



National Service & Legislative Headquarters
807 Maine Avenue SW
Washington, DC 20024-2410
tel 202-554-3501
fax 202-554-3581

**STATEMENT OF
SHANE L. LIERMANN
DAV DEPUTY NATIONAL LEGISLATIVE DIRECTOR
FOR THE RECORD OF
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JULY 13, 2022**

Chairman Tester, Ranking Member Moran and members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Senate Veterans' Affairs Committee. As you are aware, DAV is a non-profit veterans service organization (VSO) comprised of one million wartime service-disabled veterans and dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

We are pleased to offer our views on the bills that impact service-disabled veterans, their caregivers and families and the programs administered by the Department of Veterans Affairs (VA) that are under consideration by the Committee.

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

Currently title 38, United State Code, subsections 1801 to 1834 directly codify the benefits and hospital care for children of Vietnam veterans who have been diagnosed with spina bifida. This bill would add to section 1831 by defining a covered child and a covered veteran.

Additionally, this bill would require the Secretary to establish an advisory council on health care and benefits for covered children. The advisory council shall solicit feedback from covered children and covered veterans on the health care and benefits and communicate such feedback to the Secretary. Also, the bill would create care and coordination teams for covered children.

The bill requires the VA Under Secretary for Benefits and Under Secretary for Health to enter into a memorandum of understanding to better assist covered children and to establish conditions to be included in the required report.

We understand the importance of caring for those exposed to toxins, especially Agent Orange. However, DAV, a resolution-based organization, does not have a specific resolution for the proposed changes as annotated by the bill and DAV does not take a position.

S. 3548, Veterans Hearing Benefits Act of 2022

The Veterans Hearing Benefits Act of 2022 would provide presumptive service connection for hearing loss and tinnitus and a minimum evaluation for the required use of hearing aids.

VA does not provide a presumption of service connection for hearing loss or tinnitus. All veterans must establish exposure to acoustic trauma in service, provide a diagnosis of hearing loss or tinnitus, and a medical opinion linking them together. However, this can be difficult to overcome as in many cases acoustic noise exposure in service is not documented or hearing examinations were not provided.

The Veterans Hearing Benefits Act would consider hearing loss, tinnitus, or both, incurred in or aggravated by active military service for a veteran who served in combat and for veterans in certain military occupational specialties who were likely exposed to sufficient high levels of acoustic trauma to result in permanent hearing loss, tinnitus, or both.

Veterans can be rated at 0% disabling for hearing loss and be required to use hearing aids. Additionally, this bill would require the VA Schedule of Rating Disabilities to establish a minimum compensable disability rating for a veteran who requires a hearing aid for a service-connected disability.

DAV strongly supports the Veterans Hearing Benefits Act, in accordance with DAV Resolution Nos. 035 and 047, as it would provide presumptive service connection or hearing loss and tinnitus, while also providing a compensable evaluation for service-connected hearing loss that requires a hearing aid.

S. 3606, to eliminate the requirement to specify an effective period of transfer of Post-9/11 educational assistance to a dependent

Currently VA and the Department of Defense (DOD) cannot amend the information required on the official forms to elect the transfer of Post-9/11 GI Bill benefits to a dependent, without statutory authority. S. 3606 would require VA and the DOD to change the language used on the forms to clarify the information when a service member elects to have their Post-9/11 GI Bill benefit transferred to a dependent.

Many times, service members misread the information requested in the GI Bill benefit transfer forms. This results in eligible dependents being barred from educational benefits. S. 3606 would correct this issue impacting surviving families and dependents.

DAV supports S. 3606, in accordance with DAV Resolution No. 174, which supports legislation that would improve and protect the VA's education and employment benefits for service-disabled veterans and their survivors.

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

Under current statute, if a defrauded veteran dies before their case with VA is resolved, the veteran's family cannot seek reimbursement for the defrauded funds.

S. 3994 would require VA to reissue misused benefits to a beneficiary's estate in cases where the beneficiary predeceased reissuance and would provide reissued benefits to either the veteran's estate, successor, or next inheritor. Most importantly, the Restoring Benefits to Defrauded Veterans Act would not allow the VA to make any reissuance to any family member who was the fiduciary and was misusing the veteran's benefits.

DAV supports S. 3994, as it is in alignment with DAV Resolution No. 036, which calls for meaningful claims reform. The Restoring Benefits for Defrauded Veterans Act will not allow family members who defrauded the veteran to receive any of the reissued benefits, which is a significant reform to the claims process.

S. 4141, to establish in the Department of Veterans Affairs an Advisory Committee on United States Outlying Areas and Freely Associated States

S. 4141 requires the VA to establish an Advisory Committee on United States Outlying Areas and Freely Associate States. The purpose of the Committee would be to provide VA advice and guidance for veterans residing in American Samoa, Guam, Puerto Rico, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

This advisory committee can be critical to specifically address the needs of veterans living in these remote locations that have a small VA presence. For example, out of all of the locations noted, only one, Puerto Rico, has an actual VA medical center. Some of the other locations have VA Clinics, but not all. VA must do better in providing vital services to all veterans, especially remote and underserved populations.

DAV supports S. 4141, in accordance with DAV Resolution No. 020, which calls for the right of rural veterans to be served by the VA to the maximum extent practicable, but urges the VA to develop training materials and conduct training and outreach to its community and federal partners in rural areas to ensure that these providers have understanding of veteran-specific exposures, risks and evidence-based practices to best address their needs.

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

The Improving Access to the VA Home Loan Act would update the appraisal requirement for loans guaranteed by VA. This bill will would allow for a modern, digital appraisal process, which will expedite the appraisal process and not place veterans at a disadvantage during the entire home buying process.

We understand the positive impact the VA Home Loan gives veterans. However, DAV, a resolution-based organization, does not have a specific resolution for the proposed changes as annotated by the bill and DAV does not take a position.

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

DAV Supports S. 4223, the Veterans' Compensation Cost-of-Living Adjustment (COLA) Act of 2022. It would increase compensation rates for VA benefits, including clothing allowance, and dependency and indemnity benefits paid to survivors and families of service members who died in the line of duty or suffer from a service-related injury or disease.

This increase in compensation rates is based on the same percentage that Social Security benefits are increased for 2023. If passed, these rates would be effective December 1, 2022, and most importantly, would be realized in compensation benefits paid on January 1, 2023.

With inflation reaching a 40-year high, we must ensure that veterans' benefits keep pace for the many veterans and survivors who are on fixed incomes and largely rely on their compensation payments. For those, a COLA can be the difference between providing for their families or not. Consistent with DAV Resolution No. 070, we support S. 4223.

Mr. Chairman, we appreciate you and Ranking Member Moran introducing this important bill. To demonstrate the importance of a COLA for veterans' benefits, in the past 16 days, DAV members have sent over 30,000 emails to Congress in support of the Veterans' Compensation Cost-of-Living Act. We look forward to quick passage in the Senate.

S. 4308, Veterans Marriage Recognition Act

On June 26, 2015, the Supreme Court held in *Obergefell v. Hodges* that the Fourteenth Amendment of the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

Accordingly, VA now recognizes all same-sex marriages without regard to a veteran's state of residence. However, 38 U.S.C. 101(3) and § 101(31) define "surviving spouse" and "spouse" as persons "of the opposite sex." These definitions were not specifically addressed in the Supreme Court's decision or by a subsequent statute.

The Veterans Marriage Recognition Act would amend the existing statutes and define a spouse as "who was lawfully married to a veteran, including a marriage between two persons of the same sex." This bill would also remove the requirement "of the opposite sex."

DAV supports S. 4308, the Veterans Marriage Recognition Act of 2022, which would codify the VA's current practice of recognizing same-sex marriages into law. This would provide protection of same-sex marriages within the VA and not allow a change based on policy.

S. 4319, Informing VETS Act of 2022

The Informing Veterans on Educations for Transitioning Servicemembers (VETS) Act would require the VA to promote all the programs under Chapter 31 of title 38, United States Code.

The July 28, 2021 GAO report found when given the choice between the Post-9/11 GI Bill and the Veteran Readiness and Employment (VR&E) program, veterans with disabilities will base their choice on which program best suits their unique goals, preferences, and circumstances. For example, certain veterans may prefer the GI Bill's flexibility to independently select courses of study, whereas others may prefer to have the assistance of a counselor to select a course of study as part of an employment plan, as provided under VR&E. However, most officials GAO interviewed said veterans with disabilities often use the GI Bill for education benefits without knowing that the VR&E program exists, or that it can pay for education, provide assistive equipment for their disability, or offer unique benefits of working with a counselor.

The GAO report recommended VA to take steps to provide veterans with more information about VR&E's education benefits and to inform veterans about the comparative program features of the GI Bill and VR&E. VA concurred with the recommendations.

S. 4319 addresses both of the recommendations as it will require the VA to inform, by letter, each veteran entitled to the program that explains the educational benefits of the program, and to provide in each letter and online a side-by-side comparison of benefits between the program and Post-9/11 GI Bill educational assistance.

DAV supports the Informing VETS Act as it is in direct alignment with DAV Resolution No. 174. This will help to ensure that disabled veterans can take full advantage of the multiple benefits of utilizing VR&E.

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

The Ensuring the Best Schools for Veterans Act would streamline VA's 85/15 Rule, a school reporting requirement that prohibits VA from paying benefits to students enrolling in education programs where more than 85% of the students in that program use the G.I. Bill or other funding from the Department.

VA recently rescinded all exemptions for schools where the number of students receiving VA assistance is less than 35% of the total campus population, placing many

schools' ability to enroll veterans in jeopardy due to burdensome administrative red tape. The Ensuring the Best Schools for Veterans Act of 2022 will clarify the requirements of the 85/15 rule, ensuring education programs can continue accepting veterans while maintaining oversight to prevent fraudulent programs from taking advantage of veterans.

DAV supports S. 4458, the Ensuring the Best Schools for Veterans Act, as aligns with DAV Resolution No. 174 which supports legislation that would improve and protect the VA's education benefits for service-disabled veterans.

Discussion Draft, Native American Direct Loan Improvement Act

This discussion draft proposes to improve to title 38, United States Code, Section 3762, "Direct housing loans to Native American Veterans; program administration." This would include awarding grants to local service providers such as tribal organizations, tribally designated housing entities, Native Community development financial institutions and nonprofit organizations. Additionally, the discussion draft would create a pilot program on relending of direct housing loans by Native community development financial institutions.

For many veterans, homeownership is an essential part of the American dream and a benefit they have earned. However, DAV, a resolution-based organization, does not have a specific resolution for the proposed changes as annotated by the discussion draft and DAV does not take a position.

Discussion Draft, to address the operation and maintenance of veterans' cemeteries on trust land owned by, or held in trust for, tribal organizations

Currently title, 38, United States Code, Section 2408(g), notes the Secretary may make grants to any tribal organization to assist the tribal organization in establishing, expanding, or improving veterans' cemeteries, or in operating and maintaining such cemeteries, on trust land owned by, or held in trust for, the tribal organization.

The discussion draft would amend this statute by adding that if the Secretary determines that a tribal organization is not operating or maintaining a covered veterans' cemetery in accordance with such standards as the Secretary determines appropriate, the Secretary may 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.

DAV would be supportive of this potential legislation, based on DAV Resolution No. 293, which calls for increases to cover improvements, operations and maintenance of veterans' cemeteries that are owned and operated by a state, federally recognized tribal government or U.S. territory.

Discussion Draft, No Bonuses for Bad Exams Act

The discussion draft, No Bonuses for Bad Exams Act, seeks to improve the quality and transparency of contracted medical disability examinations overseen by the Veterans Benefits Administration (VBA).

This proposal addresses training requirements for those conducting VA examinations. Specifically, the training instruction would include: the duty to assist; the relevance of causation compared to other evidentiary standards; well supported medical opinions; and the relevance of a lack of statutory or regulatory presumption of service connection. In addition, the discussion draft would require all VA personnel that conduct or review medical examinations completes similar training annually. The Board of Veterans' Appeals (the Board) and the U.S. Court of Appeals for Veterans Claims (the Court) are included in this training requirement.

VBA oversees and reviews the quality of these contracted examiners. Of note is that this proposal states that no contractor that provides medical disability examinations shall receive a monetary incentive or bonus, unless 95% or more of the provided examinations are adequate for rating purposes.

Further, this draft would require VBA to provide the credentials of the contractor examiner to the claimant and the claimant's representative. If an examination is determined to be inadequate by the Board or the Court, and the claimant or the representative request to have the examination removed, VBA must remove said evidence and not be able to use in further adjudicative actions.

DAV would be supportive of such a legislative proposal, as VA should get examinations and decisions correct the first time around to improve timeliness and potentially reduce the need to resolve issues by appeal. DAV Resolution No. 036 supports legislation that would provide meaningful claims and appeals reform, strengthen training, testing and quality control, as well accountability on VBA.

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