



## Statement for the Record

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Before the  
House Committee on Veterans Affairs  
Subcommittee on Disability Assistance and Memorial Affairs  
on  
Reviewing VA's Implementation of the PACT Act

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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:**
  - **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 nine months ("PACT Weekly Report," OPA&I, May 6, 2023).
  - **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.
  - **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.
  - **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:**

- Fact: According to VA, of the 546,000 claims received by VA, 346,000 remain pending, as of May 6, 2023.
- Observation: VA still needs to finish processing 346,000 open claims in order to prepare a rating decision.
- 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.
- 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:**

- 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.
- 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.
- 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 denial 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 FY23. This is compared to 0.93 percent growth in the same period during FY22. 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 one 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 three 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