



# CONGRESSIONAL TESTIMONY

*STATEMENT FOR THE RECORD*

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**PROVIDED TO THE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS**

**HEARING ON**

**"FULFILLING OUR PACT: ENSURING EFFECTIVE IMPLEMENTATION OF TOXIC EXPOSURE  
LEGISLATION"**

**DECEMBER 7, 2022**

Chairman Takano, Ranking Member Bost, and Members of the Committee:

The American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record on today's hearing titled "Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation." AFGE represents more than 700,000 federal and District of Columbia government employees, 291,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. This includes front-line providers at the Veterans Health Administration (VHA) who provide exemplary specialized medical and mental health care to veterans including those newly eligible for treatment under the Sergeant First Class (SFC) Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, and the Veterans Benefits Administration (VBA) workforce responsible for the processing veterans' new eligible claims under the PACT Act.

With this firsthand and frontline perspective, we offer our observations and recommendations for effective implementation of this historic new law. Specifically, AFGE will identify current issues and needed solutions related to:

- Significant problems with performance standards for VBA employees. These include:
  - The constantly changing and haphazard approach VBA makes to procedures and performance standards without utilizing input from frontline workers.
  - The failure to grant credit to employees who perform work on claims that are not ready to advance to the next step of the claims process.
  - Intentionally not recognizing the variation in complexity of claims and failing to adjust performance standards for the benefit of veterans.

- Prioritizing quantity over quality at VBA National Call Centers to the detriment of veterans.
- Addressing the critical need for staffing with the rapid influx of new PACT Act claims.
- Ensuring the training for VBA employees is adequate, nationally consistent, and beneficial.
- Requiring VHA to put its employees in a position to succeed by:
  - Monitoring that VHA has the staff it needs to meet the increased demand created by the PACT Act.
  - Ensuring that VHA is using the compensation tools it gained in the PACT Act to benefit lower-grade front line clinicians.
  - Restoring full HR functioning at the facility level through additional hiring, training, and decentralization.

We hope you find these suggestions constructive, and we stand ready to work with the Members of the Committee to make necessary and positive improvements to the VA.

### **Performance Standards for VBA Employees**

For many years prior to the passage of the PACT Act, AFGE has highlighted the many problems with the VBA performance standards faced by its employees. When asking bargaining unit employees in the VA's Regional Offices (VARO) to identify the single biggest obstacle they face to successfully performing their duties and serving veterans, the universal answer is constantly changing performance standards. These standards are often introduced and implemented for VBA staff in a haphazard manner and are overly focused on metrics that prioritize quantity over quality, providing a disservice to the veterans they are intended to

benefit. Unfortunately, these problems have not been solved by the PACT Act, but instead further highlighted with increased demand from the PACT Act.

### **Frequency of Changes to Processes**

A classic example of VBA's constant change to performance standards was the implementation of new performance standards for Veteran Service Representatives (VSR) and Rating Veteran Service Representatives (RVSRs) on October 1, 2020, with a three-month acclimation period. Since the implementation of these standards, VBA made changes to these standards in November 2020 and December 2020, and then announced at the end of the end of December 2020 that it would make more changes leading to another three-month acclimation period. These standards were changed again in January of 2021, again in March of 2021, and were finalized on April 1, 2021. For context, these standards are incredibly complex and take time to learn, requiring acclimation periods to allow the employees to fully understand them. Having six changes made in six months was severely disruptive and made it difficult for staff to perform their duties and effectively serve veterans. Had VBA worked collaboratively with AFGE representatives from the beginning when changing these standards to gain employee perspectives and input, many of these problems could have been avoided and VBA would have been able to process claims in a more efficient and timely manner.

The implementation of the PACT ACT is leading to changes in performance standards for numerous positions. VBA is currently designing new standards for Authorization Quality Review Specialists, Rating Quality Review Specialists, Fiduciary Program Specialists, and Quality Review Specialists in the National Call Center. AFGE is attempting to reach a memorandum of understanding with VBA on these changes prior to their implementation on

January 1, 2023, rather than VBA unilaterally imposing new standards on the workforce. As these and other performance standards are updated, AFGE urges VBA to work in good faith with AFGE to design fair and attainable standards that prioritize quality over quantity, and best serve veterans. AFGE also urges the committee to perform oversight on the developments of new VBA production and quality standards in response to the PACT Act to ensure that these standards enable employees to serve the best interests of veterans.

### **Granting Rating Veteran Service Representatives Credit for Deferrals**

Rating Veteran Service Representatives (RVSRs) frequently complain about their performance standards because they do not get production credit for determining that a claim is not ready to “rate” or advance through the claims process, and instead needs further consideration (a deferral). This ignores the amount of work required to reach the conclusion to defer a claim, even though the decision to defer was in the veteran’s best interests. When an RVSR starts to review a claim, they do so without prior knowledge and do not know if the claim is ready to rate. An RVSR who spends hours trying to rectify problems on a claim and then concludes that a determination cannot be made receives no credit for the portion of the claim (which may be the entire claim) that was deferred. This imperils the employee’s ability to meet their standards and may lead to discipline through Performance Improvement Plans (PIPs), and in turn limited promotional opportunities, a desire to find another job outside of VBA, or termination. This practice cynically encourages employees to advance or deny claims prematurely, with a significant risk of harming the veteran. These decisions should not be rushed, and employees should not be punished for taking the time to work on a claim and then determine that the claim is not yet ready.

Under the PACT Act, the problems created by lack of credit for deferrals have been highlighted in the Louisville, Kentucky VARO, particularly for RVSRs who process Camp Lejeune Contaminated Water (CLCW) claims. The Louisville VARO is the office that receives all CLCW claims that have been determined unratable under the rules in effect prior to the PACT Act and require a more specialized analysis. With the enactment of the PACT Act this year, VBA has held and continues to hold CLCW claims that could not be granted under pre-PACT Act rules for adjudication, instead waiting to rate these claims until after the PACT Act took effect. AFGE supports this decision as it benefits veterans, but we object to the way the VBA has implemented this decision. Because of this hold on CLCW claims, RVSRs who worked on CLCW claims and had the claims they rated deferred, will get no credit for their production or quality quotas and unnecessarily suffer the consequences of an arbitrary case assignment. Furthermore, while the VBA has the authority to avoid unfairly punishing employees by offering “excluded time,” which removes the time used on a deferral from the performance average of the employee, the Louisville VARO, like many other VAROs, chooses not to not approve excluded time for the full rating of claims that result in a deferral. AFGE urges the VA to award credit to RVSRs for the portions of claims that are deferred and asks the Committee to question the VBA about why it arbitrarily refuses to count the work performed on deferred claims.

### **Earning Credit for Each Issue in a Claim**

Clearly, every veteran is supposed by treated equally by the VA, but VBA performance standards can cause disparate treatment depending on the claim filed. When evaluating claims, VBA does not easily distinguish the number of issues or contentions each veteran makes in their claim, instead using a complex tier system that unnecessarily hurts the ability of VSRs and

RVSRs to meet their standards. This is arbitrary and punishes employees who get assigned claims with a significant number of contentions, but not enough to earn additional credit. This can unfairly punish veterans who, through no fault of their own for the number of contentions they submit in a given claim, realize negative decisions affecting their claims.

The PACT Act will lead to the filing of many claims with significantly more contentions and distinctions. We strongly urge VBA to fairly recalibrate its employee production standards and new training programs and procedures to factor in the additional work and time that will be required to process these new claims and urge the committee to monitor the implementation of these performance standards.

### **National Call Centers**

For years, AFGE has raised concerns to this committee about the VBA's measure of the timeliness or "talk time" component for Legal Administrative Specialists (LAS) who answer veterans' questions at VBA's eight national call centers. Each LAS is allotted a certain amount of time they can be on the phone with a veteran based upon the employee's GS level. This can be as little as eight minutes and thirty seconds. This is a one size fits all standard that does not consider common issues veterans often call in about including a "first notice of death call" where a veteran's spouse is calling to inform the VA that the veteran has passed away. Such a call may take 20-30 minutes. The standard also does take into account the numerous older veterans who have difficulty communicating or veterans who have more than one question or issue to resolve. Additionally, the standard effectively disincentivizes an employee from making a suggestion to a veteran about a benefit or program he or she may be eligible for but does not know to ask about, because it would take more time on the phone.

With passage of the PACT Act, there has been a predictable surge in calls to the national call centers with numerous questions for VBA employees. Despite the fact this problem that was easily anticipated by VBA leadership, employees, including those in the National Call Centers, have not been given any additional time to meet their talk time standards, and were only provided with a short generic script to respond to a veteran's complex questions.

An employee whose primary responsibility is to answer a veteran's questions should not have their performance measured by how quickly they can get a veteran off of the phone, and the VA should not prioritize a contrived metric over providing valuable customer service to veterans, especially in the wake of a massive and complex expansion of benefits to millions of veterans. VBA should remove Talk Time as a critical component of employee performance.

Furthermore, it has come to AFGE's attention that on October 20, 2022, VBA instituted new performance standards for the call centers that further restricted the use of "wrap up time" at the end of the day for LASs to input data, prepare mail to veterans and complete other tasks that they could not handle during calls. This change was also accompanied by a new availability standard that substituted percentages for raw minutes, further increasing stress on workers, and unnecessarily increasing the difficulty of the job. These rules, which result in unnecessarily limiting bathroom breaks, are pennywise and pound foolish, and decrease the quality of service that veterans receive.

### **VBA Staffing and Backlog**

The enactment of the PACT Act has resulted in a need to increase the size of the VBA workforce to process the expected surge in claims from newly eligible veterans. In a presentation made to AFGE representatives, VBA estimated that the current backlog of 150,000



claims is expected to increase to 450,000 claims in 2023. Additionally, according to the data on staff vacancies required by Section 505 of the VA MISSION Act, VBA has 2,806 vacancies as of the end of the third quarter of Fiscal Year 2022. Despite this, while the VA has hired many new claims processors, AFGE has heard reports of slow hiring for employees, one example being the Cleveland, OH VARO, which is having a delay in hiring candidates who are disabled veterans. These delays have taken months, causing some applicants to accept other jobs. Additionally, given the months it takes to effectively learn to process claims, this delay is worsening the backlog to the detriment of veterans. AFGE urges the VBA to continue to quickly ramp up its staffing and training of claims processors and allow it to better manage the backlog of claims, instead of relying upon mandatory overtime.

## **Training**

The PACT Act mandates several new VA workforce training initiatives. However, the information shared with employees since enactment has been greatly inadequate. What has been communicated thus far to AFGE is that each VBA employee will receive five Talent Management System courses and given a new Standard Operating Procedure to read. To date, no hands-on training or opportunities to ask questions of a live instructor have been offered.

This will foreseeably create inconsistency in the future with different VAROs creating different determinations. AFGE urges the VBA to increase training, including ample opportunity to ask questions. For PACT training to be effective, it is essential that management solicit input from the labor representatives' rank and file members who are actually working with PACT Act claims as to what training would enable them to better serve veterans.

## **VHA Staffing, Compensation, and Other Workforce Issues**

As a result of the PACT Act, VHA is facing an unprecedented increase in demand for medical care. The hiring and training of additional health care personnel will be essential to meet the screening and treatment needs of newly eligible veterans in virtually every medical center service line, in particular primary care clinics, emergency rooms (ER), cardiology, pulmonology, urology, gastroenterology and dermatology. Unfortunately, an informal survey of our members reveals very limited efforts to hire, train or carry out other activities for an effective rollout of new PACT Act health care initiatives and increased demand for services.

### **Staffing**

There is an urgent need for VHA to address the chronic short staffing that significantly worsened during the pandemic. According to the data on staff vacancies required by Section 505 of the VA MISSION Act, VHA has 76,531 vacancies as of the end of the third quarter of Fiscal Year 2022. Outpatient clinics are forced to shut their doors due to lack of staff. Many facilities cannot reopen their hospital beds due to a critical nurse staffing shortage, leaving veterans in the ER for up to 48 hours waiting to be admitted. AFGE received an encouraging member report from a VISN 6 facility that is actively carrying out onboarding events to expedite the hiring of more clinical staff, an effort that should be replicated across the country. Another VISN 6 provider provided a less encouraging report that his management at his facility has failed to step up recruitment and retention efforts, and in some cases, is actively pushing employees to resign.

AFGE has received very troubling reports from our locals at numerous facilities that medical center directors who received retention incentive funds provided by the PACT Act have not distributed them to front line clinicians even in the face of high vacancy rates. Also, the job

listings posted by medical centers in many locations failed to align with the much higher vacancy rates used to justify these retention incentive dollars. More generally, congressional oversight of the deeply flawed and unreliable vacancy data that is currently collected and published by the VA is badly needed.

### **Compensation**

The pay grades of a number of lower wage VHA positions, including the nursing assistants and licensed practical nurses who make up the core of VA community living center workforces, are still too low to recruit and retain sufficient staff. Similarly, medical support assistants who handle patient scheduling and other critical support functions are already working at a low grade that causes a lot of attrition and in some cases are facing downgrades to even lower positions. While it is encouraging that the PACT Act may make it easier to hire more housekeepers to keep medical facilities clean and safe, this position has had a high attrition rate for many years. VA needs to raise their pay grades to make them more competitive with the private sector.

### **Other VHA Workforce Matters**

Veterans in need of screening and treatment for toxic exposure need and deserve the thorough, specialized, comprehensive care that only the VA provides. We received a concerning report from VISN 23 that veterans may be shortchanged by a new “bookable hours” policy that cuts the time that a provider can spend to assess a new patient from sixty to thirty minutes. It is equally urgent that the VA reverse the harmful effects of HR modernization that have greatly slowed and confused the process for hiring new providers and other personnel. In

addition, the counterproductive centralization of HR functions away from the medical centers must be reversed. Front line personnel and their labor representatives are in desperate need of being able to interface with knowledgeable HR specialists *at the facility level* in order to resolve routine personnel matters.

Our members report that the online training on new screening tools that has been provided is a good first start but that more comprehensive training is needed to ensure that all clinicians and support personnel have a full understanding of the specialized screening processes and treatment needs of veterans with toxic exposure.

AFGE thanks the House Veterans' Affairs Committee for the opportunity to submit a Statement for the Record for today's hearing. AFGE stands ready to work with the committee and the VA to address the issues affected by PACT Act implementation and strengthen the VA workforce to best serve our nation's veterans.