STATEMENT OF
BETH MURPHY
EXECUTIVE DIRECTOR, COMPENSATION SERVICE,
VETERANS BENEFITS ADMINISTRATION,
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE SENATE COMMITTEE ON VETERANS' AFFAIRS

JULY 13, 2022

Good afternoon, Chairman Tester, Ranking Member Moran and other Members of the Committee. Thank you for inviting us here today to present our views on bills affecting VA's programs and Veterans' benefits. Joining me today from the Veterans Benefits Administration (VBA) are Jocelyn Moses, Senior Principal Advisor, Compensation Service, and James Ruhlman, Deputy Director for Program Management, Education Service.

S. 3372 – Spina Bifida and Other Birth Defects

This bill is intended to strengthen benefits for children of Vietnam Veterans born with spina bifida and children of women Vietnam Veterans born with other birth defects. Section 1(a) would amend 38 U.S.C. § 1831 by adding new definitions of the terms "covered child" and "covered Veteran" for purposes of chapter 18. The term "covered child" would mean a child who is eligible for health care and benefits under this chapter. The term "covered Veteran" would mean an individual whose children are eligible for health care and benefits under this chapter.

Section 1(b) would add new sections 1835, 1836 and 1837 to title 38. The proposed section 1835 would require VA to establish an advisory council on health care and benefits for covered children. The advisory council would solicit feedback from covered children and covered Veterans on the health care and benefits provided under

this chapter and communicate such feedback to the Secretary. The proposed section 1836 would require VA to establish care and coordination teams for covered children. These teams would contact each covered child not less frequently than once every 180 days to ensure the continued care of the child and assist with any changes in care needed due to a changed situation of the child. These teams would also have to contact each covered child as soon as practicable after the identification of a condition listed in a report to Congress, due not later than 180 days from enactment, setting forth the conditions that would trigger outreach to covered children. The proposed section 1837 would require VA to provide a covered child with health care and benefits under chapter 18 for the duration of the life of the child and notwithstanding any death of a parent of the child that precedes the death of the child.

Section 1(c) would require the Under Secretary for Benefits and the Under Secretary for Health to enter into a memorandum of understanding (MOU) within 90 days of enactment. The MOU would address improved assistance for covered children and establish conditions to be included in the report to Congress under the proposed section 1836.

Section 1(d) would require VA, not later than 90 days after enactment, to establish the advisory council required by section 1835 and the care and coordination teams required by section 1836.

VA agrees with the purpose of this bill but has concerns with its terms as written. In particular, we believe the 90 days provided for implementation in section 1(d) would be insufficient. We would be unable to set up an advisory council within this period of time, or hire staff to comprise the care and coordination teams. Without these teams in

place, we also do not believe the outreach requirement within 180 days would be practical.

The proposed section 1835, requiring the establishment of an advisory council, is unclear as to who would be appointed to this council, and consequently, whether the Federal Advisory Committee Act would apply. In accordance with the Federal Advisory Committee Act, if the council members are Federal employees, VA does not have to establish a Federal Advisory Committee. Therefore, we recommend that the bill state that the council be comprised of Federal Government employees only.

In terms of the care and coordination teams under proposed section 1836, it is unclear what the bill intends for how these teams would be formed and operated. We do not believe that placing these teams at the facility level would be appropriate because we do not provide direct care to these beneficiaries, and authorizations for covered care in the community are centralized under the Office of Integrated Veteran Care. For these reasons, we would recommend including them in the national program office as part of the customer service team, as this would better facilitate case management between patients and the non-Department providers furnishing their care. Also, regarding the proposed section 1836, the event that would seemingly trigger outreach would be a change in the patient's condition; however, it is unclear what is meant by the term "condition." VA could, and does, conduct outreach when a child beneficiary develops a need for additional care (such as the need for a ventilator or a new need for a home health aide). In this context, it is not clear that identifying outreach requirements or reporting requirements would be particularly helpful.

We are also unclear as to the intended effect of the proposed section 1837, as the definition of "child" in current 38 U.S.C. § 1831(1) does not condition eligibility on having a living parent; further, these beneficiaries retain eligibility regardless of age or marital status. VA has, therefore, considered this to be a life-long benefit.

We generally believe much of this legislation can be accomplished within VA's existing authorities. We have worked with Senator Braun's staff to provide technical assistance on earlier drafts of this bill, and we would welcome the opportunity to continue these discussions and to confer with the Committee on this legislation before further action on this bill is taken.

We estimate this bill would cost $1.53 million in fiscal year (FY) 2023, $8.25 million over 5 years, and $18.24 million over 10 years.

S. 3548 – Veterans Hearing Benefits Act of 2022

This bill would provide a presumption of service connection for hearing loss and tinnitus for certain Veterans and establish a minimum disability rating for Veterans who require a hearing aid because of a service-connected disability. More specifically, section 2 of the bill would establish a presumption of service connection for the diagnosed hearing loss, tinnitus or both of a Veteran who served in combat or a Veteran assigned to a military occupational specialty (MOS) or equivalent who was likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus or both, as determined by the Secretary. Section 3 of the bill would require VA to adjust the schedule of rating disabilities to establish a minimum disability rating for a Veteran who requires a hearing aid because of a service-connected disability.

VA supports this bill, subject to the availability of appropriations, but notes several areas of concern. As of May 31, 2022, of the more than 5 million Veterans receiving service-connected disability compensation benefits, more than 2.6 million Veterans are service-connected for tinnitus and more than 1.4 million Veterans are service-connected for hearing loss. According to the FY 2021 Annual Benefits Report, tinnitus and hearing loss are the number one and three most prevalent disabilities among compensation recipients, respectively.

VA notes that establishing a presumption of service connection that is not time-limited following separation from service presents the risk that the decision may be inconsistent with the current state of scientific and medical findings on these conditions.

VA notes that the language in section 3 of the bill is unclear. It is unclear if the intent of S.3548 would be to allow for multiple, separate compensable ratings if more than one service-connected disability requires hearing aids. If a hearing aid is required for more than one service-connected disability, would there be a preclusion against compensating for the same functional impairment under different diagnoses?

Additionally, clarification is needed on the definition of “minimum disability rating,” i.e., whether that phrase refers to a non-compensable rating or a 10% rating. It is unclear if the intent of S.3548 is to include a 0% service connection (minimum disability rating) for any Veteran with clinical hearing loss incurred in service that does not meet the level of disabling (and thus, nonservice connected), but requires a hearing aid for treatment of their hearing loss. Currently, the Veteran may have a significant change in hearing threshold in service, but it does not meet the criteria to be considered a disability for VA purposes.

If the intent of S.3548 is to increase 0% service connection to 10% service connection based on a requirement for a Veteran to obtain a hearing aid, this would place an undue burden on the Veterans Health Administration (VHA), VBA and, most importantly, the Veteran who must have a hearing aid as a requirement for application for increased disability. Additionally, there are other types of assistive technologies, and some Veterans choose to use no technology at all.

If passed as written, the required changes to the VA Schedule for Rating Disabilities would depend on whether the Veteran will require a hearing aid (responsiveness to treatment) rather than the level of their hearing impairment (medical diagnostics and expertise). This requirement for a hearing aid device for rating purposes will increase the demand for audiology services within VHA by Veterans who are seeking a hearing aid for rating purposes only, rather than because they perceive their hearing loss to be creating activity limitations or participation restrictions. The impact on access would be significant. As a result, this additionally generated demand could severely impede access to necessary assistive technologies for all Veterans seeking audiology care.

VHA does not interpret the intent of S.3548 as restricting a Veteran's eligibility for hearing aids based on a minimum level of disability. Currently, hearing aids are available based on clinical need to Veterans who are eligible and enrolled for VA health care. If the intent of S.3548 is to restrict hearing healthcare, VHA would not concur with section 3.

VA also notes that, although the presumption created by the bill is broader than the existing presumption, a presumption for hearing loss and tinnitus currently exists in

regulation. Hearing loss and tinnitus are considered organic diseases of the nervous system and are already subject to presumptive service connection under 38 C.F.R. § 3.309(a) for chronic diseases if the condition manifests to a degree of 10% or more within 1 year following separation from service (38 C.F.R. § 3.307(a)(3)). VA notes that the extension of the presumption period may lead to service connection for hearing loss that is unrelated to military service exposure.

In addition, current statutory, regulatory and procedural guidance requires VA to liberally consider evidence of noise exposure in service. The provisions of 38 U.S.C. § 1154(a) require considerations of the time, place and circumstances of service. Section 1154(b) requires that, for combat Veterans, satisfactory lay or other evidence that an injury or disease was incurred in or aggravated by combat service will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardship of such incurrence or aggravation, notwithstanding the fact that there is no official record of such incurrence or aggravation. This statute is implemented in regulation in 38 C.F.R. § 3.304(d).

In considering claims outside the presumptive period, VA already considers the Veteran's MOS. In VA's Adjudication Procedures Manual, M21-1 V.iii.2.B.1.b claims processors are advised to review the Duty MOS Noise Exposure Listing, which includes a list of MOS's for officers and enlisted members that have a high, moderate or low probability of hazardous noise exposure. When the MOS is shown to have a high, moderate or low probability of hazardous noise exposure, claims processors will concede exposure to hazardous noise for the purposes of establishing an event in service. Claims processors also review the Veteran's records for evidence that the

Veteran engaged in combat with the enemy in active service during a period of war, campaign, or expedition. If the evidence establishes that the Veteran was engaged in combat, claims processors will concede exposure to hazardous noise for the purposes of establishing an event in service.

However, the Duty MOS Noise Exposure Listing is not an exclusive means of establishing a Veteran's in-service noise exposure. Claims processors evaluate claims for service connection for hearing loss in light of the circumstances of the Veteran's service and all available evidence, including treatment records and examination results.

Significant mandatory and discretionary costs are associated with this bill, and additional time would be needed to estimate costs.

S. 3606 – Educational Assistance

This bill would eliminate the requirement to specify an effective period of a transfer of post-9/11 educational assistance to a dependent. VA supports this bill, subject to the availability of appropriations, as it would remove the requirement for a Service member to decide the timeframe for a dependent to use transferred entitlement and prevent the negative impact of certain decisions. Mandatory costs associated with this bill are estimated to be insignificant at $7,000 in 2023, $38,000 over 5 years and $85,000 over 10 years. Discretionary costs are not anticipated for the bill.

S. 3994 – Restoring Benefits to Defrauded Veterans Act of 2022

This bill would provide an order of preference for VA's reissuance of funds that were misused by a fiduciary if the beneficiary is deceased. The bill would require VA to pay those funds to the estate of the deceased beneficiary, to a successor fiduciary serving the beneficiary when the beneficiary died or to the next inheritor determined by

a court, in that order, but it would not allow VA to reissue funds to a fiduciary who misused the benefits of the beneficiary.

VA supports the bill, if amended, and subject to the availability of appropriations. Currently, VA must evaluate various factors when determining to whom to reissue misused benefits when the beneficiary is deceased. Updating legislative language to more clearly identify the prioritization of who may receive reissued funds on behalf of a deceased beneficiary would provide greater consistency and legal basis for making such a determination. Incorporating an order-of-priority would also align this bill with other title 38 statutes.

Existing VA procedures allow for an executor identified by a court of competent jurisdiction to receive and hold the funds pending final disposition determinations if there is no estate on file with VA prior to the beneficiary's death and if there is no successor fiduciary serving the beneficiary at the time of the beneficiary's death to identify an estate. The bill's current language would preclude an executor from receiving the funds and require VA to hold the funds until such time that the inheritor(s) have been identified. Therefore, VA recommends that the bill be amended in proposed subsection (c)(1)(C) to allow an executor to receive the funds until the inheritor(s) have been identified.

Moreover, the bill's current language would preclude a fiduciary who misused benefits from receiving payment of reissued funds even if that fiduciary is a beneficiary of the Veteran's estate.

VA recommends that the Committee consider language that would, instead of precluding payment in these situations, offset the amount misused by a fiduciary. For

instance, proposed section 6107(c)(2) could read as follows: “The Secretary may deduct any amount due VA prior to making a payment under this subsection to a fiduciary who misused benefits of the beneficiary.” This amendment would allow VA to ensure that fiduciaries are not benefiting from their misuse, while maintaining precedential estate standards. VA is willing to provide further technical assistance and continued collaboration with the Committee on this bill.

Benefit costs are estimated to be insignificant at $141,000 in 2023, $740,000 over 5 years, and $1.7 million over 10 years. Discretionary costs are not anticipated for the bill.

S. 4141 – Advisory Committee on United States Outlying Areas and Freely Associated States

This bill would require VA to establish an advisory committee to provide advice and guidance to the Secretary on matters related to covered Veterans residing in United States Outlying Areas and Freely Associated States. Covered Veterans would include Veterans residing in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Marina Islands, the Virgin Islands of the United States, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. In carrying out this section, VA would be required to consult with Veterans Service Organizations serving covered Veterans.

VA strives to serve all Veteran populations equitably, including Veterans residing in United States Outlying Areas and Freely Associated States. However, for the reasons discussed below, the Department does not support this bill. Per the Federal Advisory Committee Act Final Rule, VA believes its established Advisory Committee on Minority

Veterans (ACMV) would best represent the covered Veteran constituency group identified in S. 4141 (i.e., Veterans who reside in United States Outlying Areas and Freely Associated States). Accordingly, while VA believes that these commitments could be accomplished in minimal time and longitudinally, realizing the intent more by utilizing an already active committee whose expertise already encompasses the subject matter of interest, Congress' assistance is required in expanding the statutory language of the ACMV committee to encompass these groups. VA believes that such an amendment to the statutory authority of the existing committees, rather than establishing a new advisory committee, would be the most holistic and Veteran-centric resolution. Additionally, the Secretary has appointed a career VA senior executive to serve full-time for up to 3 years as the Senior Advisor for Pacific Strategy, paying particular attention to the needs of Veterans living in the U.S. territories in the Pacific and in the Freely Associated States.

S. 4208 – Improving Access to the VA Home Loan Act of 2022

This bill would require VA to clarify existing requirements in the home loan program's appraisal process and consider new opportunities for improvements. Specifically, section 2(b) would direct the Secretary to consider changing appraiser certification requirements, minimum property requirements, processes related to comparable sales, quality control processes, use of the Assisted Appraisal Processing Program and waivers or other alternatives to existing appraisal processes. Section 2(c) would require the Secretary to provide guidance on desktop appraisals, taking into consideration situations where a desktop appraisal would provide a borrower with cost savings and would eliminate appraisal delays that jeopardize a sales transaction.

VA would support the bill, if amended. VA shares the Committee's concerns about Veterans needing to compete in the homebuying market and is committed to making ongoing improvements to VA's appraisal procedures. VA has already begun reevaluating its processes to enable appraisers to leverage technology, including desk-top appraisals, in the valuation process. As such, VA has no objection to reviewing and clarifying, within 90 days of enactment, VA's program requirements regarding desktop appraisal procedures. VA also supports evaluating other aspects of the appraisal program, including those outlined in section 2(b) of the bill. However, VA cannot complete a more comprehensive review and prescribe updated regulations or program requirements within 90 days of enactment.

VA recognizes that the appraisal industry is overstrained in many areas and that improvements are essential to help Veterans use their benefits in highly competitive markets. VA also recognizes the dwindling number of qualified appraisers in certain areas of the country may make traditional appraisals impracticable (for example, in Fairbanks, Alaska, there are seven VA panel appraisers). During the COVID-19 national emergency, VA revised its procedures to expand use of innovative appraisal technologies. The multiple approaches allowed appraisers and Veterans to safely and timely complete the appraisal process and spurred VA to continue exploring how these tools might lead to long-term efficiencies in the appraisal process. At a recent hearing before the Economic Opportunity Subcommittee of the House Committee on Veterans' Affairs, VA noted that within 90 days of that May 18, 2022 hearing, the issuance of a new procedural waterfall for appraisal assignments that incorporates use of innovative

appraisal tools, including VA's Assisted Appraisal Processing Program and desktop appraisals was expected. VA remains on track to release that procedural waterfall.

VA is continuing to research and evaluate other measures that will make it easier for Veterans and other participants to complete loan transactions in VA's program. This includes considering changes to certification requirements for appraisers, minimum property requirements, the process for selecting and reviewing comparable sales, quality control processes and the use of waivers or other alternatives to existing appraisal processes. VA supports a long-range review of VA's appraisal program as necessary to ensure the VA home loan guaranty remains a competitive earned benefit for the Nation's Veterans.

That said, VA does not believe that VA's appraisal process causes homebuyers such significant issues as to necessitate a revamping of its program within 90 days. From an internal perspective, VA would not be able to develop a well-reasoned, evidence-based public policy in that timeframe. The effort would also divert the home loan guaranty program's resources from other mission-critical functions. From an external perspective, a massive overhaul of VA's program would be premature and could disrupt larger, industry-wide efforts that are already underway. For example, the Property Appraisal and Valuation Equity (PAVE) Task Force recently submitted to the President an action plan that would change the landscape of the valuation industry. As a member of the PAVE Task Force, VA will continue working with the collaborating Federal agencies to implement this action plan.

Like any organization striving to provide world-class service, VA is always looking for ways to better serve Veterans. VA has already begun reevaluating and realizes

there is more work to be done. VA is committed to the improvement process and welcomes an ongoing dialogue with the Committee about how to accomplish that. However, VA cannot support a requirement to overhaul within 90 days its longstanding, time-tested appraisal model, especially to address a volatile, unsustainable market abnormality. If a rulemaking is required, VA would expect for the public to have the advantage of a full 60-day comment period and would hope for responses from a wide range of stakeholders. VA would also expect the interagency clearance process to bring substantial input from other Federal programs. VA would need time to evaluate all comments and interagency input and perhaps even solicit additional public comment if new issues were to surface from the initial round of comments. VA could support this bill if the 90-day requirement were removed.

VA does not anticipate any costs associated with this bill, if amended.

S. 4223 – Veterans' Compensation Cost-of-Living Adjustment Act of 2022

This bill would increase the rates of compensation (for Veterans with service-connected disabilities) and dependency and indemnity compensation (for survivors of certain disabled Veterans) to keep pace with increases in consumer prices.

VA supports the bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children, and it would ensure that the value of their benefits keeps pace with increases in consumer prices.

VA estimates the mandatory cost of this bill to be $4.2 billion in FY 2023, $26.1 billion over 5 years, and $57.2 billion over 10 years. However, the cost of these increases is included in VA's baseline budget because VA assumes Congress will enact

a cost-of-living adjustment each year. Therefore, enactment of this bill would not result in additional mandatory costs, beyond what is included in VA's baseline budget. Discretionary costs are not anticipated for the bill.

S. 4308 – Veterans Marriage Recognition Act of 2022

This bill would amend the definition of "surviving spouse" and "spouse" in 38 U.S.C. § 101 to remove the requirement that a spouse or surviving spouse be a member of the opposite sex.

VA supports this bill, subject to the availability of appropriations. On June 26, 2013, the U.S. Supreme Court held, in *United States v. Windsor*, 570 U.S. 744 (2013), that section 3 of the Defense of Marriage Act, 1 U.S.C. § 7, violates Fifth Amendment principles by discriminating against legally married same-sex couples. On September 4, 2013, the Attorney General announced that the President had directed the Executive Branch to cease enforcement of similar provisions in 38 U.S.C. §§ 101(3) and 101(31), defining surviving spouse and spouse to the extent that they limit Veterans' benefits to opposite sex couples. VA has been administering spousal benefits to same-sex married couples since that time, provided their marriages otherwise meet the requirements of 38 U.S.C. § 103(c). On June 26, 2015, the U.S. Supreme Court also held, in *Obergefell v. Hodges*, 576 U.S. 644 (2015), that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendments, same-sex couples may not be deprived of that right and that liberty. Following *Obergefell*, VA amended its policies and procedures to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. This bill would eliminate potential confusion and

provide clear statutory basis for the practices VA has adopted to conform with the Court's rulings in *Windsor* and *Obergefell*.

VA notes that, while the Supreme Court's decision in *Obergefell* allows it to recognize the same-sex marriage of most Veterans, the decision arguably does not apply to the laws of foreign nations and specifically to the laws of foreign nations that prohibit and do not recognize same-sex marriage. This bill has similar limitations because, as amended, 38 U.S.C. § 101(3) would still define a "surviving spouse" as someone who was "lawfully married to a Veteran." Pursuant to 38 U.S.C. § 103(c), a Veteran's marriage is to be recognized "according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued." Under the plain text of 38 U.S.C. § 103(c), VA would be required to apply the law of the jurisdiction in which the Veteran and spouse resided to determine the validity of their same-sex marriage. Accordingly, if the intent of this bill is to remove the requirement that a spouse or surviving spouse of a Veteran be a person of the opposite sex in all cases, VA suggests that consideration be given to amending 38 U.S.C. § 103(c) to specifically address marriages occurring outside the United States.

This bill would not result in any additional costs to VA.

S. 4319 – Informing VETS Act of 2022

This bill would require VA to send a letter to each Veteran entitled to a chapter 31 program that explains education benefits under chapter 31 and provides a side-by-side comparison between chapter 31 benefits and educational assistance under chapter 33.

VA does not support this bill because it would result in actions that VA deems redundant. When Veterans receive notification of VA disability compensation decisions, VA sends out information regarding the Veteran Readiness and Employment (VR&E) chapter 31 program. When a Veteran applies and is determined eligible for services, an initial evaluation is scheduled for the Veteran to meet one on one with a Vocational Rehabilitation Counselor. During this meeting, the Veteran is provided benefits counseling regarding the benefits and services provided under chapter 31 and chapter 33. Furthermore, a side-by-side comparison of VA education benefits is available on the VR&E program website under the heading “What kind of VR&E services can I get.”.

VBA’s external-facing website and printed materials provide an overview of the chapter 31 program. Additionally, the services VA provides Veterans are individualized to each participant. VA looks forward to the opportunity to discuss these issues in greater detail with the Committee.

S. XXXX – Native American Veterans Direct Housing Loans

This bill would amend VA’s Native American Direct Loan (NADL) program by providing Native American Veterans with more refinance options, requiring the Secretary to award grants to local service providers that specialize in Native American lending and authorizing a new pilot program to assess the feasibility and advisability of a relending program to community development financial institutions (CDFI) that specialize in Native American lending.

VA would support the bill, if amended, subject to the availability of appropriations. VA is committed to making ongoing improvements to the NADL program.

Section 2(a) of the bill would allow Native American Veterans to use the NADL program to refinance their non-NADL mortgage loans. VA notes that there are significant technical issues that would have to be resolved for the bill to accomplish its intended purpose. Under current law, the refinancing of a NADL program loan is limited to a streamline refinance known in VA's program as an Interest Rate Reduction Refinance Loan (commonly called an IRRRL). VA believes the purpose of the subsection would be to eliminate this limitation and expand Native American Veterans' opportunities to take advantage of the NADL program. But the bill text, as drafted, would fail to accomplish that intent. For instance, as the bill is drafted, Native American Veterans would still be unable to use the NADL program to repair, alter or improve their homes in conjunction with the refinance of a non-NADL program loan. Additionally, technical amendments to 38 U.S.C. § 3729 would be required to ensure that Native American Veterans would be charged the correct statutory loan fee depending on the refinancing loan type. VA would be pleased to work with the Committee to resolve these and other technical matters to ensure that the bill would address unique issues facing Native American Veterans who want to participate in the NADL program.

Section 2(a) loan subsidy cost savings is estimated to be $103,000 in 2023, $536,000 over 5 years, and $1.1 million over 10 years.

Section 2(b) would require VA to make grants to local service providers for conducting outreach, homebuyer education, housing counseling, risk mitigation and other technical assistance as needed to assist Native American Veterans seeking to qualify for mortgage financing. Section 2(c) would amend 38 U.S.C. § 3765 to define terms introduced in section 2(b), including CDFI, Native CDFI and tribally designated

housing entity. Although VA supports the intent behind section 2(b), VA does not support the requirement that VA make grants for such services, as the staffing resources necessary to implement and oversee the grant program would deplete VA's ability to carry out the other NADL program functions. VA would instead support an amendment, subject to the availability of appropriations, that would require VA to partner with local service providers for conducting homebuyer education and housing counseling to assist Native American Veterans seeking to qualify for mortgage financing. Such amendment would provide flexibility for VA to further the mission of assisting Native American Veterans with opportunities to achieve economic success through housing, with less impact on the limited staff who specialize in the NADL program.

Section 3 of the bill would require the Secretary to establish a pilot program to assess the feasibility and advisability of making direct housing loans to Native CDFIs to allow them to relend to qualified Native American Veterans and qualified non-Native American Veterans. The bill would establish application and lending requirements, interest rates for loans made to Native CDFIs, non-Federal cost share requirements and repayment requirements. The bill would also authorize VA to use $5 million to carry out the pilot program in the fiscal year following the fiscal year in which the bill is enacted. VA notes that the bill would not make the re-lending requirements specific to Native American Veterans. Also, VA believes that a pilot program, rather than a permanent one, would be counterproductive. VA would need additional enforcement mechanisms to ensure that funds would be used for the statutory purpose and that Native American Veterans would obtain loans on favorable terms. VA further notes there are numerous

technical concerns (for example, definitional consistency), both within the bill text and across 38 U.S.C. chapter 37.

Accordingly, VA would support section 3, with amendments, subject to the availability of appropriations. Such amendments would include provisions to: (1) ensure that the respective CDFIs are limited to making loans to Native American Veterans; (2) establish the program as a permanent one, rather than a pilot program; (3) provide the Secretary with flexibility and discretion to establish additional program requirements, including terms and conditions both for loans from VA to CDFIs and for loans from CDFIs to Veterans; (4) outline the Secretary's oversight authorities; and (5) address other technical concerns (for example, consistency of definitions for terms). VA looks forward to working with the Committee to further develop this legislation and address our concerns.

Section 3 loan cost subsidy savings is estimated to be $2.2 million in 2023 over 5 and 10 years.

VA general operating expense NADL program estimate for FY 2023 is $2 million and includes salary, benefits, rent, travel, supplies, other services, and equipment. Five-year costs are estimated at $10.4 million and 10-year costs are estimated to be $22 million.

S. XXXX – Ensuring the Best Schools for Veterans Act of 2022

This bill would amend 38 U.S.C. § 3680A(d), the section which sets forth the law known colloquially as the "85/15 rule" for VA approval of programs of education. In doing so, the bill would require VA to establish a process for an educational institution to request a review of a determination that the educational institution does not meet the

85/15 requirement. VA's Under Secretary for Benefits would be required to issue an initial decision for each request, within 30 days to the extent feasible, and an educational institution could request the Secretary to review the decision of the Under Secretary.

VA would support the bill, if amended, and subject to the availability of appropriations. 85/15 reports, and therefore suspensions, happen at the start of each term and are reported and adjudicated individually for each approved program. This means there are hundreds of 85/15 calculations and potential suspensions for lack of compliance with the 85/15 rule annually. This large volume of continuous adjudications would add sizeable administrative burdens at both the Under Secretary and the Secretary levels. Therefore, VA recommends that the bill not mandate the level of decision authority for these determinations, to allow VA the ability to manage the adjudicatory workload. No mandatory costs are associated with this bill.

S. XXXX – Veterans' Cemeteries on Trust Land

Section 1 of the draft bill would amend 38 U.S.C. § 2408(g) by adding a new paragraph (3) to address cases where a tribal organization is not operating or maintaining a covered (grant-funded) Veterans' cemetery in accordance with standards established by VA. As drafted, new paragraph (3)(A) would authorize the Secretary to choose among a variety of measures with regard to the cemetery ranging from providing funding for the education and training of the cemetery staff to determining that the cemetery is no longer eligible to receive grants under this subsection. Paragraph (3)(B) would require VA to prescribe regulations establishing a process to make determinations as to whether a grant-funded tribal Veterans' cemetery is being operated

and maintained in accordance with established standards. Paragraph (3)(C) would define “covered veterans’ cemetery” to mean a Veterans’ cemetery on trust land owned by, or held in trust for, a tribal organization for which the tribal organization has received a grant under section 2408(g)(1).

As drafted, section 1 would require VA to establish a process to determine whether a tribal organization is operating and maintaining a tribal Veterans’ cemetery, which was the subject of a grant under section 2408(g), in accordance with established standards. In a case in which VA determines that a tribal organization is not meeting the standards, section 1 would authorize VA to: “provide funding to such entities as the Secretary determines appropriate for the education and training of the staff of the cemetery;” “make grants for the operation and maintenance of the cemetery;” “assume responsibility for costs associated with the operation and maintenance of the cemetery;” or “determine that the cemetery is no longer eligible to receive grants under this subsection.”

VA does not support this section of the draft bill for several reasons. First, VA notes section 2408(c) currently authorizes grant funds to be used for training costs for employees of Veterans’ cemeteries on trust land owned by, or held in trust for, a tribal organization. Also, VA already has authority to make operations and maintenance grants to tribal organizations for operating and maintaining a cemetery under 38 U.S.C. § 2408(g)(1) and (2) and such grants are conditional on the cemetery complying with VA standards under section 2408(d). Thus, the training and operations and maintenance grants provisions of the bill appear to be redundant with existing law.

VA defines an operation and maintenance project in regulation (38 C.F.R. § 39.2) as a project that "assists a State or Tribal Organization to achieve VA's national shrine standards of appearance in the key cemetery operational areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites and turf conditions." It is unclear if Congress' intent is to create a new type of grant that would support interment and daily maintenance and administrative activities at tribal cemeteries. VA does not provide grant funds for daily operations activities, such as conducting interments or mowing the grass. If the intent is to provide such funds, VA strongly recommends revising for clarity to distinguish Congress' intent from VA's long-standing practice and current regulatory use of the term "operations and maintenance". However, VA strongly opposes extending the grant program in this way.

Assuming responsibility for costs of a cemetery on trust land owned by, or held in trust for, a tribal organization is an expansive departure from providing a construction or an operations and maintenance grant upon request from the tribe. It would entail using federally appropriated funds for a cemetery that is not federally owned or operated. VA makes clear in 38 C.F.R. § 39.11 that neither the Secretary nor any employee of VA shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any grant funded cemetery, except as specifically prescribed within the regulation which governs the grant program. Assuming responsibility for costs would mean exercising direct Federal supervision and control over activities of a sovereign entity.

In addition, the underlying concept of this proposed provision would put VA in a position of providing additional Federal funding to a tribal organization that has already

received Federal grant funds under an agreement to operate and maintain the Veterans' cemetery in accordance with VA's national shrine standards yet is failing to do so. The result would be that tribal organizations that are not meeting their commitment would potentially receive additional funds while those that do meet their commitment do not receive additional resources. In addition, limiting this provision to tribal organizations while excluding States creates the appearance of inequitable oversight and inequitable consideration for funding and could considerably diminish the grant funding available to establish, expand and improve other cemeteries.

VA already requires, in 38 C.F.R. § 39.121, that grant-funded cemeteries be inspected for compliance with such standards at the completion of the initial project, and every 3 years subsequent to completion. Grant-funded cemeteries on trust land owned by, or held in trust for, a tribal organization are subject to these inspections by VA's Compliance Review Program and are already subject to agreements that require such cemeteries be operated and maintained in compliance with such standards.

Finally, the language would create ambiguity as to whether the tribal organization would need to apply for grant funding provided in accordance with the bill, as is generally required in section 2408(a)(2) for cemetery grant funding. Section 2408(a)(2) indicates that such grants may be awarded only upon submission of an application. VA has existing regulations governing the application process and the prioritization process for making grant awards with limited grant funds.

VA is unable to provide a cost estimate for section 1 as written. VA is unable to distinguish Congress' intent from VA's long-standing practice and current regulatory use of the term Operations and Maintenance.

Section 2 of the bill would require the Secretary of Veterans Affairs to submit to Congress a report detailing the number of Veterans buried in a cemetery or section of a cemetery that is on trust land owned by or held in trust for a tribal organization who meet the requirements for a plot or interment allowance under 38 U.S.C. § 2303(b)(1) but for whom the Secretary has not paid such allowance.

VA would support section 2 of this bill, if amended. VA notes that section 2 does not specify which Veterans shall be included within the report. Payment for a plot or interment allowance per 38 U.S.C. § 2303(b)(1) for a Veteran buried in a cemetery, or a section of a cemetery, located on trust land owned by, or held in trust for, a tribal organization was not available before enactment of the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2002, Pub. L. 117-103, Div. CC, § 102(c). As such, VA requests clarification on the exact metric for which Veterans to include within the report to Congress. VA offers the following non-exhaustive list of possible interpretations:

- All Veterans who have been buried on land specified within the draft bill and for which a plot or interment allowance has not been paid, regardless of the date of interment or if a plot or interment allowance benefit has been claimed;
- All claims for a plot or interment allowance which have been denied for Veterans on land specified within the draft bill to include the time period prior to the enactment of Public Law 117-103; or
- Only Veterans whose burial should have been eligible for a plot or interment allowance under 38 U.S.C. § 2303(b)(1) beginning on March 15, 2022, upon

enactment of Public Law 117-103, which have been denied or are currently pending.

VA is open to providing additional technical assistance and working with Congress regarding this portion of the draft bill. VA notes that any data for Veterans who have been buried on tribal land as specified within Public Law 117-103 for which a claim for plot or interment allowance has not yet been filed would not be available within VBA data resources.

Section 3 of the draft bill would amend 38 U.S.C. § 2404(c)(2) to authorize the Secretary to designate one or more sections in any national cemetery as green burial sections and to provide for grave markers of such type as the Secretary considers appropriate. The provision includes a definition of the term "green burial section," which would be a section in which remains of individuals have been prepared for interment in a manner that does not involve chemicals or embalming fluids and have been interred in a natural manner or in completely biodegradable burial receptacles. Section 3(b) of the bill seeks to remove an apparent requirement in section 2306(e) for use of outer burial receptacles; however, the term "shall" in subsection (e)(1)(A) has already been replaced by "may" in Public Law 116-315, § 2203 (2021) and will be effective January 5, 2023, so this provision may not be necessary.

VA supports the amendment to section 2402(c) and is appreciative of Congress' support of green burial sections in VA's national cemeteries. This provision reflects the content of the National cemetery Administration's (NCA) legislative proposal requesting authorization to designate sections of national cemeteries for green burial.

Regarding the amendment to section 2306(e), VA supports the concept of this provision insofar as it advances the effective date of the amendment in Public Law 116-315, § 2203, which authorized replacing “shall” with “may” in subsection (e)(1)(A), effective January 5, 2023. However, we oppose the addition of the paragraph (5) language since it would limit this discretionary authority to apply to green burial sections only. The pending discretionary authority under Public Law 116-315 will apply to casketed burials in any VA national cemetery section instead of just to green burial sections, and will allow VA to honor the wishes of families to forego a burial receptacle for other reasons (e.g., to allow for observance of religious customs among observant Muslim and Jewish Veterans and their dependents). There would be no costs associated with this provision.

Section 4 of the draft bill would authorize the Secretary of the Army to convey to the Secretary of Veterans Affairs approximately two acres of land near the national cemetery at Fort Bliss, Texas, for the purpose of expanding that cemetery. This provision reflects NCA’s legislative proposal requesting authorization for this land transfer.

VA supports this provision, subject to the availability of appropriations, and is appreciative of Congress’ support of this land transfer. However, the provision excludes much of VA’s proposed legislative language that would be critical to the conveyance, particularly provisions regarding conditions of conveyance; responsibility for any environmental conditions; and payment of costs of conveyance. VA would appreciate the opportunity to discuss the legislative details further with the Committee.

Section 5 of the draft bill would authorize the Secretary of the Interior to transfer to VA administrative jurisdiction over eligible Bureau of Land Management (BLM) land for use as a national cemetery. This provision is a general authorization to allow transfer of jurisdiction of eligible BLM land as needed and appropriate upon agreement by the Secretaries of Interior and Veterans Affairs. This provision is similar to NCA's legislative proposal requesting authorization for such transfers.

VA supports this provision and is appreciative of Congress' support of this authority to transfer jurisdiction of land from BLM to VA. However, the provision does not include some legislative specifics that VA included in our legislative proposal, which would remove ambiguity of the applicability of 43 U.S.C. § 1714. VA would appreciate the opportunity to discuss the legislative details further with the Committee.

Section 6 of the draft bill would amend 38 U.S.C. § 2411 by adding new subsection (b)(5), which would prohibit the interment or memorialization in a VA national cemetery or Arlington National Cemetery of a person who is found to have committed a Federal or State crime that would cause the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (34 U.S.C. 20901 et seq.), but has not been convicted by reason of not being available for trial due to death or flight to avoid prosecution. Section 6 would include several amendments to include a reference to "a Federal or State crime that would cause the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (34 U.S.C. 20901 et seq.)" rather than referring only to "a Federal capital crime or a State capital crime." This provision mirrors NCA's legislative proposal requesting such clarifications.

VA supports this provision and is appreciative of Congress' support in clarifying the prohibition against interment or memorialization of persons committing certain Federal or State crimes. There would be no costs associated with this provision.

Conclusion

This concludes my statement. My colleagues and I would be happy to answer any questions you or other Members of the Committee may have.