Cohort of Overpressured Warfighters Action Council
2841 Majestic View Walk
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July 16, 2026

To:
The Honorable Jerry Moran, Chairman
The Honorable Richard Blumenthal, Ranking Member
and the Distinguished Members of the Committee
United States Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, DC 20510

Via electronic delivery

RE: Supplement to COWAC letter of July 14, 2026. S. 4744 / H.R. 9237, the Take Care of America's Veterans Act, Section 108

Dear Chairman Moran, Ranking Member Blumenthal, and Members of the Committee:

We write to supplement the record provided in our July 14, 2026 letter, to correct one statement in it, and to set out more completely the structural and precedential objections to Section 108. On further review of the administrative record, we believe those objections, and not the merits of any single rating change, are the matters most deserving of this Committee's attention. Our requests are unchanged. The reasons for them have deepened.

I. Correction and Completion of the Procedural Record

Our letter stated that the sole amendment submitted to the Committee on Rules was the Chairman's manager's amendment. The record should reflect more. On June 23, 2026, the Committee on Rules defeated by record vote a motion to make in order a substitute offered by Ranking Member Takano that would have struck the text of H.R. 9237 and inserted the Major Richard Star Act, offset by Department of Defense funds. On July 13, 2026, the Committee defeated, 4 to 6, a motion to strike the provision establishing a closed rule.[1] The replacement rule, H. Res. 1423, was then adopted by the House on July 14, 2026, 215 to 211.[2] These are not gaps in the record. They are recorded votes. Twice the House was asked to let itself consider Section 108, or a clean alternative, on the merits. Twice it declined.

II. Two Tracks Toward One Result: The Bifurcation of Rule and Statute

The reductions in Section 108 are not a novel legislative idea. They are the codification of a rulemaking already in progress. The current Unified Agenda lists RIN 2900-AQ72, the Department's revision of the

[1] House Committee on Rules, bill page for H.R. 9237, rules.house.gov/bill/119/hr-9237 (recording the June 23, 2026 defeat of the motion to make in order the Takano substitute, and the July 13, 2026 defeat, 4 to 6, of the motion to strike the closed-rule provision).
[2] H. Res. 1423, agreed to July 14, 2026 by a vote of 215 to 211 (Roll Call 237); the prior rule, H. Res. 1377, was laid on the table.

rating schedule for ear, nose, throat, audiology, and respiratory disabilities, at the final rule stage, together with the companion revisions for neurological conditions (RIN 2900-AQ73) and mental disorders (RIN 2900-AQ82).[3] The proposed rule under RIN 2900-AQ72 carries the same architecture Section 108 would enact: it would evaluate tinnitus through its underlying pathology rather than as a standalone disability, and evaluate sleep apnea by responsiveness to treatment.

The same policy is therefore advancing on two tracks at once. One track is an executive rulemaking, conducted by the Secretary under authority Congress delegated for precisely this purpose. The other is a statutory codification, pursued because a rule cannot be scored as a legislative pay-for but a statute can. The Committee is being asked to enact by law a change the Department is separately preparing to make by rule. The question this bifurcation forces is not whether the rating criteria will change. It is which branch changes them, by which instrument, and with what consequences for the veterans who lose recourse when the instrument shifts from a rule to a statute.

III. The Inferior Instrument: What Codification Forecloses

Congress vested the rating schedule in the Secretary and bound it to a standard. The schedule must rest, so far as practicable, on the average impairment of earning capacity that a condition produces.[4] That standard is a constraint. A rule that rates sleep apnea by whether treatment succeeds, rather than by the earning-capacity impairment the condition imposes, can be tested against Section 1155 and against the record the agency compiled. A statute cannot. This is the heart of the difference between the two tracks, and it runs entirely in the veteran's disfavor when the statute is chosen.

The administrative path, whatever its result, preserves every avenue of recourse. It proceeds through notice-and-comment, and the tinnitus and sleep apnea proposals already drew extensive opposition in that process. Its product is reviewable in court for arbitrary and capricious action, and is subject to disapproval by this Congress under the Congressional Review Act.[5] It remains open to revision or rescission by this or any future Administration through the same process that made it. Codification extinguishes all of this at once. A statute is not reviewable for arbitrariness, is not subject to Congressional Review Act disapproval, cannot be revised by a future Secretary, and can be undone only by a future Congress acting against the inertia of enacted law. Section 108 does not merely reduce benefits. It selects the one instrument that forecloses every check the Constitution and the Administrative Procedure Act would otherwise leave in a veteran's hands, and it does so for the conditions that happen to yield the largest budgetary score.

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[3] Unified Agenda of Federal Regulatory and Deregulatory Actions, Department of Veterans Affairs: RIN 2900-AQ72 (Ear, Nose, Throat, and Audiology Disabilities; Respiratory System), Final Rule Stage; RIN 2900-AQ73 (Neurological Conditions and Convulsive Disorders), Final Rule Stage; RIN 2900-AQ82 (Mental Disorders), Final Rule Stage. reginfo.gov. The proposed rule under RIN 2900-AQ72 would delete Diagnostic Code 6260 and evaluate tinnitus through its underlying pathology, and would evaluate sleep apnea by responsiveness to treatment.

[4] 38 U.S.C. § 1155 (the rating schedule shall be based, so far as practicable, upon the average impairments of earning capacity resulting from the rated conditions in civil occupations).

[5] 5 U.S.C. § 706(2)(A) (reviewing court shall set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law); Congressional Review Act, 5 U.S.C. § 801 et seq. (joint resolution of disapproval); 5 U.S.C. § 553 (notice-and-comment rulemaking).

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IV. The Offset Is Illusory: The Pay-For Folly

The financing rationale collapses on its own terms. The bill's supporters have stated publicly that the reductions will be implemented by the Department regardless of whether the legislation passes, and that the projected savings would revert to the Treasury absent the bill.[6] If that is true, the cuts to tinnitus and sleep apnea compensation fall on future veterans either way. Section 108 does not generate the savings that fund the Major Richard Star Act. It relocates an administrative reduction into the United States Code so that its projected effect can be claimed as a legislative offset, while stripping from veterans the recourse the administrative path preserves. The pay-for does not buy the Star Act. It launders a rule into a statute for a scorekeeper's benefit.

The offset is unnecessary as well as illusory. Veterans' disability compensation is exempt from pay-as-you-go sequestration under 2 U.S.C. Section 905. The remaining budget constraints are waivable, and the House waived all points of order against this very bill in the rule that brought it to the floor. Congress cannot maintain that its own rules compelled these reductions while simultaneously suspending those rules to pass the package. The Star Act does not require Section 108. It requires only the political will to fund an earned benefit without charging it to another cohort of the wounded.

V. The Efforts of the Ranking Member, and a Divided Community

The record already contains the alternative. Discharge Petition No. 22, filed by Ranking Member Takano on May 21, 2026, would bring the clean Major Richard Star Act to the floor with pay-as-you-go rules waived. It reached 213 signatures, five short of the 218 required, before H.R. 9237 was introduced on June 10 and the petition's path was overtaken.[7] The Ranking Member's substitute at the Rules Committee offered the same clean bill with a Department of Defense offset. Both efforts point to the funding path that even this bill's supporters have called the correct one. Both were foreclosed by the votes recorded in Part I above.

The veterans community is not of one mind, and the division is instructive. The Veterans of Foreign Wars, through National Commander Carol Whitmore, opposes the bill because it reduces ratings for tinnitus and obstructive sleep apnea, conditions she identified as common sequelae of combat polytrauma.[8] Disabled American Veterans and Iraq and Afghanistan Veterans of America likewise oppose it. Members of this Committee have carried the same objection to the Secretary in writing, opposing both the rule and the statute on the ground that codification would make permanent what the community overwhelmingly opposed in comments.[9] Set against this is the June 29 letter of twenty organizations

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[6] Stars and Stripes, July 14, 2026, reporting remarks at a Capitol news conference held prior to House consideration of H.R. 9237, including the statement that the reductions are on a path to implementation by the Department and that projected savings would revert to the Treasury absent the legislation.

[7] Clerk of the House, Discharge Petition No. 22 (filed May 21, 2026, by Ranking Member Takano, on H. Res. 1247, providing for consideration of the Major Richard Star Act, H.R. 2102, with pay-as-you-go rules waived), clerk.house.gov/DischargePetition/2026052122.

[8] Statement of VFW National Commander Carol Whitmore (the VFW opposes the bill because it changes the rating schedule for tinnitus and obstructive sleep apnea, which she described as common conditions associated with combat polytrauma).

[9] Letter of Senator Angus King and colleagues to Secretary Douglas Collins, opposing both RIN 2900-AQ72 and the Take Care of America's Veterans Act on the ground that codification would permanently implement reductions overwhelmingly opposed by veterans, medical experts, and veterans service organizations.

endorsing the package. The endorsement is difficult to reconcile with the same organizations' posture in the rulemaking. The American Legion, for one, objected in its comments on RIN 2900-AQ72 to eliminating standalone tinnitus as inconsistent with judicial precedent, then joined the letter endorsing the statute that codifies that elimination.[10] We do not question the sincerity of any organization. We observe only that several of them opposed these reductions when proposed by rule and accepted them when enacted by statute, which is the more damaging of the two instruments for the reasons stated above.

VI. The Precedent: Codified Cannibalization and the Erosion of Special Solicitude

Our deepest objection is not to this bill alone but to the rule of decision it would establish. The law has long extended a special solicitude to veterans. Interpretive doubt in a veterans' benefits statute is resolved in the veteran's favor, a canon the Supreme Court grounded in the settled solicitude of Congress for those who served.[11] That canon is not sentiment. It is a working presumption that Congress, when it legislates for veterans, legislates to their benefit, and courts read ambiguous provisions accordingly.

Section 108 would place in the United States Code the first modern statute whose express mechanism reduces one class of veterans' future benefits in order to finance another's. It does not merely harm the veterans who will be rated for tinnitus and sleep apnea under its terms. It supplies a counter-example to the premise on which the entire pro-veteran canon rests. Once Congress has treated the disability rating schedule as a fund from which some veterans may be subtracted to pay for others, the presumption that veterans' statutes are beneficent has a documented exception, and every future litigant, agency, and Congress inherits it.

The precedent is also fiscal, and it is self-consuming. If the ratings for tinnitus and sleep apnea may be reduced to pay for the Major Richard Star Act, then the rating for any condition may be reduced to pay for any other. Every future improvement to the schedule, including the presumptive recognition of blast overpressure injuries for which this organization has long advocated, would arrive under a new and corrosive question: which veterans will be charged for it? A benefits system built on the average impairment of earning capacity becomes, instead, a closed and zero-sum pool that can expand only by cannibalizing itself. That is not modernization. It is the conversion of an earned entitlement into a ledger that must always net to zero, and it forecloses the very reforms this Committee exists to advance.

COWAC's position is consistent with everything we have urged before this Committee and the Secretary. If the rating schedule is to be modernized, that work belongs in the reviewable administrative sphere Congress designed for it, subject to comment, to judicial review, and to correction, and not locked into statute as the price of an unrelated benefit. The special solicitude owed to veterans is not a surplus to be spent balancing a package. Once spent, it does not return.

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[10] Comments of The American Legion on RIN 2900-AQ72, objecting to the elimination of tinnitus as a standalone disability as inconsistent with judicial decisions recognizing tinnitus as a standalone condition (public comment docket, regulations.gov, VA-2022-VBA-0009).

[11] Brown v. Gardner, 513 U.S. 115 (1994) (interpretive doubt is to be resolved in the veteran's favor); Henderson v. Shinseki, 562 U.S. 428 (2011) (recognizing the solicitude of Congress for veterans and the uniquely pro-claimant character of the veterans' benefits system).

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VII. Requests

Each of the six requests in our July 14 letter stands, refined by the record above. We ask the Committee to strike Section 108 on the Senate floor, or to amend it to remove all restrictions on future evaluations for tinnitus and obstructive sleep apnea; to fund the Major Richard Star Act through the defense authorizing committees; to waive the applicable pay-as-you-go point of order if an offset is demanded, consistent with the House's waiver of all points of order against this same bill; to preserve the blast overpressure provisions of Sections 310 and 311; and to obtain from the Administration, before any floor vote, a written statement addressing whether and when the final rule under RIN 2900-AQ72 will publish, whether its criteria match Section 108, and how the offset's projected savings are affected if the rule publishes without the legislation. Should any form of Section 108 survive, we ask that it apply prospectively only, with no retroactive harm to current beneficiaries; that any scored savings be reinvested by statute in veterans' programs; and that it carry an express rule of construction preserving both the Secretary's authority under 38 U.S.C. Section 1155 and the pro-veteran canon of construction against any inference that veterans' benefits are a fungible source of offsets.

Conclusion

The Senate floor is the last forum in which Section 108 can be examined on its merits, and the only one in which the precedent it would set can still be refused. We offer this supplement so that the Committee acts on a complete record: a policy proceeding on two tracks, a statute chosen over a rule precisely because it forecloses recourse, an offset that saves nothing the Star Act needs, a community divided along the seam between comment and codification, and a precedent that would tax the solicitude this nation owes its veterans in order to balance a bill. We remain ready to brief any Member or staff at their convenience.

Sincerely,

Timothy J. Grossman
Founder, President, and Chairman
Cohort of Overpressured Warfighters Action Council (COWAC)