



# **CONGRESSIONAL TESTIMONY**

***STATEMENT FOR THE RECORD***

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

**PROVIDED TO THE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

**HEARING ON**

**"REVIEWING VA'S IMPLEMENTATION OF THE PACT ACT"**

**MAY 16, 2023**

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee:

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 "Reviewing VA's Implementation of the PACT Act." AFGE represents more than 750,000 federal and District of Columbia government employees, 291,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. This includes the Veterans Benefits Administration (VBA) workers responsible for the processing veterans' newly eligible claims under the PACT Act and answering veterans' complex questions about their benefits.

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.

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 has led to changes in performance standards for numerous positions. VBA has designed and is continually updating standards for Authorization Quality Review Specialists, Rating Quality Review Specialists, Fiduciary Program Specialists, Veterans Service Representatives, Rating Veteran Service Representatives, Quality Review Specialists in the National Call Center, and others. AFGE and VBA have reached agreement on the performance standards for many of the covered positions but have not yet agreed on standards for Veterans Service Representatives and Rating Veteran Service Representatives. 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. As part of this, AFGE supported the decision by VBA to in March announce a “60 Day Quality Grace Period” to employees as they adjust to the law and its inherent changes and urges VBA to continuing monitoring the need for future extensions.

Additionally, AFGE was pleased that VBA is improving its consideration of employee input and appreciates VBA Undersecretary Josh Jacobs’ participation in the VBA National Labor Management Forum the week of May 8, 2023, and hopes the dialogue started there leads to positive change. 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. Prior to the implementation of the PACT Act this year, VBA had held CLCW claims that could not be granted under pre-PACT Act rules for adjudication so they could be considered 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 the hold on CLCW claims, RVSRs who worked on CLCW claims and had the claims they rated deferred, received no credit for their production or quality quotas and unnecessarily suffered 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, had until recently not approved excluded time for the full rating of claims that result in a deferral. This changed in April of 2023, and left the approval of excluded time to an RVSR’s coach’s discretion, which is still inconsistent for RVSRs, and is time consuming in and of itself, further making it harder for RVSRs to meet their standards. 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 has led 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 conveyed that the current backlog is approximately 210,000 claims.



Additionally, according to the data on staff vacancies required by Section 505 of the VA MISSION Act, VBA has 3,220 vacancies as of the end of the first quarter of Fiscal Year 2023. Despite this, while the VBA 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. Employees have received five Talent Management System Courses and three separate iterations of a Standard Operating Procedure (SOP) document to read. Live training on the SOP document has varied from office to office. When it has been conducted, the training has been conducted over Microsoft Teams and consists of senior employees trying to interpret the document for other employees while attempting to understand it themselves. To date, no hands-on training or opportunities to ask questions of a live instructor have been offered.

This has also foreseeably created inconsistency between the different VAROs creating different determinations. AFGE urges the VBA to increase training, including ample opportunity to ask questions, and add training based upon the frequency of those 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.

Collectively, the insufficient and inconsistent training and rushed timeline has resulted in a higher percentage of erroneous rating decisions to veterans and affected the benefits they have earned. AFGE thanks the House Veterans' Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs for the opportunity to submit a Statement for the Record for today's hearing. AFGE stands ready to work with the committee and VBA to address the issues affected by PACT Act implementation and strengthen the VA workforce to best serve our nation's veterans.