THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 15 2015

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The agenda for the Senate Committee on Veterans' Affairs' May 13, 2015, legislative hearing included a number of bills that the Department of Veterans Affairs was unable to address in our testimony. We are aware of the Committee's interest in receiving our views and cost estimates for those bills. By this letter, we are providing views and cost estimates on S. 681; sections 202, 203, and 206 of the "21st Century Veterans Benefits Delivery Act;" sections 201 and 206 of the consolidated bill related to bills from the 113th Congress; the bill associated with legislative proposals from the Department of Defense; and the bill associated with legislative proposals from the Report of the Military Compensation and Retirement Modernization Commission. In addition, we are providing cost estimates and S. 602 and revised views for S. 270.

We appreciate this opportunity to comment on this legislation and look forward to working with you and the other Committee Members on these important legislative issues.

Sincerely,

Robert A. McDonald

Enclosure

S. 270

S. 270, the "Charlie Morgan Military Spouses Equal Treatment Act of 2015," would amend sections 101 and 103 of title 38, United States Code (U.S.C.), to revise the definition of spouse for purposes of Veterans' benefits. Specifically, the bill would remove from the definition of "surviving spouse" under section 101(3) the phrase "of the opposite sex," and amend the definition of "spouse" under section 101(31) to include an individual if the marriage of the individual is "valid under the laws of any State." The bill would define "State" in the same way that term is defined in section 101(20) of title 38, U.S.C., for purposes of title 38, but include also "the Commonwealth of the Northern Mariana Islands." Additionally, S. 270 would amend section 103(c) of title 38, U.S.C., removing the limitation that a marriage shall be proven as valid "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." The bill would amend section 103(c) to follow the revised definition of "spouse" in section 101(31).

The Department of Veterans Affairs (VA) provided views on S. 270 in our testimony on May 13, 2015. Since the time of that testimony, the United States Supreme Court issued its decision in Obergefell v. Hodges. Now VA may recognize the same-sex marriage of all Veterans, where the Veteran or the Veteran's spouse resided anywhere in the United States or its territories at the time of the marriage or at the time of application for benefits. VA will work quickly to ensure that all offices and employees are provided guidance on implementing this important decision with respect to all programs, statutes, and regulations administered by VA. In addition, VA is consulting with the Department of Justice to fully analyze all aspects of the impact of the

Obergefell decision on all Veterans and their spouses. VA stands ready to brief the Committee with an updated assessment of the need for legislation along the lines of S.270 when that analysis is concluded.

S. 602

S. 602, the "GI Bill Fairness Act of 2015," would amend the term "active duty" under chapter 33 of title 38, to include certain time spent receiving medical care from the Department of Defense (DoD) as qualifying active duty service performed by members of the Reserve and National Guard. Under this bill, individuals ordered to active duty under section 12301(h) of title 10, U.S.C., to receive authorized medical care, to be medically evaluated for disability or other purposes, or to complete a required DoD health care study would receive credit for this service under the Post-9/11 GI Bill.

S. 602 would apply as if it were enacted immediately after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008, Public Law 110 252.

VA provided views on S. 602 in our testimony on May 13, 2015. VA defers to DoD regarding the change to qualifying active duty service under the Post-9/11 GI Bill S. 602 but, as explained in our testimony, VA estimates that it would need one year from enactment of S. 602 to complete changes to the data shared between DoD and VA.

Benefit costs are estimated to be $19.9 million in 2016, $106.7 million over 5 years, and $169.5 million over 10 years. Veterans Benefits Administration (VBA) general operating expenses (GOE) costs are estimated to be insignificant, and information technology costs are estimated to be $500,000.

S. 681

S. 681, the "Blue Water Navy Vietnam Veterans Act of 2015," would amend section 1116 of title 38, U.S.C., by inserting into subsections (a)(1) and (f) the parenthetical "(including the territorial seas of such Republic)" after "served in the Republic of Vietnam" each place it appears. It also would amend section 1710(e)(4) to make a corresponding change in health care eligibility based upon Agent Orange exposure.

VA is obligated to assess the factual and scientific basis for granting disability compensation for all claims, including those associated with Agent Orange exposure. For Veterans who served in the offshore territorial seas of the Republic of Vietnam, there is insufficient evidence to establish a presumption that they were exposed to Agent Orange, which was used over the Vietnam land mass to destroy enemy food crops and reveal enemy activity hidden by jungle foliage. A study by the National Academy of Sciences' Institute of Medicine, *Blue Water Navy Veterans and Agent Orange Exposure* (2011), does not support allegations that ships in Vietnam's territorial seas were significantly exposed to Agent Orange from aerial spray drift or river water runoff.

VA acknowledges that some Veterans qualify for the presumption of Agent Orange exposure because they personally went ashore or their ship entered Vietnam's inland waterways. This is consistent with the use of Agent Orange within the land boundaries of Vietnam and follows the current requirements of 38 U.S.C. § 1116.

However, there is insufficient evidence to extend the presumption of exposure to Veterans whose only service was on Vietnam's offshore territorial seas.

VA will continue to review any new scientific evidence and third party analysis that may arise regarding Agent Orange exposure in the offshore territorial seas of Vietnam. Should evidence be provided that would indicate there was in fact Agent Orange exposure in those areas, the Department will review existing policy and make the appropriate determination based on that evidence.

The benefit costs are estimated to be $1.3 billion during fiscal year (FY) 2016, $2.5 billion for five years, and $4.4 billion over ten years. Discretionary costs arising from the change in health care eligibility cannot be reliably estimated.

S. 1203

Section 202

Section 202 of the draft bill would require VA to establish a training program for Veterans Service Center Managers or employees in successor positions in VBA's regional offices. The training would focus on managerial skills and such other skills the Secretary considers appropriate.

VA supports the intent of this bill, which is to ensure that each regional office has well-trained managers, but opposes it because the proposed legislation is unnecessary. VA's Advanced Management Training Program already provides a one-week residential, instructor-led training for newly appointed senior and division-level managers. This program is conducted at the VBA Professional Development Academy in Baltimore, Maryland. The Advanced Management Training curriculum focuses on

knowledge of VA management policies and regulations, human resources management, budget formulation and execution, employee and labor relations, equal employment opportunity, and diversity management and inclusion.

VBA also offers a number of courses relevant to management skills in its Talent Management System. These courses are generally self-study courses and can either be self-selected by the manager or assigned by a supervisor. In addition, VA provides a number of other supervisory training opportunities, such as programs at Graduate School USA and the Federal Executive Institute.

VA estimates that there are no GOE or benefit costs associated with this section.

Section 203

Section 203 of the bill would require VA to ensure each systematic analysis of operations completed by a Veterans Service Center Manager in a regional office includes analysis of communication between the regional office, Veterans service organizations (VSO), and caseworkers employed by Members of Congress.

VA opposes this section of the bill because it is unnecessary. VA already has authority to require each Veterans Service Center Manager to complete a systematic analysis of operations (SAO). Under current policies and procedures, Veterans Service Center Managers must complete ten SAOs annually that generally cover all areas of service center operations, including timeliness, quality, and internal controls, and may conduct additional SAOs on specific areas of operations as necessary. One mandatory SAO already covers correspondence, which includes communication with VSOs and Congressional caseworkers, and compliance with the outreach procedures. As written,

section 203 would impose a redundant administrative requirement that would not improve the analysis of communications with VSOs or Congressional caseworkers.

VA estimates that there are no GOE or benefit costs associated with this section.

Section 206

Section 206 of the bill would require VA within 180 days after enactment of the bill to complete its efforts to revise VBA's resource allocation model (RAM) and submit a report to the House and Senate Veterans' Affairs Committees on the revised RAM.

VA opposes section 206 because it is unnecessary. VBA continues to take actions to improve the RAM and ensure appropriate resources are available for future operations. For example, in FY 2014, VBA adjusted the RAM to incorporate additional variables to more closely align with VBA's transformation to a fully electronic claims process.

If Congress enacts section 206, it would not allow VBA to continue to analyze and adjust the RAM as new information becomes available and initiatives are implemented. This would be particularly problematic during VBA's implementation of the National Work Queue (NWQ), a paperless workload management initiative designed to improve VBA's overall production capacity. VBA is currently in a transition phase with rating workload managed and redistributed by four area offices as well as a Virtual Workload Management Team. In the beginning of FY 2016, VBA plans to deploy a staggered rollout of a single NWQ to eight regional offices, followed by national deployment. Work will be distributed based on station capacity, prioritization of claims at the national level, and additional routing rules that can be adjusted without modifying

software. Through initial and subsequent phases of NWQ, VBA will garner more robust data to update and refine the way resources are distributed.

In recent years, VBA has provided several updates to the Committee on the RAM and operational capacity, and VBA would be happy to continue providing updates as needed without legislation.

VA estimates that there are no GOE or benefit costs associated with this section.

Draft Consolidated Legislation from the 113th Congress

Section 201

Section 201 of the draft bill would amend section 5103A(d) of title 38, U.S.C., which describes when the Secretary of Veterans Affairs must obtain a medical examination or opinion to decide a claim for disability compensation, by adding paragraph (3)(A). This paragraph would require VA to obtain an examination or opinion in claims involving disability compensation based on a mental health condition related to military sexual trauma (MST) when the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant):

1. Contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and
2. Indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

3. Does not contain a diagnosis or opinion by a mental health professional that may assist in corroborating the occurrence of a military sexual trauma stressor related to a diagnosable mental health condition.

Section 201 would allow VA to define MST but would require that the definition include "sexual harassment (as so specified)." It would also require VA to provide Congress with a report on the total number of examinations and opinions conducted pursuant to this new provision and specify the number of examinations conducted by VA using a "standardized disability assessment" versus the number using a "non-standardized clinical interview."

VA does not support section 201 because VA already provides medical opinions in MST-related claims for post-traumatic stress disorder (PTSD) when there is minimal evidence that an in-service MST stressor may have occurred. Under 38 Code of Federal Regulations (C.F.R.) § 3.304(f)(5), VA currently provides a medical opinion when there is evidence of PTSD symptoms and circumstantial evidence that an MST stressor may have occurred. This liberal approach comes into play when the normally required corroborating documentation of an in-service PTSD stressor is not available. VA has been improving its processing of claims based upon MST under its regulations and continues to believe that legislation is not necessary.

VA also opposes the draft bill because it would extend the proposed provisions to any "mental health condition," which is defined in section 202 of the draft bill as PTSD, anxiety, depression, or any other mental health diagnosis designated by the Secretary. According to the American Psychiatric Association, PTSD is a unique mental disorder because symptoms are caused by specific stressors, and these symptoms tend to

appear and persist at some future point in time. Therefore, when service connection for PTSD is at issue, VA looks for evidence of an in-service stressful event that is linked to post-service diagnosis of PTSD. The American Psychiatric Association has not associated the other mental health conditions listed in the definition in section 202 with a stressor that creates delayed onset symptoms many years later. Reactions to an MST stressful event in service may result in depression or anxiety, but these symptoms are not associated with a lengthy delay in onset. As a result of this onset difference, VA created special regulations for PTSD, which are not applicable to other mental disorders. Therefore, the use of an examiner's opinion as "after-the-fact" evidence for an in-service MST event, as proposed by this bill, is not compatible with modern mental health concepts as implemented in VA's current non-PTSD regulations.

Regarding the requirement to report the number of examinations using a standardized disability assessment versus those using a non-standardized clinical interview, VA interprets this as a request for data as to VA's use of clinical interviews conducted by VA clinicians in the course of the "Acceptable Clinical Evidence" (ACE) process. Under this process, VA clinicians prepare a Disability Benefits Questionnaire (DBQ) by considering the available medical evidence and supplementing that information with a telephone interview, if necessary. In appropriate cases, VA uses the ACE process instead of conducting an in-person examination. However, VA does not utilize the ACE process in mental health cases, including claims based on MST. As such, regardless of whether 38 U.S.C. § 5103A(d) is amended to add paragraph (3)(A), VA would have no data to report as to the number of MST cases in which VA conducts

clinical interviews as part of the ACE process in lieu of an in-person, standardized disability assessment.

Benefit costs are estimated to be $171.0 million during FY 2016, $2.3 billion for 5 years, and $7.2 billion over 10 years.

Section 206

Section 206 of the draft bill would require VA to report to Congress within 180 days of enactment the following information related to disability examination requests:

- The number of general medical examinations furnished by VA from FY 2011 through FY 2014;
- The number of general medical examinations furnished by VA from FY 2011 through FY 2014 in which a joint examination was conducted, but no joint claim was received;
- The number of specialty medical examinations furnished from FY 2011 through FY 2014;
- The number of specialty medical examinations furnished by VA from FY 2011 through FY 2014 in which one or more joint examinations were conducted;
- A summary with citations to any medical or scientific studies that provide a basis for determining that three repetitions are adequate to determine the effect of repetitive use on functional impairment;
- The names of all examination reports used by VA, including general medical examinations and DBQs, that require measurement of repeated range of motion testing and the number of these examinations conducted in 2014;

- The average amount of time taken by an individual conducting a medical examination to perform three repetitions of movement of each joint;
- A discussion of whether there are more efficient and effective scientifically reliable methods of testing for functional loss on repetitive use of an extremity other than the three-time repetition currently used by the Department; and
- Recommendations as to the continuation of repetitive joint testing.

In addition, VA would be required to report to Congress within 180 days of enactment on efforts to reduce the need for in-person disability examinations. This report would include:

- Criteria used to determine if a claim is eligible for the ACE initiative;
- The number of claims eligible for ACE since the initiative began through enactment of this bill, broken-down by fiscal year and by claims determined eligible based in whole or in part on medical evidence provided by a private health care provider;
- The number of claims eligible for ACE that required a VA employee to supplement evidence with information obtained during a telephone interview with a claimant or health care provider;
- Information on any other initiatives or efforts, including DBQs, to encourage the use of medical evidence and reports provided by private health care providers if the report is sufficiently complete for purposes of adjudicating a claim;
- A plan to measure, track, and prevent ordering unnecessary disability examinations when a claimant provides a medical examination in support of a claim; and,

- A plan with actions VA will take to eliminate requests for disability examinations when a claimant provides a medical exam that is adequate for purposes of adjudicating a claim.

Although VA supports the intent of these reporting requirements, this provision is unnecessary as it would duplicate existing laws and processes requiring VA to measure, track, and prevent the ordering of unnecessary medical examinations. Under 38 U.S.C. § 5103A(d)(2), an examination or opinion is only required when the record does not contain sufficient medical evidence to make a decision. Furthermore, 38 U.S.C. § 5125 explicitly notes that VA need not conduct additional examinations if private examinations are sufficient for adjudicating claims. VA regulations are consistent with these statutory requirements. Therefore, a plan to prevent the ordering of unnecessary medical examinations would be duplicative of current policies and procedures. VA already has authority to adjudicate a claim without an examination if the claimant provides, or VA otherwise obtains, evidence adequate for rating purposes.

Subsection (a)(2)(B) would require VA to report the number of general medical examinations in which a joint examination was conducted, but no joint claim was received. These data would not be meaningful as all general medical examinations include joint examinations.

In addition, VA does not track some of the requested data, which would be burdensome to obtain. Subsection (a)(2)(G) would require VA to report the average time to conduct three repetitions of movement in joint examinations; however, VA does not track these data. Similarly, VA does not track data regarding the number of claims using ACE that are supplemented with a telephone interview. VA does not track when

or if private medical evidence is sufficient for rating purposes. Further, the receipt of new evidence may change decisions regarding the sufficiency of private medical evidence over time. VA's policy is to evaluate a condition without ordering an examination when the evidence of record is sufficient to rate the claim.

VA has conducted extensive training on the use of private medical evidence in deciding claims. Additionally, as part of its quality review process, VA tracks the granting of some issues when the evidence is sufficient, while continuing to develop evidence to decide other issues in the claim. This review also checks whether the requested examinations were necessary, the claim was over-developed, and if any unnecessary development delayed a decision on the claim. VA added the last two items in November 2012 to determine if unnecessary development was contributing to the claims backlog.

No benefit costs are associated with this section. VA is unable to determine the costs associated with the tracking of examination data.

Draft Bill – Transfer Functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense

This draft bill would amend title 38, U.S.C., to transfer the functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense so that they may jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose Reconstruction Program. This draft bill would require VA and DoD to conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of VA decisions on claims for service connection of radiogenic diseases. VA would also be required to

provide Veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program. Finally, VA and DoD would be required to carry out any other activities with respect to the review and oversight of the program that the Departments determine are necessary.

VA supports the provisions of this draft bill. The Advisory Board held its final meeting in June 2013 and archived its files in July 2014. VA remains committed to continuing to provide benefits for radiogenic diseases. VA is also committed to providing quality decisions and will continue to audit completed claims for service connection of radiogenic diseases to ensure that they meet VA's quality standards.

No benefit costs are associated with this bill. VA estimates administrative costs would be insignificant.

Department of Defense Legislative Proposal Regarding Education Benefits Under the Montgomery GI Bill—Selected Reserve (MGIB-SR)—Retention of Entitlement to Educational Assistance During Certain Additional Periods of Active Duty

This proposal would amend section 16131(c)(3)(B)(i) of title 10, U.S.C., to add two additional authorities (sections 12304a and 12304b) to the existing list of authorities under which a Servicemember's entitlement may be restored under the MGIB-SR. Those authorities permit restoration of entitlement when a Governor requests Federal assistance in response to a major disaster or emergency, or when the Secretary of a military department determines that it is necessary to augment active forces for a preplanned mission in support of a combatant command.

The proposal would also amend 10 U.S.C. § 16133(b)(4) to allow for an extension of the period of eligibility under MGIB-SR when a Servicemember is activated

under 10 U.S.C. § 12304(a) or § 12304(b) as well. Under this amendment, the period of active-duty service, plus four months, would be added to the Servicemember's eligibility period for use of his or her entitlement.

VA does not oppose the proposed legislation. Currently, VA restores educational assistance entitlement under MGIB-SR if the Servicemember had to discontinue school because he or she was ordered to serve on active duty under sections 12301(a), 12301(d), 12301(g), 12302, or 12304, and failed to receive credit or training time toward completion of his or her approved educational, professional, or vocational objective. Additionally, VA extends the period of eligibility under MGIB-SR when a Reserve or Guard member is called to active duty under sections 12301(a), 12301(d), 12301(g), 12302, or 12304.

Based on information provided by DoD, Reservists who are called to active duty under section 12304(a), on average, spend one week or less on active duty. Generally, this timeframe would not cause these individuals to withdraw from school or retake a course of education.

When individuals are called to active duty under section 12304(b), DoD is required to notify these individuals 180 days (6 months) before mobilization. Generally, courses of education are a maximum of five months long. The requirement to give Reservists a 6-month notification should be adequate time for Servicemembers to complete their current semester or term. This timeframe allows Reservists sufficient time to change future courses of education, without any costs to individuals, DoD, or VA.

Therefore, there would be no additional benefit cost to VA associated with enactment of this proposal. Likewise, there would be no additional FTE or GOE costs associated with enactment of this proposal.

Department of Defense Legislative Proposal Regarding Education Benefits Under the Post-9/11 GI Bill—Inclusion of Duty Performed by a Reserve Component Member Under a Call or Order to Active Duty for Medical Purposes as Qualifying Active Duty Time for Purposes of Post-9/11 GI Bill Education Benefits

This proposal would amend the current definition of "active duty" found in section 3301 of title 38, U.S.C., to include certain time spent receiving medical care from the Secretary of Defense as qualifying active-duty service performed by members of the Reserve and National Guard. Under the proposed legislation, individuals ordered to active duty under section 12301(h) of title 10, U.S.C., to receive authorized medical care, to be medically evaluated for disability or other purposes, or to complete a required DoD health care study would be eligible for Post-9/11 GI Bill educational assistance.

VA does not oppose the proposed legislation.

Currently, individuals with qualifying active-duty service of at least 30 continuous days who are honorably discharged due to a service-connected disability are eligible for 100 percent of the Post-9/11 GI Bill benefit. Because service under 10 U.S.C. § 12301(h) does not, at present, meet the definition of active duty, the service cannot be used to establish eligibility or increase eligibility under the Post-9/11 GI Bill. If this proposed amendment were enacted, individuals honorably discharged from such service due to a disability after serving 30 continuous days would qualify for Post-9/11 GI Bill at the 100 percent-benefit tier. If discharged for a reason other than disability,

the service would count toward establishing or increasing eligibility, depending on the amount of aggregate qualifying active duty service accrued.

Benefit costs to the readjustment benefits account associated with enactment of this proposal are estimated to be $9.4 million in FY 2016, $51.2 million over five years, and $114 million over 10 years. GOE costs associated with the proposed legislation are estimated to be insignificant, and Information Technology costs are estimated to be approximately $500,000 for the design, development, testing, and deployment of the new functionality needed to meet the requirements of this legislation.

Military Compensation and Retirement Modernization Commission (MCRMC) Legislative Proposals

Section 1101

Section 1101 of the proposed legislation would amend section 3011(a)(1)(A) of title 38, U.S.C., to limit the availability of the Montgomery GI Bill-Active Duty (MGIB-AD) program to eligible individuals who had a reduction in basic pay for educational assistance under chapter 30 before October 1, 2015.

VA supports legislation that would sunset the MGIB-AD program, as in a similar proposal that the Administration transmitted as part of the National Defense Authorization Act. VA provides educational assistance to eligible persons under multiple programs, including the MGIB-AD program (chapter 30) and the Post-9/11 GI Bill (chapter 33). Individuals eligible under both the MGIB-AD and the Post-9/11 GI Bill will generally receive a greater benefit under the Post-9/11 GI Bill.

Public Law 111-377 expanded the Post-9/11 GI Bill and resulted in that benefit being more advantageous for most Veterans. The Post-9/11 GI Bill can now be used

for non-college degree programs, on-the-job training, and apprenticeships, which were previously only available to individuals eligible for other VA education programs. Qualifying active duty service for the Post-9/11 GI Bill now includes title 32 service. This change allowed certain activated National Guard members who were only eligible for other educational assistance programs to now qualify for benefits under the Post-9/11 GI Bill. Additionally, the housing allowance payable under the Post-9/11 GI Bill is now available to individuals pursuing programs of education solely via distance learning.

While VA supports sunsetting the MGIB-AD program, the language suggested for 38 U.S.C. § 3011(a)(1)(A) would create implementation problems from a VA standpoint, and we therefore prefer to accomplish this objective through the Administration proposal that was transmitted by DoD on May 1, for inclusion in the National Defense Authorization Act. VA does not receive information regarding the date on which a Servicemember's pay is reduced for contributions into the MGIB-AD program, as the collection of those funds is a DoD responsibility and pay reduction is not currently a requirement for establishing benefit eligibility. Additionally, VA notes that previous education benefits have been sunsetted based on dates of service. For example, the Post-Vietnam Era Veterans' Educational Assistance Program was sunsetted by limiting participation to those who entered service prior to July 1, 1985. The Administration's proposal addresses these technical concerns.

Increases to VA's outlays associated with the enactment of our transmitted proposal are estimated to be $142.3 million in FY 2016, $508.4 million over five years, and $690.4 million over 10 years.

There are no additional FTE or GOE costs associated with section 1101.

Section 1102

Section 1102 of the proposed legislation would add a new section 16167 to chapter 1607 of title 10, U.S.C. This new section would provide continuing eligibility under the Reserve Educational Assistance Program (REAP) to members who entered service before the date of enactment of this legislation and received educational assistance for a course of study for the period of enrollment immediately preceding the date of enactment. The proposed legislation would also sunset REAP four years after the date of enactment. VA supports legislation that would sunset REAP.

As mentioned above, Public Law 111-377 expanded the Post-9/11 GI Bill and resulted in that benefit being more advantageous for most Veterans. The Post-9/11 GI Bill can now be used for non-college degree programs, on-the-job training, and apprenticeships, which were previously only available to individuals eligible for other VA education programs. Additionally, the housing allowance payable under the Post-9/11 GI Bill is now available to individuals pursuing programs of education solely via distance learning. The number of individuals using REAP decreased 68 percent, from 42,881 beneficiaries in FY 2009, to 13,784 beneficiaries in FY 2014. VA believes most beneficiaries would elect to receive educational assistance under the Post-9/11 GI Bill.

While VA supports sunsetting the REAP program, we prefer to accomplish this objective through the Administration proposal that was transmitted by DoD on May 1, for inclusion in the National Defense Authorization Act. We prefer the Administration's proposal because we believe that the original proposed statutory language from the Commission would disenfranchise some Guard and Reserve members; in addition, the initial implementation would be cumbersome. First, we note that those individuals not

enrolled in the term immediately preceding the date of enactment would lose eligibility for REAP. For this reason, we are concerned that, due to the draft provisions in section 1102, and the prohibition of duplication of eligibility for the Post-9/11 GI Bill and REAP based on the same period of service, some beneficiaries would be left without eligibility for any educational assistance as of the date of enactment.

Second, the requirement that the individual be enrolled in the term immediately preceding enactment would impact VA's ability to process claims for REAP in a timely fashion. We do not routinely check to see if a REAP beneficiary was enrolled in any particular term prior to awarding benefits for reenrollment. The Administration's proposal addresses these technical concerns.

Benefit costs associated with enactment of our transmitted proposal are estimated to be $50.2 million over five years and $245.3 million over 10 years. There are no additional FTE or GOE costs associated with section 1102.

Section 1104

Section 1104 of the proposed legislation would amend section 3319(b)(1) of title 38, U.S.C., to require Servicemembers to complete 10 years of service and enter into an agreement to serve at least 2 more years to be eligible to transfer their unused Post-9/11 GI Bill education benefits to family members. Currently, Servicemembers must complete at least 6 years of service and agree to serve at least 4 more years to qualify for transferability. Although dependent children are not eligible to receive transferred benefits until the Servicemember has completed a minimum of 10 years in the armed forces, spouses can currently begin using transferred benefits once the Servicemember has completed six years in the armed forces.

Since transferability is a DoD benefit that aids in retention, VA defers to DoD on this section. VA cannot develop a cost estimate related to this section, as it is unclear what the long-term effects on recruitment, retention, and use of transfer of eligibility would be.

There are no additional FTE or GOE costs associated with this section.

Section 1105

Section 1105 of the proposed legislation would provide that each Secretary concerned exercise the discretionary authority to transfer unused education benefits to family members under section 3319(a)(2) of title 10, U.S.C., in a manner that encourages retention of individuals in the uniformed services. The proposal also would provide that the Secretary concerned be more selective in permitting such transferability.

VA defers to DoD regarding the provisions in section 1105. However, we note that the reference to title 10 in the proposed legislation should be changed to title 38.

There are no mandatory costs associated with section 1105. Likewise, there are no FTE or GOE costs associated with this section.

Section 1106

Section 1106 of the proposed legislation would amend section 3325(b)(1) of title 38, U.S.C., to require the Secretary of Defense to include in the annual report on the programs under chapters 33 and 35 of title 38, information on the highest level of education obtained by each individual who transfers an education benefit under section 3319.

VA defers to DoD for assessing the full impact of this legislation. This proposal would require the Secretary of Defense to provide information on the highest level of education obtained by these individuals; therefore no impact to VA is anticipated.

There are no mandatory costs associated with enactment of section 1106. Likewise, there are no FTE or GOE costs associated with section 1106.

Section 1107

Section 1107 of the proposed legislation would add a new subsection (d) to section 1142 of title 10, U.S.C. that would require the Secretary concerned to collect information, at the time of separation, on the highest level of education obtained by individuals who transfer an education benefit under section 3319 of title 38,U.S.C. The proposal would also require the Secretary concerned to prepare and submit annually to Congress a report that contains such information.

VA defers to DoD for assessing the full impact of this proposal. This legislation would not impact VA's administration of the Post-9/11 GI Bill.

There are no mandatory costs associated with section 1107. Likewise, there are no FTE or GOE costs associated with enactment of section 1107.

Section 1108

Section 1108 of the proposed legislation would amend section 3319(h)(2) of title 38, U.S.C, to terminate basic allowance for housing payments on or after July 1, 2017, for dependent spouses and children who use transferred education benefits under the Post-9/11 GI Bill.

VA defers to DoD regarding the impact of the provisions of section 1108 on recruitment and retention.

VA notes that the proposed language only removes housing allowance eligibility for those enrolled at an institution of higher learning, while retaining the benefit for those enrolled at non-degree granting schools, as well as for apprenticeship and on-the-job training programs.

Benefit savings associated with the enactment of this section are estimated to be $287.4 million in FY 2017, $5.4 billion over 5 years, and $13.4 billion over 10 years. There are no FTE or GOE costs associated with section 1108.

Section 1109

Section 1109 of the proposed legislation would amend section 8525(b) of title 5, United States Code, to prohibit an individual from receiving unemployment compensation for any period for which the individual receives a housing stipend under chapter 33 of title 38, U.S.C.

VA has concerns with this recommendation. Unemployment compensation (UCX) is a critical stabilization component for transitioning Servicemembers and their families. We note that the majority of transitioning Servicemembers do not use UCX for the full allotment of benefits (26 weeks in most states). This proposal could reduce future economic opportunities, mobility, and competitiveness for Veterans and their families.

Under this section, Veterans would have to choose between receiving unemployment compensation and receiving a housing stipend under VA's Post-9/11 GI Bill education benefits (chapter 33). There are numerous variables that are used to determine an individual's weekly employment compensation payment. Drivers, such as an individual's previous salary, length of time employed, state of residence, and state of

employment, play a factor in determining each individual's payment. The length of time an individual can receive unemployment also varies on a case-by-case basis. There are also numerous variables that determine an individual's level of education benefit, including time of service and training time.

Therefore, VA is unable to determine whether there would be any benefit costs or savings to VA's Readjustment Benefits Account under this proposed section due to insufficient data on the number of individuals who are currently in receipt of both a housing allowance and unemployment compensation.

There are no FTE or GOE costs associated with enactment of section 1109.

Section 1110

Section 1110 would add a new section 3326 to chapter 33 of title 38, U.S.C., that would require each educational institution receiving a payment on behalf of an individual who receives educational assistance under chapter 33 to report annually to the Secretary of Veterans Affairs information regarding the academic progress of the individual, as the Secretary may require. The legislation would also amend section 3325(c) of title 38, United States Code, to require the Secretary of Veterans Affairs to include this information in its annual report to Congress on the operation of the chapter 33 and 35 programs.

Although the Administration did not submit this proposal for inclusion in the National Defense Authorization Act, VA does not object to the proposed legislation. In accordance with Executive Order 13607: Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members and Public Law 112-249: Improving Transparency of Education

Opportunities for Veterans, the Departments of Education, Veterans Affairs, and Defense were tasked with identifying outcome measures in order to provide information on available educational programs to support informed decision-making about educational choices as they relate to Veterans and Servicemembers.

A set of outcome measures was developed to capture important information on Veterans' experiences during school, upon completion of a degree or certificate, and post-graduation using existing administrative data. These measures include graduation rates, persistence rates, retention rates, transfer-out rates (2-year institutes of higher learning), certificate completion, number of years to complete degree/certificate, number of institutions attended to complete degree, and number of degrees/certifications completed. We are presently collecting the relevant data and anticipate these data will be available for publishing on the Department of Education's College Navigator and VA's website in 2015. This would allow Veterans to view specific Post 9/11 GI Bill statistics for each approved educational institution.

Due to system limitations, the Education Service does not track individual employment data and course enrollment (for example: English 101, Math 120) or the grades associated with each course. Schools provide total credit hours for a specific term and the total allowable tuition and fees associated to those credit hours. Schools provide reductions in the rate of pursuit, but do not report individual course descriptions when completing this process. It is therefore not possible to track course completion rates, course dropout rates, or course failure rates.

In accordance with section 402 of Public Law 112-154 and 38 U.S.C. § 3325(c), VA has submitted two reports to Congress that include information concerning the level

of utilization and expenditures; appropriate student-outcome measures, such as the number of credit hours, certificates, degrees, and other qualifications earned by beneficiaries during an academic year; and recommendations for administrative and legislative changes regarding the provision of educational assistance to Servicemembers, Veterans, and their dependents.

There are no mandatory costs associated with enactment of section 1110. Likewise, there are no FTE or GOE costs associated with section 1110.

Section 1203

Section 1203 would mandate that Department of Labor (DOL), in consultation with DoD and VA, to conduct a review of Veteran employment matters and challenges. Additionally it would mandate DOL, in consultation with DoD and VA, to prepare a report, no later than 120 days from the date of enactment, that provides recommendations to address employer barriers with respect to hiring Veterans, and recommendations for improving information sharing between the Federal agencies that will serve transitioning Servicemembers and Veterans.

VA defers to DOL on the provisions of this section.

Section 1204 would mandate that DoD, in consultation with DOL and VA, conduct a review of the Transition GPS Program Core Curriculum. Additionally it would mandate DoD, in consultation with DOL and VA, to prepare and submit a report, no later than 120 days from the date of enactment, that provides specific recommendations for improving the Transition GPS Core Curriculum.

VA defers to DoD on this provision.