



Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015

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STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

WITH RESPECT TO

**S. 290, S. 563, S. 564, S. 1450, S. 1451, S. 1460, S. 1693, S. 1856, S. 1938, and
DRAFT LEGISLATION**

WASHINGTON, D.C.

Chairman Isakson, Ranking Member Blumenthal and members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

S. 290, the "Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015"

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

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

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

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

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

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

S. 563, the "Physician Ambassadors Helping Veterans Act"

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

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

This legislation seeks to streamline that process by establishing a 60-day deadline for VA to complete the credentialing process for volunteer physicians. While the VFW supports expediting the approval process for volunteer physicians, we do not support establishing an arbitrary deadline for the VA credentialing process. While it may be grueling at times, the credentialing process serves to ensure the safety of those under VA's care and should not be unduly rushed. We also fear such a mandate would result in VA medical facilities prioritizing volunteer physicians over new hires in an effort to meet statutory requirements, further delaying VA's lengthy employment process. That is why we urge the Committee to amend this legislation and require VA to develop a new hiring process specifically tailored towards volunteer physicians. The new process must not impede a medical facility's ability to process applications for new hires. It should, however, reduce or eliminate requirements that may not be necessary for volunteer physicians, such as requiring a minimum of three references from previous employers.

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

S. 564, the “Veterans Hearing Aid Access and Assistance Act”

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

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

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

S. 1450, the “Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act”

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

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

access barrier and improve VA's ability to recruit and retain high-quality hospitalist and emergency room physicians.

S. 1451, the "Veterans' Survivors Claims Processing Automation Act"

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

S. 1460, the "Fry Scholarship Enhancement Act of 2015"

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

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

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

S. 1693, to expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the

Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment.

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

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

S. 1856, the “Department of Veterans Affairs Equitable Employee Accountability Act of 2015”

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

Section 2 of the bill would amend Chapter 7 of title 38 by including a new paragraph that outlines the suspension and removal of employees for performance or misconduct that is a threat to public health or safety. While it is critically important to ensure the safety and health of veterans, the narrow definition of performance or misconduct this provision provides would be limited to health care providers and only in cases when negligent care is involved. This leaves out a vast majority of employees and situations when removal should take place.

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

While the VFW supports your proposal for immediate removal of employees without pay, the remaining procedures for removal and appeal process have considerable differences

with H.R. 1994, which the VFW supports. Our membership insists that a prompt removal process be developed to give the Secretary broader authority to remove bad employees. The VFW looks forward to working with both parties to find common ground and a final solution to removing bad actors from VA's workforce.

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

S. 1938, the "Career-Ready Student Veterans Act"

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

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

Discussion Draft

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

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

The section also adjusts how VA reimburses veterans eligible for the Montgomery GI Bill (Chapter 30) and who have paid into the benefit, but elect to use Chapter 33 instead. Currently, Chapter 30-eligible veterans who elect to use Chapter 33 must wait until they have finished using their benefits before VA can repay them for their Chapter 30

contribution. Under this legislation, the Chapter 30 contribution would be prorated and added into living stipend payments while veterans are enrolled in Chapter 33, granting them a faster system of reimbursement while they are still in school and need it most. The VFW fully supports this section.

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

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

Currently, third party training programs that contract with public schools are able to charge unlimited fees since public schools have no set dollar amount cap. The law states only that the Post-9/11 GI Bill covers the actual cost of in-state tuition and fees. Last year, it came to light that some contracted flight training programs were charging exorbitant fees, which far exceeded the cost of an average in-state education. The VFW believes this is a loophole that must be closed by placing reasonable caps on these sorts of training programs.

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

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

Section 5 would codify the authority of State Approving Agencies (SAAs) to inspect and approve non-college degree (NCD) programs at not-for-profit institutions of higher learning

to validate their quality. This is an authority previously held by SAAs, but rescinded by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010. As a result, some not-for-profit schools developed NCD programs of questionable value. Although the VA Office of Economic Opportunity issued guidance allowing the SAAs to inspect NCD programs in subsequent years, the VFW still believes that this policy should be strengthened by statute.

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

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

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