

**NATIONAL ASSOCIATION OF
COUNTY VETERANS SERVICE OFFICERS**



STATEMENT FOR THE RECORD
NATIONAL ASSOCIATION OF COUNTY VETERAN SERVICE OFFICERS
FOR THE
HOUSE VETERANS' AFFAIRS COMMITTEE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
ON
PENDING AND PROPOSED LEGISLATION

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Presented by

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Chairman Luttrell, Ranking Member Pappas, and distinguished members of the Subcommittee, the National Association of County Veteran Service Officers, commonly referred to as NACVSO, would like to thank you for the opportunity to submit our views on pending legislation impacting the Department of Veterans Affairs (VA) that is before the Subcommittee.

NACVSO is a unique organization in that all our elected or appointed leaders and most of our members are currently serving as VA accredited representatives — working as Government Veteran Service Officers (GVSOs) in the field every day to help America's Veterans and their dependents access the benefits they earned with their service. Once again, it is our honor to share with you the issues that are important to NACVSO.

Veterans Appeals Options Expansion Act of 2024

NACVSO supports the proposed legislation's goal of removing barriers for Veterans that were inadvertently created under AMA.

Although Public Law 115-55, *Veterans Appeals Improvement and Modernization Act of 2017* (hereinafter AMA) greatly improved Veterans' and advocates' ability to challenge initial benefit eligibility determinations, a number of issues became apparent during the implementation of the AMA.

A primary challenge with the AMA is how supplemental claims are processed when there is an unintentional or clerical error in form filing. Take for example, a Veteran from the Vietnam era, who filed an initial claim for hearing loss in 1972 with the Veterans Benefits Administration (hereinafter VBA), which the VBA denied in 1972. Decades later, that same Veteran has progressive hearing loss and inadvertently submits another initial claim form for hearing loss instead of a supplemental claim form, as historical evidence of the first claim from 1972 is unavailable to the Veteran or their advocate at the time of submission. When VA receives the new

claim submission, it correctly identifies that the Veteran previously filed a claim for hearing loss and informs the Veteran by mail that he or she used the wrong form. The Veteran then correctly submits a supplemental claim form to VBA, and the effective date for the Veteran, in many instances, becomes the date that VBA receives the correct form, not the date when the Veteran actually notified VA of his intent to file, but inadvertently used the wrong form. Since it takes several months or, in some cases, even years for VA to notify Veterans of clerical errors in form filing, many Veterans lose out on benefits they should have been entitled to simply because of a clerical error. This also increases the number of appeals to the Board of Veterans Appeals (hereinafter Board)

AMA made other changes to the VBA claims adjudication process that have slowed benefits delivery to eligible Veterans. Under AMA, when a claim is remanded and returned by the Board to the VA Regional Office for additional follow-up, it can be denied at the Regional Office and ultimately end up back at the Board. When this happens, Veterans' cases are placed in a "queue" in which any judge on the Board may be assigned to review the decision. Under the prior system, the same judge who initially remanded the case would review and render a decision on the case when it is returned to the Board. Under the AMA, the judge who conducted the initial hearing, and who likely has the best understanding of the case, is now unlikely to be the same judge to review the new determination of the Regional Office. Further, Veterans who find themselves returning to the Board do not receive priority for new decisions; some Veterans have waited over two years for a decision on the return of their case to the Board under AMA.

Veterans Appeals Efficiency Act of 2024 and the Veterans Claims Quality Improvement Act of 2024

NACVSO supports the proposed legislation's overall goals of improving Board decisions and VBA compliance with those decisions, expanding the jurisdiction of the Court of Appeals for Veterans Claims, and requiring notice for reasons for deferrals and assigned suspense dates for further actions on claims pending adjudication. However, NACVSO does not believe that allowing the Board to issue precedential decisions is in keeping with the non-adversarial nature of initial appeals before the Board. NACVSO believes that each appeal at the Board should be evaluated on its own merit and set of facts and conditions.

An AMA Summit hosted by The Board and VBA on 6-7 February 2024, brought to light many of the current challenges with Board decisions and VBA compliance. At this summit, the Board informed participants that between 1 October 2023 and 6 February 2024, there were 20,381 reasons for remands from the Board to VBA. Fifty-two percent (52%) of these remands (10,607) dealt with errors, omissions, or inadequacy in the required forensic examinations that Veterans must complete in order to receive a decision on their claim for benefits.

As an example, GVSOs have seen situations where a Veteran with an established history of receiving treatment for Post-Traumatic Stress (PTS) at a VA medical center was denied benefits because the VBA forensic examiner determined, despite having the treatment records, that the Veteran not only does not have PTS, but also no mental health diagnosis. Upon appeal to the Board, these cases are currently remanded to the VBA for a new examination to determine whether the Veteran has PTS again, rather than the Board relying on medical evidence of a diagnosis, granting PTS, and remanding to the VBA solely to determine severity of the Veteran's PTS. Currently, Veterans who find themselves in the appeals repeat loop who have PTS have sometimes had to go

through multiple forensic examinations, which leaves Veterans feeling helpless, unwanted, and untrusted.

Toxic Exposures Examination Improvement Act and Medical Disability Examination Act of 2024

NACVSO supports both of these proposed pieces of legislation but recommends combining the bills and striking Section 2 from the Medical Disability Examinations Act of 2024.

The *Sergeant First Class (SFC) Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (Pub. L. 117-168) (hereinafter PACT Act) was a lifechanging piece of legislation for so many Veterans who now receive services and benefits that were previously not available to them. However, its implementation has revealed issues that we believe must be urgently addressed. For example, a massive amount of Veterans who have filed a claim for benefits since the PACT Act was signed into law are having their claims processed under a toxic exposure risk activity claim (hereinafter TERA), even if the Veteran did not allege or claim TERA when filing for a condition, they believe they are eligible for but is not related to toxic exposure. Under the US Code, Veterans filing a disability claim must have: 1) an in-service injury or disease; 2) a current diagnosis; and 3) a medical nexus connecting the two. Further, a Veteran may be awarded benefits under any of the five theories of entitlement: 1) direct service connection; 2) aggravation of a pre-existing condition; 3) a presumptive condition relating to the nature of the Veterans service; 4) a condition deemed secondary, or caused by, an already established service connected injury or disease; or, 5) due to injuries sustained by the VA (38 U.S.C. § 1151).

Since passage of the PACT Act, GVSOs have seen situations where forensic examiners and VA ratings specialists rely solely on TERA claims, and not on the aforementioned entitlement

theories in US Code for granting benefits. Without official action on the part of Congress or the Secretary, overreliance on TERA has created a situation in which some VBA employees have, in essence, created a sixth criteria of entitlement (e.g., toxic exposure) rather than utilizing TERA as part of determining eligibility under the five established theories of entitlement.

Both of the proposed bills are designed to remedy this situation; however, under Section 2 of the Medical Disability Examinations Act of 2024, the change to what constitutes a “covered Veteran” to only those Veterans who fall under section 1119(c) carries with it an unintended consequence. As an example, consider a Veteran who served as a heavy equipment operator in Germany during the Vietnam War and who was routinely exposed to toxins. Medical studies indicate these Veterans carry an increased risk of developing Non-Hodgkins Lymphoma.^{1, 2, 3} The changes proposed under Section 2 of the Medical Disability Examinations Act of 2024 would, in essence, preclude this Veteran from being able to prove service connection for benefits, even though medical literature shows an extremely high likelihood of Non-Hodgkins Lymphoma due to that Veteran’s military service.

HR 2911 – Fairness for Servicemembers and their Families Act of 2023 and the Veterans’ Compensation Cost-of-Living Adjustment Act of 2024

NACVSO supports both HR 2911 and the proposed Veterans’ Compensation Cost-of-Living Adjustment Act of 2024.

¹ See e.g. Schenk M, Purdue MP, Colt JS, Hartge P, Blair A, Stewart P, Cerhan JR, De Roos AJ, Cozen W, Severson RK. Occupation/industry and risk of non-Hodgkin's lymphoma in the United States. *Occup Environ Med.* 2009 Jan;66(1):23-31. doi: 10.1136/oem.2007.036723. Epub 2008 Sep 19. PMID: 18805886; PMCID: PMC3051169.

² See e.g. Mester B, Nieters A, Deeg E, Elsner G, Becker N, Seidler A. Occupation and malignant lymphoma: a population based case control study in Germany. *Occup Environ Med.* 2006 Jan;63(1):17-26. doi: 10.1136/oem.2005.020453. PMID: 16361401; PMCID: PMC2078033.

³ See e.g. Francisco LFV, da Silva RN, Oliveira MA, Dos Santos Neto MF, Gonçalves IZ, Marques MMC, Silveira HCS. Occupational Exposures and Risks of Non-Hodgkin Lymphoma: A Meta-Analysis. *Cancers (Basel).* 2023 May 4;15(9):2600. doi: 10.3390/cancers15092600. PMID: 37174074; PMCID: PMC10177442.

Chairman, Ranking Member, and members of the subcommittee, on behalf of NACVSO thank you for the opportunity to submit our views on some of the bills being considered today. We look forward to working with you on this legislation and would be happy to take any questions for the record.