

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

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON DISABILITY  
ASSISTANCE AND MEMORIAL AFFAIRS**

OF THE

**COMMITTEE ON VETERANS' AFFAIRS**

**U.S. HOUSE OF REPRESENTATIVES**

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

**TUESDAY, MAY 16, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND  
MEMORIAL AFFAIRS,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 360, Cannon House Office Building, Hon. Morgan Luttrell (chairman of the subcommittee) presiding.

Present: Representatives Luttrell, Franklin, Ciscomani, Crane, Self, Pappas, Deluzio, McGarvey, and Ramirez.

### **OPENING STATEMENT OF MORGAN LUTTRELL, CHAIRMAN**

Mr. LUTTRELL. The subcommittee will come to order.

Good morning. I would like to welcome everybody to our first Subcommittee on Disability Assistance and Memorial Affairs (DAMA) oversight hearing, the first one of the 118th Congress. We are here today to review VA's implementation of the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022 (PACT) Act and to discuss potential areas for improvement. The PACT Act was the largest expansion of benefits for veterans and their survivors in decades.

It is a vital piece of legislation to ensure that toxic-exposed veterans and their survivors finally received their earned benefits. Given that we are approaching 6 months since the VA began to process PACT Act claims, it is a good time to take a look at the VA's implementation.

I recently had the opportunity to visit the Houston regional office, which serves many of my veteran constituents. I heard from the Regional Offices (RO's) employees about the effectiveness of training and how to process PACT Act claims and their struggles with the toxic exposure risk activities, or the Toxic Exposure Risk Activity (TERA) memo.

The regional office employees also discussed receiving inconsistent guidance from VA and how this makes it difficult for them to properly process the claims. I am concerned that the employees were not given enough time to comprehend these training materials, such as the over 70-page training manual, before they began processing PACT Act claims in January 2023. I think it is safe to say that there is some work that can be done to improve how employees are being trained and supported through this change, which ultimately affects the delivery of benefits to the veterans. I

look forward to discussing the Department's plans to address these gaps today.

I am also eager to hear about the progress that the VA is making in their technology in order to help work down the backlog. As of April 28, the VA has received over .5 million PACT Act claims and processed just over 250,000. There are still many more claims that need to be processed and many more that still have not been filed. VA's IT efforts are critical to ensuring that veterans receive timely and accurate decisions.

Finally, the PACT Act establishes a process for the Secretary to conduct research and establish new presumptive conditions based on toxic exposures. I am interested in receiving an update on the status of the VA's research on how this will impact the claims process.

I have said this many times before and I will say it again, veterans are my top priority. I appreciate the work of my colleagues in the last Congress to get the PACT Act across the finish line, but I think there is still a little work to be done.

Thank you to all our witnesses for being here today, and I look forward to your input and recommendations on this matter.

With that, I yield to the Ranking Member Pappas for an opening statement.

#### **OPENING STATEMENT OF CHRIS PAPPAS, RANKING MEMBER**

Mr. PAPPAS. Thanks very much, Mr. Chairman. I want to join you in welcoming everyone to our first oversight hearing of this subcommittee for the 118th Congress, and a special welcome to Under Secretary Jacobs, who was recently confirmed by the Senate as VA's new under secretary for benefits at the Veterans Benefits Administration (VBA).

I greatly appreciate all of our panelists being here today, and likewise, thank you all, those who are in the audience, for being a part of this session.

It has been a little over 9 months since the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022, or PACT Act, was signed into law. Since then, the Department of Veterans Affairs has been in the middle of implementing the most significant expansion of veterans healthcare and benefits in decades. VA's implementation of the PACT Act is incredibly important for our Nation's veterans and their families.

As ranking member of this subcommittee, it is my job to ensure that VA has the necessary resources to administer timely benefits decisions, as well as access to world-class healthcare for all veterans eligible under PACT Act.

I also want to commend the Department for creating a biweekly PACT Act performance dashboard. I know my staff and I can track and measure in realtime the overall impact of the PACT Act in terms of its expansion of healthcare and benefits, measure of VA's success in delivering timely support through customer service, VA's outreach efforts, as well as VA's success in hiring the necessary staff to get the job done.

At today's hearing, we will have important topics that we need addressed regarding VA's implementations of the PACT Act. Specifically, I am interested in discussing the toxic exposure presump-

tion process under title 2, research into the health effects of toxic exposure under title 5, and VA's progress deploying information technology updates needed to process claims, as well as accuracy of claims decisions, and progress reducing the inventory of pending disability compensation claims.

I also introduced the VA Workforce Investment and Expansion Act, which included several VA workforce related provisions, and was ultimately included in the PACT Act. I am also interested in VA's implementation of workforce development and training for VA personnel with respect to veterans who report toxic exposures.

I am also interested in hearing from our witnesses today about the present implementation challenges and concerns, which is why this hearing is critical, to conduct oversight and speak directly with VA regarding its views and experiences implementing the PACT Act.

The first challenge is ensuring that veterans and their families are made aware of and understand the benefits that are available to them because of PACT Act. It is especially important that VA is reaching those veterans in underserved or rural communities since the bill has several deadlines coming up at the end of the fiscal year. I know that VA has dedicated significant resources to this issue. I am sure we will hear more about that in just a moment.

The second biggest challenge, of course, is the increase in disability compensation claims as a result of the addition of 23 new presumptives. Over .5 million PACT Act claims have been filed by veterans so far, and I am looking forward to hearing about VA's plans for IT upgrades and the use of automation to address these claims. We will use this hearing to explore how VA is utilizing those resources and authorities to avoid the risk of overwhelming the system.

A third challenge is hiring and training to support the millions of veterans who now have access to expanded care, benefits, and services. I know that VA has aggressively moved in that direction, but there are some concerns that linger, and we want to make sure that we are hearing about efforts to onboard and train new claims processors as we think about the job that remains to be done.

I appreciate you, Mr. Chairman, holding this hearing today. I look forward to everyone's testimony. I yield back.

Mr. LUTTRELL. I will now introduce the witness panel. Our first witness from the Department of Veterans Affairs is the honorable Joshua Jacobs, under secretary for benefits. Sir, congratulations in your recent appointment.

We also have Ms. Patricia Hastings, the chief consultant for health outcomes and military exposures for the Veterans Health Administration.

Mr. Robert Orifici, director of the benefits and memorial services portfolio for the Office of Information and Technology. Thank you all for being here today.

Under Secretary Jacobs, you are now recognized for 5 minutes to deliver your opening statement.

#### **STATEMENT OF JOSHUA JACOBS**

Mr. JACOBS. Good morning, Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee. We appreciate the op-

portunity to appear before you to discuss VA's implementation of the PACT Act. I am joined today by Dr. Patricia Hastings, chief consultant for the home office in Veterans Health Administration (VHA), and Mr. Robert Orifici, benefits and memorial services portfolio director for VA's Office of Information and Technology (OI&T).

It has been over 9 months since Congress passed and President Biden signed the PACT Act into law and more than 5 months since VA began full implementation of the law. In this time, across the agency, it has truly been an all-hands-on-deck effort to prepare for and then execute on the delivery of the new PACT Act benefits and healthcare.

The hard work done by VA's incredible workforce and our amazing partners across the country is producing results. Veterans have filed nearly 570,000 PACT claims since August 10. We are working diligently to complete them as quickly and accurately as possible, with over 280,000 claims completed.

As we work through each and every incoming claim, we are reminded that behind each claim is a veteran, family member, or survivor. Take Benito, for example, who is a proud Marine Corps veteran. Benito was one of the first to step foot into Kuwait during Operation Desert Shield in 1990. He remembers thinking something was wrong when he saw all those burning oil wells while marching on foot to their objective.

When he returned home from the war and left his beloved Marine Corps, he found out that all those burning oil wells impacted his health, and he received documentation from the military doctors to prove it. When he tried to file claims regarding his exposure in Kuwait, he was denied by VA twice. Benito says the VA doctors told him he was crazy for trying to claim problems from being around those burning oil wells. He eventually received a disability rating of 70 percent for other conditions. His treatment by VA back then left him feeling like his service did not matter, and that the VA, of all places, did not care about what he and his brothers experienced.

Now, fast forward 32 years, Benito started receiving and ignoring emails about the PACT Act, but those emails just kept coming telling him to give VA another chance and that the PACT Act was for him and veterans like him. He finally called the number on the message, and he was ready for history to repeat itself, but according to Benito, this time was different.

Thanks to the PACT Act, VA was able to grant Benito service connection for asthma and chronic bronchitis on a presumptive basis, which increased his disability rating to 100 percent. Benito finally felt vindicated. He says the extra benefit he now receives goes to helping his mother financially, who is in a nursing home with dementia. For Benito, it means a lot to finally be able to contribute to taking care of his mother in her final days. Today, Benito is taking every opportunity to urge his old Marine Corps buddies and other friends who served to check out the PACT Act and to give VA one more chance, just like he did.

This is just one story of the veterans behind the numbers we report and the decisions we make, and we were able to provide benefits to Benito and many others like him because of the months of hard work, planning, and coordination that went into our PACT



Act implementation. Even before President Biden signed the PACT Act into law, VA began actively hiring new employees to prepare for the expansion of benefits. In fact, we have increased the VBA workforce by 15 percent over the last year and a half, and it now stands at more than 28,000.

We launched VA.Gov/PACT, a one-stop-shop website for understanding the PACT Act and applying for benefits as soon as the Senate sent the bill to the President's desk for signing. We continue to conduct extensive outreach across the country through multiple channels targeted to populations that have traditionally been underserved or hard to reach.

We not only made all presumptive conditions effective the day the bill was signed into law, but we also accelerated implementation to January 1, but publishing sub regulatory guidance instead of regulations, which could have delayed implementation by up to 2 years. We had employees from the Philippines to Puerto Rico volunteer to process PACT Act claims on January 1, the first day we had the authority to provide these benefits for most veterans. They worked on the weekend and on a Federal holiday so that they could be part of history in helping to deliver benefits to veterans and survivors as soon as possible.

Though our effort to start PACT implementation on January 1 was the right veteran-centric decision, it did require us to do a tremendous amount of complicated work in a very short period of time. We are already applying many of the lessons learned to refine and improve our processes and outcomes moving forward.

For example, we have heard about the need to streamline and revise the PACT Act training; about the complexity of applying the new toxic exposure risk activity, or TERA, requirements in the law; and about the pressure experienced by our hardworking claims processors, who are doing their best to learn the nuances of this once-in-a-generation legislation while continuing to meet their production in quality standards.

We are using this feedback to make improvements to our PACT training, as well as our VBA training more broadly. We have also developed a TERA memorandum tool which guides employees to make uniform and consistent decisions regarding the application of TERA. We have extended a quality grace period until the end of May to allow our claims processors time to adjust to the new requirements, and we are increasingly leveraging automated tools to make our employees more effective and efficient.

As we continue to implement this new law, we remain committed to an immediate and deliberate forward-leaning approach that tackles questions of environmental exposure through more expansive research and a new streamlined presumptive decisionmaking process.

I want to express my appreciation for your continued support of veterans, for your service in uniform, and for your support of their families, caregivers, and survivors.

I also want to acknowledge our Veteran Service Organization (VSO) partners, as well as others in the veteran community, who work with us to execute this historic law and provide the best care and services for veterans and their families.

I would be happy to answer any questions you or the subcommittee members may have.

[THE PREPARED STATEMENT OF JOSHUA JACOBS APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Mr. Secretary.

The written statement of the Under Secretary Jacobs will be entered into the hearing record.

We will now move to questioning. I recognize myself for 5 minutes.

Mr. Jacobs, thank you so much for that opening remarks, and, again, thank you for meeting with me yesterday one on one. I really got a lot from our interaction.

Mr. Orifici, did I nail it?

Mr. ORIFICI. Orifici, but that is very close.

Mr. LUTTRELL. Orifici, ah, okay. I apologize. My fault. First question for you, sir, the National Work Queue (NWQ) has been a useful tool for ensuring that veterans receive timely decisions. However, the regional office employees lose the ability to learn from the errors because deferred claims are not returned to the person who made the mistake. Is OI&T developing functionality in NWQ to return deferred claims to the person who made the error?

Having the opportunity to sit down with the folks, that makes total sense to me. I can appreciate the complexities and the originality of the effort to send it out to share the workload, okay. One of the biggest complaints is like, they do not—when it moves up the chain of command, so to speak, and it is not pushed back down to the originator, they lose connectivity on whether or not they made a mistake. It starts completely over with an individual and the veteran. That seems like we could tweak that a bit and make that more advantageous. Your thoughts?

Mr. ORIFICI. We have a number of changes that we are putting in right now for National Work Queue to allow for additional rules in how we route the work and how that is distributed to the employees and how it moves back and forth up the chain. We work very closely with VBA, who sets the rules for how that workflow and how those claims flow through the system.

In terms of the specific rules about what defers back to the employees, I would have to defer to Mr. Jacobs in terms of setting those rules, but we are working on making sure that capability is in the system.

Mr. JACOBS. Mr. Chairman, if I may add, I have asked the team to do a red team review of the National Work Queue functionality and the capabilities, and I expect feedback and some recommendations by the end of the calendar year. I share your concerns. I think we need to ensure that we are promoting continuous learning.

Right now, what happens with the National Work Queue is, if there is an error made and it needs to be sent back, it goes back to the regional office. Based on capacity with an individual rater, they may route it back to the individual employee or they may send it back elsewhere. I have asked them specifically about this question, and I mentioned to you yesterday, it is like you have been in some of the meetings I have been holding with staff across the country, as well as with the staff that run the National Work Queue.

This is something we are taking a hard look at, and I have asked the team to do the full-scale review, because National Work Queue has given us the capability to better manage our workload and deliver more benefits to more veterans than ever before. We need to ensure that as we are doing that we are enabling our employees to learn from their mistakes and improve so that they are constantly learning and growing and not making those repeat mistakes.

Mr. LUTTRELL. I can appreciate the challenge of getting something done in a short window given the scale and scope of this thing.

Mr. JACOBS. Yep.

Mr. LUTTRELL. I would hate to think that if we wait to the end of the calendar year how many claims will have issues. Then now think about it in those terms. I would ask that we might pressure the Department to move on this hurriedly so it is the veterans that are not suffering at the end, because if—and you know the frustrate—we talked about this. Veterans, we are a hard group to get a handle on.

Mr. JACOBS. Yes, sir.

Mr. LUTTRELL. If the VA is making these mistakes—and not purposefully. I would never—and again, the employees that I spoke with, every other word is like, it is about the veterans. It is about the veterans. I—and I absolutely respect that. I just want to make sure that we up here and the Department are doing what they need to be doing in order to prevent this.

Mr. JACOBS. Yes, sir. We have a number of efforts in addition to the National Work Queue that provide oversight and assessment of quality of our decisions, and so based on some of the trends that we see, we then follow up and provide reinforced training. When we see that there are issues, so, for example, providing the TERA memo, we are going to go back and we are going to make sure that, you know, if needed, we are going to provide additional training and reinforce that guidance.

Those are the types of things that we do through in-process reviews, through special focus reviews where—and we are particularly sensitive to that given the newness of PACT Act. This is a massive new benefit, and it is not only increasing the total number of claims but it is adding new complexity to the work process, right. There is a new theory of entitlement, and so—and there are different dates of—different effective dates and different conditions that are covered. It is categories of conditions. We have to be very focused and disciplined to make sure that we are reinforcing the guidance, and it is one of the key lessons from this implementation is we need to do more and we need to do better on training.

Mr. LUTTRELL. I heard one of the young ladies in Houston say it took years to create the PACT Act, and it took months to implement it, and that is—

Mr. JACOBS. Yep.

Mr. LUTTRELL. That can be a little overwhelming for them, I would assume—I am guessing. I just—

Mr. JACOBS. Yep.

Mr. LUTTRELL. I will add this, and then I—because my time is up, but we need to give them exactly what they need to be successful.

Mr. JACOBS. Yep. Yes, sir. I will say, we felt an urgency to get the law implemented. We are dealing with veterans who have in some cases waited decades for these benefits and in some cases are dealing with terminal illnesses. It is a balancing act, and I think we will continue focusing on employee feedback and responding appropriately. Thank you.

Mr. LUTTRELL. Okay. Thank you, sir.

I now recognize the Ranking Member Pappas for his—

Mr. PAPPAS. Thank you, Mr. Chairman.

I appreciate the way that VA has really been aggressively communicating around the benefits that are available to veterans now through PACT Act. I want to zero in on the August 9th date, which is approaching, because veterans will receive benefits backdated to the date of the bill signing in advance of that date.

I am wondering if you can talk about any major push in advance of August 9th to ensure that veterans know what is available to them.

Mr. JACOBS. Yes, Congressman, that is a great point. In fact, right now, this morning, we are having a PACT Act day of learning here in Congress. We are holding PACT Act claims clinics across the country in partnership with our VHA partners where we are doing toxic exposure screenings, and we were continuing to push the word out through multiple channels in the media, working with our partners in the VSO community, with States, and counties, and local nonprofits.

We are pushing hard, one, because the PACT Act is a once in a lifetime—once-in-a-generation opportunity, but it does not do anyone any good if they do not know about it. We have the unique authority, so if a veteran files a PACT claim within the first year of the law's enactment, they have the possibility of back dating their effective date to the date the law was signed, August 10, 2022.

We are pushing veterans so that they know they can file that claim before then, and if they do not have all of their materials prepared, they can file an intent to file. They can effectively have a marker that preserves that potentially earliest possible effective date.

It is also important for them to know they can come to VA.Gov/PACT and file that claim, or they can work with an accredited representative like a VSO to get that help that they need. We want them to come, we are actively seeking them out, and we are using data to drive our outreach.

Mr. PAPPAS. Can you talk about challenges that you have experienced in getting to underserved communities, minority veterans, women veterans, LGBTQ veterans, and how you are addressing some of those challenges?

Mr. JACOBS. Yes. I think we are dealing with a deficit in trust in some cases. I mentioned Benito. There are people who have had experiences with the Department that turn them away from seeking the benefits and the support that they have earned. We are working to restore that trust through that active outreach and through things like our veteran experience effort.

We are partnering with the Veteran Experience Office to try to identify the pain points, the moments that matter, and use that data, both the qualitative and the quantitative data, that we are getting to better inform how we deliver services and how we communicate. We are also using data where we can identify on a county-by-county basis the percentage of veterans who are utilizing their benefits, and we are going to drive that outreach to try to target those historically underserved organizations.

Then, finally, we are working with different special emphasis programs and groups to make sure that we are communicating in culturally appropriate ways. We are here to serve all veterans, not some veterans.

Mr. PAPPAS. Dr. Hastings, if I can turn to you, I know VA is working to establish new presumptives. Can you talk about VA's plans to publish these new presumptives and how many might be included on the list?

Ms. HASTINGS. First, I would like to thank you for the PACT Act. When we talk about the 24 or so presumptions, it is really not 24 presumptions that you gave veterans. These are buckets of presumptions. When you look at respiratory cancers of any type, reproductive cancers of any type, digestive cancers of any type, you know, just for respiratory alone there are over 80 different kinds of cancers, because basically it is from the lips to the lining of the chest wall. Thank you very much. It is over 300 presumptions.

We are going to publish in the Federal Register. This is something that is new. We have gotten lots of information in the past from veterans, from VSOs, from Congress, from VA leadership, from the media as to what needs to be looked at next. This is the first time we will be able to publish in the Federal Register and have public comment from veterans and be able to have it on a website so it is open, people can look at it.

We are very excited with this opportunity. We are planning on getting that in well before August and starting the public comment. I also want to say that in my office we are constantly doing surveillance and looking at trends for the Gulf War, for Vietnam, for Karshi-Khanabad Airbase (K2), so this does not cease. Anytime we find a signal, we look deeper.

Mr. PAPPAS. Well, thanks for indicating how you are incorporating VSO feedback. I think that is important.

I am just wondering, in the remaining time I have, if you can touch on domestic exposures and the Guard and Reserve components and how that is being incorporated in—

Ms. HASTINGS. Yes, domestic exposures, we are going to be—from the PACT Act, we are doing a deep dive with Fort McClellan. The Agency for Toxic Substances and Disease Registry and U.S. Environmental Protection Agency (EPA) have done that in the past, but we are going to be looking at health outcomes. We also look at Camp Lejeune. We are looking at Per- and Polyfluoralkyl Substances (PFAS), and we are also looking at fuels, which as you may imagine, not only are in a deployed environment but also used extensively here in the U.S. We are looking at those garrison exposures.

Mr. PAPPAS. Thank you very much. I yield back.

Mr. LUTTRELL. Thank you, sir.

Congressman Self, you are recognized for 5 minutes.

Mr. SELF. Thank you, Chairman.

Mr. JACOBS, I understand that all of the training has not been completed for people that are currently processing claims. It looks to me like you are, and rightfully so, looking at quantity right now. What are the quality measures for claims adjudication, and when do you expect training to be complete and quality measures metrics to kick in?

Mr. JACOBS. Sir, we have completed training for our existing employees. We are now providing training for all of the new employees.

Mr. SELF. Right.

Mr. JACOBS. The quality that we are seeing so far remains relatively high, up in the 90, 95 percent area. We have seen a consistent increase from the start of January 1, where you would expect, as employees are learning the new process, the new theories of entitlement. We have seen—we have identified some areas where we need to focus in and make sure that we are reinforcing that guidance.

The quality, in fact, remains high. I think the concern is equally high. Our employees come to work, and these are—more than 50 percent of them are veterans. They come to work at VBA because they want to serve veterans, and they want to do a good job. We have asked them to do a lot. It is already a complex line of business. They have to understand how to review very complex and lengthy military records and extensive medical information.

The great thing about a presumption is you do not have to develop the nexus. We are making it easier, and that is the great thing about this process, but the new theories of entitlement are making the way that we have traditionally done the work hard, and so that has created a level of anxiety across the workforce, which is why I have provided the extension of the grace period for quality. Quality remains high and we will continue to focus on that moving forward.

Mr. SELF. Okay. Very good.

I see the TERA claims are more complex. Is there any consideration for easing the presumptive claims so that you can focus on the TERA claims? I mean, it is presumptive, after all.

Mr. JACOBS. Yes. The TERA application is being provided for claims that are not presumptive.

Mr. SELF. Right.

Mr. JACOBS. We get a claim that has maybe ten contentions, and if five are presumptive, we can make a decision relatively easy based on what is in the evidence. For those claims that are non-presumptive, so they fall outside the category of the 20-plus areas, we then have a different process, so whereby we used to be able to kind of review the case, and if we could not make a decision, we would then send that contention out for a Compensation and Pension (C&P) exam. In cases where we can not provide that benefit, where we would otherwise deny based on the evidence, if there is evidence of a toxic exposure risk activity, we have to send veterans out.

We are working to understand the impact to the veteran. We are working to understand the impact to the overall system and the

timeliness and trying to make sure that we are giving our employees tools to make those decisions consistently.

I think—we have introduced a tool relatively recently that is kind of like a TurboTax tool where the veteran can answer a series of questions and be guided to make the decision about whether to officially request a TERA exam through the TERA memo, but we are going to be continuing to monitor implementation and coming back to talk through that as we learn more.

Mr. SELF. Okay. Very good.

For Dr. Hastings, you mentioned the Federal Register. What is your timeline for getting that out?

Ms. HASTINGS. Well, you gave us the timeline of 1 year, sir, so it will be out well before the 9th of August.

Mr. SELF. Well before the 9th of August?

Ms. HASTINGS. Yes.

Mr. SELF. Very good.

Chairman, I yield back.

Mr. LUTRELL. Thank you, Mr. Self.

Congressman Deluzio, you are recognized for 5 minutes, sir.

Mr. DELUZIO. Thank you, Mr. Chairman.

Good morning, all. I should say, congratulations to VBA on accomplishing that 1 millionth C&P exam. Job well done. I know it is an important moment for a generation of veterans, so please keep going.

Under Secretary Jacobs, I will start with you, sir. A 2022 Office of Inspector General (OIG) report found VBA's contract medical disability exam program was deficient because it was not holding vendors or contracted claim exam providers accountable for correcting errors, improving exam accuracy. As I understand it, OIG found all three of those vendors were failing to consistently provide VBA with accurate exams required under those contracts. In the timeframe of 17 to 20, as I understand it, the worst offender there was providing accurate exams between 66, 74 percent of the time. I will start with, how do you assess that performance?

Mr. JACOBS. I will say, we have measures in place in our contract to evaluate quality and to appropriately incentivize or disincentivize that. We measure quality using an 11 question checklist to determine the accuracy. It is something—so we monitor it, and we hold our vendors accountable to it.

I will just say anecdotally, when I travel across the country, this is, you know, a regular line of concern that is communicated to me. I am actively working with the head of our medical disability examination office to ensure that we are getting high quality and timely decisions or examinations from our vendors.

Mr. DELUZIO. What is your sense of that performance compared to VHA examiners?

Mr. JACOBS. I think it is a little bit—I think we look to VHA examiners for some of the more specialized and more complex related contentions. I think by and large they generally do well, but we certainly do hear—in an environment where we are providing a significant number of exams, we do hear of outlier cases that need to be addressed and either have the vendor removed or have corrective action taken.

I think that the VHA team does a pretty good job as well. I think they do about 10 percent of our total exams in a given year. We are sensitive. We always give them the right of first refusal, but they obviously have access priorities that they need to work through in terms of clinical capacity, so there is a workload balance that happens at the regional level.

Mr. DELUZIO. You mentioned more specialized exams—

Mr. JACOBS. Yep.

Mr. DELUZIO [continuing]. and issues that I suspect will be more unique to the veterans community, where perhaps the VHA examiners have more expertise, but I do not want to speak for you. Is that the place where you see them most useful or most effective in filling exam requirements?

Mr. JACOBS. In some cases, yes; in some cases, it is just a matter of capacity and filling kind of the general needs as well.

Mr. DELUZIO. Your testimony also mentions VBA's development of PACT Act training both for the VHA examiners and contract examiners—

Mr. JACOBS. Yep.

Mr. DELUZIO [continuing]. which I applaud. That is great. I want to understand more broadly the disparities, if there are any, in training of a VHA examiner by virtue of being a VA or government employee, what trainings they might have that a contract examiner is not receiving. Are there such trainings? Are there differences in what those examiners go through to understand veterans, our care, the unique challenges folks face perhaps coming from service?

Mr. JACOBS. Yes. Well, I think we have incredible training on toxic exposures that Dr. Hastings and her team that are provided to not only clinicians, but we also have training that has been provided to our C&P vendors through the four contract companies that work with us, but they also are provided the training that is included for our VHA vendors. I can get you the record and can provide the detailed list of the trainings that we provide.

Mr. DELUZIO. A quick follow up though, are there trainings that the VA—the VHA folks receive just by virtue of being a VA employee—

Mr. JACOBS. Yes.

Mr. DELUZIO [continuing]. in addition to what contract examiners might take? Like for instance, this PACT Act training, I understand both do.

Mr. JACOBS. Yes. Our VHA employees are going to receive additional training over and above what is required of our vendors, because many of those clinicians also may see patients, and so there are additional requirements associated with that training.

Mr. DELUZIO. Very good. Thank you, sir.

Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, sir.

Congressman Franklin, you are recognized for 5 minutes, sir.

Mr. FRANKLIN. Thank you, Mr. Chairman.

Thank you to our witnesses for being here today. I really appreciate it. It is not lost on any of us here the monumental task you all face in implementing the PACT Act. It is tremendous legislation that is long overdue for our veterans and they need it. Everyone is patient while they are, you know—it is a great thing to get it



out there and rolled out quickly. Patients will wear thin, as you know with folks who are now waiting to get the care that they have earned and desperately need.

I am curious a little, as I understand from talking to some of the older veterans in our district, when Agent Orange claims were being adjudicated, a lot of that was concentrated into regional offices or sites of expertise. This decision and this implementation is basically to empower, enable everyone across the spectrum to do it. Not trying to second guess that decision, but I am curious so I can help explain to folks why that decision was made and why that is going to be a better thing for the veterans in the long run.

Mr. JACOBS. No, thank you very much for that question, and it is a good one. The challenge we have—we often get asked this question, right. In the case of Camp Lejeune claims, we recently consolidated our processing in the Louisville regional office, and we could do that because we have a relatively small number of pending claims.

For PACT Act claims they are now about 40 percent of the total workload. As we think about it—and we are constantly pushing for more veterans to file PACT claims. What we are going to see in the very near future is PACT being just a regular part of business and that the total workload being so large that we have to distribute it across the rest of the organization. We just simply do not have the capacity to specialize it in a way that would make sense, otherwise veterans would have to wait a very extensive period of time.

Mr. FRANKLIN. Okay. I understand that the hiring has been a challenge and keeping up with the numbers that you need. Currently, our understanding is that the staff is required to work 20 hours of mandatory overtime every 2-week period, and that was justification for a budget request of an additional \$44 million in this current budget cycle.

Mr. JACOBS. Yep.

Mr. FRANKLIN. With TERA claims expected to peak in October of this year—I am sorry, non-TERA and then the TERA claims peaking in April 2024, do you anticipate ever getting caught up, or is this just going to be the overtime is going to be the way it is until you get passed the peak cycles?

Mr. JACOBS. My goal is to move away from mandatory overtime. I do not think it is a sustainable practice.

Mr. FRANKLIN. It is never a healthy thing, yes.

Mr. JACOBS. We also can not yet move away from it completely because of the total workload. We are providing a reprieve to mandatory overtime for several weeks over the summer, and we are going to be looking at that just like we did over the winter holidays, and that is factored into our modeling. It is also why we have been aggressively hiring so much. We are pushing more employees so that there are more people to do the work, and it is also why we are investing in things like technology so that our employees are more efficient and effective. Ultimately, we need to move away, but we also have to be able to make sure that veterans are not waiting lengthy periods of time.

Mr. FRANKLIN. Okay. You had mentioned different efforts to work with staffs here and to disseminate education out there about the program. Specifically, I am thinking about our folks across all

of our districts. Our constituent case workers are often the first ones to, you know, have a veteran reach out and help to navigate the program. Is there training, are there efforts underway or that you have planned that maybe—of things we can do to help Congress partner better with your staff?

Mr. JACOBS. Absolutely. I worked in the Senate for about a decade, so I am acutely aware of the benefit that the case workers provide. They are often a great signal of things that may not be working well that we need to know about. We do provide training to constituent case workers through our Office of congressional and Legislative Affairs, and I will follow up—make sure that we follow up with your staff afterwards to ensure that they are getting that training, just like we are doing the training on the Hill this morning.

I think there are incredible opportunities to work together more closely and more effectively, and we want to make sure if you are dealing with—if you are seeing issues or problems that we know about them so we can fix them as quickly as possible, because we want to ensure that those individual veterans that are coming to your office are taken care of, but we also want to understand if it is a broader systems issue that we should know about and we can fix for other veterans and family members.

Mr. FRANKLIN. I appreciate that. It will also help us educate and inform our veterans about, you know, how to manage expectations and how to navigate it.

Mr. JACOBS. Yes, sir.

Mr. FRANKLIN. I appreciate that.

Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, sir.

Congressman McGarvey, you are recognized for 5 minutes.

Mr. MCGARVEY. Thank you, Mr. Chairman.

I want to start by echoing the comments from my colleague Mr. Franklin. Thank you guys for being here. Thank you for the work you do. Thank you for helping all of us make sure veterans get the care they need, they deserve, they have earned.

I want to sort of follow up a little bit on the lines that my colleague, Mr. Deluzio, was talking about and get into this claims processing issue. As you all know, I want to ask about the performance standards of the rating veterans service representatives, the RVSRs, who are handling claims related to the PACT Act.

According to American Federation of Government Employees (AFGE), RVSRs currently do not receive production credit if they determine a claim needs to be deferred. You all know how this works. They only receive that production credit if they have been accepted or denied, but this means you can spend hours upon hours on a claim. They do not know exactly what is going on in realtime, and then all of a sudden they get no credit for the work they have put in only if it is accepted or denied.

I think this pressures the people handling claims to make a premature or an incorrect decision, and the result is that it could potentially haunt veterans for years to come. This has been an issue in my district, in Louisville, Kentucky, where the Kentucky VA regional office is. As you know, the Louisville regional office handles a lot of the Camp Lejeune contaminated water claims right now,

in addition to some of the other claims. In the past, Louisville has been a strong performer, but I am concerned that the current performance standards may undermine both RVSRs and the veterans they serve.

My question for you, Mr. Jacobs, is why does not the VA provide production credit for the time spent on claims that are deferred?

Mr. JACOBS. Thanks very much for that question, and it is something—it is an issue that I have been wrestling with since I came to VBA in the summer. I think that the longstanding approach has been to try to balance the desire to produce decisions for veterans while also providing credit for the employees who are doing the work. I think there has been a concern that if you provide credit for deferrals you are going to incentivize the prolonged processing of the claim and unnecessarily delay decisions for veterans.

You know, what I have learned in the time that I have been in this role is that veterans and employees oftentimes do not have the evidence that they need to make a decision for veterans. We have got a committee that is reevaluating our performance standards, and they are taking a very hard look at this question and figuring out how can we balance the need to incentivize the right outcomes and decisions for veterans while appropriately rewarding employees for the work that they have done.

I do not have an answer for you now, but I will tell you, it is a major focus of the evaluative effort that is underway, and I hope to have an answer for you in the near term.

Mr. MCGARVEY. Thank you. I appreciate that. I think you are right, we do not want to see unnecessary delay either, but want to make sure that we get this right and that veterans are getting, again, the care they deserve, that they have earned, and that we do not have a structure in place which is limiting that. I appreciate that and look forward to continuing to talk with you guys about how that is coming and when it can be implemented.

We just want to make sure, again, those performance standards are fair, robust, transparent, and that they reflect both the quality and the quantity of the work done by these people.

Mr. JACOBS. Yes, sir.

Mr. MCGARVEY. Just turning quickly, in the time I have got remaining, to title 5 of the PACT Act, which handles research on toxic exposure. Mr. Jacobs, again, can you provide us with an update on the interagency working group on toxic exposure research outlined in section 501 of the PACT Act and where the group stands?

Mr. JACOBS. Yes. If it is okay, I would like to defer to Dr. Hastings—

Mr. MCGARVEY. Sure.

Mr. JACOBS [continuing]. who has been leading our research efforts to speak to that.

Ms. HASTINGS. 501 is managed by the Office of Research and Development, and they have met four times since January. They have put together their Federal group. It has 39 members. We had a very large group initially for our first meeting, and we invited all the Federal agencies at your behest, and we invited, in fact, Department of Commerce. Who knew that Commerce was interested in PFAS because of semiconductors? I learned a lot there.

We have met. They have put the group together. They are also working with the Office of Science, Technology, and Policy, and so it is a very broad group. They do have a 5-year mandate, as you know, to look at the gaps, and they are taking that very seriously. They have put a charter together. They will have a report to you in this first year and a report every year for that 5 years.

Mr. MCGARVEY. Thank you very much. I appreciate that.

Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. McGarvey.

Congressman Ciscomani, you are recognized for 5 minutes.

Mr. CISCOMANI. Thank you, Mr. Chair.

Thank you for being here today. I know that the VA has been conducting numerous outreach efforts through their regional—your regional offices regarding veterans and survivors who have eligibility for PACT Act claims since the legislation passed last August. However, it seems also that rural and underserved areas may sometimes be left without some targeted outreach to them.

I believe that one of the areas that we could bolster this outreach is through efforts of possibly educating our congressional personnel offices, specifically in the districts, about this to address how these offices can best assist our veteran constituents as well.

My question is, and of course I should have mentioned this initially, I represent Arizona's 6th congressional District. This is part of the Tucson area, and it also includes four other counties besides Pima County, and these other four counties are very much in the rural side of the counties. How can Congress better partner with you at the VA to improve outreach on PACT Act claims in rural and underserved communities?

Mr. JACOBS. Thanks very much, Congressman. I think it is incredibly important for us to reach out to veterans, particularly in underserved and hard-to-reach areas like our rural communities. Our regional office directors across the country have been holding regular outreach events with their partners in the health system but also with the state and the local, the county veteran service officers and our VSO partners.

I would say, one action I can take following up on this effort is to make sure that our Phoenix regional office director, who has been doing a lot of proactive outreach, is partnering with your office to identify opportunities in your district. We have a really incredible tool that we have developed that enables us to identify on a county-by-county basis the percentage of veterans in individual locations that are receiving benefits or not so we can identify those underserved populations and try to target our outreach efforts there, and most appropriately, use our resources.

Mr. CISCOMANI. Yes, thank you. Well, I do think that is highly important. We want to make sure that every community gets served. I know that many of my colleagues on this committee also serve rural areas and just that outreach is highly important.

Another question here real quick. In terms of new hires, why are new hires who have not gone through the virtual in-person, or VIP, training allowed to process PACT Act claims? Are you considering changing this policy to require them to become proficient in non-PACT Act claims first?

Mr. JACOBS. I am sorry, can you repeat the question?

Mr. CISCOMANI. Sure. New hires who have not gone through the VIP training, the virtual in-person training, are allowed to process PACT Act claims. Are you considering changing this policy to require them to become proficient in non-PACT Act claims first?

Mr. JACOBS. I am not aware of that, so I would like to follow up with you. We have new employees who come on board, we require them to go through VIP training, and then they—depending on if they are a Veteran Service Representative (VSR), an RVSR, there are several, it takes a prolonged period of time, several months. Then they can continue to get that training. They come back and they typically get additional training at the regional office. They are ready in 6 to 9 months to start really being proficient and then about 2 years to reach to a journeyman level proficiency.

We are taking a hard look at our training overall, so I think one of the things we have learned from the PACT Act implementation is that we have got some areas of improvement for our training on PACT specifically, but I am taking a much broader look at the VIP training, which is what we provide to all new employees so that we can have an independent review and make the course corrections that might be necessary to better support continuous learning in an adult-learning environment.

Mr. CISCOMANI. You know, this obviously coming, the feedback, from the employees themselves. I have traveled to some of the regional offices and heard similar concerns here from the employees directly about the, I would say the delivery of the training, specifically in-person training, training mostly provided through PowerPoint or via Talent Management System (TMS) platform. This is more meant to be around the area of new hires, and should they be trained on how to generally process claims before they move on to the PACT Act claims? That is more the nature of the question.

Mr. JACOBS. Oh, got it. Now I understand. Thank you for the clarification. I think 40 percent of our workload is now PACT claims, so I think they need to be taught PACT at the same time they are being taught the regular workload. I think the broader point you are making is a correct one, we need to take a fresh look at how we are providing training to ensure that our new employees are set up for success moving forward.

We have increased our workforce by more than 15 percent in the last year and a half, and we are continuing to hire more. At the same time, we are asking our existing employees to do more, to process more claims, deliver more benefits to more veterans, and we are adding complexity through this new theory of entitlement and new ways—new effective dates and new ways of doing business.

We are adding all of these new employees who are absolutely critical for us to be able to meet this growing demand, which we are excited to meet. All of that creates an environment where there is a lot of change, and so we need to be very disciplined in terms of how we are rolling out our improvements and be vigilant in terms of doing oversight to ensure that our new employees and our existing employees are getting the support that they need, so we are taking care of employees so that they can take care of veterans.

Mr. CISCOMANI. Thank you.

Mr. Chair, I yield back.

Mr. LUTTRELL. Thank you, sir.

Congresswoman Ramirez, you are recognized for 5 minutes.

Ms. RAMIREZ. Thank you, Chairman.

I also want to thank the panel that is here with us today, Under Secretary Jacobs as well as Dr. Hastings and Mr. Orifici? Say it for me.

Mr. ORIFICI. Orifici.

Ms. RAMIREZ. Orifici. Thank you for being here. I want to follow up on some of what my colleagues have talked about today, and I specifically want to talk a little bit about how the PACT Act has established systems to be able to address cancer or any of that type of stuff presumptive for veterans. This category includes breast cancer and other cancer that are specific for working veterans.

Under Secretary Jacobs, can you tell me about outreach efforts to inform women veterans of these new benefits, and then also at what rate are women veterans applying for these benefits?

Mr. JACOBS. Great. Thanks very much for that question. We are excited that the PACT Act is allowing us for the first time to establish breast cancer as a presumptive service condition under the PACT Act, and we have worked with our Center for Women Veterans to conduct specific outreach in a variety of different forums working with a number of our partners outside of government. One of the things that I was hearing just prior to this hearing is that we need to do more outreach, and not everyone is aware that breast cancer is covered as a presumptive service connected condition.

I am taking away from just the conversation I had that we need to double down on this. I think one of the incredible things about this law is that it is massive in scope and scale. It has got more than 20 conditions and categories of conditions that we are now able for the first time to provide presumptive service connection for.

It has got additional dates of coverage and service, but all of that means that it is highly complex. There are a lot of different parts and pieces and nuances, so communicating that is really important. That is why we are doubling down on our outreach. That is why we are holding the day of learning here in the Capitol.

That is why we have had outreach with Active Duty at the Pentagon and with our military components and bases across the country and why we are working with partners in many places, in many communities. I think we are going to have to continue to do more specifically here based on some of the conversations I have just had this morning.

Ms. RAMIREZ. Thank you. I would love if you keep me posted on how the outreach efforts are going.

Mr. JACOBS. Yep.

Ms. RAMIREZ. Obviously it is really important for all of us.

I want to follow up more on claims now. The Veteran Benefits Administration to this point has managed all of the incoming claims, PACT Act claims, and the backlog effectively. Although the backlog of claims has not increased—there is currently about 210,000—it has not been effectively reduced.

Under Secretary Jacobs, currently the VBA has over 800,000 pending claims. Can you tell me a little bit about the actions that are being taken to reduce these numbers, and also how long before new claims processors are in place?

Mr. JACOBS. Yes. Well, thanks very much for that question. You know, in Fiscal Year 2022, we set a record for the highest number of claims decisions in VBA history, and that was 1.7 million claims decided. That beat the previous year's record by 12 percent. We are about halfway through this fiscal year, and we are already well above where we were last year. We have produced 15 percent more claims at this point in Fiscal Year 2023 than we had in the same point last year.

Thanks to the outreach and the incredible new benefits under the PACT Act, we have received 30 percent more claims than we did last year. We, in preparation for the PACT Act, have been—we put together a people process technology implementation plan. Before the law was passed, we started an aggressive hiring campaign, and we brought on about 2,000 additional new employees.

We have continued that aggressive hiring campaign with hiring fairs across the country, and over the last year and a half we have increased our total workforce at VBA by about 15 percent. That is—we are now over 28,000 and we are going to be quickly approaching 29,000. Because of this investment and the advanced planning, we are now producing more claims than ever before.

We completed our millionth claims decision in April, which is about a month before we did last year. In the middle of April, April 17, for the first time in our history, we completed more than 9,000 claims decisions in a day. In fact, we have completed more than 8,000 claims decisions, more than 40 times this fiscal year, which is something that we had never done—we had only done six times in our history.

Ms. RAMIREZ. Thank you so much.

Chairman, I yield back.

Mr. LUTTRELL. Thank you, ma'am.

Congressman Crane, you are recognized for 5 minutes, sir.

Mr. CRANE. Thank you, Mr. Chairman. Appreciate it. You know you walk into a hearing late and you—I am sitting here and my colleague from Arizona has already read three of my questions. It is unbelievable, Juan. I thought better of you, man.

All right. Thank you, guys, for appearing today. Thank you for your work to support one of our most cherished groups, our Nation's veterans.

I would like to start with Mr. Orifici. Did I pronounce that right, sir?

Mr. ORIFICI. Orifici, but close enough. Thank you.

Mr. CRANE. Can you say that again?

Mr. ORIFICI. Orifici.

Mr. CRANE. Okay. Orifici?

Mr. ORIFICI. Orifici.

Mr. CRANE. All right. I am just going to—I am just going to do the best I can. I will just go with sir. There you go. All right. Mr. O, how is that? All right.

Mr. ORIFICI. That works.

Mr. CRANE. When does VA project automated decision support technology will be fully functional and able to meaningfully reduce the backlog of claims?

Mr. ORIFICI. Thank you for that question. Within OIT we do a lot of work to enable the automated decision work in terms of providing data and integration with the Veterans Benefits Management Systems (VBMS) and other systems that are used to process claims. The Automated Decision Support (ADS) is managed by service providers, by VBA, so Mr. Jacobs would have to answer the exact deployment days for when that ADS would go out.

Mr. CRANE. Go ahead, Mr. Jacobs.

Mr. JACOBS. Yes. Right now we have about 57 automation eligible diagnostic codes that are in production, and 26 of those are PACT-specific conditions. We have processed—we had 166,000 claims that have utilized automation, 30,000 of those have been completed, and we have had about a 10 percent overall avoidance for automation.

What we are doing right now is we started with four prototype sites, four regional offices, where we are continuing to implement the technology and then using the frontline feedback from our employees to revise the logic and provide user interface design changes. We then expanded it to eight prototype sites, and we are closely approaching the deployment to an additional eight regional offices that are going to be pilot sites.

We are continuing to expand the utilization of our automation, but we are being very careful to do so. We are taking a verify, validate, graduate approach where we are testing the technology, we are getting the feedback, and then we are expanding capacity. The date is a little hard because we are using an agile methodology.

Mr. CRANE. Can you give me a ballpark, Mr. Jacobs—

Mr. JACOBS. I think—

Mr. CRANE [continuing]. a loose ballpark?

Mr. JACOBS [continuing]. in the next year and a half, 2 years is the goal, but there are a number of assumptions here that we have to validate before we are ready to do it. The reason, if I may—

Mr. CRANE. Yes, sir.

Mr. JACOBS [continuing]. we want to make sure this technology is going to enable us in the medium to long term to reduce the workload demands from our employees by automating many of the administrative tasks. We need to ensure that we have made policy changes that may be required, that we have adopted change management, and that our employees trust what they are getting as well as the veterans we are serving.

Mr. CRANE. Right.

Mr. JACOBS. We have got a very specific change management approach that we need to follow and ensure that we are delivering this new tool with confidence.

Mr. CRANE. Thank you, sir.

Mr. O, again, please explain why the virtual regional office platform that is in development is necessary to support automated benefits delivery tools?

Mr. ORIFICI. Yes, sir, thank you for that question. The virtual regional office tool, the VRO, is used to help communicate between all of the service providers in the VA. It provides the bridge be-



tween other service providers that VBA has brought on board to help us with the total capacity to develop ADS and helps to integrate back into the system and other tools that our claims processors use like VBMS or to connect into some of the health data repositories that are on the VHA side so it helps connect into Capri and other systems where medical data may be relevant and brought to bear for helping determine ratings and other decisions.

Mr. CRANE. Thank you. Can you also describe the smart search tool that VA is developing and explain how this tool will make the claims process more efficient?

Mr. ORIFICI. Yes. That is a great question. Smart search is a new feature that we are developing for the veterans benefits management system, and it goes and looks in the veterans e-folder where all their documents are currently stored. Today, a claims processor could go in and search on individual documents that are in the e-folder, so if they are looking for a various condition, they are looking for something like that, they have to go in document by document and search, and the e-folder could have thousands of documents in it.

A smart search will allow the search to conduct the search across the whole entire e-folder at one time, also reading handwritten notes and images and other harder-to-discern texts that is in those documents that is very difficult for them to review today.

Mr. CRANE. Thank you. My final question is for Secretary Jacobs. How is VA planning to leverage the required in-office days for employees to improve the quality of claims? For example, would you support using the in-office days for mandatory in-person training?

Mr. JACOBS. Yes. Well, we are taking a holistic look at all of our training right now, and so I have commissioned an independent review of our training. One of the things we are looking at is in addition to how we design and implement the modality of training, the actual substance of it and kind of think through things like adult learning, we are thinking about in person versus virtual.

With respect to in person more broadly, you know, we are taking a hard look at the Office of Management and Budget (OMB) memo that was issued, and we are responding to that based on their request for recommendations focused on organizational health and production.

What I will say is that over the last 2 years our VBA employees have done an incredible job. They pivoted on a dime. Thanks to the work of our IT colleagues and the work about a decade ago when we transitioned from a paper-based process where the floors were literally crumbling under the weight of all the paper claims to one that is now electronic, we were able to survive COVID and continue delivering benefits to veterans for the most part.

We have increased total production in Fiscal Year 2021 and Fiscal Year 2022 in a largely remote environment, and we have also increased total productivity. Notwithstanding the challenges of the massive change in a very short period of time, I am incredibly proud of our employees and their ability to deliver to veterans, and I am confident that they will do so no matter what happens moving forward.

Mr. CRANE. Thank you. I yield back.

Mr. LUTTRELL. Thank you, sir.

Does any member have a second round of questions?

The chair recognizes the ranking member.

Mr. PAPPAS. Thank you, Mr. Chair.

Mr. Orifici, maybe if I could ask this of you. You talked a little about technology, and the committee has heard for many years about frustration from VBA staff about VBMS and how the system does not always support their work in an ideal fashion. I am wondering if you could address this question about survey data and whether VA has conducted user satisfaction survey recently of VBMS users, and if any of that data will inform future developments of the system. This is something that Government Accountability Office (GAO) recommended both in 2016 and 2020.

Mr. ORIFICI. Thank you for that question. I am not aware of any surveys from the Office of Information and Technology, and we usually defer those surveys to VBA to conduct with their field, and so I will turn it over to Mr. Jacobs.

Mr. JACOBS. Yes. I will have to get back to you for the record, because I do not want to misspeak here on the surveys. I know that I talk regularly when I am traveling to the regional offices with frontline staff who use our systems, and I think one of the great things about the PACT Act is that it included a requirement in section 701(b) to create a 5-year IT modernization plan.

We have been working very closely with our IT partners. I have been working with our Chief Information Officer (CIO), Mr. DelBene, on an approach that we delivered, and it has been articulated. It is about 100 pages, so some light reading on the flight home, but it articulates our modernization vision, about how to continue to evolve VBMS. We clearly need to keep moving forward. Technology evolves at a rapid pace, and we need to do our best to evolve with it and skate to the puck.

We do not want to invest in yesterday's technology. We want to continue to provide our staff the tools and the support and the resources that they need to better serve veterans. I think as you look at that document, that will reflect some of the feedback we have received from employees but also a vision about how we are going to address that.

Mr. PAPPAS. Okay. Well, we will look forward to more information on that.

I have got another question, but I will submit it for the record in the interest of time, and I yield back.

Mr. LUTTRELL. Thank you, Ranking Member.

Thank you, Under Secretary Jacobs, Dr. Hastings, and Mr. Orifici. Yes? It is going to be a good day. Have a blessed day. You are excused.

Mr. LUTTRELL. I now call the second panel. You are free to join us, please.

Are you all ready? All right.

Today we have several representatives from the Veterans Service Organizations: Mr. Michael Black, national service director for American Veterans, AMVETS; U.S. Air Force retired Colonel Lorry Fenner, director of government relations for Service Women's Action Network; and Mr. Alex Morosky, deputy director of government affairs for the Wounded Warrior Project.

Sir, are you a veteran?

Mr. MOROSKY. I am, sir. Army.

Mr. LUTTRELL. Thank you, all three, for your service.

Mr. Black, you are now recognized for 5 minutes to deliver your opening statement.

#### **STATEMENT OF MICHAEL BLACK**

Mr. BLACK. Good morning, Chairman Luttrell, Ranking Member Pappas, and distinguished members of the subcommittee. As the largest veterans service organization representing all of American Veterans, AMVETS is honored to provide testimony regarding VA's administration of the PACT Act.

AMVETS is America's most inclusive, congressionally chartered veterans service organization. Our membership is open to all Active Duty, Reservists, Guardsmen, and honorably discharged veterans. Accordingly, members of AMVETS have contributed to the defense of this Nation in every conflict since World War II.

AMVETS is grateful for the hard work of this subcommittee, for its many years of consideration for the suffering faced by our veterans who are exposed to horrific, and in many cases life-ending, illnesses. The PACT Act is providing medical care and benefits to an incredible number of veterans and their loved ones.

We welcome your strong and committed support for the estimated 4 million Vietnam War, peacetime, Gulf War, and post-9/11 veterans who became eligible for VA healthcare and disability benefits when President Biden signed the PACT Act into law on August 12, 2022.

The law improves access to VA treatment for various toxic exposures experienced by our servicemembers during their military service. AMVETS applauds VA's performance, including VBA, and for their diligent efforts toward transparency and proactive communications regarding the PACT Act. AMVETS believes VA has done what it can to ensure positive outcomes for veterans. We remain concerned about accurate effective dates, accurate percentage ratings, and accurate decisions for service connection for PACT Act claims.

We have also concerns surrounding the lack of robust data that prevents us from addressing VBA rating decision outcomes. According to VA, as of May 13, veterans and survivors have filed more than 567,000 new disability claims for toxic exposure related benefits under the PACT Act since August 10, 2022. As of May 13, 2023, 352,000 claims remain pending.

VA's PACT Act reports would be more helpful if we knew how VA calculates their received, pending, and completed claims. VA should also report on the number and type of reviews filed and the number of appeals filed, as it is equally important to understand the entirety of the PACT Act claim life cycle.

This information is essential should there be a percentage or should there be a change in the PACT Act or a court opinion that alters how VBA processes and decides PACT Act claims in the future. Other recommendations shared by our members involve providing rating decision accuracy, communicating clear staffing information to stakeholders, and continuing to hire new and capable staff to handle the nearly 1.6 million total VBA inventory.

AMVETS wants VA to keep the over 212 newly service-connected veterans plus the 222,000 newly enrolled veterans informed and educated. AMVETS fully understands the complex and lengthy process of how VA implements new regulations for a large and complex law, such as the PACT Act. However, after 9 months, we note that VBA has only issued sub regulatory guidance. We strongly urge VA to publish regulations for the PACT Act so there is a greater clarity in rating decisions, as well as greater overall transparency.

On behalf of AMVETS, thank you for the opportunity to share our concerns and recommendations to ensure that this law is successful and meets the intent of Congress. I look forward to answering your questions and working with you toward supporting our Nation's veterans who rely on this law to improve their wellness and quality of life. This ends my statement.

[THE PREPARED STATEMENT OF MICHAEL BLACK APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Mr. Black.

The written statement of Mr. Black will be entered into the hearing record.

Colonel Fenner, you are now recognized for 5 minutes to deliver your opening statement.

#### **STATEMENT OF LORRY FENNER**

Colonel FENNER. Thank you, Chairman, Ranking Member, the rest of the committee members. Service Women's Action Network is so happy to be here today. We do not often get invited. I will not echo what the other VSOs say, because we largely do not always agree. I am going to highlight what we see from our members, who are predominantly women. I will just give you some highlights, and we are happy to follow up with questions, examples, work with your staff.

First of all, research is, of course, the foundation and is longer term. We would like to commend Dr. Hastings. Her work is really excellent. The whole group is very well positioned. However, what we would like to emphasize and see more of in the future is that grant and research funding language specifically calls out gender and racial and ethnic minorities so that those veterans will see themselves in the results and get faster screening and testing.

In addition, we are very happy that infertility has taken a strong point in all of this. We would like to commend the VA for in other areas doing their holistic care. What we recognize with infertility is it does not just stop at the damage caused by toxic exposure, but that in and of itself, it relates to a lot more challenges that women face and they should not have to pay out of pocket for that additional care that is directly related to what they have experienced with toxic exposure.

We do want to thank Congress for adding significant funding last year to start this year on women's healthcare, particularly because OB-GYN facilities have been lacking, and the VA can now build that capability out. We hope there will not be any reverses on that front.

I appreciate Representative Ramirez bringing up breast cancer. Our members report that it is not so intuitive in the IT system to

find breast cancer under reproduction, so that is an outreach thing that we think is an easy fix for veterans to be able to find that more easily.

Most importantly, related to the recent advisories on women getting screened and treated earlier, we would like to say that Active Duty and servicewomen exposed to toxins should get their screening as young as 20 or 30 years old, even if they do not have a family history.

Here goes another thanks for Congress, passing the Dr. Kate Hendricks Thomas Act last year. Dr. Thomas was a sworn member, who also died last year at the age of 39 from breast cancer from toxic exposure.

One of the other things we talk about quite a bit is why women veterans do not come to the VA as often as their male counterparts. VAs and VSOs have gone a long way to make women more visible, and that has been very helpful. Some of the pre-9/11 women veterans do not see themselves as veterans or as deserving. If we could do specific outreach to those pre-9/11 older women, that would take us a long way.

It is also hard to feel respected as a woman when you walk into the VA and you are assumed to be somebody's wife, mother, or daughter, which we probably are, but not to be assumed to be the veterans ourselves. That lack of respect also feeds that culture that we have been working on for decades, and all of you in the VSOs have tried to help.

This needs constant work, continuous work for as far as we can see ahead. The VA—what this causes is abuse and assault, frankly, and the VA should re-recognize and reenergize its Independent Review Commission (IRC) that is equivalent to the Department of Defense's (DODs). It started an independent one, and it needs to be reenergized. Congress should pass the Empowerment and Support Act.

We agree that communications and outreach is essential. The VA, the VSOs, the Center for Women Veterans are all positives. Since it is essential to get this word out and follow through on those claims, we think that claims processing in this outreach should not be considered an administrative expense but the cost of providing care for veterans that deserve it.

I am hoping that you have questions for me so I can dispense with the rest of this, except to say, where women veterans are reporting that they are not getting the care, we will continue to partner with you, with the other VSOs, and call attention to women's care. Thank you.

[THE PREPARED STATEMENT OF LORRY FENNER APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Colonel.

The written statement of Colonel Fenner will be entered into the hearing record.

Mr. Morosky, you are now recognized for 5 minutes to deliver your opening statement.

#### STATEMENT OF ALEKS MOROSKY

Mr. MOROSKY. Thank you, sir. Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, thank you for invit-

ing Wounded Warrior Project to participate in today's hearing on the delivery of disability benefits under the Sergeant First Class Heath Robinson Honoring Our PACT Act. Wounded Warrior Project was proud to support the passage of the PACT Act last year, and we share and appreciate the subcommittee's continued commitment to the successful implementation of this historic law.

The PACT Act addressed one of the most significant challenges that veterans have faced for many years, difficulty accessing VA care and benefits for toxic exposure-related health problems. To address a range of issues, it established over 20 new presumptive conditions related to burn pits and other exposures, conceded exposure and required exams for veterans suffering from conditions that are not presumptive, established a permanent working group to continuously study whether new presumptive conditions should be created, and guaranteed access to care for all exposed veterans. Together, these provisions represent the largest expansion of VA care and benefits in decades. VA deserves praise for moving swiftly on implementation, which has been successful, but also leaves some opportunities for improvement.

Before we discuss those topics, we would like to share the story of a warrior named Dan to help illustrate the positive impact that the PACT Act is having. Dan was an Army infantryman who served in Iraq. In 2004, he lost his leg when his vehicle was struck by a roadside bomb. Eventually, his other leg would have to be amputated as well. Dan credits part of his recovery from his wounds, both visible and invisible, to his involvement with Wounded Warrior Project's adaptive sports program, and eventually he would become a yoga structure living a healthy lifestyle.

In late 2021, Dan would learn how daily exposure to burn pits in Iraq had finally caught up with him. A colon cancer diagnosis took Dan by surprise and chemotherapy followed. His perspective on all of it has changed since the PACT Act became law. In Dan's words, I think it is really important too, outside of VA compensation, that the PACT Act may make some veterans say, I was in Iraq or Afghanistan, and I know I was exposed to all kinds of toxins. Maybe I should go get a colonoscopy. Maybe I should get a chest x-ray. It is an opportunity to catch something before it becomes bigger. Today, Dan continues receiving treatment for his cancer, which VA now officially recognizes as service connected.

Mr. Chairman, we hope this story helps illustrate the potentially lifesaving impact that the PACT Act is having on so many veterans like Dan. As previously mentioned, we believe that VA's implementation of the PACT Act has been largely successful. As of May 6, they have received over 546,000 PACT Act related claims representing over one-third of all the claims received since the bill became law. We realize that this increased workload presents certain challenges, but we believe it is necessary to ensure that exposed veterans are finally able to access the benefits they earned.

VA has been on the right track with its successful use of automated decision support technology and continued recruitment in training of claims processors made possible by the PACT Act. Congress should continue supporting both components with full funding to help ensure that veterans are not waiting too long to receive the care and benefits they need.

For those who sought relief shortly after the PACT Act was passed, the results have been promising. VA has granted nearly 80 percent of the 266,000 claims it has processed so far. This represents a significant improvement over the less than one-third grant rate that Wounded Warrior Project annual warrior survey respondents reported before the passage of the bill.

Still, we have noticed a degree of inconsistency with the way some PACT Act claims are processed, particularly when VA has sought unnecessary exams and nexus opinions when the evidence on file is sufficient to grant the claim. If not caught by a service officer, these unnecessary exams can slow down the claim, and if the exam results in a negative opinion, it could also result in an incorrect denial. We encourage VA to consider whether or not supplemental training or perhaps specialized processing teams may be beneficial to increase consistency and accuracy of claims processing.

Last, we believe that VA's outreach efforts to VSOs and veterans has been exceptional. From their PACT Act week of action in all 50 States to town halls and awareness events at Wounded Warrior Project staff have personally attended to claims clinics and outreach letters mailed directly to veterans and survivors, VA is clearly committed to reaching as many potential beneficiaries as possible.

VA's PACT Act web page is highly informative and easy to navigate, and their biweekly PACT Act performance dashboard is a model of transparent communication. Wounded Warrior Project commends VA for their robust outreach and supports their continued efforts to educate potentially eligible veterans and survivors about PACT Act benefits.

Chairman Luttrell, Ranking Member Pappas, this concludes my statement. Once again, I would like to thank you for inviting Wounded Warrior Project to testify today. I look forward to any questions you or other members of the subcommittee may have.

[THE PREPARED STATEMENT OF ALEKS MOROSKY APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you. The written statement of Mr. Morosky will be entered into the hearing record.

I now recognize myself for 5 minutes for questions.

Colonel, does your organization deal with the PACT Act at all directly now with—

Colonel FENNER. We have a very small staff, but we have a case worker that takes calls from our members and anybody else that wants to call, and then we have a referral base so that we can refer them back to the VA or to one of the organizations, say if they have a legal problem with a claim, then Disabled American Veterans (DAV) and some of the other bigger organizations can help. We do deal with PACT directly, yes, sir.

Mr. LUTTRELL. As this implementation starts to develop, I heard—and I give—you said the VA is doing a great job.

Colonel FENNER. Yes, sir.

Mr. LUTTRELL. Mr. Morosky, you said that Mr. Black you mentioned that too. Then there is the tweaks, right. It is the subtleness of it that I think will get it completely on its rail. Can you—because in the previous panel we had the privilege of hearing from the under secretary, but I would like to hear from the VSOs on

what your thoughts would be on subtle implementations or subtle tweaks to the rules and regulations that are in place that might benefit not only the VA but help Congress, keep everybody informed. Want to start with you, sir?

Mr. MOROSKY. Thank you, Mr. Chairman. You know, one of the things that we are asking VA to consider as they look to increase some of the quality and consistency of their claims processing, things like unnecessary TERA exams that we are seeing, things like maybe missing some of the conditions on the list as to maybe—

Mr. LUTTRELL. Is that redundancy as far as on the TERA exam, or is that—can you clarify what you think is unnecessary for me?

Mr. MOROSKY. Sure. TERA exams are required by the PACT Act only if the evidence in the claim is insufficient to grant without the exam. When you are talking about presumptive claims, very often if you have evidence of service in a covered location and you have a diagnosis of a covered condition, that in and of itself should be enough to grant the claim. There is no nexus opinion needed.

The TERA claims are really necessary when it comes to conditions that are not presumptive. Very often what we are seeing is those unnecessary claims for veterans who are claiming a presumptive condition. This can mean an unnecessary appointment that the veteran has to go to, and it could even result in a negative nexus opinion that could impact the claim. That is one of the things that we are seeing and that we are reaching out on a regular basis whenever we catch it to VBA to have it corrected before—

Mr. LUTTRELL. What is the response from the VA reps when you are speaking to them? What are they saying to you about that?

Mr. MOROSKY. You know, ideally they will correct it, and they will realize that that was made in error. You know, we have had VBA claims processors say, you know, thank you for catching that. That helps.

Mr. LUTTRELL. We are trying to figure out exactly where the breakdown in the communication is. Fair enough?

Mr. MOROSKY. Yes, sir.

Mr. LUTTRELL. Mr. Black, you got anything to add, sir?

Mr. BLACK. Thank you. Pretty much everything he said is correct with the Wounded Warrior Project. The part that we are seeing is that sometimes the VA does not react fast enough, and we have to basically turn the claim in—

Mr. LUTTRELL. What is fast?

Mr. BLACK. Trying to get hold of somebody at one of the regional offices to actually take a second look at the claim. We have to turn around sometimes and take those claims and actually turn them into a VBA appeal, and that is what is adding on to the length of the claim.

Mr. LUTTRELL. What does that drag out to? Weeks? Months?

Mr. BLACK. That could drag out to, with VBA, probably years.

Mr. LUTTRELL. Years? Okay. How do we solve that problem?

Mr. BLACK. Basically was that—that is part of my whole question and stuff for the VA is quality control, basically and training for their—or training for their employees, because a lot of them, the information is right there. They have boots on the ground by using their DD214. We have turned in all the medical evidence,



and that is one of the big things that AMVETS is known for. We turn in fully developed claims.

Before we turn in a claim we turn in all medical evidence, we turn in DD214s, members information for the family. We turn in everything at one time, so we turn over everything to the VA in one packet.

Mr. LUTTRELL. That is—what you are turning over is guidance—I do not know if I want to—

Mr. BLACK. Correct.

Mr. LUTTRELL. Mr. McGarvey, are you going to ask that question again that you asked? Okay. I am not going to steel your thunder then.

I am sorry, sir, go ahead.

Mr. BLACK. They have everything at hand. It is just that the knowledge of some of the raters and everything that we have at the VA is missing certain items, and that is where I go back to the training. We keep talking about training, but training is one of the biggest issues we are having right now.

Mr. LUTTRELL. Okay. Thank you.

I now recognize the Ranking Member Pappas for his line of questioning.

Mr. PAPPAS. Thanks very much, Mr. Chairman.

Thank you to our panel. We are glad that your voices are part of this conversation.

Colonel Fenner, I was hoping to be able to start with you. You mentioned infertility, and we know that it can be a symptom of many of the presumptive conditions under PACT Act. It can also be the result of treatment for a lot of those illnesses as well. You talked a little bit about holistic care. Do you want to expand upon what you said and how that is such an important concept, especially for some of the female veterans that you represent?

Colonel FENNER. Absolutely, sir. Again, we recognize that the VA does a great job in other areas with holistic care through the Primary Care Managers (PCMs) and such, so we would like to see that concept here.

What happens when a person learns that they are infertile or has been trying a very long time, anxiety and depression, we have mental health issues, the breakup of families because of these kinds of stressors. Having infertility be a result of Military Sexual Trauma (MST) adds another layer of complexity, which is why we want that addressed both on it from Active Duty transition and then also MST possibly experienced at the VA itself. We are just trying to make a very complex problem more complex in your understanding, that specifically, infertility, is a very difficult problem for us.

Mr. PAPPAS. Can you talk at all about the experience of women veterans with the VA disability claims process. I am interested particularly in their experiences in scheduling disability medical exams, anything that you have observed.

Colonel FENNER. Yes, sir. Some of our veterans are reporting that they get their notice that they have got a 10 percent disability presumptive, and then they are asked if they want to have an evaluation. Knowing that they have had other exposures possibly outside the time limits, Gulf War or flying out of Turkey, instead of

some of the places recognized where they are flying out of toxic airspace, they click “yes” that they would like to have a further evaluation and then silence.

That is one problem. Another problem is that when they get to see the claims people in person finally, that person generally will kind of try to defer as well to say, well, you already have to have an every 2-year evaluation for your disabilities, so why do not you wait until that comes up so that then you can have your toxic exposure further examined. We are talking about other illnesses again that they get the 10 percent, but they know that they have more that is being affected and so they are trying to pursue that and sometimes running up against brick walls.

We know this is a hurried effort, and we appreciate that. We know people are still in training. We find that at a lot of the local areas the claims investigators and the people that our veterans are going to are not well informed. Thank you.

Mr. LUTTRELL. Is there any concern around rejection of claims among certain populations of female veterans with respect to their male peers?

Colonel FENNER. Well, we also talk about combat designations and combat area designations. Sometimes women veterans are not given the status, especially some of the older ones, because women were barred from combat. Now even after women were allowed in combat they were classified as not combat MSOs or Military Occupational Specialities (MOSs) skill sets, but they were attached to combat units instead of in combat units, and that can make all the difference in the world. Whether it is true or not, whether it is covered by PACT or not, the people who see women veterans do not see us in the same light as many of our male counterparts.

Mr. PAPPAS. Well, thank you for those thoughts.

Mr. Morosky, if I could ask you a question. You talked about the outreach effort that has been ongoing from VA. You credited them with some success, and certainly VSOs have been doing their own work. We also know that there are many veterans who are not connected to a VSO or certainly not connected to care. PACT Act is a great opportunity. I am wondering if you have any suggestions for that slice of the veteran population that is out there, that is not engaging with VSOs, has not yet accessed VA care or may have some frustrations with VA. How do we reach them?

Mr. MOROSKY. It is a difficult question, and asking specifically about veterans who may not be engaged with either VA or VSOs, it is, I guess, to continue using all the tools at our disposal, whether that is social media, whether that is traditional media, using everything at our disposal to help talk to those veterans who have not engaged yet.

Mr. PAPPAS. It is an unfair question for, you know, 20 or 30 seconds that you had, but I appreciate that. We certainly appreciate the work of all of our VSOs. We thank you for your contributions as part of this panel. Look forward to continuing to work with you.

Thank you, Mr. Chair.

Mr. LUTTRELL. Thank you, sir.

Mr. Franklin, you are recognized for 5 minutes.

Mr. FRANKLIN. Thank you, Mr. Chairman.

Thank you, panel, for being here. As we discussed with the previous panel, this is monumental legislation. Now the hard work is actually getting it done. The work you all do to inform and educate and be alongside our veterans is tremendous, and we really appreciate that.

I would love to hear from each of you in the time we have, if you could discuss how the VA is working alongside VFOs—or VSOs to inform and educate vets on the benefits of this program and then also, you know, what can be done to better improve collaboration. Start with you, Mr. Black.

Mr. BLACK. Thank you, sir. Some of the things that basically I think the VA has done well is like for town hall meetings and putting out fast letters and actually getting communications out electronically inside the regional offices to where my service officers are. That they are doing very, very well at.

On some of the things to actually do a little bit better is actually just actually the numbers. That is the main thing that we are having some issues with, actually knowing denial rates and everything else for certain conditions so we can basically get it out to the veterans.

Mr. FRANKLIN. They should share more transparency on the numbers that they are seeing?

Mr. BLACK. Correct. Yes, sir.

Mr. FRANKLIN. Okay. All right.

Colonel.

Colonel FENNER. We would echo that as well. All of the numbers in the dashboards are great, but it does not really inform on the declination rate or the denial rate. Also, we think the relationships are great. We get a lot of information. What we can not really measure—and that helps our case worker, that helps us, and we also get the information out to our members with blast as well.

What we do not see as much of is that evaluation of how it is going, how is that outreach going. The VA is working so fast. They are spinning so fast that a lot of times there is that pause for assessing, not just what the outcome is, we did a lot of stuff, but what the impact really is. Until we see those numbers of women go up who recognize themselves and actually will use the VA, we kind of feel that there is more work to be done in that area. Thank you.

Mr. FRANKLIN. Mr. Morosky.

Mr. MOROSKY. I would also agree with the other two panelists that the data has been robust, but there is more things that we would still like to see. I would also point out that as far as their communication with us, they include PACT Act briefings regularly on just about every engagement they have with us, even if it is on another topic. If it is a veterans experience office briefing, there is a PACT Act component. If it is a family caregiver briefing, we have had PACT Act components to that.

We have had VA invite us to offsite briefings with members of their staff from different regional offices. There has been a lot of engagement with VSOs. If there is something that I think they could do better, just from a communications standpoint in general, maybe not do better but just continue to emphasize as we get closer to them, as we have got two big deadlines coming up—we have

got the August 10 deadline, which we talked about in the previous panel, which veterans have until really August 9 of this year to have their PACT Act claims backdated to the day the bill was signed, and then we also have September 30 deadline for veterans who were discharged over 10 years ago to be able to access care before they are subject to a phase in. We would like to see robust communication to veterans and VSOs about those two upcoming deadlines as we get closer to them.

Mr. FRANKLIN. All right. Thank you.

Mr. Black, could you—you have touched on this already a little bit, but could you expand some more on the concerns you raised in your testimony regarding the inaccurate ratings the veterans have received from their PACT Act decisions.

Mr. BLACK. Yes, sir. I guess, was it—for the accurate ratings, that is one of the biggest things, and like I said, that kind of goes back to what I talked about a little bit earlier with training. We are trying to make sure that the veterans is turning in all their evidence, the evidence is in there. A lot of times with the lack of training on the VA side, the raters will undercut a rating. Instead of basically giving 20 percent for—or 60 percent for a cancer they may give 10 percent for a cancer.

Mr. FRANKLIN. Do you think that is a lack of understanding, or what would be the motivation there?

Mr. BLACK. I think it is a lack of understanding, and I think it is a lack of training, and that takes time. I have learned that, for my 17 years as a service officer, it takes time to actually train somebody. You can not just pick up the job and do it. It normally takes an average service officer about 2 to 2 and a half years, almost 3 years to learn his job. That is why we are basically making the comment now about that we are seeing issues that they need to sit there and get the younger service or the younger VA employees trained. Um—I am sorry. That is it.

Mr. FRANKLIN. That is okay. I am over my time. I appreciate that. I yield back.

Mr. LUTTRELL. Thank you, sir.

Mr. McGarvey, you are recognized for 5 minutes, sir.

Mr. MCGARVEY. Thank you, Mr. Chairman. I want to start by following up on your line of questioning just a little bit here. We have talked about this. We do not want to have unnecessary delay; at the same time, we want to make sure that veterans are getting the care they have earned. Talk to us a little bit about your recommendations for performance standards, and then along with the performance standards, given the line of questioning by Mr. Franklin, also recommendations for getting new training and how you would like to see that done.

Mr. BLACK. Thank you, sir.

I am not sure if I could totally answer that because I do not know how the VA goes out and trains their employees. I know they use TMS and some of the other issues. I can not totally answer that question for you. I am sorry.

Mr. MCGARVEY. Totally okay.

Anybody else have any thoughts on that? Colonel. Mr. Morosky.

Mr. MOROSKY. Sir, I can also say, we do not necessarily have an inside view on how VA has conducted their training so far. We al-

ways encourage, you know, supplemental training whenever possible. I can tell you that Wounded Warrior Project service officers, like AMVETS, are highly trained individuals. We have a training management team, and we actually, you know, took a pause from everything everyone was doing to train PACT Act when the regulations came out. That was, you know, successful for us.

Mr. MCGARVEY. Thank you. I appreciate that.

Then I will switch gears a little bit on you then instead of going to talking about the training and the performance standards, which is people who have already contacted the VA. We will talk a little bit about outreach and how you get more people into the VA, and then hopefully we can make sure people are getting what they need.

Colonel Fenner, I really appreciate your service and for you highlighting the unique needs of our women veterans. In your testimony you spoke about the harmful effects of toxic exposure for women veterans and how more research is needed to talk about the impact for everything from infertility to breast cancer.

We also know, as you highlighted, that women may be less likely to go to the VA. As the VA carries out these large-scale outreach efforts, we want to be doing everything we can to make sure we are reaching our women vets. What do you think the VA should be doing better to reach out to women veterans, and how would you rate their current efforts?

Colonel FENNER. Again, we compliment the VA because this is complex. They have done a great job in a very short time. My colleagues were talking about the efforts that they make and the papers and the news and the flyers and the email blast, and they are all great. They very seldom kind of target some of the populations that are coming to us, whether it is women or other minorities, and we, of course, support the other minorities as well. Oftentimes, we are the only ones in the room that get to talk about racial and ethnic minorities and LGBTQ and so on.

To include in all that training the specific reference to women so that when women get that news and they look at it they can easily find themselves and then pursue their avenues. The VA has put out a fact sheet for women on PACT. It does not say you can find breast cancer under reproduction. It does not really talk about the complexities of these things. There is a very small section in the upper left-hand corner that is fantastic, and the rest of it is pro forma rather.

While we compliment them, we also try to give feedback to them and to you about how this could be more effective. I would say too that one of the minorities that we are not reaching with a lot of outreach is those people who have other-than-honorable discharges that were administrative. It is not too long ago that women were put out of the service for lack of seizability for being pregnant or getting married and adopting their husband's children. Women have been put out of the service for MST that has affected their mental health, and they are discharged—the documents discharge says they are unsuitable or ill-adapted. Then there is LGBTQ members who were put out under Don't Ask Don't Tell and/or other-than-honorable discharges. Those populations are not being reached. Thank you for the question.

Mr. MCGARVEY. I really appreciate the answer. Obviously we want to be complimentary of the VA and the work they are doing on behalf of our veterans, but feedback is always important. You all deal with people who are actually receiving this, and we want to make sure we are reaching all of our veterans for what they have done for us. Appreciate that, and I yield back.

Mr. LUTTRELL. Thank you, sir.

Mr. Ciscomani, you are recognized for 5 minutes.

Mr. CISCOMANI. Thank you, Mr. Chair.

Mr. Black, why do you think that it is important for veterans to not only participate in PACT Act screenings but also other VA research programs, such as toxic exposure and VA's Million Veteran Program?

Mr. BLACK. Thank you, sir. That is a very good question. I totally believe, since the first time when I retired from the Army in 2001 and got out, that it is one of the best ways that the VA can track what is going on inside of our bodies. Basically they can track it over time.

I know myself, being a Gulf War veteran from the first half, that was one of the first things that I signed up when I got home. The information and everything that the VA gets, or VHA, from all those is how we figure out what is presumptive and everything that is going on with veterans. I push—and so does my service officers—push all veterans into these programs and stuff because they help in the long run.

Mr. CISCOMANI. Thank you, sir. Thank you, Mr. Black, for your service.

Thank you, Ms. Fenner, for your service, Colonel.

Mr. Morosky, thank you as well. I have got a question for you, sir. The Wounded Warrior Project mentioned in their testimony that the Veterans Benefits Administration has used a strategy called a special mission in the past when a large number of exposure-related claims happened. This approach was used in improving efficiency, such as radiation, mustard gas, or potentially complex claims. This allows the VBA to train staff on those specific issues to development and processing of these claims to increase accuracy and speed.

In the testimony, you encourage the VA to consider whether a special mission would be helpful in PACT Act claims. Can you explain a little bit more on the Wounded Warrior Project, why it believes more training may be needed for employees on the cancers that are eligible for a presumption of a PACT Act?

Mr. MOROSKY. Yes, sir. As was mentioned on the previous panel, there are 23 new disabilities that are listed in the PACT Act, presumptive disabilities, but these are really umbrella categories. When you have something like head cancer of any type, neck cancer of any type, respiratory cancer of any type, many, many more diagnoses come under each one. VA has a number of diagnostic codes under each presumptive disability that they have written in their regulation that they are using to process claims right now. Then in addition to the diagnostic codes, they also have different diagnoses that they do not have diagnostic codes for that are found later on in the document.

There are really three different places within the current document that you can find different conditions that veterans may be diagnosed with that could be granted on a presumptive basis. Sometimes we are seeing claims come back, and they are being adjudicated on a direct service connection basis instead of a presumptive, because the claims processor was not aware that this particular diagnosis fell under this category.

You know, my fellow panelist has talked about breast cancer falling under reproductive cancer. Similar that there are other cancers that are being missed that fall under different umbrella categories. When we see those, you know, we reach out to VBA and we attempt to get those corrected so that they can be processed on a presumptive basis.

Mr. CISCOMANI. Thank you.

Mr. Chair, I yield back.

Mr. LUTTRELL. I want to thank all the witnesses for appearing today to discuss this vital issue.

With that, I yield to the ranking member for his closing remarks.

Mr. PAPPAS. Thank you very much, Mr. Chairman. I think there is clearly more to do regarding implementation of what is the most significant expansion of veterans healthcare and benefits in decades, and I hope we can continue to work together to perform the necessary oversight.

I want to reiterate one final time that VA's implementation of PACT Act is incredibly important to all of the veterans that we serve. It is critical to our staff that we all work together to ensure that the law is implemented expeditiously and in accordance with Congress' intent. I am confident that our continued collaboration will ensure that VA provides world-class care to veterans for years to come. With that, I yield back.

Mr. LUTTRELL. Thank you, sir.

I absolutely agree 100 percent with what my colleague just said. Working together, the VSOs working with the Department of Veterans Affairs is—I speak in absolutes. You guys touch so many veterans. They touch so many veterans. I would hate to see us being so siloed it would break down that machine, because at the end of the day, inevitably it is the veterans that will be suffering.

Moving forward—and I have no doubt that this is the case, that we break down those silos and continue to communicate, you receive the training that you need inside your VSOs. That absolutely is on par with what the VA is doing. That line of—no more—this is what frustrates me as a scientist is the fact that we do not like to communicate when something special lives, and that is—again, in this VA space, we can not have that.

I ask unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous materials.

Without objection, so ordered.

This hearing is adjourned.

[Whereupon, at 12:16 p.m., the subcommittee was adjourned.]





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**A P P E N D I X**

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## PREPARED STATEMENT OF WITNESSES

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### Prepared Statement of Joshua Jacobs

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the Department of Veterans Affairs' (VA or the Department) implementation of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (the PACT Act, P.L. 117-168). The PACT Act, which was signed into law on August 10, 2022, marked the largest and most significant expansion of Veterans' care and benefits in decades, empowering VA to deliver additional care and benefits to millions of Veterans and their survivors. We are grateful for this opportunity, and now that the bill has become law, it is our job to implement it in a way that is seamless, efficient, and timely for the Veterans and survivors we serve—and most importantly, ensures that eligible Veterans and survivors can receive the care and benefits they deserve.

Across the enterprise, VA has achieved record-breaking numbers in providing benefits in implementing the PACT Act. VA is providing more care, more benefits, and more services to more Veterans, family members, and survivors than ever before. In Fiscal Year (FY) 2022, the Veterans Benefits Administration (VBA) set a record for the highest claims production year ever with more than 1.7 million claims completed, which beat the previous year's record by 12 percent. We are halfway through this fiscal year, and we are on track to break that record this year – VA has completed 14 percent more claims today than we did at the same point last year.

Delivering these benefits and more to Veterans, family members, and their survivors would not be possible without our people. To help meet the increasing demands for VA benefits, we've been aggressively expanding our workforce through hiring fairs and other avenues. VBA's total workforce is now over 28,000 team members, a 15 percent increase since the start of Fiscal Year 2022, which is the largest VBA has ever been and the highest growth rate in over a decade.

Thanks to our aggressive hiring, and planning for workload management, VBA completed its one-millionth Compensation and Pension (C&P) claim on April 14th, 2023 – approximately 4 weeks earlier than the organization has ever hit this major milestone. On April 17, 2023, for the first time in our history, VBA completed more than 9,000 claims in a single day. VBA has completed more than 8,000 claims on 39 different days this fiscal year. By comparison, VBA completed more than 8,000 claims just 6 times in the agency's history, prior to this fiscal year.

#### **PACT Act Implementation**

VA is implementing all aspects of the PACT Act enterprise-wide, with VBA, the Veterans Health Administration (VHA), and the rest of the Department working in lockstep to execute this historic law. Even before President Biden signed the PACT Act into law, VA began preparations for smooth implementation by actively hiring and training new employees while also upgrading information technology systems.

When the legislation became law, VA took immediate action to ensure claims processors received the guidance and training needed to begin processing claims as soon as possible. Rather than waiting to publish formal regulations, which typically takes 18-24 months, VBA prepared and issued sub-regulatory guidance so that VBA field personnel could begin processing these claims as soon as possible for expeditious delivery of benefits to Veterans and their survivors. In the eight months since the enactment of the new law, VBA Central Office has initiated rulemaking to incorporate the PACT Act into VA regulations. Additionally, as part of this effort, VBA updated training courses and developed an extensive Standard Operating Procedure (SOP) that includes all procedural guidance needed to process claims under the PACT Act. VBA has and will continue to make all sub-regulatory guidance publicly available to maximize transparency during the implementation process.

VBA delivered comprehensive sub-regulatory guidance and training to claims processors in December 2022, providing claims processors the guidance and tools needed to begin processing claims on January 1, 2023. This ensured all front-line

claims processors who handle claims for disability compensation benefits based on toxic exposure were ready to process claims on January 1, 2023, and could accurately apply the provisions of the law. To ensure all PACT Act information is easily accessible to claims processors, VBA established a comprehensive intranet site for storing all guidance documents, frequently asked questions (FAQ), quality and training information, communications, and other important links.

VBA expedited training for some claims processors to begin processing PACT Act claims for terminally ill Veterans on December 12, 2022. Additionally, to expedite Veterans' access to PACT Act-related benefits, VA made all 23 presumptive conditions in the PACT Act applicable on August 10, 2022—the day the bill was signed into law—rather than following the phased-in approach allowed by the Act.

Since January 1, 2023, VBA Central Office has continued providing support to ROs by conducting non-punitive quality spot checks on claims processors and quality review specialists related to PACT Act and relaying feedback, as well as answering questions and troubleshooting issues. VBA has also provided live support to claims processors of survivor-related claims. This provided valuable real-time feedback on claims. Also, in January 2023, VBA Central Office completed a PACT Act special focused review to identify common error trends in PACT Act claims processing. This led to identification of additional training needs.

In February 2023, VBA released the toxic exposure risk activity (TERA) Memorandum Tool to claims processors in the field. This tool simplifies complex TERA concepts for the field and improves the overall process for claims processors and examiners alike. This tool was a collaborative VBA effort to simplify and consolidate the PACT Act requirements and field guidance into an easy-to-use tool that assists claims processors in determining if a TERA memorandum, and consequently a TERA examination and medical opinion, are required. To date, nearly 1.25 million (1,244,643) total examination scheduling requests (ESR) have been completed by VBA. Of those, nearly 300,000 (291,226) were related to the PACT Act.

VBA is also engaged with all contract medical examination vendors to ensure proper preparation and to undertake any increase in volume of PACT Act-related examinations. In an effort to increase capacity, VBA has contracted with a fourth contract medical exam vendor, in the western region of the United States. The other three regions each have three contract exam vendors. Simultaneously, VBA is working with VHA, specifically the War-Related Illness and Injury Study Center (WRIISC) and Health Outcomes Military Exposures (HOME) staff, to ensure VBA contract examiners are trained in assessing deployment-related environmental exposures.

VBA also developed a comprehensive PACT Act training for VHA and contract medical examiners. The course was deployed into the Medical Disability Examinations Office (MDEO) learning management system on December 15, 2022. The training is mandatory for all vendor and VHA examiners who will be providing medical opinions for non-presumptive conditions under the PACT Act. The course provides examiners useful information for reviewing and understanding Individual Longitudinal Exposure Record (ILER) and TERA records. Additionally, VBA incorporated a reference guide that was developed by the Medical Officers of MDEO for future reference when conducting these types of exams.

As VA progresses through implementation, we remain fully committed to an immediate and deliberate, forward-leaning approach that tackles questions of environmental exposure. Title II of the PACT Act formalizes the presumptive decision-making process by which VA may streamline presumptions of service connection based on toxic exposure in a clear and transparent manner. Under the new authorities, VA will share and seek public input on our plans to formally evaluate a condition.

For one of the most recent presumptions related to airborne hazards and particulate matter, VA conducted an intensive review of the science related to the top conditions claimed for exposure to airborne hazards in the Southwest Asia Theater of Operations (SWATO). These were asthma, rhinitis and sinusitis, which were consistent with the three symptoms that the National Academies for Science, Engineering, and Medicine (NASEM) identified as associated with possible exposures in the region.

Following this internal VA review, which led to a presumed service connection for three respiratory conditions (asthma, rhinitis, sinusitis) and nine rare respiratory cancers related to particulate matter in the SWATO, Secretary McDonough determined that VA needed to modernize and improve the presumption determination process with more constant surveillance and scrutiny of the scientific literature, increased use of VBA claims data and review and consideration of the recommendations from the 2008 NASEM report, "Improving the Presumptive Decision-Making

Process for Veterans”. VA has completed drafting that process, and it is now in review at the NASEM as directed by the PACT Act.

*Research into the health effects of toxic exposure*

Title V of the PACT Act elevates the timely progress of exposure science through a whole-of-government approach. VA’s Office of Research and Development is leading efforts to create an interagency, mission-aligned, toxic exposure research working group. This group will collaboratively develop and execute a 5-year strategic research plan on the health consequences of toxic exposures experienced during active military, naval, air, or space service, as required by section 501 of the PACT Act.

Research priorities are based on the number of Veterans affected, surveillance of possible exposure or deployed cohorts, emerging issues, monitoring of VHA health outcomes and VBA claims trends, Veterans Service Organization (VSO) input and congressional direction. The PACT Act added an additional method to solicit public comment from Veterans, their caregivers, and survivors, as well as other external stakeholders through the publication of a Federal Register Notice.

*Coordination with DoD to track the exposures of Service members and Veterans using ILER and other means*

VA addresses illnesses that may be linked to exposures incurred during active military service in one of two ways: review of individual cases or through establishment of presumption. A tool being developed to improve these methods is ILER. Working with DoD, ILER has been designed as a comprehensive, interoperable record of occupational and environmental exposure during military service. ILER is available to VA clinicians, researchers and claims and benefits personnel. Access to this historical information will facilitate more seamless care for Service members and those transitioning to Veteran status. As ILER information improves, so will research, benefits, and health care determinations.

*Toxic Exposure Screenings*

As of April 30, 2023, VA had screened 3.21 million enrolled Veterans for toxic exposures. Of the Veterans screened, approximately 43 percent reported that they have a concern. This includes both Veterans who reported possible exposure and Veterans who were unsure of potential exposure concerns and had additional questions. When the screening is initiated by health care providers, 90 percent of follow-up screenings occur on the same day as the initial screening. The follow-up screening is completed by a clinical health care provider, ensuring Veterans with health concerns receive appropriate clinical assessments. Veterans who screen positive for toxic exposure also will receive a letter from VBA with information on how to file for a PACT Act claim.

*Hiring and Claims Processing Capacity*

VBA has taken proactive steps to ensure sufficient resourcing, to include close collaboration with members of this Committee, to hire people and deploy new technology to keep pace with the increasing demands for VBA services and continuing just-in-time benefit delivery. These efforts include additional hiring and training, continued use of overtime funds, digitizing records and implementing Automated Decision Support (ADS) that will result in faster, more consistent decisions ultimately improving the Veteran customer experience.

VBA continues to hire to increase the claims processing capacity in anticipation of the influx of claims filed due to the PACT Act. Between the initial Toxic Exposure Fund(TEF) appropriation in the PACT Act and the FY 2023 TEF appropriation in the Consolidated Appropriations Act, 2023 (P.L. 117–328), Congress provided funding in the PACT Act that allowed VBA to significantly increase toxic exposure-related claims processing capacity by adding approximately 49 percent more Veterans Service Representatives (VSR) and 38 percent more Rating Veterans Service Representatives (RVSR) over FY 2022 levels. Including National Call Center and requisite support positions across the field, VBA will achieve overall staffing levels 42 percent higher over FY 2022.

Due to the influx of new claims stemming from the PACT Act, and the fact that it takes 6 to 9 months for a new employee to reach entry-level productivity, in 2022 VBA projected that the backlog would grow to more than 400,000 in the 2023–2024 timeframe. VBA expects the backlog to return to a stable level of around 100,000 or less in 2025, depending on hiring, attrition, claims receipts, technology deployment schedule, and claims complexity.

VBA recognizes that, in a very short time, employees have had to absorb a tremendous amount of information and change with new SOPs and claims guidance following the enactment of the PACT Act. VBA is aware of possible employee burn-

out or frustration and works to collect and address feedback received directly from employees, such as through townhalls or from labor union representatives. VBA's process for implementing or changing an existing standard involves review of quantitative data, as well as collaboration with the labor union to ensure that the standards are realistic and attainable. VBA will make changes impacting performance standards when there is evidence demonstrating that it is necessary. This is not a defect in the process, but an intentional design that is reflected in the Department's agreement with the labor union to identify issues that may affect employees, discuss the issues with the labor union, and work to mutually resolve the issues to the benefit of employees.

VBA also recognizes the impact mandatory overtime (OT) has on employees and their families and does not take the decision lightly. Mandatory overtime is a necessary tool, particularly during this period of intensive hiring and training, but is not sustainable indefinitely. VBA is leveraging technology to streamline claims processing and provide employees with tools to be effective and productive without requiring more time away from daily life.

VBA actively engages the workforce through a variety of avenues to ensure they are invested in the mission of implementing the PACT Act. VBA has held open townhalls with VBA leaders on the PACT Act as well as local townhalls led by Regional Office (RO) Directors. Field managers regularly engage with both labor partners and claim processors to ensure the workforce is equipped with the necessary information to process PACT Act claims and to resolve concerns. VBA is committed to providing claim processors with the necessary training, information, and tools to ensure the high-quality processing of PACT Act claims. Training events include computer-based training as well as live training events. In addition, VBA created a PACT Act inquiry tool to provide field claims processors direct access to policy experts for questions, which went live on January 3, 2023. The PACT Act Inquiry tool provides the field a direct communication link to VBA Central Office for guidance and questions related to the PACT Act when their questions cannot be addressed locally. To date, over 300 questions have been received in the tool.

*Update on Benefits IT Systems Modernization, Under Section 701(b) of the PACT Act*

VBA is undergoing business modernization efforts designed to leverage technology by automating administrative tasks and workflows, known as Automated Decision Support (ADS) technology. Claims processing tasks supported by automation include data and records extraction from Veterans' electronic health records, verification of military service eligibility, expediting claims that can be decided based on the evidence of record, ordering examinations when required, and the intelligent indexing of the relevant adjudicative information.

VA's Office of Information Technology (OIT) has made significant improvements to benefits IT systems since the enactment of the PACT Act. In December 2022, OIT released Automated Issue Management (AIM) functionality providing the ability to prioritize claim types by issue, automating specific types, and quickly processing them without breaking up the overall claim. This directly benefits Veterans by speeding up the processing of certain issues within the overall claim, rather than waiting for the entire claim to be processed. In the third quarter of calendar year 2023, OIT will deploy Smart Search technology, which allows claims processors to conduct intelligent searches of the entire Veteran's eFolder of documents, which was formerly a manual process. This capability increases employee efficiency by accelerating the ability to search for relevant information to expedite PACT Act claims processing.

OIT has surged to meet VBA's demand to onboard new users and ensure its systems have high availability. OIT completed improvements to the Veterans Benefits Management System (VBMS) training environments to enable VBA to scale its new-hire trainings to eight times the prior capacity. In addition, OIT improved capacity and monitoring to reduce system downtimes for these environments, ensuring that VBA can train a continual stream of new employees supporting PACT Act claims processing.

In addition, OIT is steadily rolling out efforts to stabilize and create more robust systems and architecture. The Corporate Data base (CRP), which houses all Veteran data, recently upgraded to increase security and resiliency. Across all systems, OIT is improving resiliency to ensure that systems are available and reliable. OIT will continue modernizing current technologies and developing new technologies over the next five years, using funding appropriated through the PACT Act to automate and modernize IT capabilities for benefits delivery.

*Communication Efforts*

Outreach efforts are ongoing across VA. Multiple joint VHA/VBA PACT Act events have been held across the country, including a recent event at the Pentagon to provide information on health care and benefits to Veterans and their families. This event saw over 1,300 attendees with a dozen Veterans enrolling in VA health care onsite and over 30 Veterans receiving a toxic exposure screening. VA has also held quarterly meetings with VSOs and congressional staffers, known as “Days of Learning”. Some of the outreach events have been for Veteran cohorts with specific concerns, such as Veterans who served at Karshi-Khanabad (K2) Airbase and Veterans exposed to particulate matter pollution.

To improve evaluation and care of Veterans with military environmental exposures, Secretary McDonough directed, and the PACT Act reinforced, that all VA health care personnel receive education and training to identify, treat, and assess the impact on Veterans of illnesses related to toxic exposures; this education and training also must inform such personnel of how to ask for additional information from Veterans regarding different exposures. VA Military Environmental Exposure training<sup>1</sup> has been featured on the Centers for Disease Control and Prevention website as exemplary, and the American College of Preventive Medicine offers a certificate for completion of VA’s military environmental exposure training set<sup>2</sup>. Subject matter experts present and lead workshops to discuss exposure issues at professional and scientific meetings. HOME publishes research findings in peer-reviewed journals to improve clinical practice. All of these education and dissemination activities contribute to raising the standard of care to improve Veterans’ health and function.

VA is focused on reaching as many Veterans and survivors as possible to provide information on the PACT Act. We launched VA.gov/PACT—a one-stop-shop website for understanding the PACT Act and applying for benefits—as soon as the Senate sent the bill to President Biden’s desk for signing. Since its August 2022 launch, this page has received over 10 million page views. We also have enhanced 1–800-MyVA411—an easy—to-remember telephonic front door for Veterans and their supporters—to include self-service PACT Act FAQs and seamless navigation to 24/7 live agents to address Veterans’ concerns. From October 2022 to April 2023, VA has received more than 545,000 total MyVA411 calls that have accessed the “PACT Act” main menu. We also immediately began executing a comprehensive, targeted outreach effort to encourage Veterans and survivors to apply now for PACT Act-related care and benefits.

VA is executing an aggressive national and local earned media campaign, seeking to inform Veterans and survivors about the PACT Act and encourage them to apply. VA has published a series of videos explaining the PACT Act, garnering hundreds of thousands of views across YouTube, Facebook, and other mediums. One such video is *Be Vigilant of PACT Act Scammers*. VA also leverages Public Service Announcements (PSA) to inform audiences – families, Vietnam Veterans, Gulf War Veterans, and women Veterans – of their benefits under the PACT Act. From October 2022 to March 2023, VBA’s PSAs on the PACT Act resulted in 39.7 million impressions with a donated media value of \$1.8 million. To provide direct outreach to Veterans and their families, VA has sent more than one million outreach letters to potentially eligible Veterans and survivors. VA has also developed dozens of PACT Act flyers and fact sheets to help Veterans understand what this law means for them. These resources have been shared directly with Veterans, VA facilities, VSOs, and others nationwide.

Additionally, since January 1, 2023, VBA has participated in 2,510 PACT Act briefings, reaching 130,099 people to help spread awareness about this new law and how Veterans and survivors can apply for benefits. Of these PACT Act briefings, 193 included congressional representation, and 119 included the media. VBA held 138 claims clinics across the country, which reached more than 11,000 attendees and resulted in 2,644 claims filed.

VA’s senior leaders are highlighting the PACT Act across a wide-ranging series of events with Veterans, families, survivors, VSOs, Members of Congress, and others, including a satellite media tour that consisted of 26 total media interviews (20 television and 6 radio), resulting in more than 13 million impressions. VBA continues to maintain focus on reaching populations that might not otherwise be able to access needed information. These include rural Veterans, women Veterans, LGBTQ+, tribal and Native American Veterans and many others. Building on the December “Week of Action,” in March, VBA and VHA collaborated to hold more than 50 additional claims clinics with toxic exposure screenings, enabling a “one-

<sup>1</sup> <https://www.train.org/cdctrain/course/1070234/details>

<sup>2</sup> <https://www.acpm.org/education-events/military-environmental-exposures-certification/>

stop-shop” for Veterans to learn about VA health care and benefits they may be eligible for and help them apply for them.

Our messaging across these mediums has sought to simplify this complex law as much as possible, putting it into the terms that are most useful and understandable for Veterans and survivors. Regardless of the medium, the core message has been – and continues to be – that VA wants Veterans and survivors to apply for health care and benefits now, regardless of whether their eligibility is tied to the PACT Act.

### **Conclusion**

As we move forward, VA will continue to gather as much science and evidence as possible to swiftly support Veterans facing serious illnesses related to military exposures. When there is compelling information that is scientifically sound and legally defensible, VA will consider rulemaking related to service connection—allowing Veterans, family members, and their survivors to receive any additional benefits, health care, and other services that they have earned and deserve.

I want to express my appreciation for your continued support of Veterans, their families, caregivers, and survivors. VA appreciates the tremendous work Congress has done to pass this historic law, and VA values our work with you toward our common goal of serving Veterans. We want to thank you for your staff’s involvement with offsite events and the Committee’s side-by-side relationship during implementation of this historic law. I also want to acknowledge our VSO partners, as well as others in the Veteran community, who work with us to provide the best care and services for Veterans and their families. They do so much to advocate on behalf of Veterans. This sacred mission is both personal and professional for me, and it remains the honor of my lifetime to serve Veterans, their families, caregivers, and survivors.

We look forward to continued engagement with you as we implement this law and strive to serve with excellence those who have served the Nation.

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### **Prepared Statement of Michael Black**

Chairman Luttrell, Ranking Member Pappas, and distinguished members of the Subcommittee on Disability Assistance and Memorial Affairs, as the largest veterans service organization representing all of America’s veterans, AMVETS is honored to provide testimony regarding VA’s implementation of the PACT Act.

AMVETS is grateful for the hard work of this Committee for its many years of consideration of the suffering faced by our veterans who were exposed to horrific, and in many cases life-ending, situations. The PACT Act will no doubt provide medical care and benefits to an incredible number of veterans and their loved ones. We understand this is no light cost. War never is, and this is one of many costs of war.

As such, we appreciate the Subcommittee’s leadership, particularly the Committee Staff’s ongoing and diligent oversight of one of the most significant expansions of VA benefits and healthcare in several generations. We welcome your strong and enthusiastic support for the estimated four million Vietnam War, peacetime, Gulf War, and Post-9/11 veterans who became eligible for expanded and earned VA healthcare and disability benefits when President Biden signed the PACT Act into law on August 12, 2022. The law improves access to VA treatment for various toxic exposures experienced by our service members during military service. The detailed listing of these specific conditions by Congress as presumptive disabilities saves a great deal of time and frustration for both our veterans and the VA.

AMVETS applauds VA’s performance since August 2022. Specifically, VA created and regularly updates a dedicated website for the PACT Act. At the national level, VA has also been hosting PACT Act Days of Learning to provide regular updates regarding PACT Act implementation and outreach. They also conduct outreach events and share weekly reports on the impact of the law. This represents a significant improvement worthy of recognition.

### **Current VA Facts, Concerns, and Recommendations for the PACT Act**

AMVETS thanks VA, especially the Veterans Benefits Administration (VBA), and VBA’s Office of Performance Analysis & Integrity (OPA&I), for its diligent efforts toward transparency and proactive communications regarding the implementation and impact of a large and complex law intended to improve the health and lives of millions of our Nation’s veterans and their families.

While AMVETS believes VA has genuinely done everything it can to ensure positive outcomes for veterans amidst this massive undertaking, we remain concerned about accurate effective dates, accurate percentage ratings, and accurate decisions



for service connection for PACT Act claims. While AMVETS applauds VBA's tremendous hiring and claims processing statistics, we are concerned that the lack of robust data prevents us from commenting on the nuanced outcomes of VBA rating decisions.

Our statement lists facts, most often provided by VA, followed by our observations, concerns, and recommendations. AMVETS suggests we review the PACT Act by closely referencing numbers shared by VA:

- **There are 546,000+ new PACT Act claims:**

- o Fact: According to VA, as of May 6, 2023, veterans and survivors have filed more than 546,000 new disability claims for toxic exposure-related benefits under the PACT Act since August 10, 2022. The linear graph supplied by VA to VSOs indicates a steady increase in the weekly number of new claims filed during the past 9 months ("PACT Weekly Report," OPA&I, May 6, 2023).

- o Observation: VA's nimble ability to receive, process, decide, count, and report on the surge of claims within a few months after the PACT Act became law is truly impressive, unprecedented, and worthy of praise.

- o Concern: AMVETS seeks any additional VA projection for future new claims, reviews, increased ratings, and appeals under the PACT Act. In a related manner, we hope VA can adequately sustain the department's response to the claim surge over several more months or years as deployments to war zones continue and as more is learned about the adverse health consequences of exposure to toxins during military service.

- o Recommendation: VA should continue collecting data, preparing reports, and releasing facts to stakeholders. With more robust information, described in detail below, Congress, VA, and VSOs can collaborate on monitoring and improving the PACT Act based on an agreed-upon set of facts. VA should consider creating and sharing reports to project future claim and benefit activity among veterans using the PACT Act and for the veteran population as a whole.

- **There are 346,000 PACT Act claims pending:**

- o Fact: According to VA, of the 546,000 claims received by VA, 346,000 remain pending, as of May 6, 2023.

- o Observation: VA still needs to finish processing 346,000 open claims in order to prepare a rating decision.

- o Concern: We note that VA does not fully explain its math. For example, if VA's count of 346,000 claims pending is added to VA's count of 267,000 claims completed, then the sum is approximately 613,000 total claims. This is 67,000 higher than VA's reported 546,000 total claims received. These are most likely situations where the veteran claimed multiple disabilities, sought an increased rating, or filed a review after disagreeing with a VA rating decision.

- o Recommendation: We ask that VA's reports about the PACT Act contain details on how VA calculated claims received, pending, and completed for its reports. VA should also report on the number and type of reviews filed (i.e., Supplemental Claim or Higher-Level Review), as well as appeals filed (i.e., Notice of Disagreement and appeal to the Board of Veterans' Appeals), as it is equally important to know the full life-cycle of claims filed under the PACT Act. This information is essential should there be a change in the PACT Act or a court opinion that changes how VBA processes and decides PACT Act claims.

- **Over 212,000 PACT Act claims have been granted:**

- o Fact: VA reports 212,552 granted claims out of 266,690 claims rated by VA. That is slightly under an 80 percent grant rate per veteran for PACT Act claim rating decisions.

- o Observation: Compared with the historical data through 2021, when VA was granting about 20 percent of claims related to toxic exposures, the current grant rate of about 80 percent represents a remarkable and praiseworthy reversal. The grant rate highlights the importance of VA medical research into toxic exposures. The grant rate also confirms the importance of expanding the list of presumptive exposures and disabilities based on science in the PACT Act.

- o Concern: We note that VA's information about granted claims is based on a count of veterans, where if VA granted service connection for one condition, yet denied service connection for one or more other conditions, then VA considered the claim as a grant. VA has not released statistics about the grant or de-

nial rate for each of the 20 new PACT Act presumptive disabilities. We also note that VA has not released information about the reasons each of the claimed disabilities was denied.

- o Recommendation: In order for stakeholders to provide more robust feedback to Congress and our members, VA should also collect and release the grant and denial rates for each condition. Further, AMVETS asks VA to prepare a report listing the reasons for denial for each of the 20 new PACT Act presumptive conditions. For example, did the Veteran provide evidence of qualified service (such as deployment to Southwest Asia since August 1990), as well as evidence of a qualified presumptive disability? In order for AMETS to fully understand any challenges with the implementation of the PACT Act and then address them, Congress and VSOs need to know the reasons for VA's denials.

- **There are approximately 27,000 VBA employees:**

- o Fact: According to VA, there were 27,337 employees at VBA as of January 31, 2023. In addition, as of March 8, 2023, the VBA's total workforce had grown by 1,369 employees (5.27 percent) in the first four months of FY 2023. This is compared to 0.93 percent growth in the same period during FY 2022. This represents the highest growth rate at VBA in the past 20 years.

- o Observation: AMVETS applauds VBA for the prompt hiring surge. We support efforts for VBA to recruit, train, and retain the best quality workforces so it can process disability claims in an efficient and accurate manner.

- o Concern: In an email distributed by VBA on May 4, 2023, VBA reported the department would extend the "quality grace period" for VBA employees who make errors processing claims. The extension expires on May 31, 2023, due to the PACT Act, which VBA described as "wide-reaching changes resulting from this once-in-a-generation legislation." VBA's note is an admission that it faces a challenge with rating decision accuracy. Further, we note that VBA has not provided information to stakeholders that differentiates between new hires and replacement hires. We want to know if VBA has sufficient staff to provide timely and quality ratings without the inventory of claims rising or the error rates increasing.

- o Recommendation: AMVETS understands the enormous and unprecedented pressure the PACT Act placed upon VBA staff, especially new employees. As mentioned before, VBA should provide additional details about the types of errors it has observed, as these are likely associated with the reasons for VBA's denials of PACT Act claims. Specifically, VA should highlight any areas where VSOs and advocates can provide additional training to our service officers to reduce the number of VBA claim errors or otherwise improve VBA performance.

- **There is an inventory of 1.4 million total claims:**

- o Fact: As of April 15, 2023, VBA's total claim inventory of all work (pending, reviews, remands, for compensation and pension, etc.) is nearly 1.4 million, according to VBA's "Monday Morning Workload Report," "Traditional Aggregate."

- o Observation: VA outreach for the PACT Act appears to be successful, and the facts clearly reveal the results of VA's publicity surrounding the PACT Act, including press releases, press conferences, outreach events, information shared with VSOs, and the dedicated website.

- o Concern: The amount of work to be performed by VBA continues to grow quickly. AMVETS supports VBA in its momentous effort to hire new and capable staff to handle this claim surge as the wars continue in and around Southwest Asia.

- **There are 215,000+ veterans enrolled in VA healthcare:**

- o Fact: According to VA, as of April 26, 2023, More than 215,000 Veterans have enrolled in VA healthcare since the PACT Act became law in August 2022 ("Veterans and Survivors Have Filed More than 500,000 Toxic Exposure-Related Benefits Claims Under the Pact Act," VA Office of Public and Intergovernmental Affairs, April 26, 2023).

- o Observation: This is one of the most important facts shared by VA, as it clearly demonstrates how the PACT Act is opening the door to quality medical care provided by VA's Veterans Health Administration (VHA). As VHA develops more treatments for disabilities related to toxic exposures, veterans can quickly obtain those treatments. AMVETS truly thanks Congress, VA, and our VSO partners for this positive development.

- o Concern: When VBA issues a rating decision, VBA does not specifically inform or recommend that the newly service-connected veteran should enroll in VHA in order to obtain care. Further, VBA does not share information about VHA priority groups in VA rating decisions.

- o Recommendation: When VBA issues a rating decision, VBA should inform the veteran that he or she should file VA Form 10-10EZ and enroll for VHA healthcare. Further, VBA should provide a link for information about VA Form 10-10EZ as well as a link for information about VHA priority groups. From there, the veteran can compare their new combined degree of disability and other factors to estimate their VHA priority group. One of the main goals of the PACT Act is for VA to provide free medical care for conditions related to toxic exposures. Veterans generally receive that after receiving a service connection from VBA and then enrolling with VHA. Furthermore, VBA rating decisions should also inform veterans about their eligibility for free VHA care if they were deployed to a war zone.

- **There have been more than 3 million toxic exposure screenings:**

- o Fact: According to the same April 26, 2023, VA press release, more than 3 million veterans have received VA's new toxic exposure screenings since August 2022.

- o Observation: Again, the screenings are among the most important outcomes of the PACT Act. Primarily, the screenings raise awareness among veterans and VA medical professionals about the widespread presence of toxins during a service member's military career.

- o Concern: While the screenings provide increased awareness, our NSOs report that the information gathered is not as comprehensive as VA's registries for Burn Pits, Gulf War Illnesses, and Agent Orange.

- o Recommendation: AMVETS believes that VHA's screenings are a vital component in the process of better understanding and addressing the healthcare needs of veterans exposed to toxins. We recommend that veterans be encouraged to participate in VA research into toxic exposures, complete a VA registry exam, and become part of VA's Million Veteran Program (MVP) so that more robust longitudinal data can be collected and analyzed for the benefit of current and future veterans.

- **Information is unclear regarding the monitoring of in-service toxic exposures:**

- o Fact: As part of the PACT Act, the Department of Defense (DoD) is required to track toxic exposures of servicemembers and veterans using the Individual Longitudinal Exposure Record (ILER).

- o Observation: AMVETS strongly agrees with this provision, yet we do not have enough information on DoD's implementation of this requirement. We believe the collection of exposure data should help researchers understand illnesses so our veterans can receive treatments.

- o Concern: We hope to learn additional information about DoD's actions so we can appropriately comment.

- o Recommendation: We hope DoD's implementation of ILER is robust. Should the veteran's service records confirm a specific toxic exposure during service, then the veteran has an opportunity to file a VA disability claim for a condition associated with that toxin on a direct basis.

#### **Additional Facts and Assistance Needed from VA**

- While AMVETS appreciates VA's significant efforts to date, there is room for additional information so the PACT Act can be more closely monitored. Specifically, as we stated earlier, AMVETS is concerned about accurate effective dates, accurate percentage ratings, and accurate decisions for service connection for PACT Act claims. While AMVETS applauds VBA's tremendous hiring and claims processing statistics, we are concerned that the lack of robust data prevents us from commenting on the nuanced outcomes of VBA rating decisions. While AMVETS can provide anecdotal instances of what we believe to be VBA errors, VBA possesses the data that can be used to prepare reports that identify and correct systemic claim processing and decision errors within VBA. Our overall goal in requesting additional facts and assistance from VA is to better

understand the outcomes of the PACT Act so it can be incrementally improved using the same set of robust facts.

- o Accurate Effective Dates. According to AMVETS national service officers (NSOs) working inside VBA Regional Offices, VBA raters have set incorrect effective dates. For example, a veteran filed a disability claim before the PACT Act became law. When VBA correctly granted the veteran's claim, VBA incorrectly set the effective date as the date the PACT Act was signed into law. VBA should have established the earliest possible effective date allowed, in this case, the date the veteran filed the original claim.

- o Accurate Percentage Ratings. Our NSOs have identified VBA rating decisions where the veteran's symptoms, based on VA's rating schedule, should have resulted in a higher rating for the claimed disability. However, VBA improperly combined multiple disabilities and then incorrectly reduced the veteran's rating to 10 percent. There should not have been a rating reduction without a specific notice to reduce the required disability under 38 USC-5112 (b) (6). Under normal circumstances, an additional disability granted under the PACT Act would have most likely increased the veteran's combined degree of disability rating.

- o Accurate Service Connection Decisions. AMVETS service officers, many working side-by-side with VBA staff to assist veterans, believe the quality and clarity of some VBA rating decisions require improvement. For example, in one claim reviewed by an NSO, an eligible veteran filed a claim for prostate cancer, a presumptive disability now under the PACT Act. Yet VA denied service connection based on risk factors and an Inadequate exam. AMVETS and the veteran filed a Higher-Level Review to fix what we believe is a VBA error. We also want to make sure VBA is not requesting nexus opinions as part of the compensation and pension exam process, as a nexus opinion is not required for a presumptive disability. One of the reasons for the passage of the PACT Act was to reduce VBA's error rate where one of the systemic patterns of VBA denials included improper requests for nexus opinions.

- PACT Act Regulations. AMVETS fully understands the complex and lengthy process of how VA promulgates new regulations for a large and complex law such as the PACT Act. However, after nine months, we note that VBA has only issued "subregulatory guidance" for the PACT Act (VBA Letter 20-22-10, Processing Claims Involving Public Law 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (hereinafter referred to as "PACT Act." December 22, 2022). We strongly urge VA to publish regulations for the PACT Act so there is greater clarity in rating decisions, especially should there be appeals further down the road.
- VA Accreditation and PIV Cards: AMVETS maintains a strong working relationship with VBA, with highly motivated and trained NSOs located inside VBA Regional Offices who meet with veterans and families, develop evidence, submit claims, and handle appeals. However, AMVETS remains concerned about lengthy delays in obtaining Personal Identity Verification (PIV) cards so that our NSOs can properly perform their advocacy duties and responsibilities. In one situation, a VA delay in issuing a PIV card resulted in a new hire finding employment elsewhere. Therefore, we urge VBA to hire, at least temporarily, additional staff to process and approve PIV cards for AMVETS and other VSOs so veterans can fully utilize the quality, free, and VA-accredited services provided by our NSOs. At AMVETS, our goal is to understand the veteran's needs and submit a fully developed PACT Act claim that includes evidence of qualifying service (i.e., deployment to Afghanistan in 2002) along with evidence of a qualifying disability (i.e., brain cancer). We make sure veterans are not filing claims for "Burn Pits" without any evidence of qualifying service or disability.
- Unaccredited Companies Prey on Veterans. With any new and widely publicized government benefit, unscrupulous actors try to take advantage of veterans and families. This Congress has rightfully held two hearings on companies, not accredited by VA, that charge veterans fees to file VA disability claims. Further, AMVETS appreciates how VA widely distributed warnings about predatory companies. AMVETS agrees: veterans should use VA-accredited VSOs, claim agents, and attorneys when filing for benefits or appealing a VA rating decision ("VA Fights Back Against Predatory Claims-Assistance Practice," VA Office of Public and Intergovernmental Affairs, March 4, 2021, and "Protecting Your PACT Act Benefits," Veterans Benefits Administration, February 7, 2023).

On behalf of AMVETS, thank you for the opportunity to share our concerns and recommendations with the Subcommittee regarding the implementation of the landmark PACT Act. We recommend Congress holds additional hearings on the implementation of the PACT Act, as Congress sees fit, and that, we offer, should be within 1 year of this hearing. Thank you for the Committee's, and your staff's, efforts to ensure that this implementation is successful and meets the intent of this monumental congressional effort.

**National Service Director, Michael T. Black**

Michael T. Black is a 16-year AMVETS employee. He became the National Service Director in June 2021. Michael was originally hired as an accredited National Service Officer in March 2007. He works full-time out of the St. Petersburg, Florida VA Regional Office. During his employment, he was promoted several times, to Office Manager, Regional Director, and Deputy National Service Director.

Michael is originally from Tarpon Springs, Florida. He joined the Army in 1981 and retired in 2001. While in the military, Michael was assigned to the following units: 1st Cavalry Division, 101st Airborne Division, 6th Light Infantry Division, and 32 ADACOM Task Force 8/43 Air Defense Artillery. He served as Multi-Channel Communications Non-Commissioned Officer in a Patriot / Hawk Missile battery in Saudi Arabia and Iraq during Operation Desert Shield and the ground invasion during Operation Desert Storm.

His military awards include the Meritorious Service Medal, the Army Commendation Medal, and the Southwest Asia Service Medal. During his career, he served in Alaska, South Korea, West Germany, Saudi Arabia, and Iraq.

Michael received his Associate of Science degree in Business Management from St. Petersburg College. He lives in Florida with his wife Janet. He is a Life Member of AMVETS Post 67 in Clearwater, Florida.

**About AMVETS**

Today, AMVETS is America's most inclusive congressionally chartered veterans service organization. Our membership is open to all active-duty, reservists, guardsmen, and honorably discharged veterans. Accordingly, members of AMVETS have contributed to the defense of our Nation in every conflict since World War II.

Our commitment to these men and women can also be traced to the aftermath of the last World War, when waves of former service members began returning stateside in search of the health, education, and employment benefits they earned. Because obtaining these benefits proved difficult for many, veterans savvy at navigating the government bureaucracy began forming local groups to help their peers. As the ranks of our Nation's veterans swelled into the millions, it became clear a national organization would be needed. Groups established to serve the veterans of previous wars wouldn't do either; the leaders of this new generation wanted an organization of their own.

With that in mind, 18 delegates, representing nine veterans' clubs, gathered in Kansas City, Missouri, and founded The American Veterans of World War II on Dec. 10, 1944. Less than 3 years later, on July 23, 1947, President Harry S. Truman signed Public Law 216, making AMVETS the first post-World War II organization to be chartered by Congress.

Since then, our congressional charter was amended to admit members from subsequent eras of service. Our organization has also changed over the years, evolving to better serve these more recent generations of veterans and their families. In furtherance of this goal, AMVETS maintains partnerships with other congressionally chartered veterans' service organizations that round out what's called the "Big Six" coalition. We're also working with newer groups, including Iraq and Afghanistan Veterans of America and The Independence Fund. Moreover, AMVETS recently teamed up with the VA's Office of Suicide Prevention and Mental Health to help stem the epidemic of veterans' suicide. As our organization looks to the future, we do so hand in hand with those who share our commitment to serving the defenders of this Nation. We hope the 118th Session of Congress will join in our conviction by casting votes and making policy decisions that protect our veterans.

**Information Required by Rule XI 2(g) of the House of Representatives**

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding Federal grants and contracts.

Fiscal Year 2021—None

Fiscal Year 2020—None

Fiscal Year 2019—None

Disclosure of Foreign Payments – None

### Prepared Statement of Lorry Fenner

Good morning, Chairman Luttrell, Ranking Member Pappas, and members of this very important subcommittee.

On behalf of the Service Women's Action Network (SWAN), I thank you for the opportunity to give you one more perspective on the implementation of the PACT Act. I know you've been hearing from the VA and larger Veterans Service Organizations, so I would like to concentrate on a view from our members who are predominantly women. We do recognize what the other VSOs have been telling you and share their concerns as well.

First, our thanks for everything Congress did to pass the PACT Act. We know that while it was a long time coming, it was also a heavy lift. It will make a huge difference for veterans and their families. We also thank the VA for their energetic efforts to implement this law. While we do not often hear success stories, there are many. However, as you know, there are also many challenges some of which are region or facility or staff specific. Rest assured, we want to be part of a productive and collaborative effort to improve the implementation in whatever way we can. We will continue to encourage our members to support your and VA's actions in law and policy. We will help to inform our members of changes they may not be aware of and encourage them to make claims and get care. And, we will continue to provide the VA and Congress with information about specific problems our members are facing and bring to us as well as advising on possible solutions.

**Research:** One of our top concerns is a longer term one. As you know, toxins affect various populations differently. We would like to make sure that your oversight helps the VA increasingly uses more specific language in grants and other research funding to include an appropriate percentage of gender and racial and ethnic minorities. This would ensure that the specific illnesses and treatments that the VA studies and collects data on account for those real differences. This will support more appropriate screening and care. We also encourage our members to participate in research when the VA calls for subjects. However, some report that they never hear back.

**Infertility:** As others have said, exposure to toxins significantly affects reproductive capability. Infertility runs high among veterans and there are other significant consequences for those who postpone building a family because of military necessity (like deployments) or for their careers. There are other hidden impacts. Our members report that the electronic claims process is not user-friendly in this area. They report having trouble finding breast cancer under PACT conditions because it's nested under "reproduction." The inclusion of Camp Lejeune is welcome, but infertility must be a focus in processing all claims and providing treatment under the PACT Act. Women and minorities need real and continuing holistic help. And, Veterans should not have to pay for this care out of pocket.

**Screening and prevention:** In addition, we know that a lower percentage of women veterans use the VA or make claims for a variety of reasons. Some of those reasons include the lack of OB/GYN providers and facilities. In, recognizing this, Congress has provided additional funding for women's health and the VA is starting to increase capacity and capability. We must not have any reverses in this effort. Women's reactions to toxins demand specific and timely screening, as with mammography, in order to receive appropriate treatment. We know, even with the new recommendation that women get screening starting at 40 or 45, women veterans and certain ethnic groups should start screening when they are much younger because of toxins (20 or 30 years old, even without a family history). We also thank the Congress for last year's *Dr. Kate Hendricks Thomas Supporting and Expanded Review for Veterans in Combat Environments Act*. Dr. Kate was a SWAN researcher who also died last year from breast cancer caused by toxins at 39. On screening, again, if we help get the word out that the VA wants to provide for women and others in larger numbers, but the claims process is not user friendly and effective, providers are not available, wait times are too long, needed capabilities are not present, and predators advertise being able to help with claims when Veterans get frustrated, we will likely not be trusted again.

**Respect:** Other things that impact the PACT Act implementation may not get much mention. Invisibility, lack of respect, and safety are important. One reason women veterans might not make disability claims or access care through the VA is that they don't feel they deserve veteran status or taxpayer funded disability assistance or care. This is particularly true for older women. We need a specific information campaign for pre-9-11 women veterans. In addition, sometimes not wanting to come to the VA is justified by the disrespect many women of all ages have encountered from staff and other veterans. Of note, Veterans who should have had Char-

acter of Discharge issues with Other Than Honorable (OTH) designation under old laws and policies must be worked better and faster. This could happen with an Unlawful Turn-Aways law. Most importantly, we will not implement the PACT Act fully if we cannot prevent the assault and abuse of women, minorities, and family members at VA facilities. Many of us have worked for decades to find ways to change the culture to help women feel welcome. Congress and the VA are trying, but still falling short. Actions, rather than words, must be constant and continuous for as long and far as we can see ahead. In this regard, we would like to see the VA reenergize its own Independent Review Commission (IRC) and we support the bi-partisan, bi-cameral *Service Members and Veterans Empowerment and Support Act*.

**Communications-Outreach:** In all of this, for us the key for implementation energetic outreach and for women and minorities to know that they will be welcome, respected, and protected. Through legislation and policy, as well as improving processes and building capability, women must know that the VA will provide help more easily. This also means we must consider outreach and the claims process as part of the cost of care, not as an administrative expense. We know gaining resources, hiring, and training take time. But we have to try harder and move faster. We think the VA has been trying very hard to get the word out. They have been keeping VSOs aware of their efforts and improvements. I would specifically commend the Center for Women Veterans. For example, the VA did a great job in notifying some of our members that they presumptively qualified for the 10 percent disability for toxic exposure. However, when asked if they would like an appointment for evaluation, they asked for one knowing that some of their other illnesses are related to toxic exposure or that they deserve a higher percentage disability. They haven't heard back for months, and some not at all. When they check their records on-line, the information hasn't been added. When they do get to see someone in person, it is obvious the staff are not all yet informed, trained, or helpful. We ask the Congress and VA to continue to follow through as vigorously as possible. Again, if we get veterans to call or show up, but we fall short in delivering, many won't try again.

For our part, we will continue to do all we can to advise Congress about what we see at the ground level and to provide information to the VA and to partner with other VSOs. We will continue to listen to our members. We will continue to spread the word as well as to support our members in their efforts to submit their claims and we hope they get timely responses. And, we will continue to advocate for them when they don't get the care they earned. Thank you. I look forward to your questions.

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#### Prepared Statement of Aleks Morosky

Chairman Luttrell, Ranking Member Pappas, and distinguished members of the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs – thank you for inviting Wounded Warrior Project (WWP) to participate in today's hearing on the delivery of disability compensation benefits under the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (P.L. 117-168). WWP commends the Subcommittee for its work on this landmark legislation, and we were proud to support its successful passage into law last year. Providing access to care and benefits for veterans suffering from the health consequences of military toxic exposures remains a top WWP priority in the 118th Congress, and we share and appreciate the Subcommittee's continued commitment to ensure the successful implementation of this historic law.

Wounded Warrior Project was founded to connect, serve, and empower our Nation's wounded, ill, and injured veterans, Service members, and their families and caregivers. We are fulfilling this mission by providing more than 20 life-changing programs and services to over 188,000 registered post-9/11 warriors and 47,000 of their registered family members. In addition to programming focused on mental and physical health, our advocacy before the Subcommittee is informed by financial wellness services that include assisting veterans with their disability claims at the Department of Veterans Affairs (VA).

For two decades, Service members who were deployed to post-9/11 battlefields were exposed to dangerous fumes from burn pits and other toxic chemicals. Consequently, many veterans now suffer from respiratory conditions, cancers, and other serious illnesses, but have historically struggled to obtain service connection. The *PACT Act* comprehensively addressed this issue, representing the largest expansion of VA benefits in decades. VA deserves praise for moving swiftly to deliver

lifelong benefits to exposed veterans who need them, many of whom have been waiting for years; however, implementing such significant legislation understandably carries with it certain challenges. WWP's views and suggestions to address those challenges are given in the spirit of partnership with VA and are informed by our network of accredited National Service Officers, colleagues who respond to phone calls and emails in our Resource Center, and the warriors they interact with on a daily basis.

### **Disability Claims Processing**

Prior to the passage of the *PACT Act*, many veterans who submitted VA disability compensation claims for toxic exposure-related conditions (particularly those who suffered exposures during post-9/11 deployments) often faced significant obstacles when attempting to link their illnesses to service. Establishing an in-service "injury" was challenging because exposure to burn pits and other toxic substances was often not documented in the veteran's military record. Establishing a connection to service, or "nexus," was made difficult by the fact that many medical conditions associated with toxic exposure are more likely to manifest several years after discharge and be related to exposures not documented in the service medical record. These factors would most often culminate in VA finding insufficient evidence to establish service connection.

The *PACT Act* addressed these challenges by establishing over 20 new presumptive conditions related to toxic exposures, allowing VA to presume these conditions are service connected for veterans who served in areas of known exposure. While the majority of these conditions are cancers and respiratory illnesses associated with Gulf War and post-9/11 service in Iraq, Afghanistan, and surrounding areas, it also created two new conditions associated with Agent Orange exposure and expanded qualifying service locations for Agent Orange and radiation exposure. The new law also created a legal concession that toxic exposure occurred for veterans who served in certain locations (see 38 U.S.C. § 1119 (b)) and required that any veteran who submits a disability claim and participated in a toxic exposure risk activity (TERA) be granted a medical examination and nexus opinion if the evidence in the claim is insufficient to grant service connection. This is especially useful for veterans who are claiming conditions that are not presumed to be connected to service pursuant to the *PACT Act*. The legislation defines TERA as any activity recorded in an exposure record tracking system, such as the Individual Longitudinal Exposure Record (ILER), or any other exposure as determined by VA.

These new policies have understandably resulted in a significant influx of new disability claims. As of May 6, 2023, the Veterans Benefits Administration (VBA) has received over 546,529 *PACT Act*-related claims since the bill was signed into law on August 10, 2022, representing 33.9 percent of the total claims received over that time period.<sup>1</sup> Although this larger workload has created an increase to the claims backlog, we believe this is necessary to ensure that exposed veterans, many of whom have been filing claims unsuccessfully for years, are finally able to access the health care and benefits they need. VA has already begun implementing provisions of the legislation that granted the ability to hire additional employees to address the increased workload, and WWP believes it is critical that Congress continues to fully fund these important authorities.

One strategy VA is utilizing to address the increased workload is Automated Decision Support (ADS) technologies. This technology is designed to scan a veteran's records to extract relevant information such as current medical treatment history and locations of service, and then generate an Automated Review Summary Document (ARSD), which is then reviewed by a Veterans Benefits Administration (VBA) claims processor with full adjudicative discretion for a decision. VA is currently using ADS for 56 diagnostic codes – numeric codes associated with specific medical diagnoses – and states that the technology is significantly improving processing times. WWP service officers report that all ARSDs that they have reviewed have been accurate and presumably helpful in the processing of the claim. WWP believes that ADS shows great potential for further expansion beyond *PACT Act* claims.

Since VA began processing for all *PACT Act* claims, VBA has completed 266,690 claims, 79.7 percent of which have been approved.<sup>2</sup> This represents a significant improvement over the less than one-third grant rate that WWP Annual Warrior Sur-

<sup>1</sup>U.S. DEPT OF VET. AFFAIRS, VA *PACT Act Performance Dashboard 2*, May 12, 2023, available at [https://www.accesstocare.va.gov/pdf/VA\\_PACTActDashboard\\_Issue6\\_051223\\_508.pdf](https://www.accesstocare.va.gov/pdf/VA_PACTActDashboard_Issue6_051223_508.pdf).

<sup>2</sup>Id. at 1–2.



vey respondents reported before the passage of the bill.<sup>3</sup> Still, WWP has noticed a degree of inconsistency with the way *PACT Act* claims are processed, particularly with respect to unnecessary TERA exams and nexus opinions being ordered when the evidence in the file – which includes documentation of service in a designated exposure area and a diagnosis of a presumptive condition – is sufficient to grant the claim without further development. If not caught by a WWP (or other) service officer, these unnecessary exams could slow down the claim and, if the exam results in a negative nexus opinion, could result in an erroneous denial.

Another error is occasional failure by VBA processors to recognize the list of the most common presumptive cancer diagnoses recognized by the *PACT Act* and found on pages 24 to 28 of VBA Policy Letter 20–22–10.<sup>4</sup> If uncorrected, this could also lead to an incorrectly adjudicated claim. We encourage VBA to consider whether supplemental training may be necessary to increase consistency and accuracy of claims processing.

One strategy VBA has used in the past when presented with a large number of exposure-related claims was to establish a “special mission.” This approach was used to improve the processing efficiency of Camp Lejeune, radiation, mustard gas or Lewisite, and other potentially complex claims.<sup>5</sup> Similarly, VBA has established specialized processing teams at designated regional offices to process Blue Water Navy claims.<sup>6</sup> This allows VBA to train designated staff on those specific issues and centralize research, development, and processing of related claims to increase accuracy and speed through specialization. In addition to the potential for connecting veterans to their *PACT Act*-related benefits sooner, improved adjudication of these claims has potential to mitigate downstream effects on all VA claims that may be caused by overdevelopment, supplemental claim filing, and appeals related to the high volume of *PACT Act* claims. We encourage VA to consider whether a “special mission” would be similarly advantageous for processing *PACT Act* claims.

#### **Toxic Exposure Presumption Process**

In recognition of the challenges associated with establishing direct service connection for toxic exposure-related conditions, Congress has historically created mechanisms to require VA to decide whether to establish presumptive service connection when scientific data show a link between specific exposures and associated illnesses, as it did for Vietnam veterans with the *Agent Orange Act of 1991* (P.L. 102–4). However, no law existed prior to the passage of the *PACT Act* to require VA determinations on illnesses associated with all toxic exposures, regardless of location or period of service.

The *PACT Act* established a permanent VA Working Group to continuously review evidence and receive input from Veterans Service Organizations (VSOs) and the public on all potential exposure-related conditions in veterans and their family members who were military dependents, now and in the future. This Working Group is required to make recommendations to the Secretary of Veterans Affairs on whether to establish a presumption of service connection for an exposure related condition. To form its recommendations, the Working Group will continuously review scientific literature, VBA claims data, and other factors including the level of disability and mortality caused by the condition, whether conditions are deployment-related, the rarity of conditions, and the quantity and quality of the information available.

When conducting their reviews, WWP encourages the Working Group to expand the types of conditions it considers for association with burn pits and other toxic substances present on post-9/11 deployments beyond the two categories of presumptive conditions established by the *PACT Act* – respiratory conditions and cancers. While these categories of conditions are closely associated to exposure to airborne hazards, they do not capture the full range of illnesses that exposed post-9/11 veterans are experiencing. In our most recent Annual Warrior Survey, the health condition veterans most commonly believed to be associated with their toxic exposure was neurological problems (35.1 percent). Hypertension (33.2 percent), Chronic Multisymptom Illness (24.4 percent), immune system problems (10.5 percent), and liver conditions (7.8 percent) were also conditions that veterans commonly believe

<sup>3</sup>A full copy of the 2022 Annual Warrior Survey can be viewed at <https://www.woundedwarriorproject.org/mission/annual-warrior-survey>.

<sup>4</sup>See U.S. DEPT OF VET. AFFAIRS, VBA Letter 20–22–10 (Dec. 22, 2022) (*available at* <https://www.regulations.gov/document/VA-2022-VACO-0002-0176>).

<sup>5</sup>See U.S. DEPT OF VET. AFFAIRS, VA ADJUDICATION PROCEDURE MANUAL M21–1, PART II, SUBPART II, CH. 3, 3.1.b-c (2022).

<sup>6</sup>See U.S. DEPT OF VET. AFFAIRS, VA ADJUDICATION PROCEDURE MANUAL M21–1, PART VIII, SUBPART I, Ch. 1, 1.A.1.a. (2021).

are associated with exposures while in service. WWP looks forward to working with VA to help identify these and other conditions that we believe warrant further consideration.

#### **Access to Health Care**

Although we recognize that VA health care eligibility may not be under the jurisdiction of this Subcommittee, we would like to take this opportunity to address access to care. Under the *PACT Act*, recently discharged combat veterans now have a 10-year enhanced enrollment period (up from 5 years), and veterans who were discharged more than 10 years ago have a limited one-year period to enroll for care (October 1, 2022, to September 30, 2023). For exposed veterans who miss the one-year open enrollment, there is a 10-year phase-in for permanent access to Priority Group 6 enrollment based on discharge date.

Wounded Warrior Project is concerned that the one-year open enrollment followed by the 10-year phase-in leaves some potential gaps in eligibility. From August 2022, when the *PACT Act* became law, to April 2023, there were 244,544 new VA health care enrollees.<sup>7</sup> Of those, it is estimated that only 77,337 were from the *PACT Act* eligible population. We believe this is a relatively small number in a system of over 9 million enrollees.

Modest measures can be taken to address any eligibility gaps that may exist for exposed veterans. First, Congress can consider extending the 1-year open enrollment period for an additional year to protect against lack of awareness or urgency among the post-9/11 community. Second, the Veterans Health Administration (VHA) can continuously evaluate the number of veterans who enroll for care under the *PACT Act* to determine the impact on capacity to deliver high quality and timely care. If VHA has sufficient resources to meet additional demand at any point, we encourage VA to use its existing authority to modify the phase-in to an earlier date to grant permanent access to care for more exposed veterans sooner.

#### **Veteran Outreach**

To realize the full potential of the *PACT Act*, veterans must know about the disability compensation and care that are now available, as well as an easy-to-understand path to accessing them. For this reason, WWP has conducted significant outreach to warriors and their families to inform them about the new law includes what they can expect, and what actions they can take to realize its potential benefits. WWP's outreach efforts include e-mail, social media, a dedicated page on our website, written materials, a summary video, live webinars, and co-sponsoring a nationally televised panel discussion on the passage of the *PACT Act* to reach veterans across the country in as many ways as possible. Additionally, we continue to work with VA to find innovative way to reach out to veterans who are not connected to the VA or may not be highly active in a Veteran Service Organizations (VSOs), but more can be done.

Since the *PACT Act* became law, VA's outreach efforts to VSOs and veterans have been exceptional. From their *PACT Act* "Week of Action" events in all 50 states, to town halls and awareness events that WWP staff have personally attended, to claims clinics and outreach letters mailed directly to veterans and survivors that VSOs can view within electronic claims files, VA is clearly committed to reaching as many potential beneficiaries as possible. VA, in collaboration with the Department of Defense, has also proactively engaged with Active-Duty Service members to educate them on the *PACT Act* and how to access their benefits. VA's *PACT Act* webpage is highly informative and easy to navigate, and their biweekly *PACT Act* Performance Dashboard is a model of transparent communication. WWP commends VA for their robust outreach supports their continued efforts to educate potentially eligible veterans and survivors about *PACT Act* benefits but encourages both VA and Congress to increase outreach as we get closer to the two deadlines highlighted above.

#### **CONCLUSION**

Wounded Warrior Project thanks the Subcommittee on Disability Assistance and Memorial Affairs and its distinguished members for inviting our organization to submit this statement. We are grateful for your attention and efforts toward addressing the critical issue of ensuring that *PACT Act* benefits and care are delivered as effectively as possible. We look forward to continuing to work with you on these issues and are standing by to assist in any way we can toward our shared goals of serving those that have served this country.

<sup>7</sup> U.S. DEPT OF VET. AFFAIRS, *supra* note 1, at 1.

## STATEMENTS FOR THE RECORD

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### **Prepared Statement of American Federation of Government Employees**

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 3-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 December 2020 that it would make more changes leading to another three-month acclimation period. These standards were

changed again in January 2021, again in March 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 6 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 dialog 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 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 to be 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 8 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 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.

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### **Prepared Statement of Disabled American Veterans**

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee: Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of your oversight hearing titled, "Reviewing VA's Implementation of the PACT Act." DAV is a congressionally chartered and VA-accredited national veterans' service organization (VSO) of more than one million wartime service-disabled veterans. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the Nation, including the Board of Veterans' Appeals (Board).

Mr. Chairman, the historic passage of the SFC Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act, is now providing benefits and health care to veterans exposed to burn pits, radiation, Agent Orange and other toxins. Starting in January 2023, VA has been adjudicating PACT Act claims. In our December 2022 testimony to this Subcommittee, we highlighted the importance of continued oversight of Veterans Benefits Administration's (VBA) implementation; therefore, we greatly appreciate today's hearing. We need to ensure VA is properly implementing and executing the most expansive toxic exposure legislation ever passed into law.

Based on our experience of providing VA-accredited claims representation and assistance, we are pleased to provide our insight and comments on PACT Act implementation; specifically, the positive impact for veterans, the backlog, VA's miscues, VA's outreach and collaboration and DAV's concerns.

### **POSTIVE IMPACT OF THE PACT ACT**

DAV represents more than 1 million veterans and family members in their claims and appeals within VA; therefore, we are unmistakably aware of the toll toxic exposures have had on veterans, their health, their livelihood and families. The positive impact the PACT Act has had for those exposed to toxins has been, thus far, incalculable.

After the passage of the PACT Act, VA announced they would start processing all PACT Act related claims on January 1, 2023. However, on December 12, 2022, VBA took the initiative to grant benefits for terminally ill veterans in cases where

service connection for a PACT Act presumptive condition could be established. VA completed 4,844 claims for terminally ill veterans, 3,118 of which were granted.

In November 2022, a DAV member and female OIF veteran established her PACT Act claim for service connection for a reproductive cancer and subsequent complete hysterectomy. In early March 2023, she followed up with DAV for advice on her decision that granted her claimed PACT Act cancer and its residuals. Her overall combined evaluation increased and she became eligible for additional ancillary benefits.

In 2004, a Vietnam veteran was denied service connection for diabetes mellitus II as presumptive to Agent Orange as he was not physically in Vietnam but served in the U.S. Navy. Shortly thereafter, the veteran passed away. In 2021, with the assistance of DAV, the surviving spouse filed for Dependency Indemnity Compensation (DIC) based on the passage of the Blue Water Navy Act. The diabetes mellitus II was not service connected at the time of the veteran's death. The PACT Act included Guam as a conceded location of Agent Orange exposure and the veteran's records established service on Guam. VA was able to grant the DIC as the diabetes was now related to Agent Orange exposure in Guam. The surviving spouse received over 2 years of retroactive compensation benefits.

In 2012, Alfred Lewis Jr., a Vietnam veteran, sought out DAV's assistance in filing claims for disabilities related to his Agent Orange exposure. VA granted service connection for his ischemic heart disease but denied his claim for hypertension as it was not a presumptive disease and determined not related to his heart disease. In the fall of 2022, the DAV National Service Office in Los Angeles reached out to Mr. Lewis to advise on the passage of the PACT Act and the inclusion of hypertension as a disease related to Agent Orange. A claim was filed and in early 2023, Mr. Lewis was granted entitlement to hypertension, which increased his overall combined evaluation and now he is entitled to multiple additional benefits including dental health care, which was denied previously.

These few real-life stories reflect the positive impact of the PACT Act on veterans and their families. Additionally, these are clear examples of how professional VA-accredited representation makes a difference in veterans' lives. DAV's benefits advocates are experts in providing the latest information on veterans' benefits, including the most recent updates from the PACT Act.

The intent of the PACT Act was to provide toxic exposed veterans the benefits and the access to VA health care they earned, which it clearly has done in these instances. Prior to the passage of the PACT Act, DAV consistently testified that legislation this large would create significant increases in VA's caseload and would impact the existing backlog of claims.

### **PACT ACT AND THE BACKLOG**

There are currently 346,000 PACT Act related claims pending of which 96,366 are considered backlogged. To truly understand this in context, we need to understand that VA defines a case as being backlogged if it has been pending over 125 days. Also, we need to understand how VBA's workload has changed over the past decade to include the pending claims prior to the pandemic and prior to the PACT Act passing into law.

In 2013, VA's backlog reached historic levels of 611,000 claims pending over 125 days with an average of 282 days to completion and an accuracy determination of 83 percent. In 2016, VA greatly reduced the pending claim inventory and the backlog of cases.

Just prior to the COVID-19 pandemic, in February 2020, VA had 413,032 claims pending with less than 70,000 backlogged. Within one year, as of February 2021, there was a total of 478,032 claims with over 212,000 claims pending over 125 days. The number of backlogged claims tripled during that year due to the monumental impact of the pandemic. The largest contributor to that increase was the backlog of VA Compensation and Pension examinations.

In February 2022, VBA's case load was 615,000 pending claims with over 259,000 pending more than 125 days. The PACT Act became law in August 2022, which dramatically increased the number of claims being submitted and, in February 2023, VBA had over 742,000 claims pending with 197,353 of them pending for more than 125 days. Since August 10, 2022, VBA has received over 1.6 million total claims from veterans and survivors, which includes 546,529 PACT Act claims.

The most recent report from VBA, dated May 6, 2023, reflects a current inventory of 813,762 claims, of which 210,599 are backlogged. Additionally, the report reflects that over 1.1 million claims were decided since October 1, 2022. While all of this data reflects the significant increase of claims submitted over the past three years, it notes that the number of backlogged claims has not grown since February 2021.

To date, VA has received 546,529 PACT Act claims and has adjudicated 266,690 of those claims, while managing the current total case load and mitigating an increase in the backlog. For VA to continue on the path of successful PACT Act implementation, we encourage Congress to continue oversight measures to eliminate any potential miscues in the adjudicatory process that would negatively impact pending claims and the backlog.

#### **VA IMPLEMENTATION MISCUES**

While we believe VA has effectively started the implementation process, there are examples of VA's miscues that display the need for constant oversight, collaboration and training.

Upon passage of the PACT Act, VBA issued immediate processing guidance to all VAROs. On September 9, 2022, VBA followed up with more detailed interim guidance, which provided procedural steps to processing PACT Act related claims. Part of that guidance advised claims processors to hold claims that could not be granted until January 2023, when full PACT Act processing would begin.

VBA's review of the PACT Act decisions dated after August 10, 2022, identified 17,563 prematurely decided claims across all VAROs through December 31, 2022. While some of the decisions were correctly decided, the notification that went to veterans did not include PACT Act language as required by law. The discovery of these prematurely decided claims was found under a compliance review. In January 2023, VA advised that they did not know to what extent all of the decisions were to be changed.

In November 2022, while attending a VA PACT Act offsite event in Baltimore, we became aware of complaints from VA claims processors on VBA PACT Act claims training. This issue was addressed by VBA and they provided an explanation of the training, release dates and guidance.

In December 2022, VBA issued guidance on the specific cancers that would qualify, including prostate cancer as a reproductive cancer for PACT Act claims. However, in early January 2023, several VSOs identified a trend in PACT Act decisions denying prostate cancer as a PACT Act presumptive disease. The decisions stated that prostate cancer was not considered as a reproductive disease and the claims were denied. Subsequently, VSOs followed up and provided VA's own guidance from December 2022.

Additionally, there is confusion within the veterans community on whether breast cancer for female veterans is considered a reproductive cancer. Breast cancer is a PACT Act cancer; however, it is not easily found on VA sites or on any comprehensive lists. We argue that this can be blamed on the lack of VA regulations specific to the PACT Act and the diseases related thereto. In the meantime, we recommend that VA issue a simple fact sheet or list of those conditions they consider as presumptive diseases under the PACT Act. VA can mitigate these miscues by increasing awareness and outreach to the veterans community and their continued collaboration and partnership with the VSO community.

#### **OUTREACH AND COLLABORATION**

For 25 years, I have been a DAV VA-accredited benefits advocate providing veterans and their families with claims and appeals representation. During that time, I have not previously witnessed the level of outreach and collaboration that VA has committed to in the implementation of the PACT Act.

##### **Outreach**

While VA has been providing outreach since the passage, from January 2023 through March 2023, VBA conducted 1,560 PACT Act specific awareness events across the country, totaling nearly 6,000 hours. It is estimated to be the equivalent of 20 PACT Act events per day. The events have varied from day-long claims clinics to community townhalls, and many more. Over 60,000 have either joined virtually or attended in-person. At claims clinics, VA representatives have been available to answer questions, assist with filing claims and helping veterans and family members understand what benefits they may be eligible for under the PACT Act. Some of the events offer toxic exposure screenings for veterans. Many VA Medical Centers, like the Robley Rex VAMC, in conjunction with local VSOs, started conducting monthly PACT Act meetings.

In February 2023, VA provided the "Privacy Service" webinar for veterans to safeguard their PACT Act and VA benefits and to protect them from identity theft and scammers. Additionally, VA is providing information on the Veterans Benefits Banking Program, secure access to banking and financial services to protect veterans and their families from fraudulent schemes and pension poaching.



DAV has been actively involved in PACT Act outreach. We have dedicated a part of our website to burn pits and toxic exposure information, as well as regularly providing information through our magazine, web and social media platforms. Just in May 2023, DAV has scheduled 21 information seminars in 14 different states, with 12 already conducted, including one today in Florida.

### **Collaboration**

VBA has conducted several events with stakeholders and Congress, such as the PACT Act Day of Learning and several multiple-day offsite events. DAV has been invited and participated in all of the events. I personally attended one of the PACT Act Day of Learning sessions and the PACT Act offsite event in Baltimore, December 13–14, 2022. I was struck immediately by VBA’s genuine inclusiveness of VSO input and collaboration. VBA openly shared the status of all initiatives, their efforts on terminally ill veterans with PACT Act claims, the Automated Decision Tool, and the results of VBA’s Overdevelopment Task Force.

We commend VA on their commitment to intense veteran outreach and VSO collaboration. While we are pleased with VA’s inclusion and implementation to this point, we do have some concerns as they move forward.

### **DAV CONCERNS**

Continued oversight of VA will be key to the proper and successful the implementation of the PACT Act. It is imperative that Congress and the VSO community monitor and collaborate with VA. Overall, DAV is pleased with VA’s efforts; however, we have concerns and those are:

- **Backlog of claims**—As we noted above, VBA to this point, has managed all of the incoming claims, PACT Act claims and the backlog effectively. Although the backlog of claims has not increased it has not been effectively reduced. Currently, VBA has over 800,000 pending claims. We are concerned that these could quickly create an overwhelming number of backlogged claims.
- **Hiring and Training New Claims Processors**—VBA keeps us advised on their recruiting efforts to hire 2,000 new claims processors. Knowing that it can take 18 to 24 months to fully train a rating specialist, we do have concerns that VBA may not be able to onboard new employees timely to avoid our concerns over a looming increase in backlogged claims.
- **VA PACT Act training**—As we noted previously, there have been some miscues in training and subsequent rating decisions. Although we have been informed of their training, DAV has not seen or been given access to their training to provide our input and feedback from a veteran’s perspective.
- **PACT Act regulatory provisions**—VA has published some rule changes in the Federal Register, such as their notice of sub-regulatory guidance in December 2022, updating the presumptive radiations locations based on the PACT Act on March 13, 2023 and the reevaluation of claims for DIC on March 22, 2023. However, VA has not published overarching proposed rule changes since the December 2022 guidance.
- **VA’s presumptive disability decisionmaking process**—Since the passage of the PACT Act, VA has not announced any additional disabilities related to any exposures. Also, we are not aware of any actions of VA’s Working Group or if even created, as mandated by law.
- **Individual Longitudinal Exposure Record (ILER)**—As required by the PACT Act, the Department of Defense and VA were to coordinate veteran access to ILER. As of this date, we are not aware of any actions taken by either agency to address ILER access. A review of VA’s website notes that updates will be provided in September 2023.

In conclusion, we applaud VA for its implementation, historic completion of 1.1 million claims since October 1, 2022, and its inclusive outreach and collaboration. However, based on our concerns and the noted miscues, we urge Congress to continue to hold regular oversight hearings over the next three years. This will assist VA in focusing on their claims processing, training, as well as the quality of the decisionmaking process. We must ensure that VA is being accountable for the implementation of the most comprehensive toxic exposure statutes ever enacted.

Mr. Chairman, DAV believes that with a proper focus on PACT Act claims processing, the backlog of claims and continued oversight, VA can continue to be successful for veterans like Alfred Lewis Jr. We stand ready to assist the Subcommittee and VA in PACT Act implementation. We must deliver on the promise made by the PACT Act for the sake of toxic exposed veterans and their families, as many are

in desperate need of VA's life-changing benefits. This concludes my testimony and we thank you for the opportunity to provide our comments.

### **Prepared Statement of Veterans of Foreign Wars of the United States**

Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on this important issue.

The VFW continues to applaud the passage of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022* (PACT Act), the most significant piece of veteran legislation this century and perhaps of all time. Through the efforts of the VFW, our Veterans Service Organization (VSO) partners, stakeholders and other engaged entities, and veterans and their families, the call to action was heard. Congress put partisan differences aside and did what was right for veterans exposed to toxins, radiation, chemicals, burn pits, and other substances that often required prolonged medical treatment and financial hardship. Now is not the time to rest. The hard work continues. Since the moment the president signed the bill into law, organizations like the VFW have amplified the effort to educate and inform veterans and encourage them to apply for their rightfully earned benefits. We thank the subcommittee for the opportunity to provide comments.

The passage of the PACT Act was a monumental advancement of veteran benefits for veterans of all eras. The VFW was heavily invested in its passage because this multi-generational bill directly affects our multi-generational organization. The VFW is comprised of the different generations of veterans who will benefit from this new law, which is why we care so deeply about it.

Too many veteran advocates viewed the passage of the PACT Act as the finish line in a long and arduous overdue process. The VFW viewed the signing of the PACT Act as the completion of phase one in providing the necessary care and benefits veterans have earned. Phase two is delivering on the promises made. In early 2023 the VFW launched [www.pactactinfo.org](http://www.pactactinfo.org) to help guide veterans through the benefits process for free, with no strings attached.

Our website, [www.pactactinfo.org](http://www.pactactinfo.org), is designed to educate veterans and claimants on available benefits under the law by answering a few simple questions. If eligible, the veteran is referred to one of our professionally trained, accredited representatives to learn more about potential benefits or to get assistance in filing a claim. We have had over seven thousand inquiries in just the first few months of the website being operational, demonstrating that veterans have an ardent desire for accurate information regarding any potential benefits for which they may be eligible. Many of these veterans served in several conflict areas, and have multiple service-connected issues they are claiming. This is not exclusive to states that traditionally have a higher veteran population. We have been contacted by veterans from every State in the union and veterans who live overseas.

What we have learned from this effort has been revealing. Thus far 6,500 veterans who served in Iraq, Afghanistan, Saudi Arabia, or Kuwait have reached out to us for assistance. We have received 2,600 inquiries from Vietnam veterans. Five hundred Camp Lejeune veterans or family members have shown interest in either receiving more information or filing an action. Others from different eras and theatres have contacted us as well. Of the top five most common conditions claimed through [pactactinfo.org](http://pactactinfo.org), three were respiratory or digestive issues. The results from the VFW's referral tool confirm the PACT Act was necessary and is being widely used by eligible veterans.

It is proof positive that there is a strong interest in the benefits this law provides and the vital role that we as veteran advocates play in helping the Department of Veterans Affairs (VA) deliver them. This is why we have partnered with Humana and Psych Armor in a project called "15 Things Service Officers Want You to Know" to add a layer of consumer protection, let claimants know our services are ALWAYS FREE, alert them to bad actors and exorbitant fees, and aggressively spread the message in conjunction with our partners like Disabled American Veterans, Wounded Warrior Project, and the National Association of County Veterans Service Officers.

### **Challenges We See**

As with any significant endeavor, implementation of the PACT Act has presented challenges. These have included ramping up staffing, training new hires to an acceptable level to begin adjudicating thousands of PACT-related claims, accounting

for lost institutional knowledge from normal attrition like retirements or transfers to different federal agencies, and adhering to the core tenets of this legislation. It must be recognized positively that VA was prepared to handle these challenges with foresight and proper planning.

To say that VA has experienced an uptick in submissions to record levels is most certainly an understatement. Adjudicators are deciding record numbers of claims daily, and for as many decisions that are completed dozens more are filed. The VFW applauds VA's aggressive marketing campaign and collaboration with their VSO partners and other stakeholders to alert veterans, their family members, and survivors to potential benefits. Yet, for many people who will benefit from this significant legislation there have been other inadvertent issues.

Regrettably, Section 804, The Camp Lejeune Justice Act, has taken over as the face of the bill. This is a distraction from what the PACT Act is. You cannot turn on your television, open a publication, or look at social media without being assailed by near-endless advertisements from law firms or companies of good or ill reputation, that want to help eligible claimants file for remediation or VA benefits. Sadly, this overshadows the true intent for whom and for what the PACT Act was implemented. In response to this continued confusion, the VFW is doing its part to enlighten veterans, their family members, and survivors on the differences and the outcomes of joining in a claim against the government for exposure, and the outcomes this may have on VA benefits and any settlements received by injured parties. We have entered into memorandums of understanding with two law firms—Bergmann and Moore and BMBFC—that have agreed to certain professional and ethical standards in representing claimants in these endeavors. Now, we urge Congress to step up and protect these interested parties by enacting clear and explicit policies on fee caps.

#### **Consumer Protection Issues**

Through all of this, some in Congress maintain that the handling and processing of VA claims requires no special education or training to be successful or avert disaster. Moreover, some lawmakers sense that those who consult in such affairs should be able to charge extortionate fees and not be subject to the same fines, penalties, and VA oversight as those who are professionally trained and accredited before VA to handle such matters.

The time has come for bipartisan action to be taken. Recently, a VFW-accredited representative was notified by a claimant that she had been contacted by an unscrupulous law firm. This firm indicated it had received a claim packet from the representative. The representative did not know anything about it. However, the law firm insisted that the claimant sign and return the forms. Although the claimant was confused with all of this, she signed the forms. The VFW then had to have the veteran sign a new power of attorney with us. Who knows how much this would have cost the claimant, or if she is still beholden to a contract obtained by deceit? The VFW will not stand idly by and allow this to happen. There is no compromise, there is only full compliance with established regulations, and we have to insist that anyone who touches a disability claim be accredited. That is why the *GUARD VA Benefits Act of 2023* is vitally important to safeguard veterans and their families against the deceitful agreements and immoral practices of some who claim to be advocates. It is unforgivable for fellow Americans who are often fellow veterans to imperil and financially ruin their comrades.

As the Nation's oldest organization of combat veterans, the VFW has a moral obligation to continue to protect those who served our great nation and defend the Constitution of the United States. Along with that comes the responsibility of keeping a watchful eye on the Department of Veterans Affairs as well. The VFW constantly assesses how VA's programs and initiatives impact the veterans of our organization and this Nation. Traditionally, we have proven to be quick to praise both Congress and VA, as we have on several occasions when those decisions are good for veterans and their families. We will always reserve the right to be critical when we feel decisions made are harmful. In all of this, as a "partner" working to the same end, it is fundamental to the relationship that we also offer solutions to the problems we identify and work to resolve differences amicably.

#### **Development of Claims**

The VFW is grateful that Congress and the Secretary authorized new presumptive conditions that clear the bureaucratic red tape many veterans faced in trying to prove eligibility for their rightfully earned benefits. We are also grateful for the provisions to extend access to VA health care for the thousands of veterans who may otherwise not have been eligible or had previously been denied access. While this is another positive step in improving access and care for many veterans, the VFW

has not seen the expected heavy influx of new enrollees. We attribute this to the fact that many consumers of Veterans Health Administration services are already enrolled as a standalone service or because of service-connected disabilities. The upside is that veterans are finally seeking benefits for persistent chronic conditions. We have assisted with 2,500 claims for hypertension, more than 2,000 related to sinusitis/rhinitis, 1,800 on respiratory issues, and more than 1,800 gastrointestinal issues. While the burden of proof for service connection has been relaxed, hurdles still remain.

VA must implement clear and understandable policies not only in regulation but in its overall processing of PACT Act claims. Consistency is vital. As the VFW has testified on numerous times, rushing to implementation is not a solution, nor is not communicating the intent of any new policy or process to the field without proper training and oversight. Too often, the playing field is uneven across the enterprise. What is granted in Waco is denied in White River Junction even though the evidence of record is the same. This is harmful to claimants, and we are confident it is not the intent of VA to arbitrarily deny benefits based on a weak interpretation of the law.

Most in the business of providing claims assistance or having any policy experience knew that claims for hypertension would be among the first to see a sizable increase. Title 38 Code of Federal Regulations is clear in adjudicating claims and providing the percentages for those disabilities. The VFW continues to see inconsistencies in adjudicating these claims. Many times, the rater is assigned a zero percent rating when the evidence empirically indicates a higher evaluation. In looking more closely at these, our quality assurance team has discovered that had a better review of medical history taken place, the proper rating most likely would have been assigned from the start. This is not only problematic in the sense that it has cost the veteran benefits, but it also indicates a larger training and processing issue that all the evidence of record is not being considered.

Earlier this year, we provided testimony on several topics that are priorities for our organization. One of them was the continued overdevelopment of claims. Overdevelopment is another indication of a training shortcoming and misapplication of accepted policy. Presumptive claims are the easiest and least time-consuming for developers and adjudicators. It just needs to be verified and processed provided it meets a minimum of criteria. If a condition is presumptive, VA concedes exposure, or will not challenge that the illness or injury occurred while on duty. A nexus is generally not required. Yet, repeatedly VA will order an examination to determine the etiology. While it is more noticeable now due to PACT Act claims, those are not the only instances of its occurrence. Thousands of dollars that could be used for other purposes are being wasted on unnecessary examinations, man-hours, and development.

We cannot stress enough that training and repetition combined with proper oversight are quintessential to accuracy and timeliness. The VFW continues to see claims being denied based on erroneous negative nexus opinions for conditions that are now accepted as presumptive. Fortunately, for the more experienced rating veteran service representatives who remain, this has resulted in granting the claimed issue. However, we have also observed presumptive claims being denied for a negative nexus that was not required in the first place.

Another concern that has arisen is the general processing of overall claims that have PACT Act contentions along with other unrelated disabilities. The Veterans Benefits Administration (VBA) is ordering examinations for PACT Act issues being claimed, some of which we have noted may be entirely unnecessary. Non-PACT-Act issues are completed but the veteran must continue to wait needlessly for the entire claim to be adjudicated before receiving a decision. This only prolongs the claims cycle and results in more frustration for the claimant who must wait for examinations to be processed.

Adding to the continued misinformation and sporadic confusion is the Toxic Exposure Risk Assessment (TERA) and the application of those policies. The VFW thanks the under secretary for benefits and VBA for including us in their PACT Act offsite seminar recently held in Atlanta. This was an opportunity to hear directly from VA executives and decision makers about the challenges they have had with the implementation of policy and how it impacts the adjudication of PACT Act claims. One thing was abundantly clear. Even VA, sometimes at the highest levels, is confused about TERA and its interaction in the process. Because of the way the law was written, VA must order examinations if there is even the remotest possibility of TERA. In most cases, the VFW has observed these required examinations to be wholly pointless. We recently assisted a veteran who was claiming tinnitus only to have the claim denied because the decision maker opined that it was not related to toxic exposure. We continue to be made aware of this requirement and

VA completely failing to consider any other path to service connection. It is apparent that between the cloudy topic of work credit, production standards, incomplete training, and the wrong focus, VA has somewhat lost its focus and is improperly leaning heavily on possible toxic exposure development, rather than determining that direct service connection is the correct path to take.

### **Examinations Issues**

The VFW is pleased with the overall timeliness of decisions given the enormity of the number of claims that have been received. We acknowledge that PACT Act claimants, in most cases, receive decisions very quickly. We even support the suspension of punitive action based on quality review as the workforce continues to navigate changes. We must stress that a greater emphasis be put on corrective training and consistency in application across the enterprise. VA must learn from common errors and implement uniform training to reduce wait times even further. We are confident this will produce accurate and high-quality ratings every time.

VA turned its focus away from providing in-house disability examinations many months ago. The reliance on contract examiners to handle the increased capacity is near or at an all-time high. While we understand the transition to nearly full-time contract examiners, we cannot continue to endure the irregularities and continuous miscommunications that have taken place. Veterans have contacted us with persistent complaints about scheduling examinations and then receiving incorrect notification letters. Often there is no consideration given to the timing of appointments or the distance the veteran must travel. The VFW has received complaints from veterans having to travel hundreds of miles roundtrip between examiners or being scheduled for examinations miles apart, knowing they will never arrive on time and risk being deemed a "no-show." It is perilous to give an examiner such broad authority without guidelines to determine if a veteran missed a scheduled appointment. When we have looked more deeply into complaints, some examiners willfully marked veterans as missing examinations despite requests to be rescheduled. If true, this negates any possible penalty the provider may incur and allows them to be compensated for the missed examination when it finally takes place.

The VFW has continually suggested veterans be given agency over their disability examinations because it would lead to better outcomes for veterans and contractors, and be a more responsible use of taxpayer funds. Vendors that contract to provide disability examinations often have portals and tracking systems that are outside of VA's infrastructure. We have found this to be the best way for veterans to manage the scheduling of their required compensation and pension examinations. It is near-instant communication with the provider where the veteran can upload questionnaires and forms, change appointments when necessary, or perform other prerequisites.

We commend VA for instituting the Medical Disability Evaluation Office (MDEO) to be a central administration point for contract disability examinations, but more robust and persistent oversight of contract vendors must be forefront. Penalties incurred for incomplete examinations, not completing requests on time, or any number of contractual errors must go beyond reduced contracted financial obligations or loss of incentives. From the quality of the examination to the qualifications of the examiner, all must be monitored equally. Examiners must fully understand the entire claims process and the full impact that their properly or improperly completed work has on veterans seeking benefits. This office must be made aware they too are full partners, along with the VSO community in this endeavor.

Transparency is a word with which MDEO is not familiar. VSOs have been asked to submit complaints to the MDEO corporate mailbox, yet the generic responses received lack substance or resolution. The VFW would find it helpful if we were familiar with the contents of the contract entered, so we know how best to respond to veteran complaints. Short of filing a Freedom of Information Act request, we are in the blind. On numerous occasions, we have submitted complaints to MDEO or encouraged affected veterans who feel the quality of their examinations was lacking, yet we never learn of any corrective actions taken nor will this office share Quality Review standards as to the accuracy of examinations completed by contracted examiners. Given the nature of the business model, our accredited representatives along with the contract examination staff are among the first critical touchpoints for those who seek benefits. Though the VFW has excellent communication and collaboration with examination vendors, we ask VA to afford similar recognition of the corresponding roles that accredited representatives and contract examiners play in the process.

A modern innovation from VA that has been in development over the last several months is the Automated Decision System. This new platform, along with the continued development and refinement of standardized forms has been an improvement

for claims processing. In the Veterans Benefits Management System—VA’s claims management system—the claims file is flashed as a PACT-related claim which allows developers to quickly identify it as related to the new law and presumptions for proper processing. By leveraging technology to identify keywords and information for specific claim types, the system then determines if there is adequate evidence of record to proceed to a decision. If there is not, then the file continues in the development phase until finally adjudicated. The VFW welcomes this process and continues to encourage its progress. We see the pluses in getting benefits into the hands of deserving veterans as quickly as possible. However, we continue to hold that VA must never rely solely on automated decisions for the sake of reporting numbers. All decisions must be subject to human quality review for accuracy, and we must also caution once again about rushing to implement change for change’s sake. The addition of new issues for consideration of this process must be deliberate, and we ask that VSOs continue to be a part of that conversation.

Chairman Luttrell, this concludes our testimony. Again, the VFW would like to thank you and Ranking Member Pappas for the opportunity to offer our comments on these important issues to this subcommittee.

**Information Required by Rule XI2(g)(4) of the House of Representatives**

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2023, nor has it received any Federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.

