SEC. 547. AUTHORITY FOR APPLICATIONS FOR CORRECTION OF MILITARY RECORDS TO BE INITIATED BY SECRETARY CONCERNED.

Section 1552(b) of title 10, United States Code, is amended—

(1) by striking "or his heir or legal representative" and inserting "(or the claimant's heir or legal representative) or the Secretary concerned"; and

(2) by striking "he discovers" and inserting "discovering".

Section-by-Section Analysis

This proposal would allow the Secretaries of the military departments to apply for a correction to military records on behalf of an unrepresented individual who cannot file on his or her own behalf or on behalf of a group of service members or veterans identically impacted by a Service's action or inaction.

Congress created the Boards for the Correction of Military Records (BCMRs) to eliminate the need for Congress and the President to enact private bills to correct military records that contained errors or resulted in injustices. In the past, the Army Board for Correction of Military Records (ABCMR) has decided cases affecting large groups of soldiers or veterans identically impacted by Army errors. The Army could not otherwise correct the errors without enlisting the extraordinary authority of the ABCMR or seeking legislative relief. The Army sought relief from the ABCMR because the Board could react more quickly than Congress or because the problem was a one-time occurrence that did not necessitate corrective legislation for future occasions. However, each soldier or veteran had to file an individual application to authorize the ABCMR to act in his or her case. The ABCMR has also had cases where it wanted to correct an error or injustice, but was unable to do so because it could not locate a veteran, or an individual authorized to represent the veteran, who could then file an application for relief that the ABCMR was already prepared to provide.

Three examples will illustrate the problem to be addressed. In the first set of cases, approximately 2,000 National Guard members were inadvertently disadvantaged for Montgomery GI Bill benefits by the manner in which the Army extended their mobilizations. These deployed Guard members did not qualify for the more beneficial active duty Montgomery GI Bill, although they had served the requisite period of continuous active duty. The Army wanted to correct the unintended consequences of its action, but lacked the authority to do so unless it employed the ABCMRs jurisdiction to correct errors and injustices. However, the BCMRs currently can act only in response to an application from the affected individual, his or her heir, or legal representative. The Secretary concerned cannot file an application on behalf of an individual. Accordingly, the Army spent considerable resources briefing Guard members and obtaining their individual applications. The ABCMR also spent considerable resources processing the individual applications.

As a second example in another set of cases, the ABCMR granted relief to a handful of veterans who the Army unfairly convicted at a joint court-martial during World War II. Unfortunately, the Army could not locate the remainder of the 28 convicted veterans (or their heirs) to advise them of the availability of the ABCMR process to clear their records. Allowing the Secretary concerned to act on behalf of members of a group similarly affected and/or on behalf of an unrepresented individual who cannot file on his or her own behalf would have provided a more effective and efficient method of granting relief to all parties who had been disadvantaged by the Army's action.

As a third example, the ABCMR currently is processing cases involving former soldiers who requested separation pay pursuant to section 1174 of title 10, United States Code, based upon their agreement to serve in the Ready Reserve. Despite a request by the Army, DFAS refused to make the separation payments because the Army failed to have the soldiers execute the proper form. Approximately 200 former soldiers were impacted by this oversight. Army G-1 supports granting these former soldiers relief through a correction showing that they executed the proper paperwork to receive the separation pay. However, in order to do so, the ABCMR must obtain applications from each affected former soldier.

This proposal would permit the Services' BCMRs, using procedures approved by the Secretary of Defense, to correct an injustice for an individual or class of individual service members or veterans. The proposal would enable the BCMRs to more efficiently take corrective action for known injustices or errors.

Budget Implications: There are no funding implications for this proposal. A change in the law would have no increased financial implications as the Service BCMRs under current law would still have to process the cases of each individual applicant. In fact, a service initiated application to its respective BCMR would create efficiencies by corrections of errors for many similarly situated applicants in one or a limited number of cases rather than on an individual basis.

It is hard to estimate the number of individuals affected because we have no way of anticipating when common errors affecting a large group of current or former soldiers will arise. As noted above, we currently have a scenario affecting about 200 former soldiers who could have benefitted from the proposed change to the law. However, even where common errors are identified that affect a group of current or former soldiers, the amendment to the law would be invoked only under procedures specified by the Office of the Secretary of Defense (OSD) and the military departments.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	0.00	0.00	0.00	0.00	0.00				
Total	0.00	0.00	0.00	0.00	0.00				

Change to Existing Law: This proposal would make the following change to section 1552 of title 10, United States Code:

§1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant ~~or his heir or legal representative~~(or the claimant's heir or legal representative) or the Secretary concerned files a request for the correction within three years after ~~he discovers~~ discovering the error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid-

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) If the correction of military records under this section involves setting aside a conviction by court-martial, the payment of a claim under this subsection in connection with the correction of the records shall include interest at a rate to be determined by the Secretary concerned, unless the Secretary determines that the payment of interest is inappropriate under the circumstances. If the payment of the claim is to include interest, the interest shall be calculated on an annual basis, and compounded, using the amount of the lost pay, allowances, compensation, emoluments, or other pecuniary benefits involved, and the amount of any fine or

forfeiture paid, beginning from the date of the conviction through the date on which the payment is made.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to-

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) In this section, the term "military record" means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).