, when properly applied, has done a fine job of ensuring quality education for veterans and weeding out bad actors for four decades. It has only been in the past two years that problems have arisen, and as I explained above many of those problems are directly attributable to the VA's own incompetence and arbitrary changes in administering these laws, rules, and regulations. Yet VA representatives come before you and other Members of the Committee and, just as VHA bureaucrats did last year when their mismanagement of VA medical care was just coming to light, mislead, misspeak, and misrepresent the reality of how VA is administering and overseeing veterans' education benefits and the quality educational institutions that proudly and humbly provide programs of education for veterans and civilians alike in good faith.

Indeed, Mr. Chairman, there are plenty more ways in which the VA has over the years screwed up the administration of VA education benefits not only to the detriment of many quality programs, but also to the detriment of hundreds, if not thousands, of veterans themselves. In the past, when VA moved away from a less costly and more administratively efficient pay-as-you-go policy for professional aviation education and training, overpayments to schools resulted from this change in payment policy by VA.

Schools like ours have an interest in ensuring that students complete their programs of education as quickly (but as safely!) as is possible for them to earn their degree, certificates, and required flight hours to be competitive in the job market. When the VA began inadvertently overpaying for the cost of our training as a result this change, we sent money back to the VA for hundreds of students who completed their programs without using all of the money the VA paid out to us.

However, in nearly 200 cases, the VA would not accept this money back and instead forwarded it directly on to the student. However, in what was surely an administrative mishap, but mismanagement and incompetence nevertheless, VA officials instituted a convoluted recertification regimen to deal with the overpayments and the transfer of the excess funds by VA directly to the veterans, then ended up billing veterans for overpayments, sending them to collections, and ruining their credit records just as they were beginning their civilian professional lives.

While this is a separate issue that is worthwhile for this Committee to investigate, I mention it here not only to bring it to your attention but also to demonstrate the level of incompetence and mismanagement of veterans' hard earned benefits that also goes on within the Veterans Benefits Administration. If properly investigated, Mr. Chairman, I'm sure you and your staff would find that this too is a crisis that has similarly, while perhaps not lethally, ruined the lives of countless veterans who were only seeking to use their VA education benefits in good faith to improve their and their families' lives and livelihoods post-service.

SAA ASSOCIATION TESTIMONY

Neither we, nor to our knowledge any other expert in aviation education or representative of the aviation education industry, have had an opportunity to meet with representatives of the National Association of State Approving Agencies and educate them on the many ways in which the administration of the tools and policies in place to properly regulate and control the costs of flight training are not being utilized or are being arbitrarily enforced. We would have graciously welcomed this opportunity prior to this important organization analyzing the impact of this proposed legislation on the aviation education industry and on the Post-9/11 benefit, and prior to the organization developing its position on this proposal. However, this critical conversation did not occur prior to the hearing, and the result was not only an uninformed position, but the propagation of some very unfortunate misinformation by the Association's witness during oral remarks.

First, the Association's witness claimed that student veterans' tuition and fee bills had in the past reached as high as $900,000. While we have heard some absurdly high claims of aviation education program totals, this was the wildest claim we have heard to date. While we have seen a few rare outlier bills as high as a few hundred thousand dollars, as I explained earlier in this statement these bills (at least the ones that occurred at our institution) were actually the result of the VA's overrides of policies that are in place precisely to prevent such high bills and our school absolutely did not want to jeopardize the safety of our instructors or waste our limited time and equipment on these repeated student recycles.

While there may have been high flight training bills at other institutions, we have yet to see evidence of this presented by the VA, and if so I would strongly suspect

that those were due to similar misapplications and overrides of cost-control policies by other VA officials as well. Regardless, we find the suggestion of the existence of even one flight training bill in excess of $900,000 completely outrageous, and we challenge either the witness or the VA to produce proof of such an outrageous and irresponsible claim.

Second, Mr. Westcott testified that prior to the more generous Post-9/11 GI Bill benefit, veterans attending flight schools only received around $10,000 per year. In fact, this is incorrect. Under the previous Montgomery GI Bill (Chapter 30), the VA covered 60% of flight training costs after the private pilot certificate. This meant that the old GI Bill could cover up to nearly $70,000 for professional flight training costs alone in one year, not even including the tuition for an accompanying degree program like we include in our programs to make our graduates competitively employable and secure. This means that under the proposed low-ball cap, you would not only be slashing the current Post-9/11 GI Bill, but you would be rolling it back to be enormously far less generous than even the old Montgomery GI Bill program.

What the witness was confused about was that when a student attends private vocational flight training under the New GI Bill benefit, they max out at $12,000, and for good reason—the amount of flight training you can receive in a vocational program like these is not anywhere sufficient to become a professionally trained pilot with enough training or flight hours to become employable, rendering private vocational flight training largely a recreational pursuit, for which the GI Bill program was not intended. But under the private vocational school standards of the New GI Bill, even beauty schools are given a much more generous benefit of $24,000 per year rather than the $12,000 currently allocated for vocational flight training.

We maintain, however, that the GI Bill program is best invested in programs of education, whether public or private, that lead to high-paying jobs and stable livelihoods for veterans and their families, and the fact remains that professional aviation education, especially high-demand, turbine-engine, rotor-wing aviation training, while more costly than a philosophy degree or beauty school certificate, remains one of the best returns on investment for veterans, the GI Bill program, and the American taxpayer.

Thank you again, Mr. Chairman, for recognizing my strong objection to and disagreement with several witness oral statements to you at this recent hearing, and for offering me the opportunity to submit additional information to you in writing. We would be happy to continue educating Members of the Committee on the nuances of this issue, the detrimental impact of this proposed legislation on schools and veterans, and the myriad other issues that necessitate congressional oversight with respect to VA's administration and management of veterans' education benefits.

Sincerely,

LOIS REID,
Chief Executive Officer.

STATEMENT FOR THE RECORD

LEGISLATIVE HEARING ON THE
CAREER-READY STUDENT VETERANS ACT (S. 1938)

BEFORE THE

COMMITTEE ON VETERANS AFFAIRS

U.S. SENATE

SEPTEMBER 16, 2015

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Veterans Education Success (VES) appreciates the opportunity to share its perspective on the Career-Ready Student Veterans Act (S. 1938). VES is a non-profit organization focused on protecting the integrity and promise of the GI Bill and other federal educational programs for veterans and servicemembers.

Career-Ready Student Veterans Act (S. 1938)

S. 1938 adopts the same commonsense, bipartisan protections for GI Bill educational benefits that Congress put in place, through the bipartisan 2014 National Defense Authorization Act, for servicemembers who use DOD's Tuition Assistance Program.[1] We believe that it is critical for Congress to extend these same bipartisan protections to veterans using GI Bill benefits.

The goal of this important legislation is simple—to protect the integrity of GI Bill educational benefits and taxpayer expenditures. Earning a certificate or degree does not automatically lead to a job in a veteran's field of study. Some professions, including law, nursing, teaching, and certain healthcare professions, must also meet state licensure and certification requirements as well as employer expectations.

The Department of Veterans Affairs (VA) and its partner, State Approving Agencies (SAAs) approve programs for veterans to attend using their GI Bill benefits. Unfortunately, the Department of Veterans Affairs allows veterans to use their GI Bill benefits for degrees that do not lead to the necessary licensure or certification. Frankly, this is a waste of both veterans' hard-earned educational benefits and taxpayer dollars.

[1] P.L 113-66.

Appropriate Accreditation Is Often the Pathway to a Job

In approving degree programs, VA and SAAs generally rely on standards established by the Department of Education. The Education Department recognizes two types of accrediting agencies—both institutional and programmatic. According to the Education Department, accreditation is the recognition that an institution maintains standards requisite for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.

In general, institutional accreditation, not programmatic accreditation, is a prerequisite for a school to participate in the federal student aid program.[2]

- *Institutional accrediting organizations* are either regionally based (accrediting schools in their geographic region) or national in scope (accrediting schools that have multiple campuses across the country).[3] In some cases, the type of institutional accreditation can limit the ability of schools' graduates to find a job in their field of study. For example, all states require teachers to graduate from a regionally accredited school and some police agencies do as well.

- *Specialized accrediting agencies* focus on specific degrees offered by schools or by a department or college within a larger university.[4] Some of these specialized agencies accredit distance education programs and accreditation by one of these agencies allows schools to participate in federal student aid.[5] For some careers, however, institutional accreditation is not sufficient: Proper accreditation at the programmatic level by a specialized accrediting organization is necessary. For example, lawyers must graduate from a law school accredited by the American Bar Association to sit for Bar Exam, which is required in all but a few states to practice law. Similarly, you simply cannot become a licensed clinical psychologist unless the PhD program you attend is accredited by the American Psychological Association.

State Boards and Employers Also Play a Role in Determining Who Gets Hired

At the state level, various boards and entities determine licensing and certification requirements, including Boards of Nursing and Dentistry, state bar admission associations, and state Departments of Education. For law enforcement officers, state legislatures may set minimum standards but state and local police agencies may adopt more stringent requirements.

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[2]Although the Department's College Navigator website provides information on institutional accreditation, it has very spotty data on schools' programmatic accreditation.
[3]http://www2.ed.gov/admins/finaid/accred/accreditation_pg6.html
[4]See http://ope.ed.gov/accreditation/FAQAccr.aspx. See this link for a list of some the specialized accrediting agencies: http://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html. Other approved agencies can be found at the Council for Higher Education Accreditation, http://www.chea.org/.
[5]http://www2.ed.gov/admins/finaid/accred/accreditation_pg10.html

While some professions do not require licensure, states and employers may strongly prefer schools to be programmatically accredited. For example, state nursing boards may take programmatic accreditation into consideration when determining which schools' nursing programs are approved for graduates to become licensed RNs. And, some employers insist that graduates pass a national certification exam offered by a recognized organization. Particularly in the healthcare field, employers view such certification as a protection against lawsuits alleging that they employ unqualified health personnel.

GI Bill Approval of a School Program Doesn't Mean the Degree Leads to a Job

Numerous GI Bill approved degrees in programs such as law, psychology, teaching, criminal justice, and numerous healthcare fields, including nursing, medical assistant, and dental assistant do not lead to jobs because they lack the appropriate accreditation or fail to meet state-specific criteria required for certification or license. Moreover, veterans graduating from some programs are unable to obtain the professional certifications that employers strongly prefer.

From our pool of veterans complaints and law enforcement actions, we identified at least 8 fields of study offered by 15 different schools that failed to meet state or employer requirements for graduates to find a job in their field of study (see table below). Yet, the Department of Veterans Affairs authorizes GI Bill benefits for these programs at almost 60 campuses across the country. Overall, GI Bill approved programs at about 20 percent of the 300 campuses that we examined did not qualify graduates for state licensure or certification. An attachment to this statement contains a detailed description of these findings.

These programs—offered both online and at brick and mortar campuses—represent the tip of the iceberg of unaccredited programs because this analysis focused only on some of the degree programs that were the subject of veteran complaints or state Attorneys General lawsuits. Certainly, degree programs in other fields pose similar accreditation problems for graduates. For example, on May 26, 2015, the U.S. Federal Trade Commission announced an action against Ashworth College for misleading students about programs that "failed to meet the basic educational requirements set by state licensing boards for careers or jobs" in numerous states. The action noted that Ashworth's programs were eligible for GI Bill dollars, but not for federal student loans, and that Ashworth targeted veterans and service members for recruiting, including through recruiters posing as "military advisors."[6]

[6] https://www.ftc.gov/system/files/documents/cases/150526ashworthcollegecmpt.pdf

Sample of Degree Programs Approved for GI Bill Benefits that Don't Lead to Jobs in Those Fields

Degree	Sample of GI Bill-approved campuses identified through veteran complaints or lawsuits with degree programs that don't satisfy job requirements	Why degree doesn't lead to a job	Related Lawsuit
Law	7 (online (3), CA (4))[a]	not ABA accredited[b]	
Clinical Psychology (PhD)	2 (WA, FL)	not APA accredited[c]	CO AG
	MN	not APA accredited	CT
Teaching (early childhood)	IA, online	not state board of education approved	IA AG
Nursing	2 (FL)	not state board of nursing approved	NM AG
Criminal Justice	Boise	police dept. requires regional accreditation	
	4 (Tampa, St. Petersburg, IL (2))	police dept. requires regional accreditation	
	4 (IL)	police dept. requires regional accreditation	IL AG
Dental Assisting	18 (TX (9), CA (9))	not state dentistry board approved[d]	
Medical Assisting	3 (CA)	lacks the program accreditation required to attain the certification employers prefer	
	4 (NE, OH (2), WI)	lacks the program accreditation required to attain the certification employers prefer	MN AG
	8 (CO, MO, NE, OK, TX (4))	lacks the program accreditation required to attain the certification employers prefer	
Surgical Technology	KS, MO	lacks the program accreditation/approval required to attain the certification employers prefer[e]	NY AG

Source: Research by Veterans Education Success.

[a]There are a total of 6 law schools but 7 online/campus-based programs because one law school offers both online and campus-based degrees.
[b]American Bar Association. ABA accreditation is not required to sit for the bar in California and several other states. However, graduates are required to undergo several years of mentoring by a licensed lawyer in order to take the bar exam.
[c]American Psychological Association.
[d]Texas requires dental assistants who perform x-rays to be state registered but none of Kaplan's 9 Texas campuses are approved by the state dentistry board. California's dentistry board requires dental assistants to attend a state approved school to perform four different procedures but Kaplan is only approved for one of the four procedures.
[e]Two organizations offer a certification exam for surgical technology—the National Board of Surgical Technology and Surgical Assisting and the National Center for Certification Testing. The former requires schools to have programmatic accreditation to sit for the exam while the latter requires graduation from an "authorized" school.

Accreditation and licensure requirements bring harsh, real-life implications for the young men and women who learn, too late, that their degree lacked the proper accreditation and they are not eligible to even sit for a licensing exam in their field of study. Once their GI

Bill benefits are wasted on an unaccredited program, there is no recourse for them. Many such veterans understandably express anger that VA did not properly protect their hard-earned benefit.

Veterans justifiably expect that if VA has approved a program for GI Bill benefits, then that program is a good use of those hard-earned benefits. Veterans believe that VA approval means the program is worthy of their sacrifice. Veterans should not be expected to navigate different state-specific licensing requirements and employer preferences to try to uncover that a program is, in fact, unlikely to leave them eligible for work. Nor should they be expected to rely on school disclosures, which may not be forthcoming or helpful.[7] In short, determining whether a school's program meets career requirements is not a task that veterans should be burdened with.

Already operating under a similar provision, the Defense Department reports that it requires schools to self-certify that they are in compliance in order to relieve the administrative burden of enforcing the requirement

Conclusion

S. 1938, the Career-Ready Student Veterans Act would extend to veterans the same commonsense, bipartisan protections that Congress already put in place in 2013 for servicemembers who use DOD's Tuition Assistance Program.

The examples cited in this testimony underscore the need to protect veterans' hard-earned educational benefits by ensuring that only degree programs leading to the jobs they actually studied for are approved to receive GI Bill funds. These degree programs at both brick and mortar campuses and online are only the tip of the iceberg. Because this analysis only examined some of the programs that were the subject of veteran complaints or state Attorneys General lawsuits, additional programs may also leave veterans ineligible to work in their field of study.

It would be a disservice both to veterans' military service and to taxpayers' investment in the post-military careers of our nation's veterans not to extend these basic protections.

Thank you for considering the views of Veterans Education Success on this important topic.

Walter Ochinko
Policy Director
Walter@VeteransEducationSuccess.org

[7]Inadequate disclosures about programs' lack of proper accreditation has been the subject of many law enforcement law suits against certain programs.

THE GI BILL PAYS FOR DEGREES THAT DO NOT LEAD TO A JOB

Issue

Unfortunately, some programs approved for GI Bill benefits leave graduates *de facto* ineligible to obtain a job in their field of study because the school (1) lacks the appropriate accreditation or (2) fails to meet state-specific criteria required for certification or licensure. In addition, some graduates may be technically eligible to obtain a job in the field of study, but are not hired because they are unable to obtain the professional certifications that employers strongly prefer. The programs at issue range from law to teaching, criminal justice, and numerous healthcare fields, including nursing, psychology, medical assisting, dental assisting, and surgical technology.

The fiscal year 2014 National Defense Authorization Act requires schools that participate in DOD's Tuition Assistance program to meet the instructional curriculum licensure and certification requirement of each state if the schools program is designed to prepare individuals for state licensure or certification.[1] To relieve the administrative burden of enforcing this requirement, DOD officials told us that it requires schools to certify that they are in compliance. We believe that it is critical for Congress to extend these same bipartisan protections to veterans using GI Bill benefits.

Findings

Based on a limited sample of veterans' complaints and lawsuits by state law enforcement agencies, our research identified 8 degree-programs offered by 15 different schools at both brick and mortar campuses and online that failed to meet state or employer requirements, leaving graduates ineligible to work in their field of study. Yet, veterans are able to enroll in these programs at about 60 campuses across the country. Overall, GI Bill approved programs at about 20 percent of the 300 campuses that we examined did not qualify graduates for state licensure or certification. A description of our methodology may be found at the end of this document.

These degree programs represent the tip of the iceberg because we examined only some of the programs that were the subject of veteran complaints or state Attorneys General lawsuits; additional programs may also leave veterans ineligible to work in their field of study. For example, at the end of May, the U.S. Federal Trade Commission (FTC) announced a settlement with Ashworth College for misleading students about programs that "failed to meet the basic educational requirements set by state licensing boards for careers or jobs" in numerous states because they lacked the proper accreditation.[2] FTC noted that Ashworth's programs were eligible for GI Bill dollars, but not for federal

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[1] P.L. 113-66.
[2] https://www.ftc.gov/system/files/documents/cases/150526ashworthcollegecmpt.pdf

student loans, and that Ashworth targeted veterans and service members for recruiting, including through recruiters posing as "military advisors."

Sample of Degree Programs Approved for GI Bill Benefits that Don't Lead to Jobs in Those Fields

Degree	Sample of GI Bill-approved campuses identified through veteran complaints or lawsuits with degree programs that don't satisfy job requirements	Why degree doesn't lead to a job	Related Lawsuit
Law	7 (online (3), CA (4))[a]	not ABA accredited[b]	
Clinical Psychology (PhD)	2 (WA, FL)	not APA accredited[c]	CO AG
	MN	not APA accredited	CT
Teaching (early childhood)	IA, online	not state board of education approved	IA AG
Nursing	2 FL	not state board of nursing approved	NM AG
Criminal Justice	Boise	police dept. requires regional accreditation	
	4 (Tampa, St. Petersburg, IL (2))	police dept. requires regional accreditation	
	4 (IL)	police dept. requires regional accreditation	IL AG
Dental Assisting	18 (TX (9), CA (9))	not state dentistry board approved[d]	
Medical Assisting	3 (CA)	lacks the program accreditation required to attain the certification employers prefer	
	4 (NE, OH (2), WI)	lacks the program accreditation required to attain the certification employers prefer	MN AG
	8 (CO, MO, NE, OK, TX (4))	lacks the program accreditation required to attain the certification employers prefer	
Surgical Technology	KS, MO	lacks the program accreditation/approval required to attain the certification employers prefer[e]	NY AG

Source: Research by Veterans Education Success.

[a]There are a total of 6 law schools but 7 online/campus-based programs because one law school offers both online and campus-based degrees.
[b]American Bar Association. ABA accreditation is not required to sit for the bar in California and several other states. However, graduates are required to undergo several years of mentoring by a licensed lawyer in order to take the bar exam.
[c]American Psychological Association.
[d]Texas requires dental assistants who perform x-rays to be state registered but none of Kaplan's 9 Texas campuses are approved by the state dentistry board. California's dentistry board requires dental assistants to attend a state approved school to perform four different procedures but Kaplan is only approved for one of the four procedures.
[e]Two organizations offer a certification exam for surgical technology—the National Board of Surgical Technology and Surgical Assisting and the National Center for Certification Testing. The former requires schools to have programmatic accreditation to sit for the exam while the latter requires graduation from an "authorized" school.

Background on Accreditation

The Department of Veterans Affairs and its partner, State Approving Agencies, approve programs for GI Bill benefits, relying in part on accreditation. The Education Department recognizes accrediting agencies. Accreditation signifies that an institution maintains standards requisite for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.

There are two types of accrediting bodies—institutional and "specialized," programmatic accrediting agencies. In general, institutional accreditation, not programmatic accreditation, is a prerequisite for a school to participate in the federal student aid program.[3]

- *Institutional accrediting organizations* are either regionally based (accrediting schools in their geographic region) or national in scope (accrediting schools that have multiple campuses across the country).[4]
- *Specialized accrediting agencies* focus on specific degrees offered by schools or by a department or college within a larger university.[5] Some of these specialized agencies accredit distance education programs.[6]

For example, Harvard University is accredited as an institution, while its law school is accredited by the American Bar Association, which is the specialized accrediting body with sole jurisdiction over accreditation of U.S. law schools.

How Institutional Accreditation Affects Veterans. In some cases the type of institutional accreditation can affect the ability of a school's graduates to obtain a job in their field of study. For example:

- Police departments increasingly require an Associates degree from an accredited school. For some jobs, students must graduate from a *regionally* accredited school in order to obtain the required state certification or licensure.
- In order to be licensed to teach in any other states, individuals must graduate from a *regionally* accredited school with a state-approved teacher preparation program.[7] In addition, states have additional requirements. For example, in New Jersey graduates must then pass a certification exam in order to receive a provisional teaching certificate. With this certificate, graduates can be hired by a school district where they receive mentoring, supervision, and evaluation before earning a permanent teaching certificate.

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[3]Although the Education Department's College Navigator website provides information on institutional accreditation, it has very spotty data on schools' programmatic accreditation.
[4]http://www2.ed.gov/admins/finaid/accred/accreditation_pg6.html
[5]See http://ope.ed.gov/accreditation/FAQAccr.aspx. See this link for a list of the specialized accrediting agencies: http://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html
[6]http://www2.ed.gov/admins/finaid/accred/accreditation_pg10.html
[7]Interview with the Director of Accreditation, CAEP.

How Specialized Accrediting Agencies Affect Veterans. For some jobs, institutional accreditation may be insufficient; programmatic accreditation by a specialized accrediting organization may be necessary to gain employment. For example:

- Law school graduates must have matriculated at a school accredited by the American Bar Association in order to sit for the Bar Examination in nearly every state, and passing the Bar Exam is required in most states to practice law.
- Accreditation by the American Psychological Association is required to become a licensed clinical psychologist.

State/Employer Preference. Some states and employers may not require, but strongly prefer, schools to be programmatically accredited.[8] For example:

- State nursing boards may take programmatic accreditation into consideration when determining which schools' nursing programs are approved. Only graduates of approved nursing programs can sit for a state's licensing exam.
- Employers may also prefer to hire graduates from programmatically accredited schools and offer such graduates higher salaries.

DEGREES THAT REQUIRE PROGRAMMATIC ACCREDITATION

Law

Passing the bar exam allows graduates to be licensed to practice law in that state. The vast majority of U.S. bar admission associations rely on accreditation by the American Bar Association (ABA) to determine whether their legal education requirement for admission to the bar is satisfied. Education at an ABA-approved law school meets the requirements in every jurisdiction in the United States.[9] California, Washington, Vermont, and Virginia provide an alternative route to legal practice in addition to attending a traditional, ABA-approved, law school. This alternate route, referred to as "law office reading," allows individuals to skip law school and instead apprentice for several years with a licensed lawyer. Veterans pursuing this alternate route do not need to attend law school or use up their GI Bill and incur debt. Their bar-exam pass rates are significantly lower than for law school graduates.[10]

The following sample of law schools are not accredited by the American Bar Association but are approved to receive GI Bill educational benefits.[11] All six schools are located in California which does not require ABA accreditation for graduates to take the bar exam,

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[8]Employers' human resources departments caution students to make sure they are enrolling in programs with the proper accreditation, a seal of approval that many bosses look for. See https://sites.google.com/site/commonsensedemocracyfoundation/recent-articles/idahoansareflockingtoexpensivefor-profitschools

[9]http://www.americanbar.org/groups/legal_education/resources/distance_education.html

[10]http://www.slate.com/blogs/business_insider/2014/08/02/states_that_allow_bar_exams_without_law_degrees_require_apprenticeships.html

[11]http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/official-guide-to-aba-approved-law-schools.html

but does require additional steps.[12] In July 2015, the Los Angeles Times reported that 9 in 10 students drop out of unaccredited for-profit law schools and only 1 in 5 graduates actually become lawyers.[13] Subsequently, the California Bar Association announced plans to require unaccredited law schools to report their dropout rates in order to increase transparency.[14]

There may be additional law schools that do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

- Abraham Lincoln University's Juris Doctor law degree program.[15]
  - 25 veterans enrolled during CY 2014. VA paid tuition and fees for 17 veterans in FY 2014 totaling $71,488.

- California Southern University's Juris Doctor law degree program.[16]
  - 10 veterans enrolled during CY 2014. VA paid tuition and fees for 6 veterans in FY 2014 totaling $37,965.

- Concord Law School's Juris Doctor law degree program.[17]
  - 48 veterans enrolled during CY 2014. VA paid tuition and fees for 25 veterans in FY 2014 totaling $225,000.

- Irvine University's Juris Doctor law degree program.[18]
  - 4 veterans enrolled as of April 2015. VA paid tuition and fees paid for 3 veterans in FY 2014 totaling $15,045.

- Pacific West College of Law's Juris Doctor law degree program.[19]
  - 2 veterans enrolled as of April 2015. FY 14 tuition and fees paid for 1 veteran totaled $7,476.

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[12]The State Bar of California recognizes three different categories of law schools: ABA-accredited schools, state-accredited schools, and unaccredited schools. In most states, a degree from an ABA-accredited law school is a prerequisite for eligibility to take the bar examination, but California has its own system for accrediting law schools and allows graduates of these state-accredited schools (also called Committee-accredited schools, since the body accrediting them is the Committee of Bar Examiners) to sit the bar upon completion of their degrees alongside graduates of ABA-accredited schools. The Committee also allows graduates of unaccredited law schools to sit the bar, but students at these schools are required to take the First-Year Law Students' Examination, also called the Baby Bar, in order to proceed past their 1st year in law school. See http://www.top-law-schools.com/californias-law-school-baby-bar.html

[13]http://www.latimes.com/local/education/la-me-law-schools-20150726-story.html

[14]http://www.latimes.com/local/education/la-me-law-schools-20150829-story.html

[15]This law school only offers online classes. It's website states that it is accredited by the Distance Education and Training Council but does not acknowledge that the school lacks ABA accreditation. During a live chat, VES asked if a graduate could sit for the bar exam in Iowa and the response was to contact the bar admission authorities in that state. "I cannot advise you about other state bars, unfortunately."

[16]This school offers both campus-based and online degrees.

[17]Concord law school is an online program.

[18]Irvine's law program is campus based.

[19]Pacific West's law program is campus based.

- University of San Luis Obispo Juris Doctor law degree program.[20]
  - 1 veteran enrolled as of April 2015. FY 14 tuition and fees paid for 1 veteran totaled $3,240.

Law School Student Testimonial
"I could have tried to transfer, but I had heard from many sources that [Concord] credits rarely transferred. The most important bit of knowledge I gained during this time was from a one-term adjunct instructor, who, when I told her of my plan to continue my education through Concord Law School, informed me that the school was not recognized in Iowa for taking the Bar exam. That information was eye opening. The Dean apparently didn't know or forgot to mention this little problem with Concord."
Student Eric Schmitt, U.S. Senate Testimony: http://www.help.senate.gov/imo/media/doc/Schmitt.pdf

Psychology

To be licensed as a clinical psychologist, students must graduate from a doctoral program accredited by the American Psychological Association (APA).

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

- Argosy University PhD in clinical psychology is GI Bill approved for 11 campuses (including its online program). The online and 8 of the campus-based doctoral programs are APA accredited (CA, GA, HI, IL, MN, and VA).
  Its doctoral programs in Washington state and Florida lack APA accreditation.
  - GI Bill approved, but **not** APA accredited at campuses in WA and FL.

- Walden's PhD in Psychology is not accredited by the APA.
  - GI Bill approved, but **not** APA accredited for its MN campus

Colorado Attorney General's Lawsuit
Argosy's lack of proper accreditation for its PhD in psychology left its graduates ineligible to become licensed Psychologists. This was the topic of a successful lawsuit by the Colorado Attorney General, which reached a $3.3 million settlement with the school. The AG's office said Argosy admitted it planned to apply for APA accreditation for the PsyD program but never did. The company also said it never intended to apply for APA accreditation because the APA doesn't accredit programs that meet only on the weekends.
http://www.bizjournals.com/denver/news/2013/12/05/argosy-university-pays-colorado-33m.html

Private Connecticut Lawsuit
The U.S. District Court refused to dismiss a lawsuit against Walden brought by a graduate of the school's PhD psychology program. Although the plaintiff was told he could become a licensed psychologist, he learned that Walden did not have the appropriate accreditation when he applied to take Connecticut's licensing exam.
http://law.justia.com/cases/federal/district-courts/connecticut/ctdce/3:2008cv00045/80151/36/

[20]San Luis Obispo's law program is campus based. The school's website clearly states that it is unaccredited and spells out the steps students must take to sit for the bar in California.

DEGREE PROGRAMS THAT REQUIRE STATE-LEVEL APPROVAL

Teaching

States, not specialized accrediting agencies, are responsible for approving teacher education programs. Programmatic accreditation by the Teachers Education Accreditation Council (TEAC) or the National Council on Accreditation of Teacher Education (NCATE) is only one of a number of factors that states may take into consideration when approving teacher education programs.[21]

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

Ashford University is not TEAC or NCATE accredited but has institutional accreditation from the Western Accreditation of Schools and Colleges, a regional accrediting agency. All states, including Iowa, require teachers to graduate from regionally accredited schools; Iowa has approved Ashford's elementary and secondary teacher education programs up to the Bachelor's degree level.[22] However, Iowa has not approved Ashford's early childhood education program.

- Ashford University's online early childhood education program does not allow graduates to become classroom teachers without additional classroom time.
  - Ashford's early childhood online degree is approved for GI Bill benefits at its Iowa campus and online but graduation **does not** result in licensure.

Iowa Attorney General's Lawsuit
In May 2014, the Iowa Attorney General reached a $7.25 million settlement with Ashford over allegations that the school's marketers told prospective students that an online Ashford education degree would allow them to become classroom teachers when, in fact, many Ashford graduates are subject to additional requirements that may require additional time, more coursework, or additional money.

After the settlement, Ashford acknowledged that its early education degree did not lead to licensure or certification in any state.
http://qctimes.com/news/local/government-and-politics/ashford-agrees-to-million-iowa-settlement/article_87739f8e-8445-51d6-b32f-1fa741874faf.html

Nursing

As with teacher education, states (not specialized accrediting agencies) are responsible for approving nursing education programs.[23] In general, states review and approve "pre-licensure" nursing programs—not programs where existing RNs enroll to earn more

[21] TEAC and NCATE are merging to create the Council on Accreditation of Education Programs (CAEP).
[22] See http://www.boee.iowa.gov/require.html
[23] See https://www.ncsbn.org/665.htm

advanced credentials such as Bachelors or Masters degrees. The graduate of a state Board of Nursing (BON) approved program may be able to obtain a nursing license in a different state through endorsement (reciprocity) or because it is a compact state that recognizes licenses obtained in other compact states.[24] Endorsement is not automatic. According to the Texas BON, every state has different practice regulations based on the needs of its population, which the state takes into consideration in approving endorsements. In addition, applicants must meet the same standards as those required of Texas nurses.[25] Although applicants can't sit for the licensing exam in Texas if they graduated from an approved nursing program in different state, California permits this route to licensure.[26]

National nursing accreditation is a voluntary process intended to strengthen education quality by measuring schools' performance against nationally recognized standards. The Accreditation Commission for Education in Nursing (ACEN) accredits diploma programs, practical nurse programs, associate programs, bachelors, and masters programs. Another national nursing accrediting agency, the Commission on Collegiate Nursing Education (CCNE), focuses on baccalaureate, graduate, and residency programs in nursing.[27] Accreditation in nursing is important, as it generally requires a certain level of licensure exam pass rates, thereby ensuring the nation's nurses bring a level of quality.

Although national accreditation by a specialized accrediting agency is not required to obtain a nursing license, there is a potential downside in attending a non-accredited nursing program. While you may receive a quality education and be eligible to sit for and pass the NCLEX licensing examination, it generally does imply that you will not be qualified to attend an accredited nursing school in pursuit of additional education (for example, an RN-to-BSN or a master's degree program). That, in turn, might limit your progression in your professional nursing career.[28]

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

ITT Tech offers Associates degrees in nursing at 40 campuses all of which are approved for GI Bill benefits. None of ITT's nursing programs are accredited by the national nursing accrediting agency, CCNE.

- ITT Tech's Associates degree in nursing has state Board of Nursing approval or initial approval at 24 of its 40 campuses.[29] Of the remaining campuses, however, 2 lack state Board of Nursing approval and their graduates cannot sit for the state licensure exam; 14 campuses are subject to increased scrutiny (consent

[24]https://www.ncsbn.org/nurse-licensure-compact.htm
[25]https://www.bon.texas.gov/licensure_endorsement.asp
[26]http://www.rn.ca.gov/applicants/lic-end.shtml
[27]See http://nmbon.sks.com/Approval_and_Accreditation.aspx.
[28] http://www.allnursingschools.com/nursing-careers/article/nursing-school-accreditation/
[29]Initial approval allows graduates to sit for state licensure.

agreements), conditional approval (enrollment suspended), or probationary status (low licensure pass rates). Again, all 40 ITT campuses are approved for GI Bill benefits.

- 2 ITT Florida campuses are GI Bill approved but graduates cannot obtain a license in that state.

New Mexico Attorney General's Lawsuit
The New Mexico 2014 lawsuit alleges that ITT's nursing program has never been accredited by the Accreditation Commission for Education in Nursing, the organization that accredits associate degree nursing programs. In addition, it alleges ITT misled its New Mexico students into believing that the Nursing program was accredited.
http://www.bizjournals.com/albuquerque/news/2014/02/27/ags-office-sues-itt-educational.html

Veteran Student Testimonial
"I feel I was misled in my education path. I wanted to be a registered nurse. University of Phoenix stated they could get me there, but most of my credits did not transfer and did not bring me much closer to my ultimate goal."
Eric L., who served in Iraq (March 2015 complaint received by Veterans Education Success)

Criminal Justice

State legislature or boards may set the minimum educational standards for police officers, but local police agencies are free to set higher educational standards. As a result, determining whether applicants meet a police agency's educational standards requires considerable research and ultimately may require applicants to contact police agencies directly.[30] In addition to state and local education standards, it may be considered a plus if a school's program is acknowledged by the Academy of Criminal Justice Sciences, an international body for certifying criminal justice education programs.[31]

Some police agencies only require a high school degree, but often look favorably upon candidates with college experience.[32] Police agencies increasingly require some college credits, but allow exceptions to college requirements for those with military service or prior law enforcement experience.[33] In general, police agencies that require applicants to have college credits specify that credits be from an "accredited" school. Some police agencies, however, require degrees or credits from *regionally accredited* schools, such as the Illinois State Police; the DuPage and Will County, Illinois sheriffs offices; the Schaumburg, Illinois, police department; the Tampa, Florida, police department; the

[30]See http://www.how-to-become-a-police-officer.com/states/texas/ For example, in Florida and Washington state minimum educational requirements are laid out in statute. See http://www.how-to-become-a-police-officer.com/states/florida/ and http://apps.leg.wa.gov/WAC/default.aspx?cite=139-07-020 In Illinois, the Illinois State Police Merit Board establishes the basic standards (http://www.how-to-become-a-police-officer.com/states/illinois/)
[31]http://www.excite.com/education/states/ohio/criminal-justice-schools-in-ohio
[32]Although police departments may only require candidates to have a high school diploma or GED, college graduates may receive special consideration during the hiring process, as well as higher starting salaries. See http://www.lawenforcementedu.net/ohio/ohio-schools/#context/api/listings/prefilter and http://www.how-to-become-a-police-officer.com/states/florida/
[33]http://www.how-to-become-a-police-officer.com/#cities See also http://www.acjs.org/pubs/167_667_3517.cfm

Boise, Idaho police department; Texas state troopers and highway patrol officers; and many other county and local police departments.[34]

The Chicago police department required regional accreditation until about 2010 but subsequently limited the requirement to "accredited" schools. According to one state Attorney General's office, college accreditation requirements may be generally stated, but hiring preferences may favor local community college degree programs because their graduation requirements are more rigorous and include courses in writing and math, in addition to criminal justice courses.

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

Brown Mackie, ITT Tech, and Westwood College offer criminal justice degrees at numerous campuses across the U.S. that are approved for GI Bill benefits. All three schools have national rather than regional accreditation, which would satisfy the educational requirements of some police departments but not others. For example, the following police departments require degrees from regionally accredited schools:

- A graduate of ITT's criminal justice program in Tampa could not obtain a job with the Tampa police department because it requires degrees from regionally accredited schools. (Graduates would likely meet the requirements in several other Florida cities.[35])
- A graduate of ITT's criminal justice program in St. Petersburg, Florida, must contact that police department to determine if ITT is an "approved accredited college or university."[36]
- A graduate of Brown Mackie's criminal justice program in Boise, Idaho could not obtain a job with that city's police department.[37]
- A graduate of ITT's or Westwood's criminal justice programs would meet the educational requirements for employment by the Chicago police department but not for employment by the Illinois State Police; the DuPage and Will County, Illinois, sheriffs offices; or the Schaumburg, Illinois, police department.

Illinois Attorney General's Lawsuit
The Illinois Attorney General alleged in its 2014 lawsuit that Westwood misled students by falsely claiming that its criminal justice program (1) was regionally accredited; (2) graduates are eligible to be hired as federal, state or local police officers in Illinois; (3) most graduates obtain law enforcement jobs, (4) graduates earn about $20,000.00 more per year than people with just a high school diploma, (5) graduates can obtain employment in law enforcement even if possessing a criminal record;

[34]See https://www.illinoistrooper.com/recruitment/pre-employment-requirements/ ; http://www.cfpbmonitor.com/files/2014/11/IL-AG-second-amended-complaint.pdf ; http://www.ci.schaumburg.il.us/emp/employ1/Documents/Recruiting%20Brochure-12.2013.pdf ; http://www.how-to-become-a-police-officer.com/states/florida/ ; http://police.cityofboise.org/home/join-bpd/

[35]http://www.how-to-become-a-police-officer.com/states/florida/

[36]http://old.stpete.org/police/employment/police/police-selection-standards.html

[37]http://police.cityofboise.org/home/join-bpd/

and (6) degrees lead to employment with the FBI and State Police. None of these claims are true. http://www.cfpbmonitor.com/files/2014/11/IL-AG-second-amended-complaint.pdf

Veteran Student Testimonials

- *"When I attempted to transfer my units (in private and public sector security) from Brown Mackie to Pasadena City College in California, I found out that none of my units transferred because they didn't have the right level of accreditation. Not only did Brown Mackie lie about their accreditation level but they lied about (the) level of education they offer... I have a debt with nothing to show for it and am struggling to stay afloat."* Marine Corporal Anselm Caddell, Veterans Student Loan Relief Fund Fact Sheet

- *"I specifically asked ITT Tech before signing up whether their degree was the same as any other public 4-year university and was told YES. I found out while applying at NYPD, LAPD, Seattle PD and 23 other police departments that NONE of them accepted ITT Tech credits. Once I found out that my time and money spent at ITT Tech was worthless, I tried to transfer my credits to a community college. I was told I have to start completely over as a freshman."* Marine Specialist Bryan Babcock, Veterans Student Loan Relief Fund Fact Sheet[38]

- *"I went to ITT tech because I wanted to be a Drug Enforcement Agent and was told my credits would count and transfer. Well after I graduated with a two year degree, I was told the schooling I looked into after did not take their credits and I am stuck with a $46,000 school loan when the GI bill should have paid for all of it."* Roland P. of Pennsylvania, who attended from 2012-2014 (May 2015 complaint received by Veterans Education Success)

Veteran complaints suggest that other criminal justice programs may also not lead to the jobs that veterans have studied for.

Additional Veteran Student Testimonials

- *"I was told when I attended [Colorado Tech U in 2013] that any [police] department would accept their degree. Upon asking someone I knew that worked for the Georgia Department of Corrections, I was informed they do not and that they only accepted degrees from traditionally accredited universities."* Anthony B. of Georgia (May 2015 complaint received by Veterans Education Success)

- *"I was enrolled at Colorado Tech U for 4 years. No post graduation job opportunities happened. I have a BA in Criminal Justice and an Associates Degree in Accounting. Have not been able to utilize either one."* Debbie L. of Tennessee (May 2015 complaint received by Veterans Education Success)

- *"I was initially recruited at a job fair and was told that University of Phoenix was fully accredited and all law enforcement agencies accept this is a viable degree. I have applied for over 100 probation officer jobs and rarely ever get a call back. I spoke with a recruiter once that told me I would have a very difficult time finding a job in probation with that degree and he was right. I owe over $40K in student loans and can't get a job in the career field I trained so long to do."* Bryan H. of Texas (May 2015 complaint received by Veterans Education Success)

- *"I was told that there were many opportunities for a veteran in private security and law enforcement by the University of Phoenix with a degree in criminal justice. I was unable to find any willing to accept my level or training or background. So I had to change degrees [but] none of the credits were transferable. The quality of the classes was terrible, teachers "participation*

[38]Specialist Babcock attended ITT prior to 2010. Since then, some police departments, such as Chicago's, have relaxed their requirements and now require graduation from an "accredited" school.

requirements" making no sense and off of very limited information with little actual teaching. I wasted time and money for a school who couldn't make good on their educational promises."
Michael F. of Ohio (May 2015 complaint received by Veterans Education Success)

Dental Assistant

Programs for dental assistants are regulated by state dentistry boards. Kaplan offers a dental assistant certificate at campuses in California, Indiana, Tennessee, and Texas, which are approved for the GI Bill.[39] The Dentistry Boards in these four states require dental assistants to be state registered and to have graduated from a state approved dental assistant program or one accredited by the Commission on Dental Accreditation (CODA). As described below, a Kaplan graduate cannot perform the full range of duties of a dental assistant in Texas, California, Indiana, and Tennessee.

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

- 9 Kaplan campuses in Texas are GI Bill approved but lack state approval to perform x-rays. In Texas, dental assistants who perform x-rays must attend a state-approved program to obtain the required registration. None of Kaplan's 9 Texas campuses have state approval.[40]
- 9 Kaplan campuses in California are GI Bill approved but lack state approval for some procedures. California requires dental assistants to attend state-approved schools for 4 different procedures. Nine Kaplan California campuses are approved for application of "pitt and fissure selants" but none are approved for coronal polishing, x-rays, or ultrasound scaling.[41]
- 1 Kaplan campus in Indiana is GI Bill approved and the program is accredited by CODA. However, the procedures that graduates may perform are limited to applying sealants and coronal polishing.[42]
- 1 Kaplan campus in Tennessee is GI Bill approved and approved by the state dental board. However, the procedures Kaplan graduates can perform may be limited because the state requires that they have taken specific classes and then complete state approved training.[43]

Eyewitness News: WSOC TV
Students at for-profit Kaplan College say they were misled for months about the school's dental assistant program. Eyewitness News reporter Jim Bradley has been investigating their claims, taking them to state regulators and questioning college leaders.

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[39] One of Kaplan's programs in Indiana offers an AAS dental assistant degree.
[40] http://www.tsbde.state.tx.us/index.php?option=com_content&task=view&id=32&Itemid=26#Career%20School%20Graduates
[41] http://www.dbc.ca.gov/licensees/rda/certificates_pfs.shtml
[42] http://www.in.gov/pla/3162.htm
[43] See http://www.dalefoundation.org/resources-and-state-requirements/State-Dental-Assistant-Requirements/Tennessee and http://health.state.tn.us/boards/dentistry/education.htm#Registration

The students admitted they signed a disclosure form in which Kaplan makes clear its program is not approved by CODA, the National Commission on Dental Accreditation. But the students all said Kaplan counselors assured them it soon would be.

"They told me they were in the process of becoming CODA accredited, that it was already in the making, that they would be accredited by the next month," Nesbitt said.

That was last March. But it wasn't until a month ago, as many of the students approached the end of their training, that they were told the program wasn't accredited at all.

The impact of that news was huge for students. Going through an accredited program is one of the ways to become eligible to be nationally certified -- and employable -- at the higher level, and better-paid position, called Dental Assistant 2.

Since Kaplan's dental assistant program is not accredited, current Kaplan students would have to work in a dentist office as a DA 1 for 3,000 hours -- essentially two years -- to become qualified as Dental Assistant 2s.

But since the dental assistant program at Kaplan's Charlotte location isn't accredited, students are now being told they'll graduate as entry level dental assistants -- or DA1s -- who earn lower salaries, making the whistleblowers worried about being able to repay the loans they took out to cover a portion of their $18,000 tuition.

But Whistleblower 9's investigation uncovered a startling revelation. Not only is Kaplan's dental assisting program not about to complete the year-long accreditation process -- Kaplan has yet to even apply for accreditation for that program.

...after Eyewitness News began asking Kaplan questions about its dental assistant program, the company emailed this offer to students: To fully refund the cost of their tuition, books, fees and supplies. Waive all costs for the remainder of their dental assisting classes. Provide a stipend after graduation.

http://www.wsoctv.com/news/news/whistleblower-9-students-say-they-were-misled-by-l/nGSy3/

DEGREES FOR WHICH CERTIFATION MAY BE PREFERRED BY EMPLOYERS

Medical Assistant

Medical assistants work alongside physicians, mainly in outpatient or ambulatory care facilities, such as medical offices and clinics.[44] Graduates of medical assisting programs accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or the Accrediting Bureau of Health Education Schools (ABHES) are eligible to take a certification exam offered by the American Association of Medical Assistants (AAMA).[45] According to the AAMA, many employers of allied health personnel require, or at least prefer, that their medical assistants be certified, as a protection against lawsuits alleging that they employ unqualified allied health personnel.[46] Although some states

[44] http://www.aama-ntl.org/medical-assisting/what-is-a-medical-assistant#.VWM5_lnBzGc
[45] http://www.aama-ntl.org/cma-aama-exam/application-steps/eligibility
[46] http://www.aama-ntl.org/medical-assisting/what-is-a-medical-assistant#.VWM7GFnBzGc

require education and/or credentialing as a legal prerequisite for the performance of certain duties, medical assistants are currently not licensed in most states.[47]

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

American Career College, Herzing University, and National American University offer numerous medical assistant programs that are approved for the GI Bill.

- 3 American Career College campuses in California are GI Bill approved but graduates are unlikely to be employed because they lack the programmatic accreditation required by the organization that offers the certification exam that employers require or prefer.

- Herzing. Herzing offers both certificates and Associates degrees in medical assisting. Seven Herzing medical assistant programs in Ohio, Wisconsin, and Nebraska are unaccredited.[48] Four programs in various states are accredited.[49]
  - Herzing's medical assistant programs in Ohio, Wisconsin, and Nebraska are GI Bill approved but graduates are unlikely to be employed because they lack programmatic accreditation by the organization that offers the certification exam that employers require or prefer.

- National American University (NAU). Eight NAU medical assistant programs in Colorado, Missouri, Nebraska, Oklahoma, and Texas, are unaccredited. Sixteen other programs are accredited.
  - 8 National American University campuses are GI Bill approved in Colorado, Missouri, Nebraska, Oklahoma, and Texas, but graduates are unlikely to be employed because they lack programmatic accreditation by the organization that offers the certification exam that employers require or prefer.

Minnesota Attorney General's Lawsuit
Herzing has offered an accredited medical assistant diploma program at its Crystal, Minnesota campus for many years. In 2011, Herzing began to offer a two-year associate degree in clinical medical assisting at its Crystal campus. To be eligible to sit for the Certified Medical Assistant ("CMA") exam and obtain the certification preferred by many employers, a student must graduate from a medical assistant program that is programmatically accredited by either the Commission on Accreditation of Allied Health Education Programs ("CAAHEP") or the Accrediting Bureau of Health Education Schools ("ABHES"). Herzing's two-year degree program was not accredited by either organization.
bttp://blogs.mprnews.org/oncampus/2013/11/mn-attorney-general-settles-with-herzing-u-over-lack-of-ma-accreditation/

Student Testimonials

- *"I attended the [American Career College] Medical Assistants program, which promised a career in the medical field. Unfortunately, with all my hard work, this did not happen. I was*

[47] http://www.aama-ntl.org/docs/default-source/employers/more-emps-hire-cma.pdf?sfvrsn=4
[48] Herzing's website states that its Akron, Ohio, program is CAAEP accredited but CAAEP does not list the school's program as accredited. See https://www.herzing.edu/about/accreditation
[49] https://www.herzing.edu/about/accreditation

Valedictorian of my class and received honor roll and perfect attendance on graduation. A month prior to graduation, the instructor informs me they had become unaccredited and Kaiser or any other hospital will not hire anyone from American Career College." Student who wrote to the Senate HELP Committee quoted in *For Profit Higher Education: the Failure to Safeguard the Federal Investment and Ensure Student Success*, http://www.help.senate.gov/imo/media/for_profit_report/PartII/ACC.pdf, pp. 235

- A National American University recruiter touted the school's Medical Assisting Program but the student found himself taking an accounting course. He complained and was then told that the campus did not yet have approval for the Medical Assisting Program and that the school had enrolled him in a healthcare management program. 2012 Senate HELP Committee Report, *For Profit Higher Education: the Failure to Safeguard the Federal Investment and Ensure Student Success*, http://www.help.senate.gov/imo/media/for_profit_report/PartII/NAU.pdf, p. 624

Surgical Technology

According to the U.S. Department of Labor, the majority of employers want surgical technologists who have passed a national certification exam. Certification exams are administered by the National Board of Surgical Technology and Surgical Assisting (NBSTA) and the National Center for Certification Testing (NCCT). To become NBSTA certified, you must have graduated from a school with programmatic accreditation from either ABHES or CAAHEP.[50] To become NCCT certified, you must have graduated from an "authorized" school.

The following programs do not meet accreditation requirements. There may be additional programs that also do not meet accreditation requirements, as this limited sampling arose from veteran complaints or lawsuits.

- 1 Brown Mackie campus in Kansas City, Kansas is GI Bill approved but graduates are unlikely to be hired because the Kansas City campus is neither ABHES nor CAAHEP approved. As a result, graduates of the Kansas City campus cannot become NBSTA certified. Brown Mackie's Kansas City campus is not NCCT authorized.[51]
- 1 Sanford Brown campus in St. Peters, Missouri is GI Bill approved but graduates are unlikely to be hired because the Kansas City campus is neither ABHES nor CAAHEP approved. As a result, graduates of this campus cannot become NBSTA certified. It's unclear whether Sanford Brown's program is NCCT approved."[52]

Veteran complaints suggest that a wide variety of other surgical technology programs may also not lead to the jobs that veterans have studied for.

Veteran Student Testimonial
"I was unable to get a job in the private sector because Everest's Surgical Technical program was not

[50] http://www.allalliedhealthschools.com/health-careers/medical-technician/surgical-technologist-certification/
[51] VES phone call with NCCT on May 26, 2015.
[52] Phone call with NCCT on May 28, 2015.

accredited upon my graduation. Everest University stole the government's money and burdened me with tens of thousands of dollars of debt in return for a useless and meaningless degree."
Ehren N. of Florida (May 2015 complaint received by Veterans Education Success)

New York Attorney General's Lawsuit
"Certain health services programs, including the Diagnostic Medical Ultrasound, the Cardiovascular Technology, and the Surgical Technology programs at Sanford Brown Institute.... were not programmatically accredited; that graduates of these unaccredited programs could not sit for certain qualifying exams typically necessary for employment upon graduation; and that graduates' inability to sit for these exams could negatively affect their employment opportunities."
Attorney General of the State of New York v. Career Education Corporation, AOD No. 13-379, available at: http://nylag.org/wp-content/uploads/2013/05/Executed-CEC-AOD.pdf

ADDITIONAL DEGREE PROGRAMS THAT SHOULD BE INVESTIGATED

Veteran complaints suggest that a wide variety of additional degree programs may also not lead to the jobs that veterans have studied for.

There may be additional programs that also do not meet accreditation requirements, as this limited sample arose from veteran complaints or lawsuits.

Medical Billing & Coding

Medical Billing & Coding is a field similar to Medical Assistant—graduates of schools that lack the proper accreditation or recognition in the field may find it difficult to find a job.

Veteran Student Testimonials

- *"I was told [by Colorado Technical University] there were plenty of job opportunities in the Medical Billing and Coding field. But they won't hire you unless you have least two years experience. But how am gong to get the experience if they won't hire me? They also told us before we graduated get hired and then worry about getting certified. Well that's not right either. They are looking for you to be certified first."* Richard D. of Wisconsin (May 2015 complaint received by Veterans Education Success)

- *"I was assured [by Colorado Technical University] that everything was correct and I'd get my degree. They said they are accredited which is how the GI Bill is paying for it. During my LAST class for my associates degree, I found out that we can't get certified in a few different levels including the highest level which is actually required by most major medical facilities. It's a useless degree."* Cheryl M. of Illinois (April 2015 complaint received by Veterans Education Success)

- *"Sanford Brown lied, told me upon registration that my credits were transferable. This was incorrect. I was told I could get a job in that field. This was incorrect. Everything told to me was incorrect and now I owe money for a program that I took and aced however cannot get A job in medical billing and coding. They also said they were accredited. They are not."* Donna N. of South Carolina (May 2015 complaint received by Veterans Education Success)

- *[At Sanford Brown,] they didn't know how to teach. If we didn't understand we were told to 'learn it on our own.' One professor told us her way is the right way and to ignore the [Standard*

Operating Procedure] on the test. We had to ask the President of the school for soap and paper towels in the lab because nothing was done when we asked professors for the supplies. We are handling bodily fluid without being able to wash our hands before or after handling them. We used donated expired reagents, test and tubes." Millie Q of Texas (May 2015 complaint received by Veterans Education Success)

Engineering and Technology

Engineering and Technology are additional fields in which industry standards require accreditation. In engineering, the recognized accrediting body (since 1932) is the Accreditation Board for Engineering and Technology, formerly known as the Engineers' Council for Professional Development. Lack of appropriate accreditation may make it difficult for graduates to obtain a job in their field of study.

Veteran Student Testimonials

- *"When I was speaking with the [ITT] recruiter, he told me they were accredited. After 9 months, I found out yes they are accredited, just not ABET [Accreditation Board for Engineering and Technology, which is expected in the industry] accredited. Then I got deployed again. Now my student loans are almost $7,000."* Heith I. of Oregon (May 2015 complaint received by Veterans Education Success

- *"The quality of education [at Heald] was poor. I work in the telecom field and one would think that coming from a school that advertised hands on learning, that I would have known how to terminate telephone, data, and video jacks, right? Not the case. I had a 2-year degree with barely any hands on experience, never touched a relevant meter that professionals use in the field. I felt very let down and cheated that I invested so much time and energy, not getting the hands on experience, and career support as intended."* Ryan B. of Hawaii (May 2015 complaint received by Veterans Education Success)

CONCLUSION

In conclusion, veteran complaints and state law enforcement lawsuits enabled us to identify a number of programs that lacked the proper accreditation needed to meet state licensing requirements or employer expectations. As a result, veterans graduating from these programs, which were GI Bill approved, would be unable to obtain a job in their field of study. Our research likely uncovered only the tip of the iceberg with respect to programs that lacked the proper accreditation.

There are likely additional programs that also do not meet accreditation requirements, as this limited sampling arose from veteran complaints or lawsuits.

METHODOLOGY

Veterans Education Success identified degrees that do not lead to certification or licensure by reviewing state Attorney General lawsuits and student complaints. We then used several databases to determine the necessary certification or licensure requirements for various degree programs.

- *College Navigator*. This Department of Education website indicates whether a school participating in federal student aid is regionally or nationally accredited.
- *Specialized Accrediting Agencies*. We identified the specialized accrediting agencies approved by the Department of Education and then used those agencies' websites or the website of the Council on Higher Education Accreditation (CHEA) to identify the schools whose degrees have received programmatic accreditation (www.chea.org).
- *State Certification and Licensure Requirements*. For certain degrees such as nursing and teaching, we reviewed state websites to determine if schools' degree programs were approved, enabling graduates to set for certification or licensure exams.
- *Employer Preferences*. We reviewed the website of organizations that provide certifications for graduates of programs such as dental assistant, medical assisting, and medical ultrasound sonography to determine industry hiring standards for individuals who graduate with certificates or degrees in such fields.
- *WEEMS Database*. This Department of Veterans Affairs (VA) database identifies the programs at each school campus that are approved to receive GI Bill funds (http://inquiry.vba.va.gov/weamspub/buildSearchInstitutionCriteria.do).

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