

# Pending Legislation

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Statement of

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Before The

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Committee on Veterans' Affairs

With Respect To

**Pending Legislation**

WASHINGTON, D.C.

Chairman Tester, Ranking Member Moran, and members of the Senate Committee on Veterans' Affairs, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on these important pieces of legislation pending before this committee.

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**S. 3372, A bill to amend title 38, United States Code, to strengthen benefits for children of Vietnam veterans born with spina bifida, and for other purposes.**

The VFW supports this legislation which would strengthen benefits for children of Vietnam veterans born with spina bifida by establishing an advisory council, care and coordination teams, and policy to delineate the duration of care and benefits.

Since the 1990s, the VFW advocated from the beginning for benefits and health care for veterans' children with spina bifida when legislation requested research into the harmful Agent Orange effects on veterans and their families. The connection between spina bifida in children with paternal Agent Orange exposure was linked by the National Academy of Sciences in 1995. This research was the foundation of the language in the *Agent Orange Benefits Act*, Public Law 104-204, which required the Department of Veterans Affairs (VA) to establish a health care and benefits package for those individuals. Living with spina bifida since birth creates daily challenges and care needs. VA needs to ensure those challenges are overcome or made easier and those needs are met.

Sixty years ago, one in three children with spina bifida died before their fifth birthday. Today, ninety percent of individuals with spina bifida live past their thirtieth birthday. An advisory council can bridge the communication gap between this distinct group of veterans, their children, and VA to share knowledge of VA's services and benefits, and innovation of care and research as treatments improve and life expectancy lengthens.

A February 2021 VA Office of Inspector General (OIG) report identified that more outreach and coordination was needed to support spina bifida beneficiaries. The report stated that most of these Veterans Benefits Administration (VBA) beneficiaries have been assigned a disability level of III, meaning the most disabling. Therefore, many of these individuals require around-the-clock care and assistance. According to title 38, United States Code, Chapter 18, VA defines health care for these children as home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care. Individuals and families can also benefit from a care coordinator who can assist in organizing a patient's care activities to identify possible challenges, develop a care plan, monitor and adjust care when needed, and evaluate outcomes. The care coordinator provides clinical expertise to help facilitate and communicate the child's care and needs between parents, VA providers, VA community care

providers, and other health care professionals to offer the best possible quality of life.

According to the OIG report, as of May 2020, overpayments of VBA monthly compensation benefits to three eligible individuals after they died totaled well over half a million dollars. Since then, VBA and the Office of Community Care have taken swift action to ensure death notification data is shared. This legislation would clearly outline the duration of health and benefits to title 38, United States Code, for children with spina bifida to eliminate overpayment in the future.

### **S. 3548, Veterans Hearing Benefits Act of 2022**

Service in the military is often accompanied by activities during training, deployments, and everyday operations that can put service members' hearing at risk. A 2005 Institute of Medicine (now known as the National Academy of Medicine) report titled "Noise and Military Service: Implications for Hearing Loss and Tinnitus" found that based on the available data since World War II, "the evidence is sufficient to conclude that hazardous noise levels are and have been present in many military settings." In addition, the VA website states that hearing problems, including tinnitus, are the most prevalent service-connected disability among American veterans.

The VFW supports this legislation which would require VA to recognize tinnitus and hearing loss as presumptive conditions for service in combat or in military occupational specialties with exposure to acoustic trauma. Our members continue to support a VFW Resolution that urges Congress to pass legislation to this effect.

### **S. 3606, A bill to amend title 38, United States Code, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a dependent, and for other purposes.**

The VFW supports this bill, which would eliminate the requirement to specify an effective period of a transfer of Post-9/11 educational assistance to a dependent. In cases where a

service member dies before the educational assistance is used, unnecessary red tape is a hurtful barrier if the surviving family is unavailable to clarify clerical errors. The process of transferring education benefits to a dependent should be as transparent and seamless as possible, and this bill would help eliminate a field which serves no real utility. This legislation would make it easier for all veteran and military families using VA education benefits and would be of significant importance to Gold Star Families.

### **S. 3994, Restoring Benefits to Defrauded Veterans Act of 2022**

The VFW supports this legislation which would ensure that if a fiduciary misuses a veteran's VA benefits they were entrusted to manage, whenever the Secretary of Veterans Affairs determines repayment of those funds must be issued to the veteran but the veteran has passed away, the funds would be paid to the veteran's estate. These benefits may be critical for the veteran's surviving spouse, next of kin, or caregiver. The VFW appreciates that language was included which specifies that no fiduciary who misused benefits of a veteran would receive these payments, even if that person is in control of the late veteran's estate.

### **S. 4141, A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Advisory Committee on United States Outlying Areas and Freely Associated States, and for other purposes.**

For veterans residing in U.S. territories and freely associated states, access to their earned VA medical care and benefits can be challenging. The VFW supports this legislation which would create an Advisory Committee on United States Outlying Areas and Freely Associated States to identify and communicate the needs of veterans in these areas to the Secretary of Veterans Affairs and to develop appropriate solutions.

### **S. 4208, Improving Access to the VA Home Loan Act of 2022**

The Department of Veterans Affairs Loan Guaranty Service has long been providing

opportunities for upward economic mobility to the military community by opening the doors to homeownership. For over seventy years, the VA Home Loan program, established through the *Servicemen's Readjustment Act of 1944*, has provided a means to obtain and adapt homes, in recognition of the dedication and sacrifice of service members. For eligible veterans who have served on active duty and in the National Guard or Reserve forces, this program has been one of the most significant benefits offered through VA.

Veterans using VA-guaranteed loans sometimes face difficulties associated with this program's appraisal process. While conventional loans provide flexibility in choosing appraisers, VA-guaranteed loans require VA-approved appraisers. In addition to their reputation for being more stringent, these appraisals have been associated with longer wait times. Data from ICE Mortgage Technology indicates that on average for the first three months of 2021, these loans took fifty-five days to close compared to forty-nine days for conventional loans. Although the difference is less than one week, some buyers are either unaware of wait times based on the current market, or do not find a twelve percent difference to be negligible. Sellers want to close quickly on the sale of their homes. In light of the high demand for appraisals, VA has responded by increasing timeliness requirements as well as appraisal fees for VA-approved loan appraisers, while stipulating that these increases are temporary.

The VA appraisal process also has an established reputation for strict home value assessments. This can often pose a challenge for rural veterans when comparable homes are not available to accurately assess the true value of a home. Some veterans report the lack of a local VA-approved appraiser who understands the nuances of the community that factor into home values. The VFW supports this proposal to review and possibly amend appraisal practices for a VA home loan to make this great program more user friendly, without diminishing its value or security.

### **S. 4223, Veterans' Compensation Cost-of-Living Adjustment Act of 2022**

The VFW supports this legislation which would provide a cost-of-living increase for wartime disability compensation, additional compensation for dependents, clothing allowances, and dependency and indemnity compensation for surviving spouses and children. These benefits would receive the same percentage increase as is granted for Social Security benefits. The VFW would like to see cost-of-living increases for these benefits every year so

that veterans, dependents, and survivors are able to maintain financial stability.

### **S. 4308, Veterans Marriage Recognition Act of 2022**

The VFW supports this legislation which would update the definition of surviving spouse within title 38, United States Code. The last time the definition was updated was in 1962 and much has changed in the last sixty years. The change would remove the currently restrictive language that describes a surviving spouse as a person of the opposite sex. The proposed language would state that a surviving spouse is someone who was lawfully married to a veteran, including a marriage between two persons of the same sex. The VFW also recommends consideration of another update in the same section of the law (Section 101 of title 38, United States Code) by striking the language that states a surviving spouse may not live with another person or hold themselves out to be married. This is outdated language and should be updated to reflect marriage requirements of the current era.

### **S. 4319, Informing VETS Act of 2022**

The VFW supports this proposal to better inform veterans about the opportunities offered through the Veteran Readiness and Employment (VR&E) program. Currently, according to data released by the Bureau of Labor Statistics, the unemployment rate for all veterans in America in June of this year was 2.7 percent. While this is good news regarding veteran employment, the VFW understands this situation can be cyclical. If we do not put proper tools in place, we could see these numbers rise again during this country's next period of financial instability. VR&E offers a proven system that enables veterans to retrain for their next career, allowing them to continue participating in the American dream of prosperity.

### **S. 4458, Ensuring the Best Schools for Veterans Act of 2022**

The VFW supports this bill to improve the process by which the Secretary of Veterans Affairs determines whether an educational institution meets certain requirements for enrollment. VA's 85-15 rule is not meant to prohibit veterans from utilizing their earned

education benefits. However, due to recent changes that had unintended consequences, certain schools were unsure if they could enroll veterans in courses. This proposal takes input from schools and veteran advocates to make sure veterans are able to use the benefits they have earned while schools still maintain quality standards.

### **Discussion Draft, Native American Direct Loan Improvement Act**

The VFW supports this draft proposal to carry out a pilot program to offer direct housing loans to Native community development financial institutions and to expand outreach and grants to local service providers. The VFW believes stable housing is a key protective factor against veteran suicide, and improving and expanding resources like the Native American Direct Loan program is helpful to make sure veterans, regardless of where they live, can purchase a home of their own.

### **Discussion Draft, To amend title 38, United States Code, to address the operation and maintenance of veterans' cemeteries on trust land owned by, or held in trust for, tribal organizations, and for other purposes.**

The VFW supports the scope and intent of this legislation which aims to provide additional resources to veteran cemeteries on tribal lands or operated by a tribal organization that have received VA cemetery grants or grants from already existing "Operations and Maintenance" funds, but are not maintaining or are incapable of maintaining the cemeteries in accordance with the standards set by VA's National Cemetery Administration. The VFW believes the Secretary of Veterans Affairs already has the authority and budgeted resources to direct additional funding for the training of cemetery staff, provide grants or other funding for cemetery operations and maintenance, and the ability to determine when cemeteries are no longer eligible to receive grants. VA has an effective structure to provide these resources to cemeteries that are in need and are willing to use the benefits.

The VFW is supportive of the provisions in this legislation that ensure VA reports to Congress the number of interments on tribal lands or managed by tribal organizations that are eligible for plot or interment allowance but for which VA has not paid such allowance. The VFW supports that this bill would give VA the ability to create "green" burial sections at national cemeteries that include biodegradable burial receptacles, and that it would provide additional resources for the expansion of National Cemetery Administration lands.



## **Discussion Draft, No Bonuses For Bad Exams Act**

The VA OIG report from June 2022 titled “Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions” found deficiencies in VBA’s governance and oversight of its contract medical disability examination program. OIG reported that VBA “did not hold vendors accountable for correcting errors and improving exam accuracy” and stated that improvements to the program are necessary to ensure that contractors conduct accurate examinations that lead to the correct outcomes for veterans’ disability claims. OIG found that VBA conducted quality reviews correctly during the 2020 review period, but also found that all three vendors failed to meet the ninety-two percent accuracy requirement from 2017 to 2020. One vendor’s accuracy rate was as low as sixty-six percent in 2018 and had only improved to seventy-one percent by 2020. Though VBA identified these errors through its quality review, this information was not shared with claims processors and may have led to inaccurate rating decisions. Of the 12,152 quality reviews that VBA conducted in 2020, OIG estimates that 2,700 examinations had errors and 690 of those were not corrected before decisions were made on the disability claims. OIG estimates that approximately thirty-five percent of the potentially insufficient examinations had errors that were not corrected prior to the claims processors decisions. Contract examinations also represent a significant financial investment as VA has spent nearly 6.8 billion dollars since fiscal year 2017.

The VFW supports this legislation which aims to resolve the issues reported by OIG. Though much of what is being proposed already exists within VA policy, the VFW believes there are several areas in which codification may be more effective. First, regarding the training requirements within Title I, VA has required training for its staff and for contractors, though has not shared with Veterans Service Organizations (VSOs) how often that training is required. VA uses the Talent Management System as an online learning center, and the employee’s job title and duties determine which courses are required. The types of training mentioned in Section 101 (b) of this legislation are current training requirements for all VA Veterans Service Representatives and Rating Veterans Service Representatives. The VFW supports requiring the existing training to be completed not less than once per year.

The VFW supports restricting bonuses for contractors that do not meet the ninety-two percent examination accuracy requirement. This may already exist within the current contracts between VA and vendors, though proof of this has not been made available. The



VFW has made requests in the past for details on contracts regarding compensation and pension examinations and quality assurance reports, but VA has refused to share that information. This legislative proposal would establish an accuracy requirement of ninety-five percent or higher to qualify for bonuses. While the VFW would like to see one hundred percent accuracy, ninety-five percent is an achievable benchmark and incentive for contractors to ensure examinations are completed with the highest level of quality.

The VFW supports Section 103 within Title I of this legislation which would ensure data is collected and analyzed for all Veterans Health Administration and contract medical examinations on a monthly basis. VA's Medical Disability Examination Office (MDEO) should be conducting that reporting, but has admittedly lapsed on generating quality reports in the past. As the OIG report indicates, MDEO also failed to take corrective actions when it did find discrepancies in examinations. The VFW also supports priority processing for claims where the examination was identified as inadequate. VA has often failed to make these corrections, possibly due to contractual timelines and the added cost of delays, even though this is part of the existing adjudication procedures.

In addition, since VA eliminated the use of pre-decisional review, known as "48-hour review," VSOs have lost the ability to intervene when errors in examinations or other aspects of a claim are discovered. VA-Accredited Service Officers can be effective in catching these errors, and reestablishing a pre-decisional review option would serve to reduce the need for veterans to appeal. The VFW believes that the ability for VSOs to intervene in a veteran's claim prior to final rating decision is a key part of title 38, United States Code, which authorizes accredited representatives to assist with the preparation, presentation, and prosecution of claims.

Regarding Title II of this legislation, the VFW supports veterans and their representatives receiving the credentials of the contractor or employee of the Department that provided such examination. Currently, VA's Disability Benefits Questionnaire includes general credentials such as the physician number and specialty. The VFW recommends clarifying these added credentials and including the training components listed in Section 101 of this proposal.

The VFW supports Section 202 of Title II which would require that VA corrects examination errors within seven days or schedules a replacement examination and, in certain cases,

removes inadequate examinations from a veteran's claim record and prohibits their use for adjudication. The VFW suggests using the definition of "insufficient" as is currently in the M21-1 Adjudication Procedures Manual for consistency in the quality of contract disability medical examinations.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you or the committee members may have.