

VA INFRASTRUCTURE POWERS EXCEPTIONAL RESEARCH
ACT OF 2021

NOVEMBER 14, 2022.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. TAKANO, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 5721]

The Committee on Veterans' Affairs, to whom was referred the
bill (H.R. 5721) to amend title 38, United States Code, to improve
research conducted within the Department of Veterans Affairs, and
for other purposes, having considered the same, reports favorably
thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Amendment	1
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	2
Subcommittee Consideration	3
Committee Consideration	3
Committee Votes	3
Section-by-Section Description	3
Congressional Budget Office Cost Estimate	4
Committee Oversight Findings	4
Constitutional Authority Statement	4
Earmark Statement	4
Federal Mandates Statement	4
Advisory Committee Statement	5
Performance Goals	5
Supplemental, Additional, Dissenting, and Minority Views	5
Applicability to Legislative Branch	5
Statement on Duplication of Federal Programs	5
Ramseyer Submission	5

AMENDMENT

No amendment was introduced or considered.

PURPOSE AND SUMMARY

To amend title 38, United States Code, to improve research conducted within VA by authorizing the Office of Research and Development (ORD) in statute, removing burdensome paperwork requirements, expanding scientist hiring and compensation flexibility, studying the issue of dedicated research time, fixing a technical issue related to VA's Institutional Review Boards, and increasing transaction authority for the Department.

BACKGROUND AND NEED FOR LEGISLATION

VA's research program is unique in focusing solely on health issues that affect veterans. Its intramural status requires that principal investigators on VA research projects be VA employee scientists, but ORD also partners with universities, other federal agencies, nonprofit organizations, and industry through additional funding mechanisms to further the program's impact on veterans. ORD has an impressive track record of discovery that ends up benefiting not only veterans, but also non-veterans in areas as far-ranging as post-traumatic stress disorder (PTSD), chronic pain, traumatic brain injuries (TBI), and cancer. It is remarkably well-positioned to conduct and translate research quickly ("from bench to bedside") because it is housed within the largest integrated health care system in the United States, with a huge potential research population from which to draw and an electronic health record system useful for data collection and analysis.

To more efficiently and effectively support its research mission, VA needs new legal authorities in the areas of researcher hiring and compensation, intergovernmental personnel waivers, paperwork reduction, and use of Institutional Review Boards. The Committee also authorized ORD in statute in this legislation to ensure that its existence and work continue to be supported.

HEARINGS

On July 14, 2021, the Subcommittee on Health conducted a legislative hearing on various bills introduced during the 116th Congress, including a draft legislation of H.R. 5721. The following witnesses testified: The Honorable Mark Takano, U.S. House of Representatives, 41st Congressional District of California; The Honorable Chris Pappas, U.S. House of Representatives, 1st Congressional District of California; The Honorable Conor Lamb, U.S. House of Representatives, 17th Congressional District of Pennsylvania; The Honorable Jason Crow, U.S. House of Representatives, 6th Congressional District of Colorado; The Honorable Lauren Underwood, U.S. House of Representatives, 14th Congressional District of Illinois. The Honorable Gregory F. Murphy, U.S. House of Representatives, 3rd Congressional District of North Carolina; Mr. David Perry, Chief Officer, Workforce Management and Consulting, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Mike Fisher, MSW, Chief Officer, Readjustment Counseling Service, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Marquis Barefield, Assistant National Legislative Director, Disabled American Veterans; Mr. Andy Blevins, Operations and Policy Director, Minority Veterans of

America; Ms. Tammy Barlet, Deputy Director, National Legislative Service, Veterans of Foreign Wars.

SUBCOMMITTEE CONSIDERATION

H.R. 5721 was considered before the Subcommittee on Health during the above-mentioned legislative hearing on July 14, 2021.

COMMITTEE CONSIDERATION

On November 4, 2021, the full Committee met in an open session, a quorum being present, to consider H.R. 5721. The Committee ordered that H.R. 5721, as introduced, be ordered favorably reported to the House of Representatives.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 5721, as introduced, reported to the House. A motion by Ranking Member Bost of Illinois to report H.R. 5721, as introduced, favorably to the House of Representatives was adopted by voice vote.

SECTION-BY-SECTION DESCRIPTION

Sec. 1. Short title. This Act may be cited as the “VA Infrastructure Powers Exceptional Research Act of 2021” or the “VIPER Act of 2021”.

Sec. 2. Inapplicability of Paperwork Reduction Act. This section mandates that the Paperwork Reduction Act shall not apply to VA research activities. The requirements of the Paperwork Reduction Act have proven extremely burdensome for VA researchers, and VA’s scientific activities should be made exempt in line with how research activities at other agencies (including the National Institutes of Health) have already been made exempt.

Sec. 3. Research and development. This section authorizes VA’s existing Office of Research and Development in statute. It also allows the Secretary to waive the limit on the period and number of intergovernmental personnel performing research duties at VA (current limits are of shorter duration than frequently necessary for optimally conducting research, particularly longitudinal research). This section also fixes a current problem with how VA researchers may be paid for conducting research outside of their VA hours, as long as certain criteria are met (e.g. the scientist is a VA researcher and the outside research is approved by VA).

Sec. 4. Expansion of hiring authorities for certain classes of research occupations. This section allows VA to hire for categories of employees not already authorized: “statisticians, economists, informaticists, [and] data scientists . . .” These are critical positions for VA’s intramural research program.

Sec. 5. Other transaction authority. This section allows the VA Secretary more options for entering into agreements with other entities for the purpose of research, if VA’s current mechanisms (procurement contract, grant agreement, or cooperative agreement) are deemed inappropriate.

Sec. 6. Authorizing a Career Development Award grant program for medical research at R3 research institutions. This section authorizes VA to offer a Career Development Award (CDA) for scientists at “R3” academic institutions (those without tier 1 research programs that already receive the largest percentage of federal scientific grant funding). This would parallel VA’s existing CDA for scientists at historically Black colleges and universities, to further expand the scientific workforce pipeline for VA.

Sec. 7. Comptroller General study on dedicated research time for certain personnel of the Department of Veterans Affairs. This mandates a GAO study of how VA provides its clinician-scientists with dedicated time for research (a common promise when these employees are hired) and what the effects of current policies are on recruitment, retention, and research productivity.

Sec. 8. Clerical amendment. VA requested this section as a technical fix to the provision setting up new VA authorities for Institutional Review Boards in the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2020.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

COMMITTEE OVERSIGHT FINDINGS

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 5721, as amended is authorized by Congress’ power to “provide for the common Defense and general Welfare of the United States.”

EARMARK STATEMENT

H.R. 5721, as amended does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5721, as introduced, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. <https://link.springer.com/article/10.1007/s10611-020-09911-4>

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 5721, as amended.

PERFORMANCE GOALS

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives include assessing whether the new authorities granted to VA result in increased hiring and retention of researchers, less burdensome research reporting processes, improved use of VA Institutional Review Boards, and recommendations to dedicate research time for clinician-scientists.

SUPPLEMENTAL, ADDITIONAL, DISSENTING, AND MINORITY VIEWS

There were no supplemental views filed with this report.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 5721, as introduced, does not relate to the terms and condition of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 5721, as amended establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

RAMSEYER SUBMISSION

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 38, UNITED STATES CODE

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PART I—GENERAL PROVISIONS

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CHAPTER 1—GENERAL

Sec.

101. Definitions.

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120. Inapplicability of Paperwork Reduction Act.

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§ 120. Inapplicability of Paperwork Reduction Act

Subchapter I of chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”) shall not apply to research activities of the Department, including activities under subchapter V of chapter 73.

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PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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CHAPTER 73—VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS

SUBCHAPTER I—ORGANIZATION

Sec.

7301. Functions of Veterans Health Administration: in general.

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SUBCHAPTER V—RESEARCH AND DEVELOPMENT

7381. Office of Research and Development.

7382. Research personnel.

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SUBCHAPTER V—RESEARCH AND DEVELOPMENT

§ 7381. Office of Research and Development

(a) *OFFICE OF RESEARCH AND DEVELOPMENT.*—There is in the Veterans Health Administration an Office of Research and Development (in this section referred to as the “Office”).

(b) *PURPOSES.*—The function of the Office is to serve veterans through a full spectrum of research (including pre-clinical, clinical, and health systems science), technology transfer, and application.

(c) *CHIEF RESEARCH AND DEVELOPMENT OFFICER.*—The head of the Office is the Chief Research and Development Officer.

(d) *ORGANIZATION AND PERSONNEL.*—The Office shall be organized in such manner, and its personnel shall perform such duties and have such titles, as the Secretary may prescribe.

§ 7382. Research personnel

(a) *WAIVER OF INTERGOVERNMENTAL PERSONNEL ACT MOBILITY PROGRAM LIMITS.*—The Secretary may waive the limit on the period and number of assignments required under section 3372(a) of title 5 with respect to an individual who performs research for the Department under the mobility program under subchapter VI of chap-

ter 33 of such title (commonly referred to as the “Intergovernmental Personnel Act Mobility Program”).

(b) *OUTSIDE EARNED INCOME FOR RESEARCH FOR THE DEPARTMENT.*—(1) Compensation from a nonprofit corporation established under subchapter IV of this chapter, or a university affiliated with the Department, may be paid, without regard to section 209 of title 18, to an employee described in paragraph (2), for research conducted pursuant to section 7303 of this title if—

(A) the research has been approved in accordance with procedures prescribed by the Under Secretary for Health;

(B) the employee conducts research under the supervision of personnel of the Department; and

(C) the Secretary agreed to the terms of such compensation in writing.

(2) An employee described in this subsection is an employee who has an appointment within the Department, whether with or without compensation, and without regard to the source of such compensation.

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CHAPTER 74—VETERANS HEALTH ADMINISTRATION— PERSONNEL

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SUBCHAPTER I—APPOINTMENTS

§ 7401. Appointments in Veterans Health Administration

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.

(3) Audiologists, licensed hearing aid specialists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, *statisticians, economists, informaticists, data scientists, and* and such other classes of health care occupations as the Secretary

considers necessary for the recruitment and retention needs of the Department subject to the following requirements:

(A) Such other classes of health care occupations—

(i) are not occupations relating to administrative, clerical, or physical plant maintenance and protective services;

(ii) would otherwise receive basic pay in accordance with the General Schedule under section 5332 of title 5;

(iii) provide, as determined by the Secretary, direct patient care services or services incident to direct patient services; and

(iv) would not otherwise be available to provide medical care or treatment for veterans.

(B) Not later than 45 days before the Secretary appoints any personnel for a class of health care occupations that is not specifically listed in this paragraph, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate, the Committee on Veterans' Affairs of the House of Representatives, and the Office of Management and Budget notice of such appointment.

(C) Before submitting notice under subparagraph (B), the Secretary shall solicit comments from any labor organization representing employees in such class and include such comments in such notice.

(4) Directors of medical centers and directors of Veterans Integrated Service Networks with demonstrated ability in the medical profession, in health care administration, or in health care fiscal management.

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COMMANDER JOHN SCOTT HANNON VETERANS MENTAL HEALTH CARE IMPROVEMENT ACT OF 2019

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TITLE VII—OTHER MATTERS

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SEC. 704. USE BY DEPARTMENT OF VETERANS AFFAIRS OF COMMERCIAL INSTITUTIONAL REVIEW BOARDS IN SPONSORED [RESEARCH] CLINICAL TRIALS.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall complete all necessary policy revisions within the directive of the Veterans Health Administration numbered 1200.05 and titled “Requirements for the Protection of Human Subjects in Research”, to allow sponsored clinical [research] *clinical* of the Department of Veterans Affairs to use [accredited] commercial institutional review boards to review research proposal protocols of the Department.

(b) IDENTIFICATION OF REVIEW BOARDS.—Not later than 90 days after the completion of the policy revisions under subsection (a), the Secretary shall—

(1) [identify accredited] *designate* commercial institutional review boards for use in connection with sponsored clinical [research] *trials* of the Department; and

(2) establish a process to modify existing approvals in the event that a commercial institutional review board loses [its accreditation] *such designation* during an ongoing clinical trial.

(c) REPORT.—

(1) IN GENERAL.—Not later than 90 days after the completion of the policy revisions under subsection (a), and annually thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on all approvals of *commercial* institutional review boards *and central Federal agency institutional review boards* used by the Department[, including central institutional review boards and commercial institutional review boards] *in clinical investigations (as that term is defined in section 50.3 of title 21, Code of Federal Regulations, or successor regulation)*.

(2) ELEMENTS.—The report required by paragraph (1) shall include, at a minimum, the following:

(A) The name of each clinical trial with respect to which the use of [an] *such* institutional review board has been approved.

(B) The *commercial or central Federal agency* institutional review board [or institutional review boards] *or boards* used in the approval process for each clinical trial.

(C) The amount of time between submission *(as determined by the Secretary)* and approval.

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