

**HEARING ON THE
DEPARTMENT OF VETERANS AFFAIRS
IMPLEMENTATION OF THE SFC HEATH ROBINSON
HONORING OUR PACT ACT**

HEARING
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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C O N T E N T S

NOVEMBER 16, 2022

SENATORS

	Page
Tester, Hon. Jon, Chairman, U.S. Senator from Montana	1
Moran, Hon. Jerry, Ranking Member, U.S. Senator from Kansas	2
Tuberville, Hon. Tommy, U.S. Senator from Alabama	9
Brown, Hon. Sherrod, U.S. Senator from Ohio	11
Hirono, Hon. Mazie K., U.S. Senator from Hawaii	13
Blackburn, Hon. Marsha, U.S. Senator from Tennessee	15
Hassan, Hon. Margaret Wood, U.S. Senator from New Hampshire	17
Blumenthal, Hon. Richard, U.S. Senator from Connecticut	21
Sullivan, Hon. Dan, U.S. Senator from Alaska	22

WITNESSES

The Honorable Shereef M. Elnahal, Under Secretary for Health, Department of Veterans Affairs	3
Joshua Jacobs, Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits; accompanied by the Honorable Guy T. Kiyokawa, Assistant Secretary for Enterprise Integration; John W. Boerstler, Chief Veterans Experience Officer; Patricia R. Hastings, DO, MPH, FACEP, RN, Chief Consultant, Health Outcomes Military Exposures, Veterans Health Administration; Robert T. Reynolds, Deputy Under Secretary for Automated Benefits Delivery, Veterans Benefits Administration; and Tracey Therit, Chief Human Capital Officer	5

APPENDIX

PREPARED STATEMENT

Joint statement of the Honorable Shereef M. Elnahal, Under Secretary for Health, Department of Veterans Affairs; and Joshua Jacobs, Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits	33
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SUBMISSIONS FOR THE RECORD

National Executive Committee of the American Legion; Resolution No. 15: Oversight of Camp Lejeune Justice Act	59
Department of Justice Technical Assistance on Section 706 of H.R. 3967	64
Inhofe Amendment to PACT Act	67

STATEMENTS FOR THE RECORD

Kristina Keenan, Assistant Director, National Legislative Service, Veterans of Foreign Wars of the United States (VFW)	79
Lawrence W. Montreuil, Legislative Director, The American Legion	84
Rosie Torres and Army Captain Le Roy Torres, Founders of Burn Pits 360	88

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WEDNESDAY, NOVEMBER 16, 2022

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3 p.m., in Room SD-G50, Dirksen Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

Present: Senators Tester, Brown, Blumenthal, Hirono, Sinema, Hassan, Moran, Cassidy, Sullivan, Blackburn, and Tuberville.

OPENING STATEMENT OF CHAIRMAN TESTER

Chairman TESTER. I call this meeting to order. My Bulova says it is 3:00, straight up, so I appreciate you all being here.

I want to thank Mr. Elnahal and Mr. Jacobs for being here to discuss implementation of a very important bill that we talked about a few months ago, pretty extensively. It is called the PACT Act. Our PACT Act is historic in that it provides health care and benefits to generations of veterans that have been long forgotten.

Expanding health care and benefits to so many, however, does come with its challenge. For example, under the PACT Act, thousands of Vietnam-era veterans are now presumptively covered for hypertension, something that, by the way, the bill said was going to be implemented in 2027, but the Biden administration in the VA said we are going to do it now because it is the right thing to do. Thank you for that.

That means, though, that the VA has to process thousands of new disability compensation claims. Of course, it would have been easier to cut benefits, to abandon Vietnam vets with hypertension, or to ignore burn pit veterans with cancer, but that is not what this Committee did. That is not what the United States Senate did. That is not what Congress did. That is not what the Biden administration did.

What we did was what previous Congresses had not, and that is we passed a bipartisan bill to pay for the true cost of war. We also gave the VA new authorities and funding to make sure it could take care of not just the toxic-exposed veterans but also older veterans already in the system.

Look, we all know there are going to be hiccups. Veterans who previously filed claims will now hear of many more of their brothers and sisters joining them in line. But the VA must ensure that each of them gets the right decision as quickly as possible. Other veterans who rely on VA for quality health care will see new faces in hospital waiting rooms. VA must ensure that they get the quality care that they deserve.

So while we soon will hear more about certain challenges, my promise to the veterans listening today is that the VA and Congress will work together to overcome these challenges, because it took far too long to pass the PACT Act, but passage was the easy part. Implementation, making sure veterans actually get what is promised to them, that is the true test.

With that I will turn it over to my Ranking Member, who I congratulate on his reelection, Senator Jerry Moran.

OPENING STATEMENT OF SENATOR MORAN

Senator MORAN. Mr. Chairman, thank you for that. Thank you for your opening statement, thank you for the success that we have had in regard to the PACT Act, and I appreciate all of our witnesses being here today.

At the beginning of today's hearing I want to first indicate that I recognize this is National Military Families Month, and I recognize our military families in Kansas and across the Nation. While one person may wear the uniform, we know that military service is family service, and I thank all of the family members of our servicemembers for their sacrifices.

Sergeant First Class Heath Robinson Honoring Our PACT Act is the largest expansion of veterans health care and benefits in the VA's history. This is landmark legislation. It delivers long-overdue care and benefits to all generations of toxic-exposed veterans. As the process to implement the PACT Act continues I will work with my colleagues to make certain that the VA is following the law and connecting the right veterans with the right care at the right time.

The health effects of toxic exposure can take many years to manifest, so it is critical that veterans and the VA are proactive about screening and caring for these effects.

I am encouraged to see that toxic-exposed veterans are rapidly submitting claims to the VA for disability benefits for toxic wounds incurred during military service. More than 136,000 claims have already been submitted.

While this is a significant step, I am concerned about the operational impact. It is what slowed us down a bit in getting this legislation into law, and the operational impact on the VBA, and we will continue to monitor how VA handles its surge in claims.

I want to again urge the Department to utilize all the tools at its disposal and work with outside experts to implement innovative and efficient ways to administer exams, process claims, and provide resources, benefits, and care to veterans and survivors. Operational impacts to the Department were a significant concern of mine, and will continue to be a significant concern during implementation.

These new provisions, including enhanced recruitment and retention measures, more efficient hiring mechanisms, and streamlined ability to execute new medical facility leases should help the VA

mitigate the impacts to benefit the processing and care delivery for existing veteran patients while serving this new veteran population under the PACT Act. Veterans must not be left waiting in longer lines for benefits or care.

I am particularly interested in discussing provisions aimed at staffing VA medical facilities, particularly those in rural areas, to care for the influx of toxic-exposed veterans, as well as hiring and training those who will handle and process the disability benefit claims. These positions are critical to making certain veterans receive the care and benefits they need in a timely manner.

I look forward to today's discussion. Mr. Chairman, I have been asked what our next piece of legislation is that this Committee may consider, what is the next goal of the Committee, and we certainly, in my view, had success in regard to the MISSION Act, we had success in regard to the John Q. Hannon Suicide Prevention Act, and now the PACT Act. And my answer to those who ask is I think our number one priority in this Committee, by Committee members and by the VA, ought to be the appropriate, sufficient, implementation of the legislation we have passed. This hearing is one I requested and I appreciate you holding it today, and I am anxious to work with the VA to make sure our veterans, whatever their disability arises from, are cared for. Thank you.

Chairman TESTER. Thank you, Senator Moran.

Before we get into the introduction of the first and only panel I would say that I absolutely agree with you. I think oversight and implementation of all the acts that you passed, and others, are going to be critically important. And that is not to say we are not going to do legislation, because we are. But I do think our primary focus should be on oversight.

Today this hearing has one panel with key leaders crucial to the VA's success as we talk about the PACT Act. First we have Dr. Shereef Elnahal, who is Under Secretary for Health. It is good to have you in front of the Committee, Doctor.

Next we have Josh Jacobs, who I would be remiss if I did not tell you that he is turning 29 again today. He is a Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits, which is short to say that he has got an important job.

Also accompanying the two of them we have Guy Kiyokawa, Assistant Secretary for Enterprise Integration; we have John Boerstler, who is the Chief Veterans Experience Officer; we have Dr. Pat Hastings, Chief Consultant, Health Outcomes Military Exposure; we have Rob Reynolds, Deputy Under Secretary for Automated Benefits Delivery; and Tracey Therit, Chief Human Capital Officer.

We are going to start with your statement, Dr. Elnahal. Then we will move to Mr. Jacobs and his opening statement. You have the floor.

STATEMENT OF THE HONORABLE SHEREEF M. ELNAHAL

Dr. ELNAHAL. Thank you Mr. Chairman, Ranking Member Moran, and members of the committee. Thank you for the opportunity to appear before you today to discuss VA's implementation of the PACT Act. I am joined by my VA colleagues with whom I

am honored to testify in front of you today, and you already introduced them graciously.

The PACT Act marks the most significant expansion of veteran care and benefits in decades, empowering VA to do more for veterans exposed to toxins during their service. This law is extraordinary, as it not only allows many more veterans to benefit from VA, it affords us the tools we need to execute it. I am proud of the incredible work VA has already done, and we are eager and ready to implement the full extent of this law.

In VA we have one guiding question: Are veterans at the center of everything we do? We are not orienting ourselves around what would be best for VA but rather what would be best for veterans.

Today I want to share VA's three-pronged approach to PACT Act implementation. First, we must reach every veteran who may qualify for these new benefits and care to ensure they are aware of this opportunity. Second, we must build our capacity to better serve current veterans and those who we will welcome to our system for the first time. And third, we must build the path into the future to include groundbreaking new research on toxic exposures.

On outreach to veterans who could benefit from the PACT Act, we are working every day to ensure that there is no wrong door for veterans to access VA care. Our Veterans Experience Office has mapped the veteran engagement journey across all of our possible touchpoints with veterans. Whether a veteran or survivor comes to VA through a medical center, a benefits office, our website, or any other way, we are ensuring that veterans receive information about these new benefits in each interaction.

As soon as the Senate sent the bill to President Biden's desk we launched va.gov/PACT, a one-stop-shop website for understanding the PACT Act and applying for benefits. We also enhanced 1-800-MyVA411, an easy-to-remember telephonic front door for veterans and their supporters, which includes access to 24/7 live agents.

We are reaching out to veterans directly through their communities and through local VA medical centers. During the week of December 10th, we will host events at over 80 sites across the country. These events will include targeted outreach, including claims clinics, health care enrollment, and toxic exposure screenings. We are also reaching out to over 300,000 participants in our Burn Pit Registry through email, regular mail, and social media.

And VA implemented a nationwide effort to screen veterans who already get care from VA, to help determine potential toxic exposures during their service. In just over one week, this clinical screening has already reached over 166,000 veterans, with over 37 percent reporting exposures. And as of November 8th, this is now a routine part of VA health care in every medical center, and it will allow us to refer veterans directly to VBA as they may qualify for enhanced benefits or an increase in their priority group.

On building VA's capacity to deliver on PACT Act benefits and care we simply must hire enough employees to execute this law. I want to thank this Committee and the PACT Act for the PACT Act's broad range of flexibilities for hiring and retaining staff. To date, VA has implemented four sections of Title IX, resulting in several new tools to help with recruitment and retention.

We are on track to complete policy changes around all hiring provisions by the end of this calendar year. Hiring faster and more competitively by consistently implementing these new authorities everywhere is my top priority.

We are also making a historic investment in hiring additional health care enrollment specialists. As of October 25th, more than 3,600 of these specialists have been trained to determine PACT Act eligibility.

We also need to build on VA's brick-and-mortar footprint into the future, and the PACT Act allows us to do just that. The law immediately authorized 31 new leases, which will expand access through new sites of care. We are also thankful for the more efficient leasing process and appreciate our ongoing partnerships with GSA, OMB, and this Committee to get these leases done expeditiously.

I am also particularly heartened by the new ways that we can work with our academic affiliates and DoD to meet the health care needs of veterans. Co-location with our partners just makes sense for the veterans we serve in our system.

And on what comes next for veterans, families, caregivers, and survivors, VA has a strong tradition of research that has improved veteran lives. We will lead efforts to create an interagency Toxic Exposure Research Working Group to develop a 5-year strategic research plan. This research is critical to investigating whether toxic exposures may lead to other conditions that are not yet considered presumptive.

As Secretary McDonough often says, our mission at VA is to serve veterans as well as they have served our country. This law empowers us to do exactly that, and we could not have a team that is more invested and prepared to do so. We will stop at nothing to get this implementation right, and we will not rest until every eligible veteran and survivor gets the care and benefits they have earned.

Mr. Chairman, this concludes my testimony. Thank you for your time today, and I look forward to answering any questions you may have.

[The joint statement of Dr. Elnahal and Mr. Jacobs appears on page 33 of the Appendix.]

Chairman TESTER. Thank you, Doctor.

Next we will have Mr. Jacobs' testimony.

STATEMENT OF JOSHUA JACOBS ACCOMPANIED BY THE HONORABLE GUY T. KIYOKAWA; JOHN W. BOERSTLER; PATRICIA R. HASTINGS; ROBERT T. REYNOLDS; AND TRACEY THERIT

Mr. JACOBS. Good afternoon, Chairman Tester, Ranking Member Moran, and members of the Committee. Thank you for inviting us to discuss VA's implementation of the PACT Act.

As you know, VA has struggled for decades to address the health effects of harmful environmental exposures that occurred during military service. Historically, the process for VA to establish a new disability as a presumptive condition has taken too long and been too complex, taking precious time that ill veterans simply do not have. Now the passage of the PACT Act allows us to begin to right these historic injustices and deliver benefits to millions of poten-

tially eligible veterans, some of whom have been waiting for decades.

The PACT Act is not only adding over 20 new presumptive conditions related to toxic exposures and new locations for exposure to Agent Orange and radiation, but it's also strengthening how we hire and train new personnel, deploy new technology, and establish new presumptive conditions in the future.

Given the serious nature of toxic exposures, we made all conditions outlined in this new law presumptive the day the bill was signed, rather than phasing them in over years, as the law anticipated. For veterans who file for a PACT Act-related claim before August 10, 2023, the one-year anniversary of the bill's signing, their claim and benefit will be retroactive to the date of the bill's signing.

I want to take the next few minutes to explain the three-pronged approach that VBA is undertaking to deliver on the historic promise of the PACT Act. First, we are focused on hiring efforts up and down the organization. VBA has been preparing for the PACT Act implementation since last year, hiring approximately 2,000 additional employees. In the next few months, thanks to the Toxic Exposure Fund, we anticipate adding almost 1,900 more employees to our rolls. And in addition to hiring the right people, we are also focused on training them. All claims processors, whether new or current employees, will have the training necessary to process claims under the PACT Act. This training is crucial to ensure that all new PACT Act claims are processed correctly and quickly.

Second, we are looking at all of our policies and processes to enable more efficient benefits delivery. To expedite VA's ability to begin processing PACT Act claims by January 1st, VA is drafting subregulatory guidance which will be followed by formal regulations to implement the PACT Act. We anticipate the subregulatory guidance will be published in the Federal Register in December. VA is also actively engaged with all contract medical examination vendors to ensure they are prepared to undertake the increased volume of PACT Act-related examinations, and we have contracted with a fourth exam vendor to expand capacity.

Third, VA is using automation as a decision support tool to expedite claims by determining eligibility, auto-ordering exams when necessary, and gathering all relevant data and information, which is indexed into an intuitive format that gives our claims processors the ability to make quality claims decisions quickly. While VA's issued-based claims quality is currently more than 96 percent, we want to continue that focus by ensuring this technology drives consistent, standardized, accurate, and timely decisions for veterans. These tools have already reduced decision timeliness from several months to several days for the small number of claims that have leveraged this technology at one of our four pilot sites.

But the best implementation plan in the world does not matter if veterans' families and survivors do not know about the law or how to submit a claim. As Dr. Elnahal mentioned in his statement, we are making every effort to meet veterans where they are, through print and social media, radio and television, directing engagement with veterans' groups large and small, traditional and nontraditional, and many other ways as well. This also includes

targeted outreach to traditionally underserved veteran populations—women veterans, Native American veterans, African American, and Hispanic veterans.

The PACT Act helps meet generations of unmet demand from veterans and survivors, and we are already seeing this demand. The day after the bill was signed into law, veterans set an all-time record for benefits claims filed online. And since then, as of this past Saturday, veterans have filed nearly 146,000 PACT Act-specific claims. While we are receiving more claims than ever before, VA is also delivering more benefits more quickly and more accurately to more veterans than ever before, and we are processing claims at the fastest rate in VA history.

I was here a decade ago, as a senior advisor with the VA, when the backlog was at its peak, and for members who followed the claims backlog for that long you may be asking, are we about to watch the same story unfold here today?

I am happy to say that today we are in a better position to tackle this increased workload. When I was last with VA, there was a significant investment made to move from a paper-based system, where floors were literally buckling under the weight of all the paper we stored, to a paperless claims process, and now that investment, as well as many others, are paying dividends.

In fiscal year 2022, we processed 1.7 million veteran claims, shattering the previous year's record by 12 percent, and we have gotten the claims backlog down to the lowest in years, below 150,000 claims as of this month, and we have more work to do.

As we continue to encourage more veterans and survivors to apply for this PACT Act benefits we do expect an increase to the inventory and the backlog in the short term. But the efficiencies I just described and the three-part implementation plan we are executing have established a solid foundation as we work to deliver on this historic law.

I know I speak for all employees when I say we are truly excited about the opportunity to provide the support and benefits to millions more of our Nation's veterans. It is both a challenge and a promise we look forward to meeting.

This concludes my statement. Mr. Chairman, we would be happy to answer any questions you or other members of the Committee may have.

[The joint statement of Mr. Jacobs and Dr. Elnahal appears on page 33 of the Appendix.]

Chairman TESTER. Well, thank you for that statement, Mr. Jacobs, and there will be questions, and I will start with mine.

Look, the passage of the PACT Act allows a whole bunch more veterans to get health care and benefits that they have earned. This does mean, however, that VHA and VBA have to be prepared to accept new patients and new claimants into their systems.

Dr. Elnahal, how is the VA preparing to provide timely health care to newly enrolled veterans while still taking care of the folks who are already enrolled?

Dr. ELNAHAL. It is a very relevant question, Mr. Chairman. It is something we are thinking about every day on the health care system side.

I will ask Tracey in a minute, Ms. Therit, to go through some of the hiring authorities that the PACT Act affords us and how that will increase our rolls. But that is first and most important way that we need to build capacity. We simply need enough clinicians and the folks who support them in our health care system to be able to tackle the increased demand that we expect to see, because that is what veterans deserve.

We are also trying to, on top of that, make sure that we increase our productivity across the system. Our Office of Integrated Veteran Care is engaging in multiple efforts to do just that, one of which is actually standardizing our clinical grids based on specialty, to have standard times, on average, that it takes to see veterans, depending on the type of care they are getting, and then hold our clinicians and leadership accountable for resourcing those clinics to be able to meet at least an 80 percent productivity standard in those clinics.

We are also going to make sure that our network adequacy is where it needs to be with our Community Care Network, knowing that we will need to rely on that, to a degree, to meet this demand.

Ms. Therit?

Ms. THERIT. Senator, thank you for that question, and we greatly appreciate all of the authorities in Title IX. There are 20 subsections in Title IX. Up to this point we have implemented policy and guidance in 50 percent of those sections, with 70 percent targeted by the end of the year.

We are implementing the Title IX authorities to support VHA and VBA with their hiring of the workforce that is needed to serve veterans in six waves. The first wave was to remove the restrictions on housekeeping aides. I am pleased to say that in 90 days we have increased our onboard rate by 3.2 percent, hiring over 700 housekeeping aides under this new authority in the last 90 days, and strengthening our onboard capacity to provide clean and safe medical facilities.

We also, in our second wave, are reaching out to college graduates and postsecondary students and increasing the student loan authority limits to bring in that next generation of talent to our VA workforce and our facilities.

In the third wave, which is equally important to recruitment, is retention. What are we doing to recognize the amazing workforce that we have and keep them at the VA? So we have removed some of the restrictions on awards and bonuses as well as increasing our limits on special contribution awards.

And then the last wave that we just completed implementation is improving our systems. You are very familiar with the challenges that we have in hiring related to our systems, and we have made some enhancements which give greater visibility where things are in the hiring process so that we can move them along quickly.

Our fifth wave is the competitive pay. Competitive pay is a challenge, to make sure that we get the right VHA and VBA personnel as well as OIT personnel and personnel throughout the Department on board. So we have a lot of critical pay authorities, special salary rate authorities, incentives, and waivers of pay limit to make sure that we have no barriers and limitations to getting who

we need on board to serve veterans, and we greatly appreciate that help.

Chairman TESTER. Yes. So keep your mic on. So I am just going to take one of them—college grads, increasing student loan limits—which is really important and I think can be a very effective tool. How are you letting college grads know that the VA is here and they are willing to help with their college education if they go to work for you?

Ms. THERIT. We are partnering with Student Veterans of America to make sure that that word is getting out through those channels. We are also working with colleges and universities in the local areas. I know VHA and VBA have established a lot of partnerships with institutions of higher education in their communities.

VBA is using the college grads authority. Office of Research and Development is using the postsecondary students authority. So that is a lot of the communications that we are doing and we welcome others to add to the things that we are doing at both the local level and the national level.

Chairman TESTER. I appreciate that. It is a tough job market out there. I mean, good for the employee; not so good for the employer. So anything you can do to be aggressive is much appreciated.

I do not have enough time for you to answer my next question so I am going to go to Senator Tuberville.

SENATOR TOMMY TUBERVILLE

Senator TUBERVILLE. Thank you, Mr. Chairman. Thank you, panelists, for agreeing to be here today and taking time out. What a serious problem we have here. We have been working on it, what, a couple of years now. Even when I got here the Chairman was working on it at that time, before then.

Let me start by saying I voted against the final passage of this legislation. I have got 500,000 vets in the State of Alabama, and do not think I did not hear from them. I knew it would be a big vote, and that is why I approached it with an open mind. While this legislation was being considered, my staff and I met with numerous VSOs and heard from hundreds of veterans in Alabama. After many candid conversations I made an informed decision to vote no, and my position remained consistent on every PACT-related vote.

Sadly, my colleagues on the left here politicized this process and we rushed it. To me we rushed to pass this legislation.

You know, I believe the bill's imprecise, unrealistic language only sets the VA up to fail. That being said, I hope you all prove me wrong, because our veterans need help. They need a lot of help. As a member of this Committee I want to be as helpful as possible to all of you.

So Mr. Jacobs, earlier this month the VA announced that it would expedite claims for veterans with cancers to ensure they are getting timely access to the care and benefits they deserve. The VA also announced that it would prioritize the processing of the claims for veterans with terminal illnesses and those experiencing homelessness.

Question. With more than 136,000 PACT Act-related claims already filed, and existing backlogs of 100,000 or so, how can you be sure that veterans with cancers are not getting overlooked?

Mr. JACOBS. Thank you very much for that question. You know, we have an existing prioritization ability that we implement right now where if we know that a veteran is homeless, is experiencing financial hardship, is over 85, and several other categories, we are able to prioritize that claim for expedited consideration. We have 25,000 employees across the country, 60 percent of whom are veteran. Simply put, they get the job done.

We are expediting cancer claims for the PACT Act because of the severity of the conditions often associated with many of these cancers and the length of time it has taken for us to be able to deliver these benefits and connect them to the health care that they need.

So we have a well-proven process to be able to expedite those claims. We were able to execute that, and I would just ask you, to the extent that you hear from your constituent who have cancer or have one of these other elements that may require us to prioritize it, you let us know. We can expedite when we know that a particular claim meets one of these conditions, but if you happen to have that information you let us know and we will make sure we get the job done.

Senator TUBERVILLE. So we are prioritizing, right?

Mr. JACOBS. Yes, sir.

Senator TUBERVILLE. Okay. PTSD, you know, we are having huge problems with that. We are having people dying every day, and we need to do a better job with that. But that is another point.

What about homelessness? Talk about that point. Where do you rank them? How do you go about categorizing that group?

Mr. JACOBS. If we have an indication that a veteran is experiencing homelessness we will be able to prioritize that claim for consideration. Oftentimes we do that in partnership with our VHA colleagues. We recognize there is no wrong door in VA. And so we provide wraparound services. We want to make sure that we are prioritizing claims decisions so that we can get the veteran and his or her family the benefits that they need to help them with their life. We also want to make sure, to the extent that they are dealing with other issues, that they have the health care support and the other wraparound services that they need to help address the issues in their life and get back on their feet.

Senator TUBERVILLE. Thank you. Dr. Hastings, as you know, Section 801 of the PACT Act requires the VA to study the health of veterans who served at Fort McClellan between 1935 and 1999. However, during a recent briefing, VHA identified Section 801 as a challenge to implementation because, and I quote, "sufficient data on Fort McClellan's veterans during this time period may not exist."

Can you please elaborate on this issue and describe, you know, your conversations with the DoD up until this point?

Dr. HASTINGS. Absolutely, sir. Deployment Health Working Group we exchange data with DoD at all times, you know, back and forth. It is a challenge to go back to 1935. As you know, some of the mortality records did not start until the 1970s. We are leaving no stone unturned to find the data that we need. We are also

working with the Agency for Toxic Substance Disease Registry, who has a petition to look at Fort McClellan. So we are working with them also.

I was sent to Fort McClellan three times for my nuclear, biologic, and chemical training. I was there for a week at a time. Fort McClellan had a very small cadre of permanent party, and people coming through there for basic training or for other training. It was very transient. So those records will be a challenge, but I can assure we are looking everywhere and we will get every record possible, going back as far as possible.

Senator TUBERVILLE. Thank you very much. Mr. Chairman, I am out of time, and I would like to submit my remaining questions.

SENATOR SHERROD BROWN

Senator BROWN [presiding]. Without objection. Senator Tester has asked me to chair for the time being, so thank you, Senator from Alabama.

I will ask my questions and then turn to Senator Hirono. I think Senator Moran will likely be back by then.

First of all, thank you all for serving. Your work at the VA is maybe more important than it has ever been. I have done about 15 roundtables about the PACT Act, in urban areas and rural areas and suburban areas all over the State, and there is a lot of excitement but there is a lot of ignorance about what it does. So your work and your outreach is especially important.

I would like to address first the electronic health record modernization efforts. I thank Dr. Elnahal for his visit to Columbus in September. While I did not see you there I was recently at the facility with Deputy Secretary Remy and heard firsthand from front-line employees some of the same things you heard about the challenges with the Oracle Cerner program. You know all that. I do not need to dwell on it. I am concerned that the facility's recent sale data could reflect a drop in patient care and satisfaction to the EHR program, causing veterans to seek care outside of the VA, something we would prefer not, but if it a necessity to them it is.

We need to address patient care and satisfaction issues. Many veterans may not be aware that the new system has caused issues for medical providers and support staff. You know all that.

I just would like you publicly, Dr. Elnahal, to commit to continuing to work with VISN 10 officials in Columbus to ensure the facility has the support and the resources it needs to safely implement the new system.

Dr. ELNAHAL. Absolutely, Senator, and it was my visit to Columbus which triggered conversations here with VA leadership writ large around the need to have this assess-and-address period that we are undertaking with the electronic health record, to make the system better for the sites already using it. And I can tell you, the leadership and the team, down to the front line, in Columbus are extraordinary. They want to get this right. It is incumbent upon us to hold Oracle Cerner and ourselves accountable for doing so, and I do pledge that, Senator.

Senator BROWN. They do want to, but there is a healthy skepticism among sort of all levels of employees. I probably met with 15 in one meeting, 5 in another, and walked through the facility

and heard it pretty consistently. But you know that. I just wanted to say it publicly.

Mr. Jacobs, as I mentioned, I have held a number of roundtables, meeting with Vietnam veterans who talk about their Agent Orange experience, and frankly, we have learned from that, of course, the way that we did the PACT Act, as you know, the PACT Act is named after someone from Columbus. His mother-in-law has been talking to me about this for several years, and Senators Tester, Moran, and I have worked on this, obviously, together.

I appreciate the steps the VA has taken to inform veterans of these benefits. We need to get creative about how we do this outreach. The VA has to somehow expand its capacity to continue to do what you do, plus expanding the Agent Orange outreach and all the new PACT Act veterans.

So I have three or four questions of you, Mr. Jacobs, if you would. I will just do all the three questions together and you can answer them together. How is expanding outreach to veterans who might not have access to the internet or younger veterans who have not interacted with the VA, if you could talk for a moment about that? Are you working with DoD so servicemembers about to leave know of these benefits? I have found in the past that is not always the case. And is VA planning in-person events at medical centers, or in the Department, open to sending mobile teams to rural areas to expand outreach? We know there are several VA hospitals in Ohio. There are 31 or 32 CBOCs, and there are veterans that are not even near the CBOCs. So talk to those three if you would, Mr. Jacobs.

Mr. JACOBS. Great. Thank you very much, Senator Brown. As I mentioned in my opening statement, outreach is a critical priority for us. This law is historic but it does not mean a thing if veterans and their families and survivors do not know about it and they do not know how to apply.

There is an active outreach plan that we are executing on multiple fronts. I am going to ask my colleague, John Boerstler, who runs the Veteran Experience Office, to talk a little bit more about that, using human-centered design to reach veterans and their families where they are. And we are taking some of the human-centered design insights that we have learned through their work to target our outreach.

I will also say we have a unique tool that is in isolated execution. So in our New Orleans regional office we have a database system that is able to identify, parish by parish in Louisiana, where we have veterans, and the percentage of veterans that are utilizing their benefits, so we can isolate our outreach to help identify and fill in the gaps. And often those are in rural, underserved locations.

And so we are going to be working to expand that to other States in partnership with the States and other partners. But let me turn to John.

Senator BROWN. And Mr. Boerstler, if you would—thank you—while answering that just talk to us about when someone comes into the Dayton VA, say, or comes into a CBOC in Zanesville for something else, what you do about informing them of potential PACT Act exposure and treatment.

Mr. BOERSTLER. Yes. Thanks very much, Senator. And as Dr. Elnahal mentioned earlier, we are getting the word out in terms of training more of our frontline staff and clinicians about asking specific questions related to PACT Act and to toxic exposures across the board. So there is literally no wrong door. If you come in for a screening then you will be directed to hopefully file a claim and then enroll in VA health care.

In terms of outreach in rural areas specifically, we have a wonderful program called the Veteran Experience Action Centers, which we have done in Montana, we have done in South Dakota, we have done in Alabama as well, and these are really great partnerships with the State Departments of Veterans Affairs, as Mr. Jacobs alluded to, where they are incredibly effective at rural veteran outreach. So using not only those three-day enrollment sprints—where we are focusing on helping them file claims, enroll in VA health care, filing their pre-need applications for memorial services—we are also measuring that experience along the way and then tapping into outreach mechanisms that, as you mentioned, if they do not have access to broadband or internet we are hitting the radio stations, we are using our community veteran engagement boards, we are asking all of force multipliers at the county and the parish level to help us get the word out.

And as Dr. Elnahal alluded to in his opening remarks, we are launching at 80 sites, so VA medical centers and regional offices partnering across the country that first week of December to do this week of awareness, where we are going to have claims clinics mixed in with enrollment sprints. It should be incredibly impactful.

And then finally, sir, I will mention toward transitioning servicemembers and their families. We have just updated the VA Welcome Kit, which is kind of your single front door for information that veterans can get, and the first page that you have in there is our one-pager on the PACT Act, and if they qualify, based on their deployments and their symptoms. So we are really excited to push that further upstream to those that have not transitioned out of the military yet as well as sending it to those recently separated veterans and their families.

Senator BROWN. Thank you. Senator Hirono, who I believe has not voted yet either. So thank you.

SENATOR MAZIE HIRONO

Senator HIRONO. Thank you, Mr. Chairman. Let me go, first of all, to the situation at Red Hill, which was our own basically toxic exposure events. And I think, Secretary Elnahal, you are familiar with what happened there.

As we talk about loss of data, et cetera, and the need to coordinate between DoD and VA, these are thousands and thousands of people who were exposed to jet fuel leaks at Red Hill. And it occurs to us that there should be a way for some kind of tracking and tracing of the health issues attendant to this exposure while they are currently in active service as well as presumably they are going to become veterans.

So is this something that you all are already doing something with the DoD to make sure that all these people who experienced

this exposure are not lost? I think Ms. Therit, you also talked about the need to coordinate records, health records, with DoD.

Can you just talk a little bit about how you expect to keep track of all these people, 94,000 people, at least, who were exposed to the Red Hill situation?

Dr. ELNAHAL. Yes, Senator. First of all, I enjoyed visiting Hawaii for the NASDVA convention and had a chance to spend time with Dr. Anderson and his team at the Pacific Islands Health Care System.

I am aware of this, certainly, and Dr. Hastings can help us summarize the exciting work that the Interagency Research Working Group is going to do, specifically on investigating jet fuel exposures and conditions that may result from that. Dr. Hastings?

Dr. HASTINGS. Absolutely, sir. Senator, Red Hill is one of the cohorts that we are concerned with. We are concerned with many and we do follow them. There is a registry of those people that were exposed that DoD has. We meet monthly with the Deployment Health Working Group, and though it says "deployment health" we also cover garrison exposures. Those exposures at Red Hill would fit into that.

And this is a cohort that we will follow into the future, and this will be decades of following up. But that is what my office does routinely. We follow cohorts. We look at the health outcomes. We look at how to care for those veterans and their families. You know, this is not exactly a Camp Lejeune scenario, but we are going to look at it in the same manner.

Senator HIRONO. That is good because I think that there will be some long-term health issues, and there is a provision in the PACT Act that directs the Department to study the impacts of jet fuel exposure. So I assume that you are doing that and I would welcome information on how that is going.

Dr. HASTINGS. Absolutely. The Office of Health Outcomes Military Exposures started looking at fuels and jet fuels exposures about 2 years ago. We have already completed some of that preliminary work, and thank you very much for the PACT Act that expands that and allows us to work with the National Academy. We are very excited by this work. It is important. Jet fuels, you know, are what the military runs on, and we have to know more about them, and we are doing that.

Senator HIRONO. Definitely, because I hear from individuals and families who had all kinds of health issues, that clearly needs to be tracked. So we do not want to end up with a situation that resulted in our having to pass the PACT Act, where exposures going back decades have to be somehow, you know, we have to figure out the cause and effect. So what you are doing right now is very important.

I also want to mention that the vacancy rate of VAPIHCS, which is the VA health care system that covers Hawaii and the greater Pacific, has been at about 19 percent, and we have made various efforts through this Committee, and more recently through the PACT Act to provide a lot more flexibility to the VA to hire people. And I am just wondering whether there are unique circumstances in Hawaii that makes it that much harder to hire and retain people.

So have you given some thought to it is a not a one-size-fits-all situation, that Hawaii poses maybe very unique challenges, to get this 19 percent vacancy rate down? You look as though you are wanting to say something, Mr. Secretary.

Dr. ELNAHAL. Yes, Senator. I had this conversation with Dr. Anderson and his team, who did mention that the health care labor market is particularly difficult. And as you mentioned, that is borne out in the data.

Ms. Therit summarized all of the exciting new authorities that will allow us to pay people much more competitively but also to retain them, with the ability for larger retention bonuses. Again, thanks to you and this Committee we now have that.

I also had a conversation about how we could work better with the Tripler Army Base staff and allow even more services to be shared with them, and had a chance to come back and address with the Health Executive Committee and DoD. And if we have time, Mr. Kiyokawa can talk about some of the other exciting work we are doing with DoD.

Senator HIRONO. Well, my main question is I think there are some very unique circumstances in Hawaii that we have to get creative in how you all are going to take care of all the veterans, especially as we are expanding the number of people who will come for VA care, including specialized care for women veterans. And there are whole ranges of different kinds of care, and really we need to get this vacancy rate.

Thank you, Mr. Chairman.

Chairman TESTER [presiding]. Senator Moran.

Senator MORAN. Mr. Chairman, thank you. I understand that Senator Blackburn has not yet voted, and I yield my time to her, and in return I hope to be later in the hearing.

SENATOR MARSHA BLACKBURN

Senator BLACKBURN. Thank you very much. Just a couple of questions. Secretary Elnahal, I want to talk about the female veterans, the post-9/11 veterans, and the rate of breast cancer. I have seen some of the data, and those between the ages of 18 and 44 are 34 times more likely to develop breast cancers.

So if you would, talk to me a little bit about the outreach that you are doing for female veterans, what you are doing to build this awareness, to make them aware of services that are available, why they need to have regular and ongoing testing, and how they are working with the VSO on this.

Dr. ELNAHAL. Absolutely, Senator. It is a major focus of mine, as you know. The Office of Women's Health reports directly to me. We are focused on this. As a result of a lot of the authorities that you and this Committee gave us through the MAMMO Act, the Deborah Sampson Act, staffing up our facilities with enough women's health coordinators and clinicians on the front line to be able to meet the needs of these vets.

I will mention that reproductive cancers, as a category of presumptive conditions, will include breast cancer, and so that will help from the standpoint of giving even more veterans these benefits, especially if they were deployed, and Mr. Jacobs and his team can find a way to give them PACT Act benefits.

In terms of outreach, we are doing very targeted outreach to women veterans. The Center for Women Veterans is very focused on that. Mr. Boerstler probably has more details to share on that as well.

Senator BLACKBURN. Okay.

Mr. BOERSTLER. Thank you, Senator. In terms of digital ad campaigns we are specifically targeting different customer personas, including Vietnam veterans, post-9/11 veterans, and but also women veterans that may be exposed to all these toxins as well. And we have seen some significant successes, reached over 42 million just in the recent weeks since the passage of the bill. And we think that, obviously, for post-9/11 veterans, that digital advertising works very well.

We want to make sure, though, that we are also hitting radio and TV and having our facilities out in the field, engaging with as many of the women veterans who may not yet be enrolled in VA. And if you came to VA 10 years ago, come back and try us again. The women's clinics, especially, are some of the most incredible programs. We see, in terms of our trust scores, the fact that women can access the clinics from a different location or different entrance at the hospitals. They are incredible.

Also the use of telehealth and virtual health has really enabled. We have seen the trust scores for women veterans in particular that access VA health care services really go, quarter over quarter, over the course of the pandemic. So we are doing everything we can to increase access and improve outcomes for our women veterans.

Senator BLACKBURN. Okay. I appreciate that. I think that we all know, with breast cancers, with reproductive cancers, that early detection is primary, so this outreach and getting our female veterans enrolled is going to be important.

I had one other question. The Camp Lejeune Act. We have had so many questions about how Section 804 and how they are going to deal with the awards from the lawsuits and how that is going to deal with the offsets. Mr. Jacobs, I think this maybe comes under your jurisdiction.

Our veterans, there is a lot of confusion around this, with these awards. Can you speak to that for us?

Mr. JACOBS. Absolutely. Thank you, Senator. This is a question we are continuing to get and we are trying to clarify and communicate. There is a lot of confusion. I have been told is about \$1 billion worth of advertising on the lawsuit. So it is top of mind for many.

We want to make sure veterans and their family members make an informed choice. We are not going to persuade or dissuade them from seeking justice in the courts. But we do want veterans and their families to understand if they are successful and they receive an award through the judicial system that award will be offset by the amount of VA benefits they are receiving for their specific Camp Lejeune benefits that they are receiving from VA.

So we are not making that determination. We are going to share information with the Department of Justice and the courts, and they will determine the total amount of the offset. And then, of course, the offset will also have to take into account whatever lawyers' fees are part of that, from my understanding.

Senator BLACKBURN. Okay. Thank you for the clarification. I think the sooner you can get us something in writing, the better it will be.

Mr. JACOBS. Absolutely. This is a complicated piece of business and I want to make sure it is crystal clear and that it has gone through our counsel's review, and that we make sure we are clearly communicating so veterans can make an informed choice. And we also want veterans to apply for benefits if they have not done so, if they have been affected by Camp Lejeune contaminated water.

Senator BLACKBURN. Thank you. Thank you, Mr. Chairman.
Chairman TESTER. Senator HASSAN.

SENATOR MARGARET WOOD HASSAN

Senator HASSAN. Well, thank you, Mr. Chairman and Ranking Member Moran. Thank you to our witnesses for being here today. And look, up in New Hampshire the veterans I have talked with over the last few months are really excited about the passage of the PACT Act and the opportunities it provides to veterans. Understandably, at the same time, they really also have questions about the implementation and how the benefits are going to be delivered.

So I just want to focus on some of those concerns and I will start with a question to both of you, Dr. Elnahal and Mr. Jacobs. I appreciate the outreach that the VA has already done, both directly and through veteran service organizations, and it has been important. It has let veterans know about the new benefits and health care that they may be eligible for under the act. I continue to hear from veterans in New Hampshire, especially the VSOs, about how helpful those communications have been, so thank you.

But there is a concern that veterans who are not already connected to the VA, or the broader veteran community, are not getting the information that they need. And we have talked a little bit about that up here, but I want to drill down on a couple of things. In particular, I want to make sure that the VA is targeting outreach to servicemembers who will be separating or retiring from the military in the future but likely are not actively connected with VA services today.

You talked a little bit about information about the PACT Act in the Welcome Kit, but how are you coordinating with the DoD to make sure that this population learns about the PACT Act now so that they can be better prepared when it comes time for them to enroll in health care or disability claims?

Dr. ELNAHAL. I am happy to start, Senator. This is a major area of focus for us. The critical period of transition into civilian life for veterans is a very vulnerable one, and it is a perfect opportunity for us to introduce VA writ large but also the benefits under the PACT Act. We are making use of the Transition Assistance Program, TAP, and many other ways of doing that.

I will ask either Mr. Kiyokawa or Mr. Boerstler to give us some more details on that.

Senator HASSAN. Yes, and I get the focus on transition, but even before transition, what is happening?

Dr. ELNAHAL. Well, in the first instance we are actually collaborating with DoD on outreach. So we have already had excellent meetings centrally with the DoD's Public Affairs Office. DoD has

regularly events for military outreach, everything from fleet weeks, air shows, military bands, base openings, ship christenings. We are really going to be at as many of those events as possible, and also invite our DoD stakeholders to the 50 events during PACT Act Week of Awareness on December 10th.

I don't know if any of my colleagues want to supplement.

Mr. JACOBS. I can also add we have a pretty robust governance process where we partner with DoD. It is led by Deputy Secretary Remy. That is part of the Joint Executive Committee. Underneath it there is the Health Executive Committee and the Benefits Executive Committee. I co-chair the BEC. I will be at a meeting with my DoD colleagues on Friday, and one of the key points I will be raising is how do we get the word out, how do we continue to put our foot on the gas, communicate to transitioning servicemembers before—

Senator HASSAN. Well, that is helpful, and I thank you, and I will encourage you to continue planning for and supporting this group of veterans. I would also like to note that the calls made as part of the Solid Start Program to newly separated and retired veterans can be an effective tool as well.

Let me move on to one other issue in my remaining time, and this is to Dr. Elnahal. As you know, the VA needs to increase its workforce to provide veterans with their new benefits under the PACT Act. This need is particularly acute in rural communities in New Hampshire and across the country, where attracting health care providers is a challenge.

Section 901 of the PACT Act requires the VA to develop and implement a national rural recruitment and hiring plan for health care professionals to better reach these underserved communities. I am glad to hear that you are already working on this plan and you expect to complete it, I think, by early 2024, if I understand the testimony.

How is the VA developing the plan, and are there any details from the plan so far that you can share with us?

Dr. ELNAHAL. That is right, Senator. It is a really important part of what we need to do to target our hiring efforts more effectively in rural areas. As you know, these are more difficult health care labor markets. It is harder to get folks recruited for these critical positions.

We are actually approaching this in, I think, an innovative way. We are taking our experts in workforce management and human resources and combining them with our implementation science researchers to collate the data that is available to understand what a targeted outreach plan could look like and make that actually an evidence-based effort.

I will ask Ms. Therit if you want to provide more details.

Senator HASSAN. Thank you.

Ms. THERIT. Thank you, Senator. So we have an integrated project team that meets on a weekly basis and we update the status of this. I will be candid and say that we focused on the workforce authorities that we could implement right away, knowing that this had the 18-month time frame to submit the report. But we can provide you and your staff with updates as we develop the

plan and really focus on what we can do to get the workforce that we need in those locations.

Senator HASSAN. That would be great. Thank you so much, and again, thank you all for your work.

Chairman TESTER. Senator Moran.

Senator MORAN. Mr. Chairman, thank you. Dr. Elnahal, welcome. I am worried about the VA, the job that needs to be done to take care of those veterans who are not currently enrolled in the VA, and we have got a couple of windows in which they have an opportunity to do so. The one that is most pressing is October 1st, we began enrolling, and there is a 1-year opportunity. How many veterans have enrolled under that 1-year window thus far, and how many, in total, are eligible to enroll between now and October 1, 2023?

Dr. ELNAHAL. Senator, it is a big priority for us to get the word out, especially to post-9/11 veterans who have that 1-year window and may have been discharged between 2001 and 2013, and I think that is the cohort you are speaking of.

We are making updates to our health care eligibility system so that we can accurately parse out which of these health care eligibility applications are clearly connected to that window and the benefits under the PACT Act more generally. I do not have these numbers with me now, but we are happy to take this question for the record and get you more accurate information about that.

Senator MORAN. How, generally, does the VA market benefits and health care to those who are not enrolled in the VA?

Dr. ELNAHAL. It is really important for us, Senator, to reach out to the entire complement of veterans across the country, and the PACT Act is a way to do that because we do expect new enrollees to qualify. So as Mr. Boerstler mentioned, we are making sure we use as many media outlets as possible, social media, radio, print ads, trying to get in front of folks with the avenues that they normally see. And Mr. Boerstler, if you have more details specifically for that cohort of folks not associated with the VA, that would be helpful.

Mr. BOERSTLER. Absolutely, and this goes back to a lot of our data-sharing with the Defense Department. You know, we get the contact information and we are able to still target those veterans who have not enrolled in our programs because we are able to see in our system, Senator, when they enroll in our programs and what programs they are enrolled in. So proactive outreach is always top of mind for us, especially when we think about our vet resources, e-newsletters that go out on a weekly basis, that incorporate not just VA information but other information from our partners.

We have also simplified the enrollment, a 10-10EZ enrollment form, for those that are already rated at a certain percentage, so that they can get to enrollment faster.

But the untethered population is a big focus for us in making sure that they get the information on the benefits and the care that they have earned.

Senator MORAN. Dr. Elnahal, you and others here today, if you have suggestions for how I, as a Member of Congress, a Kansan, can help educate and bring in people in my State, veterans who would qualify, I would welcome that. I would guess my colleagues

would be happy to be advocates for veterans that maybe continue to fall through the cracks.

Let me turn to resourcing. One of the things that I have heard from one of our staff at one of our VA hospitals in Kansas is they cannot keep up with the pace of pay increases in the surrounding labor market. Even though they have the authority to increase clinicians' pay when the market pay increases, they say that by the time VHA human resources completes all the necessary reviews and signoffs the private sector has already begun another pay increase before the VA can match the first. They are always at least one pay increase behind what they should be.

Your thoughts on how that is or can be corrected?

Dr. ELNAHAL. Senator, I think consistent and full implementation of all of the new PACT Act hiring, recruitment, and retention authorities in the first instance is the best way to do that. And it is our job to take the excellent work of Ms. Therit and her team, our workforce management teams who are working rapidly to finalize these policies and make sure that every single network in our system is utilizing every possibility to do all of the new ways we can pay folks, recruitment and retention incentives, but also student loan repayment, and so many of the other options that we have.

I will say that we have a legislative proposal in the President's budget that I think is really important, especially for rural areas, to allow us to surpass the \$400,000 cap for physicians in particular. I will just reiterate that in order to recruit the right folks on the physician, dentist, and podiatrist side it is becoming much more difficult, especially in rural areas, as salaries go up and the health care labor market becomes more difficult. And we would be able to pay more innovatively as well to incent the right behavior among these clinicians if we were able to get that. So I humbly request your consideration of that as well.

Senator MORAN. Thank you for highlighting that. I am going to conclude, Mr. Chairman—I will not necessarily ask a question, or I will ask a very short question, to Mr. Jacobs.

One of the things that, again, I have heard in Kansas, there is a frustration for veterans who end up in a category called "ready for decision" status, but then discover that it still takes months or even a year for the decision to occur. It seems to me that we may be increasing expectations beyond our capabilities, and is there a plan to try to better inform a veteran how he or she may—what wait there may be?

Mr. JACOBS. Yes, thank you very much for that question. I would say right now we are unbalanced in terms of the distribution of the workload across the claims lifecycle. So it is kind of a pig-in-a-python situation, where during the pandemic we were not able to get certain veteran records, we were not able to provide C&P exams, so we had no claims in the "ready for decision" cycle. As we have brought down the backlog by 100,000, we now have been getting that evidence, and it is coming into the "ready for decision" cycle.

There are too many claims, simply put, there right now. Since the beginning of November we have brought it down by 5, almost 6 percent, and we need a targeted and consistent approach to con-

tinue to bring that down. And we are going to be able to free up some staff to do just that. And so I would say right now we need to do a better job managing expectations while we are working to bring that particular area into focus and get the decisions made for veterans. Thank you.

Chairman TESTER. Senator Blumenthal.

SENATOR RICHARD BLUMENTHAL

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you all for being here, and thank you to the VA for its work on reducing the backlog of claims from 175,000 now to 140,000. I understand there are 137,000 new PACT Act claims.

Do you have an estimate on what the total universe of claims likely to be made over the next 6 months, over the next year?

Mr. JACOBS. Thank you very much, Senator, for that question. We are anticipating upwards of 700,000 claims, PACT Act-specific claims, in this fiscal year. I think we have to wait and see what the total number ultimately is. In part, that is going to be dependent on our continued focus on outreach and trying to get the word out.

We have received, as of this Saturday, about 146,000 PACT Act claims. And so we are continuing to try to get the word out, and it is really important for us to communicate to veterans that we want them to file this year. If they file before August 10, 2023, they are going to be able to preserve the earliest possible effective date. So we want veterans to come in, we want them to understand the potential benefits that are provided in the PACT Act, and we want them to either file directly online, va.gov/PACT, or with an accredited representative, with one of our VSO partners. They do incredible work. They can help inform veterans about how to apply, and they can be good allies and advocates along with us.

Senator BLUMENTHAL. Let me ask you specifically about screening. I understand that screening became a possibility for everyone as of last Tuesday, a week ago yesterday. Could you talk about what kind of outreach you are doing specifically on screening?

Dr. ELNAHAL. Thank you, Senator. We are really excited about our progress with toxic exposure screenings. I mentioned earlier that in just over a week we have already conducted over 166,000 of those screenings. And a really important piece of data is that about 38 percent of veterans are indicating that they may have been exposed to one of the toxins relevant to the PACT Act.

This is a screening that is now available in primary clinics in every medical center across the country, which is why the numbers are climbing so quickly. As we see every veteran who has not yet been screened, we are screening them, and they will be screened every 5 years as part of their normal, routine care.

We think this is really important to capture, at the very least, the cohort of veterans who are already eligible for health care, and they may be eligible if we do a warm handoff successfully to VBA, which Mr. Jacobs and I are working on diligently, for a priority group increase or even more benefits that they may not have had before.

Senator BLUMENTHAL. And how did you develop the protocol for the screening? Is it uniform to every instance of screening or does

it differ at all across the country with different individuals, different exposures?

Dr. ELNAHAL. It is uniform across the entire country, Senator. We have had diligent training on the screening itself, so we are training providers across the country. We have done so since the legislation was passed and even before that, anticipating that we would get the authority to do this.

But also we are making sure that the electronic health record is the place where this information is stored in a structured way. So really the prompt is quite easy. It is basically a module within the health record. The two standard questions are there, and the drop-downs continue, based on what the veteran's answers are to these questions.

So that is structured data that we hope to be able to use for all sorts of reasons, whether it is toxic exposure research or handing over to VBA.

Senator BLUMENTHAL. What is the next step, if you find, among those 38 percent, that there was exposure?

Dr. ELNAHAL. Well, the first and most important step is that referral to VBA for possibly enhanced benefits. That is how the veteran is going to benefit from this. And as I mentioned, having that data clearly documented for every veteran who is screened will allow us to gain even more insights on the relationship between exposures and health outcomes.

Senator BLUMENTHAL. But your goal in screening is to prevent more egregious or serious illnesses, and how do you assure that those steps are taken?

Dr. ELNAHAL. Well, in the context of a primary care visit, Senator, the revelation of a possible exposure naturally leads to more questions that physicians and providers may ask in the primary care clinic, would perhaps lead to different investigations that may not have otherwise occurred. And so on a very individual level, to a veteran this is important because we can ask about symptoms related to common conditions related to exposures. The research that Dr. Hastings and her office does has informed us diligently about that. And of course the legislation provides us guidance as well.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Chairman TESTER. Senator Sullivan.

SENATOR DAN SULLIVAN

Senator SULLIVAN. Thank you, Mr. Chairman. I would like to follow up on a little bit of what Senator Blackburn was talking about. A gigantic concern of mine, that we all saw coming, I think you saw it, the Biden administration saw it, we saw it but we did not do anything about it. I wanted to do something about it. Senator Inhofe wanted to do something about it.

Unfortunately, some of my colleagues on the other side of the aisle did not, and it is this—unscrupulous trial lawyers who are now preying on Marines on this Camp Lejeune issue and are likely to make millions, if not billions of dollars, and the sick Marines are going to get crumbs. Okay? We knew it. A lot of these guys are unscrupulous, some of them are blood-suckers, and they are doing it. Okay? We all see it. Every day. You cannot turn on any TV station in America without these ads. Okay?

Here is what the American Legion recently put as a resolution. “Whereas predatory law firms charging exorbitant fees”—I am hearing 40 to 50 percent contingency fees. Sick Marines, you do not get anything. Trial lawyers get really rich. That is happening. It is happening.

American Legion, “predatory law firms charging exorbitant fees have engaged in aggressive marketing campaigns to include, but not limited to, television advertisements, social media, digital marketing campaigns, targeting veterans through sponsored content. Therefore, be it resolved they are asking us for serious oversight with regard to these unscrupulous lawyers on the Camp Lejeune Justice Act.”

Here is why it could have been avoided. The Biden administration, to its credit—Mr. Chairman, I would like to submit this for the record.

Chairman TESTER. Without objection.

[Documents submitted by Senator Sullivan appear on pages 59–76 of the Appendix.]

Senator SULLIVAN. This is the technical assistance from the Department of Justice to the Biden administration, warning us that this was going to happen, and saying if you do not cap the contingency fees on these unscrupulous lawyers they are going to get all the money. Inefficient delivery will be costly for servicemembers—this is the Biden administration Justice Department—as well as the Federal Government.

It went on to explain how they thought there should be a 2 percent fee cap for filing paperwork and a 10 percent contingency cap for trial lawyers. That was the Biden administration.

Senator Inhofe had a bill to do that. My Democratic colleagues blocked it.

So what is happening? The trial lawyers are making millions and billions and sick Marines are going to get crumbs. We all knew it. Even the Biden administration knew it.

So what I am going to do is I am going to resubmit the Inhofe legislation and try to UC it, and I hope every Senator on this Committee supports it, because it is sickening to enrich trial lawyers at the expense of sick United States Marines. And as a United States Marine I take a little bit of umbrage about this.

So I know that the panelists have had similar concerns, and I know your phones are blowing up just like mine. So would you support my legislation to do what the Biden administration Justice Department told us to do? But, you know, the trial lawyers say “jump” and certain members of this Committee and this body say “how high.” So they did not do it. No caps. And trial lawyers are getting rich and sick Marines are not getting anything.

I would like any of you to take that one and see if you would support what the Biden administration supports. Any takers? Are you upset about this just like I am?

Mr. JACOBS. I am incredibly concerned about the confusion that exists amongst the veterans who are seeing these ads.

Senator SULLIVAN. Millions and millions of dollars of ads, by the way.

Mr. JACOBS. I have heard a billion dollars.

Senator SULLIVAN. Oh, I do not doubt it because they are going to make billions.

Mr. JACOBS. Yes, I would be happy to take that for the record. I think we will likely have to—

Senator SULLIVAN. Do you agree that this Committee and this Senate and this Congress has to do something soon to stop the trial lawyers from getting all the money that is supposed to go to sick Marines? Would you agree with me, sir?

Mr. JACOBS. I agree we need to make sure that veterans are well informed about the implications of the decisions that they make.

Senator SULLIVAN. Why do you think trial lawyers are spending a billion in advertising?

Mr. JACOBS. I think there is a clear incentive.

Senator SULLIVAN. To get rich at the expense of U.S. Marines?

Mr. JACOBS. I would say that there is a history of injustice here that they are working to address, and I think that what I would say is if you are a veteran who served in Camp Lejeune and that has been affected by contaminated water, we at VA want you to file a claim. We have presumptive service connection, thanks to Congress. We want veterans to come and get the benefits that they have earned.

And I would also say we want those veterans and the family members to understand the implications of the decisions that they make when they are considering whether or not to seek justice through the courts.

Senator SULLIVAN. With a trial lawyer who is going to charge them a 60 percent contingency fee and get all the money. Correct?

Mr. JACOBS. I do not know.

Senator SULLIVAN. I mean, that is a concern, right?

Mr. JACOBS. I do not know the amount. What I will tell you is we are concerned. I am not talking specifically about trial lawyers, but we are concerned about predatory actors who are seeking to take advantage of veterans, and that is why we are consistently trying to refer our veterans to work with an accredited representative, to work with one of our VSO partners. They know the system. They have been accredited. They are going to do it for free when they come to seek VA benefits. We want to make sure that veterans understand that there are resources. You can file directly with us. If you are filing for a VA claim you can work with—

Senator SULLIVAN. You do not need a predatory law firm, as the American Legion said. Correct?

Mr. JACOBS. I defer specific questions about the lawsuits to DOJ.

Senator SULLIVAN. Okay. So Mr. Chairman, this is a huge issue. There are going to be billions of dollars going to these predatory law firms at the expense of United States Marines. This was predicted. This is now happening. The American Legion is raising the alarm bell. The VA is raising the alarm bell. The Biden Justice Department raised the alarm bell. And unfortunately this Committee did not do anything. As a matter of fact, some of you guys blocked it.

So we need to fix it, and I want to work with the VA, the Justice Department to fix it. But U.S. Marines who are sick should not have to go begging to unscrupulous trial lawyers who are going to take all the money. A billion dollars in advertising. The only reason

they are doing that is they think they are going to make tens of billions at the expense of the Marines, and right now they are set to do that.

So I appreciate your comment. I look forward to working with you on this. But it is—this is despicable. Despicable. And some of us saw it coming, the Biden Justice Department, for God's sakes, saw it coming, and now it is happening. We have got to fix it.

Thank you, Mr. Chairman.

Chairman TESTER. Thank you, Senator Sullivan.

Mr. Jacobs, I want to talk a little bit about something you talked about in your opening statement. It was automation. Now the VA is not automating the final decision, but it is instead automating prep work, as I understand it, to help with the human claims processing to make a final decision.

Can you tell us about the effectiveness of that automation and, quite frankly, is it saving us man hours in the end, and do you have any sort of update you could give us on that?

Mr. JACOBS. Yes. Thank you very much, Mr. Chairman, for that question. I think the work that we are doing with automated decision support is groundbreaking. It is very early in the process, so I think there is still a lot more to do. We are currently working on this technology at four of our regional offices. We only have run this through a very small number of claims because we are investing a significant amount of time working with our frontline staff to get their feedback on how the system is working, how it is enabling them to make more timely and accurate and consistent decisions, and also how the user interface is designed. And so it is actually, right now, taking us more time to do these decisions because we are stopping the claim, we are interviewing the employee.

We have only made, I think we have only run about 7,000 claims through the process, and I will turn it over to Rob, who has been leading the charge on this effort. I will say it is early, but there is great promise.

Mr. REYNOLDS. Thank you, Mr. Jacobs, and yes sir, it is early in the process, as was mentioned. We started with a single claim for increase, so we really have not gotten into the presumptives yet.

But what I can tell you is what we are seeing on that front end of the development lifecycle of the claim is that we are reducing the average touches of a claim by about 44 percent, and 63 percent of claims are processed with no development at all, meaning they are going right to the rater.

And a couple of the key points that we are doing in this automated decision support is really what was realized from the global pandemic, when we had trouble getting Federal records, and/or getting some of our most vulnerable veterans to medical appointments. We are leveraging that data. If we have sufficient medical evidence, we do not necessarily need to order an exam. We have got evidence that can rate the claim.

So, the technology is really realizing the efficiencies on the front-end part, but as Mr. Jacobs said, our VSRs, the raters, have been critical in that human-centered design piece of it. While we are not seeing the lift or efficiency yet, we are less than a year into the process. It is very early, but it looks promising.

Chairman TESTER. Thank you. The PACT Act also mandates that the VA conduct several large-scale research studies into toxic exposure. These studies will depend heavily on VA researchers and collaborative efforts with other Federal agencies.

Recent guidance from the Department of Justice puts hundreds of VA researchers who received compensation for research conducted outside their work with the VA at risk of criminal prosecution. So what impact does this guidance have on VA's research, and does it hinder VA's ability to complete the research mandated in the PACT Act?

Dr. ELNAHAL. I will say, Senator, in general terms, it is a big risk for VA and the research that we conduct. We not only conduct research for toxic exposures, we are, in many cases, the organization that is conducting major clinical trials, answering key questions across all of American medicine. And what this risks is the participation and employment of these physician scientists and our hospitals.

Thankfully, we have a legislative proposal that I know you are considering that will provide us relief on this. It is mentioned under the VIPER Act as one of the options. We support getting legislative relief on this because I am concerned, writ large, about our ability to have enough physician scientists and to continue, frankly, already ongoing studies, whether they are basic science or clinical, to answer some of these key questions.

I will ask Dr. Hastings if she has other things to add on this.

Dr. HASTINGS. Mr. Chairman, for the research that is specifically in the PACT Act, our epidemiologists are prepared to carry it out. I do not see any specific problems with regards to this Department of Justice letter for the PACT Act-specific research that we have. And I would like to take it for the record and explore it a bit more, just to make sure. But we are very excited to carry on the research that you have directed.

Chairman TESTER. You can take that for the record and get back to us. Thank you very much.

Senator Moran?

Senator MORAN. Mr. Chairman and witnesses, I think I am just about done. Let me ask one more.

I want to make certain that the VA is proactively looking at technology-based innovative solutions to provide quality customer service and claims accuracy and timeliness. Since innovation does not necessarily mean in-house, is the VA looking to partner with experts in the field to provide quality access and outcomes to veterans when it comes to medical disability exams, possible technologies to further enhance claim processing automation?

Mr. JACOBS. Yes, thank you very much for that question. The majority of our compensation pension exams are done by contractors, by vendors in the community. We do a small number with our VHA colleagues, but we are also mindful of allowing them to have clinical capacity to deliver health care.

I would say, to your question, everything is on the table. We do not profess to own all of the solutions or the good ideas, and we want to work with industry. To the extent that there are good ideas and solutions to help us better meet the needs of veterans in

a more timely, accurate, and equitable way, we are all for it. So if you have ideas, we want to hear them.

Senator MORAN. Are vendors, are companies bringing you those ideas now, like they see an opportunity and they are making their case?

Mr. JACOBS. Oh yes. I will defer to Rob. I am sure his inbox is full of requests.

Senator MORAN. I am not surprised.

Mr. REYNOLDS. Yes, sir. We get plenty of outreach from our vendor partners out there. In fact, some of our contracts that we are working on now are professional managed services as well, so not in-house folks we have brought in.

And one key piece that we just put in for the quality aspect is an IV&V contractor, to help us look, from an independent third-party lens, of what we are doing in the automation and that the quality is there as we move forward in this. So we are looking at all those outside vendors to help us get this right, as well.

Senator MORAN. Thank you all for being here today, and I thank you for your efforts. They are appreciated and necessary as we work to implement this major piece of legislation to benefit a significant number of veterans who desperately need timely, quality care and benefits. And so I express my gratitude to each of you and to those you work with at the Department of Veterans Affairs. And again I would offer, you have made a couple of suggestions in legislation and appropriations during this hearing, but if there are things that need to be addressed to help you accomplish that goal, to help us accomplish that goal together, please reach out to me and to my colleagues.

And I would welcome you, Dr. Elnahal, to come to Kansas and we will promote the PACT Act and let you see how it is working in the field, if that appeals to you. And anybody that has suggestions of how I and other can educate our veteran population about the opportunities, through our social media and other ways that we communicate with constituents, I am interested in being helpful. Thank you.

Chairman TESTER. I want to associate myself with the closing comments that the Vice Chairman just made. I appreciate you guys. We are here to help in any way, whether it is education, manpower, whatever it might be, to make this thing work. It is a big piece of legislation—we all knew that when we passed it—and I think it is an all-hands-on-deck kind of scenario. So thank you very much for what you are doing. Thank you for being at this hearing.

We will keep oversighting. We will keep holding you accountable. And we will also keep the record open for another 2 weeks for additional comments.

With that this hearing is adjourned. Thank you.

[Whereupon, at 4:27 p.m., the hearing was adjourned.]

A P P E N D I X

Prepared Statement

**STATEMENT OF
SHEREEF ELNAHAL, UNDER SECRETARY FOR HEALTH
AND
JOSHUA JACOBS, SENIOR ADVISOR FOR POLICY, PERFORMING THE
DELEGABLE DUTIES OF THE UNDER SECRETARY FOR BENEFITS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
HONORING OUR PACT ACT IMPLEMENTATION
NOVEMBER 16, 2022**

Chairman Tester, Ranking Member Moran, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the Department of Veterans Affairs (VA) implementation of the Sergeant First Class (SFC) Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022.

The PACT Act, which was signed into law on August 10th, marked the largest and most significant expansion of Veteran 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 we serve—and most importantly, ensures that eligible Veterans can receive the care and benefits they deserve.

Our guiding question in implementing the PACT Act is, “Are we putting the Veteran at the center of everything we do?” This means that we are not thinking about “what would be best for VA”; instead, we are thinking about “what would be best for the Veterans we serve.” This requires that all parts of VA must work together jointly and seamlessly to make sure that Veterans and their survivors are:

1. Hearing about the PACT Act via targeted outreach;
2. Understanding what the PACT Act means for them and their families; and
3. Accessing PACT Act-related care and benefits as quickly as possible.

To deliver on these priorities, we are incorporating key insights from Veterans and their supporters to create a VA-wide implementation plan to guide communications and execution from the Veteran’s perspective. Veterans tell us that VA can be difficult and confusing to navigate, and through our implementation strategy we are working to ensure that there is no “wrong door” at VA for accessing PACT Act-related care and benefits. Whether a Veteran or survivor comes to VA through a medical center, a benefits office, our website, our call center, an advertisement, or any other medium, we are working to ensure that all VA doors provide a seamless experience that accomplishes one goal: getting eligible Veterans and survivors the care and benefits they have earned in a timely manner.

We began implementation immediately when the legislation became law. To expedite Veterans' access to PACT Act-related benefits, we 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. We also launched [VA.gov/PACT](https://www.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. 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 Frequently Asked Questions and seamless navigation to 24/7 live agents to address Veteran concerns. 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.

These efforts have already generated enthusiasm among Veterans and survivors. On August 11, 2022, the day after the bill was signed into law, [VA.gov/PACT](https://www.va.gov/PACT) has garnered more than 3.3 million views; Veterans have filed more than 460,000 total disability benefits claims—an 18.9% increase over last year's record pace; and Veterans have filed over 136,000 PACT Act-specific claims between August 10, 2022, and November 5, 2022. This is in addition to 65,000 related to PACT Act conditions since August 1, 2021, through August 9, 2022, that were submitted prior to the law being signed. The Veterans Health Administration (VHA) also executed a successful pilot of the new toxic exposure screening under Section 603—VHA screened 13,380 Veterans across 13 medical centers over a 2-week period, and found that 37.4% of Veterans have respondents reported they have a concern regarding toxic exposure.

While these early successes are important, there is still a long way to go in making sure that all eligible Veterans and their survivors get access to the PACT Act-related care and benefits they earned. Today, we will outline the path forward for implementing the PACT Act across VA and across the country on January 1, 2023—including the steps we are taking to keep the Veteran at the center of all we do.

VA's Office of Enterprise Integration (OEI) is leading agency-level collaboration efforts as the PACT Act includes issues relevant across the Administrations and staff offices, as well as interagency partners. VBA has been working closely with OEI and partners across VA and the Federal government for more than a year leading up to enactment of the PACT Act and continuing through to implementation. This collaboration has been key to ensuring all sections of the PACT Act have an identified owner and addressing dependencies between Administrations and staff offices to enable an integrated Veteran experience.

As Secretary McDonough often says, our mission at VA is to serve Veterans, their family members, caregivers, and survivors as well as they have served our country. This law empowers us to do exactly that by delivering more health care and benefits to millions of Veterans and their survivors. We will stop at nothing to get this implementation right, and we will not rest until every eligible Veteran and survivor gets the PACT Act-related care and benefits they have earned and deserve.

Title-by-Title Discussion**Title I: Expansion of Health Care Eligibility**

VHA is honored to provide Veterans with personalized, patient-driven, compassionate, state-of-the-art care. Our goal is to make the Veteran experience as positive and comprehensive as possible. Veterans fought for us, and VA will fight for them. Title I of the PACT Act expands eligibility in critical way over the next 10 years. The PACT Act provides VA the ability to expand and enhance health care services to Veterans and their survivors. For some Veterans, who may have already been eligible under other authorities, the PACT Act provides an avenue for them to be placed in a higher priority group. This, on its own, expands Veterans' access to services by reducing their copayment liabilities. Additionally, VHA and the Veterans Benefits Administration (VBA) are working in lockstep with the Department of Defense (DoD) to implement the changes in eligibility made by title I of the PACT Act.

Pursuant to section 104 of the PACT Act, VA is actively undertaking a personnel and material resources assessment to determine necessary resources needed to implement the expanded eligibility resulting from section 103 of the PACT Act.

We are also diligently making updates to our Veteran Enrollment System (VES) and other information technology systems to ensure requests for toxic exposure registry exams and clinical evaluations are appropriately recorded to support determinations regarding eligibility, enrollment and claims. These system enhancements will facilitate the appropriate provisioning for VHA health care to ensure Veterans receive the maximum VHA health care benefits that their service affords.

To optimize Veteran's experience in navigating eligibility decisions, we are also making an historic investment in hiring additional enrollment specialists to ensure we continue processing enrollments in record time. After evaluating the total projected Veteran population increase, VHA plans to hire an additional 315 full-time employee equivalents (FTEE) throughout the country to support increased health care applications and expanded eligibility. To date, 185 positions have been posted. We are prepared to onboard all of these new staff expeditiously. VA is also ensuring our enrollment specialists are highly trained in these new eligibility authorities, so they can make timely and accurate eligibility decisions. As of October 25, 2022, more than 3,600 VHA staff across the nation have been trained to determine eligibility based on the amendments made by the PACT Act.

As the PACT Act expands VA's reach to Veterans who may not have been eligible for health care prior to its enactment. VHA will continue to focus on reaching out to any Veteran, caregiver, or survivor to educate them on the benefits of choosing VA. We are laser focused on encouraging Veterans to apply for enrollment in VA health care, particularly those combat Veterans who did not previously enroll but are now eligible during the one-year window that began October 1, 2022. VA developed the "PACT Act 2022 Outreach Plan" to provide a unified experience for all Veterans, family members,

survivors, and caregivers in enterprise-wide coordinated outreach to Veterans who would become eligible for healthcare enrollment and other benefits. VA will provide a report to Congress with the details, as required by section 111, but have already achieved several notable accomplishments in our outreach efforts, including:

- Developed a comprehensive communications toolkit for internal and external communications, Veterans Service Organizations (VSO) and other Veteran support organizations, and hosted a PACT Act Day of Learning with national, State, and local military and Veteran stakeholders on November 1, 2022.
- Preparing a targeted e-mail campaign to both enrolled and non-enrolled eligible Veterans and survivors using VA customer data and DoD servicemember data. This outreach will be speaking directly to customer personas rather than a one size fit all communications approach. For example, Vietnam Veterans will receive information on benefits and services specific to their service and eligibility. An early pilot supporting the Salisbury, North Carolina VA Medical Center was opened by 33K Veterans with PACT Act enhanced benefits information paired with local VA points of contact.
- Leveraged the #VetResources newsletter to approximately 10 million Veterans, its Caregiver Program newsletter reaching 300,000 people, and outreach to 550,000 family members participating in the Civilian Health and Medical Program of VA (CHAMPVA). In addition, VA will use ongoing caregiver support team check-ins to communicate about the expanded eligibility and toxic exposure screenings.
- Publicly posted PACT Act fact sheets on VA.gov in English, Tagalog and Spanish.

Title II: Toxic Exposure Presumption Process

The process VA historically used to determine presumptive conditions often took decades to complete. It was often frustrating for Veterans, their families and caregivers, as well as their clinical teams, and led to delays in Veterans receiving the health care and benefits they earned and needed. The new provisions under Title II establish a 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 for formal evaluation, work closely with our valued VSO partners, and increase our partnership with the National Academies of Sciences, Engineering, and Medicine (NASEM).

When the most recent NASEM report found evidence of an association between particulate matter and three respiratory symptoms, VHA examined recent surveillance data from VHA health care records and then partnered with VBA to obtain claims data. VA conducted additional analysis focused on scientific reviews of recently published studies. This led to the addition of these three respiratory conditions i.e., asthma, rhinitis, and sinusitis, to VA's current list of presumptive conditions in fiscal year (FY) 2021. This experience led VA to recognize that it could improve its presumptive decision-making process to be more proactive and transparent.

Soon after Secretary McDonough was confirmed, he stood up a working group within VA with VHA and VBA participation to advise him on toxic and military environmental exposures. This working group is the Military Environmental Exposures Sub-Council. This group will take on the duties and responsibilities of the working group established in 38 U.S.C. § 1172(b) as created by section 202 of the PACT Act. Subsequently, and as a result of the NASEM report relating particulate matter and the three respiratory symptoms, Secretary McDonough directed VA to update the Presumptive Decision Process (PDP) to assess the available scientific data in as timely a fashion as possible, consider the addition of other relevant information, including VBA claims data, and enhance the transparency of the process.

Under the new provisions created under this Act, VA will use several factors to develop a list of medical conditions to be considered for potential future presumptive status. These factors include, but are not limited to, the number of Veterans potentially affected, severity of the condition, amount of scientific literature available, and VHA or VBA data trends. VA will solicit input for conditions to be reviewed from external stakeholders, including Veterans and their families and caregivers, VSOs, Congress, and the public at large. This will keep VA aligned with recommendations in the NASEM 2008 report on improving the presumptive decision-making process, the PACT Act, and VA's overall commitment to addressing the health effects of harmful environmental exposures that occurred during military service.

While VA will still rely on NASEM and other outside agencies for large scale consensus reviews of the science, VA will continuously review:

- a) **Health Care Data:** VHA data in the form of epidemiological research studies and ongoing health care and population surveillance.
 - i) **Scientific Literature:** Relevant medical and scientific literature to be evaluated for the strength of the science based on study design, size, sources, reproducibility, or number of papers with similar findings, existence of conflicting studies, whether the study was peer-reviewed, whether there are limitations or flaws noted in the study, and whether there are any criticisms of a study and for what issues. VA is also studying the use of machine learning algorithms and text-mining tools for continuous review of scientific literature.
- b) **VBA Claims Data:** VBA claims data for trends, such as claim rate, rate grant, and service connection prevalence, analysis of differences in deployed and non-deployed or other cohort characteristics.
- c) **Other Factors:** Additional factors will be reviewed, and include, but are not limited to, deployments to combat zones, morbidity, mortality and prognosis associated with the medical condition, rarity of the condition, quantity/quality of available science and data, and feasibility of producing future, methodologically sound scientific studies.

Once the review panel completes its work, it will summarize its findings and conclusions as to the strength of the evidence and whether an association exists between a medical condition and an environmental exposure. The report will be reviewed by VA's established governance bodies which will submit recommendations to the Secretary for internal final determination or decision.

VA contacted NASEM on August 11, 2022, the day after the PACT Act was signed into law, to begin the process as directed by Congress to enter into an agreement with NASEM, within 90 days of enactment, to conduct an assessment of VA's implementation of the new subchapter VII of chapter 11 of title 38, U.S.C. (section 202(b)(1)(A) of the PACT Act).

VA is also developing the Congressionally directed contract for a five-year agreement with NASEM to review and evaluate the available scientific evidence regarding associations between diseases and exposures. VA thanks Congress for this support as this will replace the prior five-year agreement that ended this year.

Military Exposures Team

VBA has established a new Military Exposures Team (MET) that will be composed of primarily management and program analysts with various skillsets and will provide dedicated focus and resources to issues related to military environmental exposures. MET includes 4 sub-staffs with different function areas such as qualitative analysis and studies, policy and program review, data analysis, and regulations/implementations. This is in support of implementation of section 202 of the PACT Act and the Secretary's commitment to Veterans and partners to expedite review and analysis on the types of conditions potentially eligible to meet the statutory threshold to pursue rulemaking as a presumptive disability. The MET is working closely with VHA to execute the Secretary's vision in studying additional conditions that could be presumptive based trends found in the claims process combined with scientific literature and military records. In addition, the MET will have program oversight and management responsibilities to address all disability compensation benefit claims-related program research and supporting data analysis for making recommendations for service-connected conditions deemed presumptive due to military exposure, as well as supporting claims research and data analysis necessary to address evidence-based policy determinations for compensation benefits.

Title III: Improving the Establishment of Service Connection Process for Toxic-Exposed Veterans

Benefits Claims Processing

VA has been readying for PACT Act implementation since last year by hiring more than 2,000 employees and training nearly 4,000 claims processors. We continue to actively hire and train employees while also in the process of upgrading information technology systems to prepare for VBA to start processing PACT Act disability benefits on January

1, 2023. Right now, VA is delivering more benefits, more quickly, to more Veterans than ever before.

Last fiscal year, VBA set a record for the highest claims production year ever with more than 1.7 million claims completed. As of November 9, 2022, VBA already has completed 204,568 claims, which is 17.7% more claims than last year at this time. These achievements are in part attributable to the hiring of over 2,000 new employees in fiscal year 2022.

To enable identification of a “covered Veteran” defined in section 302, VBA, in collaboration with DoD’s Defense Manpower Data Center (DMDC) and VHA, improved the quality of the available PACT Act Veteran data. Specifically, a total of 1.6 million new deployment records and 29 million rows of medal data were identified by DoD and shared with VA, which substantially improved the precision of VBA’s source data. VBA and DMDC continue to collaborate and review additional data sources to increase the quality and accuracy of deployment data. Confirming deployment to a specific area is the first step in being able to grant a new presumptive condition and can be sufficient on its own to establish eligibility for health care in certain situations.

Technology and Automated Decision Support

VBA is undergoing business modernization efforts designed to leverage technology by automating administrative tasks and workflows, known as Automated Decision Support technology. Claims processing tasks supported by automation include data 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 as part of the Automated Review Summary Document (ARSD), a tool that efficiently outlines key and relevant information in the Veterans eFolder. This new technology will assist claims processors in making fast, consistent, and equitable claim decisions for Veterans.

VBA’s rules-based technology is coded to follow statutes and regulation, and the automation logic is reviewed and approved by VBA’s policy officials prior to implementation. VBA has already coded the decision logic for many PACT presumptive conditions, and all will be complete prior to January 1. The automation logic for a presumptive condition confirms exposure using VA and currently available DoD authoritative data, extracts medical information from examinations or private medical records, and pre-populates the VBMS evaluation calculator. The supporting data, recorded on the ARSD in an intuitive manner, plus entries into the calculator, are then reviewed by a claims processor, who has full adjudicative discretion to accept or modify the results of the automation process. The reduced time to gather information in various documents in a Veteran’s e-file supports accurate, fast, and reliable decisions. The generated information is also stored as part of the Veteran’s official record so it is reviewable for independent verification and validation for quality reviews, further process improvements, and appellate reviews.

Employee involvement and input have been instrumental in identifying, implementing, and refining all automated decision- support efforts. Currently, there are four VBA RO prototype sites (Boise, Idaho; Des Moines, Iowa; Pittsburgh, Pennsylvania; and Montgomery, Alabama), where initial automated efforts have been deployed. Feedback from subject matter experts at the four prototype sites ensures the system meets the needs of all employees and drives the development of training tools and materials for further expansion prior to January 1, 2023.

Hypertension, supplemental claims for increase were the first type of claims included in VBA's automation initiative. The limited-release testing has shown promising results, and we look forward to full scale deployment following training for all employees.

Development of Comprehensive Policies

VBA is drafting formal regulations to implement certain sections of the PACT Act. Meanwhile, VBA has prepared sub-regulatory guidance in the form of a policy letter to more quickly implement VA's ability to begin processing claims, in the same way as when new law expanded herbicide presumptions for Blue Water Navy Veterans in 2019. As this policy letter includes substantive guidance, VA is publishing it in the Federal Register as required by Federal statutes. Publishing the guidance in a policy letter will enable VBA to begin claims processing faster rather than waiting to publish formal regulations, which typically take 18-24 months. Additionally, as part of this effort, VBA will be updating the Adjudication Procedures Manual (M21-1), VA's nationwide procedural guidance for all ROs and existing training courses with PACT Act-related changes.

Toxic Exposure Risk Activity and Exams

Section 1710(e)(4)(C) of title 38, U.S.C., as added by section 102 of the PACT Act, defines the term 'toxic exposure risk activity' (TERA) "as any activity— "(i) that requires a corresponding entry in an exposure tracking record system (as defined in section 1119(c) of this title) for the veteran who carried out the activity; or '(ii) that the Secretary determines qualifies for purposes of this subsection when taking into account what is reasonably prudent to protect the health of veterans." Veterans who participated in a TERA are eligible for health care under 38 U.S.C. § 1710(e)(1)(G) and the definition of TERA is also relevant to requesting a disability examination with medical opinion under 38 U.S.C. § 1168, as added by section 303 of the PACT Act for VBA.

The term "exposure tracking record system", defined in 38 U.S.C. § 1119(c)(2), as added by section 302 of the PACT Act, means "any system, program, or pilot program used by the Secretary of Veterans Affairs or the Secretary of Defense to track how Veterans or members of the Armed Forces have been exposed to various occupational or environmental hazards, and... includes the Individual Longitudinal Exposure Record (ILER), or successor system."

Section 303 of the PACT Act, codified at 38 U.S.C. § 1168, generally requires that if a Veteran submits a claim for compensation for a service-connected disability with evidence of a disability and evidence of participation in a TERA during active service,

and such evidence is insufficient to establish service connection for the disability, then VA will provide the Veteran with a disability examination and obtain a medical opinion about the nexus between the disability and in-service TERAs.

Together, these two sections of the law modify the exam threshold for certain claims related to TERAs. The new statutory language requires an exam when a claim cannot be *granted* versus when a decision cannot be made (which could be a grant or denial). The statute creates an exception to this exam opinion, however, that applies where VA determines there is no indication of an association between the claimed disability and the TERA for which the Veteran submitted evidence.

VBA is actively engaged with all contract medical examination vendors to ensure proper preparation, to undertake any increase in volume of PACT Act-related examinations. VBA has contracted with a fourth contract exam vendor, in the western region of the United States. The new exam vendor is expected to complete all ramp-up activities prior to January 2023. 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.

Title IV: Presumptions of Service Connection

The PACT Act contained phased-in effective dates for the presumptive conditions, which VA believes were well intended and designed to help manage the significant increase in claims inventory and backlog. However, following an in-depth operational analysis, VA determined that the phased-in and criteria-based applicability dates would result in significant claims processing complexities and workload challenges, including increased claims processing errors. The Secretary considered the serious nature of exposure to environmental hazards in combat zones such as in Vietnam and the Gulf War region, the associated health effects from such exposure, and the inherent delays over several decades that have prevented Veterans from receiving the benefits they have earned, and he directed that all presumptive conditions in the PACT Act be applicable the date the bill was signed into law, August 10, 2022. This decision was made through the exercise of his statutory authority in sections in sections 403(e)(1)(E), 404(d)(1)(A)(i)(V) and (d)(2)(A)(i)(V), and 406(d)(1)(E) of the PACT Act. This approach represents a simple, streamlined policy that is easier to implement with consistency. Making all new PACT Act presumptions applicable from the date of enactment will allow VA to process claims more quickly, resulting in fewer Veterans waiting in the backlog than through phased implementation.

While the entire PACT Act is critical to the support of our Nation's Veterans, VA appreciates the statutory presumptions that it establishes. VA is now able to recognize those Veterans who served in the radiation cleanup missions at Enewetak Atoll, Palomares Spain, or Thule Greenland, as qualifying service for presumption of service connection to the list of diseases already present in 38 CFR 3.309(d); these Veterans

are also eligible to enroll in VA health care. VHA's HOME office has completed morbidity and mortality analyses for these three Veteran cohorts and will continue the surveillance for health outcomes such as cancers.

Regarding the statutory presumptive conditions related to airborne hazards in 38 U.S.C. § 1120, as added by section 406 of the PACT Act, the list is comprehensive, and VA appreciates the ability to support these Veterans with medical care and other benefits. VA has recommended to Congress a technical change to remove the reference to "lymphomatic cancer of any type" in 38 U.S.C. § 1120(b)(2)(G), as this is not a known disease entry and subparagraph (F), "lymphoma cancer of any type" is the correct terminology and covers everything that "lymphomatic cancer of any type" would have addressed.

These presumptions will affect Veterans immediately., VA still owes Veterans answers as to how to combat these conditions and when possible, how to prevent them. In this effort, VA has a strong partner in DoD with data sharing, development of the electronic health record and ILER.

An example of the continued integration among VBA and VHA is shown through the development of a list of common diagnoses found within the new PACT Act presumptive cancer categories. This list is significant as it will help claims processors identify PACT Act related cancers and will be used in the outreach products for Veterans and survivors.

Additional improvements VBA has made to the claims process include the development of the algorithmic logic rules for over 40 PACT Act eligible diagnostic codes to utilize automated decision support technology. VBA will update these logic rules over time to make them effective and efficient. While these improvements are in the early stages, this will enable the automated evaluation for review of the medical evidence submitted and/or of record. This medical data is run through a rules-engine to determine whether sufficient medical evidence is available to decide the claim. If sufficient medical evidence is of record, the claim is routed to the rating board for a determination. If sufficient medical evidence is not of record, the automation service submits an exam request.

VBA has also accelerated the process for digitalizing Service member and Veteran records for use in determining a claimant's eligibility for VA benefits. Working with the National Archives and Records Administration (NARA), VBA is proactively scanning over 170,000 Official Military Personnel Files and Service Treatment records for Veterans who may file an initial claim for benefits under the PACT Act. Once scanned, these records are available to our claims processors on the same day as the corresponding Veteran's claim is received. This allows for faster, more accurate decisions improving benefit claims processing for Veterans, Service members, their family members and survivors.

Title V: Research Matters

VA has a strong tradition of research that has improved Veterans lives. VA has an important role in understanding the health effects of military environmental exposures (MEE) through research and surveillance to enumerate diseases and advance discovery regarding health effects resulting from military service. This foundation in research supports evidence-based decision-making. Advancing MEE evidence-based research can be achieved through a collaborative approach to science that brings together scientists, clinicians, Veterans, caregivers, and other Federal groups with shared interests in improving health and healthcare. To satisfy requirements in the PACT Act VA is actively developing and strengthening collaborations with technical and thought leaders in other Federal agencies that have relevant aligned missions in exposure research and identifying academic partners whose work demonstrates excellence in answering questions relevant to Veterans' health and health care.

Title V of the PACT Act elevates the timely progress of exposure science through a whole-of-government approach. Within VHA, HOME and the Office of Research and Development (ORD) serve as the two key lead groups for carrying out research elements included in the PACT Act.

ORD will lead efforts to create an interagency, mission-aligned toxic exposure research working group with the goal of collaboratively developing and executing 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. HOME will carry out specific research activities required in the PACT Act while also coordinating with ORD as it puts forth a longer-term vision for future needs.

VA will continue to leverage Federal government-supported infrastructure, resources, and tools together with the diversity of disciplines across a spectrum of state-of-the-art technologies and repositories will create rigor and strengthen evidence-based science collection for toxic exposures as a cost of war, decision-making care and policy.

Consistent with section 501 of the PACT Act, VHA anticipates establishing the toxic exposure research working group and developing a 5-year strategic plan, which will be complete and reported no later than one and two years from the enactment of the PACT Act respectively. VHA is undertaking preliminary actions to ensure efficient and collaborative establishment of this work group, including identifying subject matter experts across Federal Agencies and developing a charter to establish the charge, governance, operations, communications and timelines for the workgroup.

Consistent with section 509 of the PACT Act, VA will establish a publicly accessible internet website to serve as a clearinghouse for the publication of Federally funded toxic exposure research for health care providers, clinician and non-clinician scientists, and public communities.

VA is in the process of hiring librarians to assist with this important function, which will make this information readily available to the public. The Federal agencies' archivists for

research will be integral to this effort. The WRIISC, the Airborne Hazards Burn Pit Center of Excellence (AHBPCE), Complex Emerging Threats Center (CETC), Women's Operational Military Exposure Network (WOMEN) Center and the VA/DoD Deployment Health Working Group will also be involved in the selection and curation of the scientific literature. VA is especially excited about the future possibilities to use emerging machine learning/artificial intelligence emerging technologies to effectively evaluate the massive amounts of toxic exposure-related literature effectively. VA believes these efforts will not only serve Veterans, inform policy, improve care and find gaps in knowledge, but also serve the Nation.

The research required in the PACT Act is wide-ranging and critical to our understanding of MEEs and may, in the future, deliver better options for protecting our Service members. Many of the required research studies are occurring now, such as the research on the health effects of jet fuels (as required by section 510 of the PACT Act) and health outcomes associated with service in the Armed Forces after September 11, 2001 (as required by section 504 of the PACT Act), but Congress also increased the span of research to be performed by VA, and this will allow VA to expand its epidemiology staff to meet these expanded PACT Act requirements.

An example of this expansion in VA research is using biomarker studies that will validate jet fuel exposure in Service members using serum samples banked in the DoD Serum Repository; allow for surveillance of exposure over time; and facilitate investigating mechanisms of certain types of disease related to jet fuel exposure. Again, VA expects that these research efforts and findings may also inform future policies at both VA and DoD in terms of preventive measures, health care guidance, and disability compensation.

The research is focused on the healthcare outcomes for Veterans with MEE and the areas in which healthcare policy intersect with science. This is a crucial endeavor and VA must use this opportunity to its greatest effect. Research into the timeline for science to inform medical care and treatment shows that the average time for a new "Best Practice" to make it into the mainstream care is 17 years, or one medial generation. This underscores the importance and timeliness of this work for our Veterans.

VA wants to use this unique opportunity to find answers for Veterans and health care providers, get the research into the mainstream by making it publicly available and readily accessible as appropriate and evaluate the outcomes with longitudinal cohort studies.

The VA electronic health care record shows promise for this effort, as does data sharing with DoD to facilitate reporting on disease morbidity and categorization by period of service to assess the contribution of potential toxic exposures. This effort is being supported by VA's Office of Information and Technology Data and Analytics Team; requirements are in development to create a reporting dashboard that will support reporting to Congress and a publicly available format for Veterans and other stakeholders.

Section 504 of the PACT Act requires VA to conduct an epidemiological study on the health trends of Veterans who served in the Armed Forces after September 11, 2001. This will utilize an existing interagency collaborative relationship with the DoD Millennium Cohort Study (MilCo). MilCo is a well-recognized longitudinal health study established by Congress enrolling Service members for over 20 years and it will go on for another decade, similar to the Framingham Study. MilCo links longitudinal health survey data collected from approximately 260,000 Service members enrolled between 2001 and 2021 with military service data, including DoD administrative and health records. There are currently over 122,000 Veterans among MilCo participants who have accessed and utilized VA for healthcare and other benefits. The merged longitudinal data present a tremendous opportunity to prospectively examine health trends among Veterans.

Cancers are of considerable concern for Veterans. Section 505 of the PACT Act requires VA to conduct a study on the incidence of cancer in Veterans. The VA National Oncology Program has been engaged in efforts to modify the records notice that regulates the use of VA patient data for this purpose. This will enable the exchange of data from the VA central cancer registry and other data sources with State cancer registries and the National Cancer Institute. Records from these data sources could be matched to identify cancer diagnoses for a large population of Veterans. This is an incredible opportunity to perform a comprehensive study of cancer among Veterans receiving care both at VHA facilities and institutions outside of VHA. NASEM will also provide invaluable support to our Nation's Veterans with a review of possible behavioral health outcomes after MEE, pursuant to section 507 of the Pact Act. It will also, pursuant to section 506 of the PACT Act, review the health outcomes of Veterans who participated in activities relating to the Manhattan Project; and this is especially timely given the recent news about the contamination in St. Louis where some of the uranium enrichment occurred.

Title VI: Improvement of Resources and Training Regarding Toxic-Exposed Veterans

Veteran Outreach

We at VA are executing a nationwide PACT Act outreach plan with one goal in mind: ensuring that every eligible Veteran and survivor gets the PACT Act-related health care and benefits they have earned. This campaign began the moment the Senate sent the PACT Act to the President's desk, leading VA to launch VA.gov/PACT, ready our call centers to discuss the PACT Act, and begin putting out materials to inform Veterans about what this law could mean for them. Since that day, the outreach campaign has grown into an all-of-VA effort that incorporates key resources, direct outreach, earned media, paid media, partnerships, and much more.

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 medium, the core message has been – and

continues to be – that VA wants Veterans and survivors to apply for their PACT Act-related benefits now. We are also continuing to encourage anyone who is interested in learning more about the PACT Act to visit VA.gov/PACT or call 1-800-MYVA411.

- *Key Resources:*
 - VA.gov/PACT: Within one hour of the Senate passage of the PACT Act, VA launched VA.gov/PACT – a one-stop-shop for Veterans and survivors to learn about and apply for PACT Act-related care and benefits. Since then, the website has garnered over 3.3 million page views from more than 2.2 million unique visitors. The website has also received a 93% “good” feedback rating, and is now available in Spanish and Tagalog.
 - [Call center](http://VA.gov/PACT): Within one hour of the Senate passage of the PACT Act, VA call centers (including 1-800-MYVA411) were ready to respond to PACT Act-related inquiries. Since then, call center volume has increased 20% due to PACT Act-related inquiries from Veterans.
 - [Print and digital resources](#): VA has developed dozens of PACT Act flyers and fact sheets to help Veterans understand what this legislation means for them. These resources have been shared directly with Veterans, VA facilities, VSOs, and other partners nationwide. Sample fliers include: [PACT Act Summary and FAQ](#), [PACT Act Survivor Benefits](#), [PACT Act scams information sheet](#).
 - [Video content](#): 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](#).
 - [Social media content](#): VA is laser-focused on meeting Veterans where they are, so we have established a steady drumbeat of PACT Act-specific content across social media—including [Twitter](#), [Facebook](#), and Instagram. We have also published several [blogs](#) informing Veterans about the PACT Act on News.VA.gov, which garners millions of views per month.
- *Direct outreach:*
 - [Email](#): VA has sent 95M e-mails via [#VetResources Newsletter](#) with PACT Act outreach materials. The e-mails were opened 27.5M times (28% open ratio) and drove 2.7M clicks to resources.
- *Earned Media*
 - [Total Coverage](#): VA has been executing an aggressive national and local earned media campaign, seeking to inform Veterans and survivors about the PACT Act and encourage them to apply. Between August 15 and October 31, these efforts have helped generate 4.9k news articles and 2.2k broadcast items about the PACT Act – with a total potential reach of 18.8B.
 - [Local media](#): Since the passage of the PACT Act, VA’s Secretary, Deputy Secretary, and Chief of Staff have visited TX, GA, FL, AR, HI, IL, WI, VA, IA, TX, CA, WA, WY, OH, KY, MO, CT, Guam, Saipan, Philippines, and American Samoa. During each of these visits, these leaders have been driving media coverage of the PACT Act—garnering stories such as [Des](#)

[Moines Register: What veterans exposed to toxic burn pits should know about the PACT Act's new benefits](#) and [Las Vegas Review-Journal: VA secretary encourages Nevada vets to file for 'burn pit' benefits](#). VA's Medical Center Directors and Regional Benefits Directors are also actively doing local media to drive awareness of the PACT Act.

- **Events:** 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 other key partners. For example, VA recently hosted a Veterans Experience Live (VetXL) Q&A Forum specifically on PACT, where VA reached nearly 110,000 Veterans and addressed nearly 600 questions and answers on burn pits, claims, and survivors assistance. VA has also consistently featured the PACT Act at its monthly press conferences, generating stories like [Military Times: VA to screen all patients for toxic exposure issues](#) and [Military.com: 'Tens of Thousands' More Veterans Will Be Eligible for VA Health Care Starting Oct. 1](#).
- **Paid Media:**
 - **Approach:** Paid advertising allows us to reach all Veterans, not just those who are connected with VA or with a VSO. For these "untethered" Veterans and their family members and caregivers, paid advertising gives us a way to touch them directly and encourage them to apply. We are using digital advertising due to its flexibility, targeting, and reach. We are running two sets of creative executions: one set targets Vietnam-era Veterans with three different messages (Agent Orange, conditions, free screening), while the other set targets Gulf War and post-9/11 Veterans (burn pits, conditions, free screening). As we see which are most effective, we will shift more spending to those ads.
 - **Mediums:** Thus far, VA has run advertising on Google, Twitter, Facebook, Military Times, Military.com, and RallyPoint. VA is also working on a Veterans Day Times Square video ad on PACT benefits.
 - **Results:** To date, VA has spent more than \$150,000 on digital advertising, generating more than 19 million impressions and driving more than 200,000 clicks to VA.gov/PACT.

Moving forward, VA will continue to aggressively conduct outreach to meet Veterans where they are, educate them about the PACT Act, and encourage them to apply. As mandated in the PACT Act, VA will create and execute:

- Plans to conduct outreach to Veterans who will become eligible for health care at least 180 days before such Veterans become eligible.
- Not later than October 1, 2024, establish information systems to assess the implementation of section 103 of the bill and use the results of the assessments to inform its annual reports to Congress.
- A plan, not later than December 1, 2022, to conduct outreach to Veterans who will become eligible to enroll during the 1-year period previously described as well as, by January 30, 2024, a report on the number of Veterans who enrolled during this period.

- Publish, and update periodically, a list of resources for toxic-exposed Veterans, Veterans who report toxic exposure, their families and caregivers, and their survivors.

VA is also preparing to launch an outreach campaign utilizing existing customer and potential customer contact information databases (including DoD) to inform Veterans and survivors of their changed eligibility for VA benefits and services. This campaign will begin with e-mail outreach using existing VA resources to contact PACT Act customer cohorts in the following order: Vietnam Era Veterans, Gulf War Era Veterans, Survivors, Post 9/11 Veterans. The phased approach is due to the complexity of the outreach data manipulation in order to send personalized information relevant to each individual customer rather than a one size fits all approach.

VA established the VetResources Community Network (VRCN) Community of Practice with community and strategic partners (includes VSOs) to increase outreach, collaboration, and community-based partnerships to increase trust and access to VA health and benefits services for our Veterans, families, caregivers, and survivors. Over 500+ VRCN partners in the Community of Practice are invited to promote PACT outreach and engagement to reach the widest audience possible. PACT outreach support from our partners is critical and VA is deploying a crowd-sourcing tool called the VetResources Community Idea Lab to identify top challenges and solutions to PACT outreach and reaching underserved communities.

Military Environmental Exposures (MEE) Training

Even prior to the enactment of the PACT Act, VA has long been concerned about the health effects of MEEs and is committed to informing and educating Veterans and VA staff about MEEs. Through a variety of modalities, VHA HOME administers various programs related to environmental and occupational exposures to better meet the needs of Veterans. An annual newsletter to Vietnam War Veterans, a “Military Exposures and Your Health” publication, and an extensive website with an A-Z index are just a few resources available to help Veterans, VA staff, and providers better understand MEEs and the potential impacts to a Veteran’s overall health and well-being. The WRIISC, a subset of the HOME Office, also hosts many webinars each year on topics relating to military exposures, as well as targeted Veteran information sessions on topics such as Gulf War Illness and Agent Orange.

Early in his tenure, Secretary McDonough recognized that care of Veterans needed to include more comprehensive education and training on MEEs. In December 2021, he directed that all providers caring for Veterans could take the WRIISC Module 1, an overview of MEEs. VA is on track to complete this training by December 31, 2022, and it will be required for all new healthcare providers within 90 days of hiring—ensuring that foundational knowledge about MEEs is established at all touchpoints for VA care. This initiative meets the provisions of Section 604 of the PACT Act.

Training Health Employees and Providers

Equipping employees and providers with the knowledge and resources they need to support Veterans who may have been exposed to MEEs during military service is

critical step in ensuring the objectives of the PACT Act are met. Within one week after enactment of the PACT Act, VHA launched a "PACT Act 101 Overview Training" in the Talent Management System (TMS). The goal of this training is to impart a general understanding of the PACT Act and its effects on operations. As of November 2, 2022, over 18,000 employees have completed this training.

In November 2021, the Secretary also directed VHA to pursue a formal relationship with the American College of Preventive Medicine, an established medical professional organization, to create a national certificate program in Military Environmental Medicine in coordination with HOME. This training is available to VA and civilian providers outside VA. VA exposure training has been featured on the Centers for Disease Control and Prevention training website. The availability of this national certificate program will serve to expand knowledge about military exposures within the medical community, leading to improved practices for preventive care and better outcomes for the Veterans we serve.

Claims Processor Training

VBA recognizes that training claims processors is an essential part of preparing the field to implement the PACT Act. VBA has been proactive and already issued several trainings to claims processors on the PACT Act. Immediately after the law was enacted, VBA issued guidance to claims processors announcing the passage of the PACT Act and directed claims processors to hold any claims that could not be granted under any other authority than the PACT Act. This safeguard ensured that Veterans and survivors would not have their claims prematurely denied before VBA issued sub-regulatory guidance on processing PACT Act claims. In September 2022, VBA released a two-hour PACT Act overview training with a 30-day completion deadline. In October 2022, VBA issued guidance and training on the ILER, which includes how to obtain access. Claims processors' understanding of ILER and its contents will be critical to processing PACT Act-related claims.

VBA is developing a more detailed training on how to process PACT Act claims and will be targeting delivery to claims processors in December 2022. This is to ensure all front-line claims processors who handle claims for disability benefits relating to service-connected disabilities based on toxic exposure are ready to process claims on January 1, 2023, and can 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 that stores all interim guidance documents, FAQs, Quality and Training information, communications, and other important links.

After the field begins to process PACT Act claims on January 1, 2023, VBA Central Office will continue providing support by conducting quality spot checks and relaying feedback to the field, as well as being available to answer questions and troubleshoot issues. If there are any common error trends identified, VBA Central Office will review to assess and determine any additional training needs to include any training necessary to address improvements in the automated decision support tools.

VBA has completed the initial automated decision support training at the 4 prototype offices and 35 other ROs. All 56 ROs will complete training by December 14, 2022. Training provides claim processors with an overview and demonstration of the tool, an in-depth explanation of the ARSD, and detailed procedures to support PACT processing starting on January 1, 2023.

To ensure VA senior leaders are prepared, in September 2022, at VBA's most recent bi-annual Senior Leadership Symposium, implementation of the PACT Act was the sole focus. Attendees of the symposium included VBA's Senior Executive Service (SES) members, including all regional office (RO) directors. In an effort to improve transparency and collaboration, VBA included key internal and external partners at the Senior Leader Symposium, including our Labor partners, Office of Management and Budget (OMB), congressional staff, VA's Office of Information Technology, the Office of the Inspector General, and VSOs.

Screening Veterans

Section 603 of the PACT Act mandates VA incorporate a screening to help determine potential toxic exposures during active service as part of health care furnished by VA.

The development of the toxic exposure screening is a crucial step in implementing the PACT Act and in recognizing toxic exposures as a cost of war for our Veterans. As the screening becomes a routine part of VA health care, it will enhance the Department's understanding of exposure concerns and allow VA to provide Veterans with resources and programs that may be relevant to their experiences during their military service.

We are already seeing the positive effects of the screening on patient care and communication. In September 2022 VA began piloting the toxic exposure screening tool at 13 sites, screening over 19,000 Veterans, yielding an average rate of more than 37% of responding Veterans reporting they believed they experienced a toxic exposure while serving in the Armed Forces. During this time, we also collected valuable feedback from VA screeners to ensure VA was putting forth the best tool possible, while keeping the needs of Veterans front and center. We incorporated lessons learned into a revised tool that provides better accountability for the whole health of the Veteran. As of November 8, 2022, this improved tool is now available at VA medical centers and clinics across the country. All Veterans enrolled in VA health care can begin receiving an initial screening and a follow-up screening at least once every 5 years. Veterans who are not enrolled and who meet eligibility requirements will have an opportunity to enroll and receive the screening.

In the initial implementation phase, assigned Veterans will receive their toxic exposure screening (TES) at their primary care appointments. By beginning the process in primary care, we are starting with the providers who know Veterans best and building on centralized, team-based care. Veterans who are not assigned to a primary care team or wish to be screened sooner than their next appointment can contact their local facility and ask to be screened by the Toxic Exposure Screening Navigator. Later

phases of implementation will expand the screening across the health system, allowing more opportunities for Veterans to be screened.

The screening asks Veterans if they believe they experienced any service related toxic exposures, including:

- open burn pits/airborne hazards
- Gulf War-related exposures
- Agent Orange,
- radiation,
- Camp Lejeune contaminated water exposure,
- other exposures,.

Regardless of how the Veteran responds, the key priorities are ensuring any concerns they have are heard, providing them with additional information, and connecting them with resources to address next steps. The processes in place were created, tested, and adjusted to best support and treat not only the current exposure related benefits needs of the Veteran, but also engage with Veterans interested in joining the Registries and addressing any reported exposure related health concerns.

Those who answer “yes” to experiencing a potential toxic exposure and report having health concerns related to potential exposures will receive appropriate clinical assessments and be connected to benefits or registries as needed when agreed upon by the Veteran. A toxic exposure diagnosis code will then be added to their health record, so it will be visible at all Veteran touchpoints within the VA health care system. Some Veterans may respond, “I don’t know” to the question if they experienced any toxic exposures while serving. In this case, Veterans will be offered ; the same resources and options as those Veterans who respond, “yes”, however the toxic exposure diagnosis code will not be entered into the medical record; these Veterans will be screened again within 1 year. If Veterans decline to participate in the screening, they too will be screened again in one year. If the Veteran responds “no” to the screening, they are offered a handout of information and will be screened again in five years.

For Veterans with additional questions about their disability claims or benefits, during the topic exposure screenings, VHA and VBA have partnered to ensure the connection between administrations is established. It is important to us—and critical for our Mission to serve those who have served us—that there is no wrong door for Veterans. If Veterans come to their local VA medical centers with questions about their benefits, our goal is to get them the information they need before they walk out the door.

Providers and staff members at VA medical centers and clinics have been key to the success we have seen throughout the piloting process and the initial phase of implementation. All facilities have identified at least two Toxic Exposure Screening

Navigators to serve as the main points of contact on all details about the screening, as well as to serve as screeners for Veterans wishing to be screened outside of a primary care provider appointment. This has allowed us to meet our requirement that no enrolled Veteran who wants to receive the screening will be turned away.

Incorporating this screening into routine VA health care will enhance longitudinal care that promotes early diagnosis and treatment of health concerns that may arise related to military exposure(s). By including affirmative screening responses and adding a diagnosis code for exposure concerns within the health record, we will ensure that the experiences and concerns of the Veteran are known and prioritized. This will allow for improved communication between Veterans and their providers, building trust and ensuring Veterans receive the care they have earned and deserve.

Title VII- Resourcing

VA appreciates the new authorities provided under the PACT Act related to real property. Infrastructure plays a critical role in how we deliver services to Veterans; these new authorities will allow VA to modernize its infrastructure more efficiently.

Major Medical Leases

The provisions of sections 702 and 703 of the PACT Act are crucial to solving on-going challenges to our major medical lease program. VA is engaging with our Congressional committees and OMB on the new committee resolution process for approval of leases provided by section 703 of the PACT Act, which will further enhance our ability to deliver leased facilities in the future.

VA is working with the General Services Administration (GSA) to obtain a delegation of leasing authority for 30 of the 31 leases authorized in the PACT Act and has asked GSA to execute the one administrative office lease. For 15 of these leases that exceed the GSA prospectus threshold, VA is working in conjunction with GSA and the OMB to finalize prospectus documents to allow the Senate Environment and Public Works (EPW) Committee and the House Transportation and Infrastructure (T&I) Committee to approve a resolution. Once the committees give their approval, GSA can then approve VA's lease delegation requests, which allows VA to publish its lease advertisement for the projects on SAM.gov.

As VA moves forward with the leases authorized by the PACT ACT, we are looking for future opportunities to partner in new ways with our academic affiliates. Pursuant to 704 of the PACT Act, VA is authorized to lease space non-competitively from our academic affiliates or covered entities to meet the health care needs of Veterans. Co-location with our affiliates provides unique opportunities to further collaborate with these critical partners. We are excited to have this added option to support our Veterans and are seeking opportunities for these new collaborations. The affiliate's space must meet VA's standard lease requirements, including the requirement to obtain a GSA lease delegation. Additionally, if the lease exceeds the GSA prospectus threshold, clearance through OMB and approval by resolution from the Senate EPW and House T&I committees is required.

Enhanced Use

The expanded Enhanced-Use Lease (EUL) authority provided in amendments to 38 U.S.C. §§ 8162 and 8165, and the repeal of section 8169, as made by section 705 of the PACT Act expands potential EUL opportunities and enhances VA's ability to leverage un-utilized real estate to better serve Veterans. VA is implementing this authority to develop services for Veterans beyond supportive housing.

The authority provided through amendments to titles 10 and 38 made in section 706 of the PACT Act will strengthen our ability to work with DoD to construct and lease joint facilities. VA and DoD are developing the initial VA-DoD joint project list and establishing milestones and schedules, including aligned funding year(s), for each initial joint project. This includes several joint leasing opportunities leveraging this new authority.

VA is thankful for approval of FY 2023 major medical leases (section 702), the funding for leases in Section 707, and the other changes for leases in Title VII. These will enable to VA to move forward with planned leases that will expand access for Veteran care and improve our ability to make use of lease authority in the future.

Title VIII: Records and Other Matters*Individual Longitudinal Exposure Repository (ILER)*

VA continues to actively partner with DoD towards the common goal of building the ILER, a robust web-based application providing both agencies with the ability to link an individual to potential exposures, in order to improve the efficiency, effectiveness, and quality of health care. Designed to be interoperable with the electronic health record and searchable by individual, location and exposure, this comprehensive platform offers VA healthcare providers, disability claim processors, epidemiologists, and researchers a gateway into the occupational and environmental exposures of military personnel. VA clinicians and benefits personnel have embraced ILER with 611,000 platform hits and counting. In the interim, VA and DoD are collaborating on a mechanism permitting Veterans to update their ILER exposure records consistent with section 803 of the PACT Act.

Airborne Hazards Registry

VHA's HOME office rapidly built the Airborne Hazards and Open Burn Pit Registry (AHOBPR) in 2014. Recommendations from recent NASEM¹ and VA Office of Inspector General² reports, and practical lessons learned provide VA with an opportunity to redesign and deliver a Veteran-centric AHOBPR. Building an improved AHOBPR will allow VA to better utilize the data available to improve care, policy and benefits. Implementation of section 808 (b)(2) of the PACT Act will result in State and

¹ [Reassessment of the Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry | National Academies](#)

² <https://www.va.gov/oig/pubs/VAOIG-21-02732-153.pdf>

congressional district breakouts for all registry participants on the HOME website before the end of calendar year 2022.

Camp Lejeune Justice Act

Section 804 of the PACT Act, also known as the Camp Lejeune Justice Act of 2022 (CLJA), allows new lawsuits for individuals exposed to contaminated water at Camp Lejeune. If Veterans awarded relief by the court in a lawsuit brought under the CLJA, the award must be offset by the amount of any disability award, payment, or benefit VA provided to them or their legal representative relating to exposure to water at Camp Lejeune. This would reduce the amount of the award Veterans or family members receive from the court, but it would not affect their VA benefits. We note that any award must also be offset by benefits provided by Medicare or Medicaid. Additionally, please note that the Department of Justice has created a phone number and email address that anyone can contact to submit questions regarding the status of cases filed in Federal court under the CLJA. The phone number is (202) 353-4426, and the email is campjeune.pactact@usdoj.gov.

Resources

VA is thankful for the \$500 million appropriated in section 806 of the PACT Act to begin implementing the PACT Act and the swift approval from both the House and Senate of VA's spend plan. With this funding, VA will hire staff to process PACT Act claims at the VBA, implement effective information technology to improve and modernize the disability compensation claims process and Veteran customer experience. VA will also hire staff to process appeals at the Board of Veterans' Appeals. Additionally, funds will support the work of VA staff to publicize the benefits of the PACT Act, implement the new human resources provisions of the PACT Act and provide legal counsel as well as other functions.

Annual Report on Disability Claims

Section 808(a)(1) of the PACT Act requires VBA to provide an annual report on disability claims, beginning not later than 180 days after the date of the enactment on the PACT Act. The focus of the report is on Gulf War era and post-9/11 Veterans. VBA is currently finalizing the required business rules to fulfill this report. VBA anticipates the report will be completed and available within the 180-day timeframe.

Title IX: Investing in our Workforce

Title IX reflects the investment needed in VA's workforce to successfully implement all other titles in this important law. The Act provides a broad range of flexibilities for recruiting and retaining staff to serve Veterans, their caregivers and survivors. VA is grateful to Congress for including these tools in the PACT Act and for supporting investments in its workforce to address ongoing challenges with recruitment, hiring and retention.

VA has taken steps to implement the priorities within title IX of the PACT Act VA quickly established an integrated project team (IPT) with internal and external stakeholders to

identify the policies, procedures, systems and training required to implement each section of title IX. The IPT meets on a weekly basis to address any issues that arise during implementation and track progress. To date, VA has implemented four sections of title IX (sections 903, 905, 908, and 909), either in whole or part, resulting in several new tools to help with recruitment and retention:

- Removing restrictions on hiring housekeeping aides,
- Removing statutory limitations on awards and bonuses,
- Enhancing systems to improve hiring,
- Increasing limits on expedited hiring of post-secondary students and college graduates,
- Increasing student loan repayment limits,
- Removing the limits for special contribution awards, and
- Increasing the limits for recruitment, relocation, and retention incentives and payment of retention incentives as a lump sum upfront.

VA is on track to complete implementation of other provisions related to special salary rates, critical pay positions and critical skill incentives by the end of the calendar year and we will report to you on steps taken to improve recruitment and retention of human resources staff in 2023. VA expects to further accelerate efforts on the remaining deliverables under title IX of the PACT Act with the influx of new hires expected to support implementation of these technical sections.

While some of these authorities have only been in effect for a few weeks, we are tracking utilization and establishing performance metrics. For example, we are announcing housekeeping aide positions without the preference-eligible restriction VHA and VBA are onboarding post-secondary students and college graduates to assist with research and claims processing using the expedited hiring authority – 15% of all slots have been filled to date.

VA is planning and preparing for the implementation of the remaining five sections (901, 902, 904, 906 and 907) of title IX of the PACT Act. VA expects to begin implementing sections 904, 906 and 907 by the end of December to modify pay caps and conditions of employment, and to waive pay limitations for certain VHA employees. VA will implement section 902, which provides authority to buy out service contracts for physicians, nurse anesthetists, physician assistants and nurse practitioners in exchange for employment at rural or high rural facilities by the end of March 2023. VA will also finalize VHA's National Rural Recruitment and Hiring Plan at the beginning of 2024.

Ensuring that VA has the appropriate mechanisms in place to track, measure and provide oversight of implementation of title IX of the PACT Act is a key priority for VA. We will continue to develop and refine metrics ensuring we can measure the effectiveness of these authorities and impact on VA's recruitment and retention efforts. VA is tracking progress through recurring reports and dashboards with oversight by VA governance processes. While VA's responsibility is to measure the impact of these

granted personnel flexibilities have on its own workforce and mission, this evaluation also will inform broader Federal human capital activity.

Conclusion

Thank you for your time today and for passing this law that will ensure millions of Veterans and their survivors receive the care and services they have earned and deserve. We look forward to continued engagement with you as we implement this law and strive to service with excellence those who have served the Nation.

Submissions for the Record

**NATIONAL EXECUTIVE COMMITTEE
OF
THE AMERICAN LEGION
October 12-13, 2022
Indianapolis, Indiana**

**Resolution No. 15: Oversight of Camp Lejeune Justice Act
Origin: Veterans Affairs & Rehabilitation Commission
Submitted by: Veterans Affairs & Rehabilitation Commission**

WHEREAS, From August 1953 to December 1987, servicemembers and their families were exposed to contaminated drinking water at Marine Corps Base Camp Lejeune, North Carolina, and Marine Corps Air Station New River, North Carolina; and

WHEREAS, During the 112th Congress, H.R. 1627 the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 was signed into law (Public Law 112-154), and Congress established presumptive conditions for those exposed to contaminated drinking water at the aforementioned locations to include the following conditions: esophageal cancer; lung cancer; breast cancer; bladder cancer; kidney cancer; leukemia; multiple myeloma; myelodysplastic syndromes; renal toxicity; hepatic steatosis; female infertility; miscarriage; scleroderma; neurobehavioral effects; and non-Hodgkin's lymphoma; and

WHEREAS, Presumptive conditions shift the burden of proof away from the veteran, which streamlined and simplified the disability claims process for those exposed to toxic drinking water at Camp Lejeune; and

WHEREAS, The Department of Veterans Affairs has established presumptive conditions for those exposed to contaminated drinking water at Camp Lejeune, but this does not address the entirety of the harm suffered by veterans and their families as a result of their exposure to contaminated water; and

WHEREAS, Within the Sergeant First Class Heath Robinson Honoring our PACT Act, Section 804 allows those who resided, worked, or were otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina to bring an action in the United States District Court for the Eastern District of North Carolina to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune; and

WHEREAS, Predatory law firms charging exorbitant fees have engaged in aggressive marketing campaigns to include, but not limited to, television advertisements and social media digital marketing campaigns targeting veterans through sponsored content; now, therefore, be it

RESOLVED, By the National Executive Committee of The American Legion in regular meeting assembled in Indianapolis, Indiana, on October 12-13, 2022, That The American Legion urges Congress to provide the necessary oversight during the implementation of the Camp Lejeune Justice Act to ensure veterans receive fair consideration of their lawsuits and protections against predatory law firms.

Department of Justice Technical Assistance on Section 706 of HR 3967

PACT ACT Section 706 Camp Lejeune
Department of Justice Technical Assistance and Proposed Alternative
May 2, 2022

Thank you for the opportunity to share our views on Section 706 of the Honoring Our Promise to Address Comprehensive Toxics Act (PACT Act). The Department of Justice strongly supports expanding Veterans' access to health care and benefits to address the health effects of harmful environmental exposures that occurred during military service. A no-fault compensation program is preferable to litigation because it would allow Veterans to recover more quickly and without the need for expensive litigation. But we are concerned that the current proposal in Section 706 related to Camp LeJeune is inefficient and will be costly for service members and other individuals, as well as the federal government. Rather than create a system for swift and efficient payment of worthy claims, Section 706 will reset decades-old litigation, at great time and expense for all involved. We therefore recommend that Congress consider an alternative solution that would replace individual litigation of these matters with a no-fault compensation scheme of the type that has worked well in similar contexts.

Background

Section 706 of the PACT Act aims to compensate service members and others who were exposed to contaminants in drinking water at Camp Lejeune, North Carolina, between 1953 and 1987. Service members and others who were stationed at or worked at Camp Lejeune during that time have developed cancer and other diseases that may be related to water contamination. The Agency for Toxic Substances and Disease Registry estimates that as many as one million people were stationed at Camp Lejeune during that timeframe.

For nearly twenty years, the Department has been litigating Federal Tort Claims Act (FTCA) cases seeking compensation for harm alleged to have resulted from exposure to contaminated water at Camp Lejeune. The Department has obtained dismissals of these cases, primarily under three legal defenses provided by the FTCA.

As currently drafted, Section 706 of the PACT Act would facilitate recoveries for Camp Lejeune claimants that are not otherwise possible under the FTCA. Section 706 accomplishes this by allowing causes of action in federal court while prohibiting the assertion of the legal defenses. Section 706 explicitly precludes the Government from raising immunity defenses under the FTCA, which would include the *Feres* doctrine (where the Supreme Court in *Feres v. United States* precluded claims for injuries incident to military service), the discretionary function exception, or any state statute of repose. Section 706 also restarts the statute of limitations for Camp Lejeune suits, lowers the standard of proof on causation, and permits jury trials that would not be available under the FTCA. Finally, Section 706 permits a service member to recover without showing that the federal government acted negligently or otherwise wrongfully, essentially creating a strict-liability theory of recovery.

Department of Justice Technical Assistance on Section 706 of HR 3967

While Section 706 seeks to make recovery easier for claimants, it would nonetheless require litigation of individual claims, because each plaintiff would still need to establish causation under the new cause of action, and they would each need to litigate their individual claim for damages.

Significant Concerns Raised by Section 706

The Department supports providing an appropriate mechanism to compensate service members for harms suffered at Camp Lejeune. But we have significant concerns about how the current bill would accomplish this goal. We believe that the approach proposed in the current Section 706 will be inefficient for all parties, especially those harmed by contamination at Camp Lejeune, create adverse precedent for future mass-tort incidents, and necessitate numerous resources from both the Department and the federal district court.

First, case-by-case district court litigation of potentially hundreds of thousands of claims will be extremely burdensome for the plaintiffs, the government, and the courts. Plaintiffs will likely have to go through many years of discovery before recovering anything. While the bill aims to make recovery more likely by removing certain federal defenses and lowering relevant burdens, the bill still requires those injured to pursue the lengthy path of litigation—requiring individuals to first file administrative claims with the Department of Defense, then file a lawsuit in district court, then prove causation and damages (potentially before a jury), and then withstand a potential appeal. All of these steps will be expensive and time-consuming, given that the bill would allow the filing of old claims from decades ago. Moreover, the cases are likely to be delayed, particularly if (as expected) there is an influx of cases in the single district court—the Eastern District of North Carolina—that will have exclusive jurisdiction under the proposed bill. The litigation-oriented remedy that Section 706 creates is therefore unlikely to meet its goal of offering an easy or quick path to recovery for the thousands of affected service members.

Second, we have serious institutional concerns about the precedent that would be set by creating a separate federal tort action against the government for a particular class of plaintiffs, as a carve-out to the FTCA. Enacting this bill could encourage other plaintiffs who have lost under the FTCA to come to Congress and ask for a similar legislative exception, rather than providing a uniform set of rules under the FTCA for all individuals as exists under current law. The contemplated carve-out from generally applicable FTCA litigation standards is unprecedented. In the past, when Congress wanted to provide remedies for a particular group of claimants who had been unsuccessful in litigation, Congress created a unique remedial program, similar to that proposed below, rather than creating a separate federal tort cause of action.

Third, we worry that Section 706, as currently drafted, would result in differing recoveries to similarly situated plaintiffs. Especially if damages awards are to be decided by a jury, as the statute contemplates, it is likely that litigation will produce a broad range of remedial outcomes even among plaintiffs who have suffered similar harms. The potential unfairness of those outcomes may undermine the statute's goal of providing redress for those affected by contamination at Camp Lejeune.

Department of Justice Technical Assistance on Section 706 of HR 3967

Finally, the bill would lead to an influx of federal-court litigation that would be extremely resource-intensive for both the Department, DoD, and the federal district court in the Eastern District of North Carolina. For its part, the Department's Civil Division estimates that 75 additional attorneys and 15 paralegals would be required to handle the thousands of expected claims. That would more than quadruple the size of the Division's Environmental Torts Section—the office which now handles the Camp Lejeune litigation as well as all the other toxic tort cases brought against the United States. The expected resource drain on the Eastern District of North Carolina stemming from the influx of litigation, as noted above, might further impede the Act's goal of ensuring Veterans and others have a swift path to recovery.

Proposed Alternative

For these reasons, the Department feels strongly that it would better serve all the parties to establish a non-adversarial compensation program for those injured at Camp Lejeune, rather than creating a new cause of action. The Department has substantial experience with administering compensation programs, including the program established through the Radiation Exposure Compensation Act (RECA). The RECA program, for example, was enacted as a non-adversarial alternative to litigation for individuals who contracted illnesses following exposure to radiation as a result of the United States' atmospheric nuclear testing program and uranium ore processing operations during the Cold War. Under this program, the Department has approved over 39,000 claims, awarding over \$2.5 billion. Similarly, the September 11th Victim Compensation Fund is another non-adversarial compensation program, which has awarded over \$9.8 billion to over 44,000 individuals suffering as a result of the September 11th attacks.

If the goal of the PACT Act is to allow Veterans and others to recover more quickly and without the need for expensive court proceedings, a non-adversarial program of this sort would be preferable to litigation. And creating a no-fault compensation program avoids creating the precedent of a separate federal tort cause of action for future cases where compensation is unavailable under the FTCA. We think that such an alternative would provide the most straightforward path to fulfilling our country's commitment to Veterans and their families.

The proposed revised Section 706 of the PACT Act, appended to this memorandum, would create an administrative compensation scheme similar to the program established by RECA. It would provide appropriate relief for harm that was caused by exposure to the water at Camp Lejeune, and it would require the Attorney General to establish procedures for individuals to submit claims for payments under the Act. It would further require that the Attorney General consult with the Secretary of Health and Human Services on establishing guidelines for determining the documentation necessary to establish a basis for eligibility for compensation for an injury or condition based on exposure to water at Camp Lejeune. It would also establish a trust fund for payment of meritorious claims.

Importantly, the proposed revised Section 706 would contain provisions to ensure that the process moves quickly to compensate Veterans. It would require the Attorney General to complete the determination on each claim within 12 months of the filing of the claim, make a final determination within 90 days after receiving a request for review of a denial, and pay the

Department of Justice Technical Assistance on Section 706 of HR 3967

claim no later than six weeks after approval. Revised Section 706 allows judicial review within 180 days of denial in the United States District Court for the Eastern District of North Carolina, where the court will review the denial on the administrative record and set aside denials that are arbitrary, capricious, an abuse of discretion, or not in accordance with law. We understand that such litigation is extremely rare in RECA cases, however, and that out of the tens of thousands of administrative adjudications, only 16 administrative decisions were appealed to district court.

Thus, under a compensation program like RECA, many Veterans would receive compensation within roughly a year of filing a claim; we think that the current proposal, by contrast, would lead to significantly longer recovery times. And because the program would prioritize speedy recovery, it would not require the significant resources that would be required to fund protracted litigation under the current proposal.

In addition, the proposed revised Section 706 would ensure consistency in resolving service members' claims. Because all claims would be resolved under the same procedures established by the Attorney General, there is no risk—as there is under the current proposal—that different district court or magistrate judges would take markedly different approaches to the relevant issues. Moreover, the proposed revised Section 706 contains a provision limiting attorney's fees, ensuring that the bulk of recovery in each case will go to the Veterans themselves and not to their lawyers.

Conclusion

In conclusion, the Department strongly supports providing Veterans exposed to contaminants in drinking water at Camp Lejeune necessary benefits and services for any harms they may have suffered as a result of exposure. The administrative compensation program proposed in the Department's revised Section 706 would provide the most effective and efficient way to compensate Veterans, and the Department therefore recommends that legislators consider this alternative to the current proposal.

Department of Justice Technical Assistance on Section 706 of HR 3967

APPENDIX: PROPOSED REVISED SECTION 706 FOR DISCUSSION

SEC. 706. CAMP LEJEUNE, NORTH CAROLINA CONTAMINATED WATER EXPOSURE COMPENSATION.

(a) **IN GENERAL.**—An individual, including a veteran (as defined in section 101 of title 38, United States Code), who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States, or the legal representative of such an individual, may file a claim for payment with the Attorney General to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.

(b) **DETERMINATION AND PAYMENT OF CLAIMS.**—

(1) **ESTABLISHMENT OF FILING PROCEDURES.**—The Attorney General shall establish procedures for submission of claims for payments under this Act. The burden of proof shall be on the party submitting the claim to show a causal connection between the water at Camp Lejeune and the harm.

(2) **DETERMINATION OF CLAIMS.**—

(A) **IN GENERAL.**—The Attorney General shall, in accordance with this section, determine whether each claim filed under this Act meets the requirements of this Act. All reasonable doubt with regard to whether a claim meets the requirements of this Act shall be resolved in favor of the claimant.

(B) **CONSULTATION.**—The Attorney General shall, in consultation with the Secretary of Health and Human Services, establish guidelines for determining what documentation is necessary to establish a basis for eligibility for compensation for an injury or condition based on exposure to water at Camp Lejeune.

(C) **PAYMENT OF CLAIMS.**—The Attorney General shall establish guidelines for determining amounts of compensation for injuries or conditions, including reasonable compensation for medical expenses, lost wages, and pain and suffering.

(i) **IN GENERAL.**—The Attorney General shall pay, from amounts available in the Camp Lejeune Fund, claims filed under this Act that the Attorney General determines meet the requirements of this Act. **[NOTE: A different section would need to establish a Fund.]**

(ii) **HEALTH AND DISABILITY BENEFITS RELATING TO WATER EXPOSURE.**— Any award made under this section shall be offset by the amount of any disability award, payment, or benefit provided to the claimant—

Department of Justice Technical Assistance on Section 706 of HR 3967

(I) under—

(A) any program under the laws administered by the Secretary of Veterans Affairs; **[NOTE: We will propose revised language to account for the circumstances where an award under this program is made prior to any award under a VA disability benefits program or other applicable benefits]**

(B) the Medicare program under title XVIII of the Social Security Act ([42 U.S.C. 1395 et seq.](#)); or

(C) the Medicaid program under title XIX of the Social Security Act ([42 U.S.C. 1396 et seq.](#)); and

(II) in connection with health care or a disability relating to exposure to the water at Camp Lejeune.

(iii) RIGHT OF SUBROGATION.— Upon payment of a claim under this section, the United States Government is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in subsection (a).

(D) ACTION ON CLAIMS.—

(i) IN GENERAL.—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (b)(1) not later than 12 months after the claim is filed. For purposes of determining when the 12-month period ends, a claim under this Act shall be deemed filed as of the date of its receipt by the Attorney General. In the event of the denial of a claim, the claimant shall be permitted a reasonable period in which to seek administrative review of the denial by the Attorney General. The Attorney General shall make a final determination with respect to any administrative review within 90 days after the receipt of the claimant's request for such review. In the event the Attorney General fails to render a determination within 12 months after the date of the receipt of such request, the claim shall be deemed awarded as a matter of law and paid.

(ii) ADDITIONAL INFORMATION.— The Attorney General may request from any claimant under this Act any reasonable additional information or documentation necessary to complete the determination on the claim in accordance with the procedures established under subsection (b)(1).

Department of Justice Technical Assistance on Section 706 of HR 3967

(iii) PAYMENT WITHIN 6 WEEKS.— The Attorney General shall ensure that an approved claim is paid not later than 6 weeks after the date on which such claim is approved.

(E) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.— Except as otherwise authorized by law, the acceptance of payment by an individual under this section shall be in full satisfaction of all claims of or on behalf of that individual against the United States that arise out of exposure to water contamination at Camp Lejeune under subsection (a).

(F) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review within 180 days of denial solely in a district court of the United States. The court shall have jurisdiction to review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(c) ATTORNEY FEES.—

(1) GENERAL RULE.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than that percentage specified in subsection (2) of a payment made under this Act on such claim.

(2) APPLICABLE PERCENTAGE LIMITATIONS.—The percentage referred to in subsection (1) is—

(i) 2 percent for the filing of an initial claim; and

(ii) 10 percent with respect to—

(I) any claim with respect to which a representative has made a contract for services before the date of the enactment of the Camp Lejeune Contaminated Water Exposure Compensation Act; or

(II) a resubmission of a denied claim.

(3) PENALTY.—Any such representative who violates this section shall be fined not more than \$5,000.

(d) EXCEPTION FOR COMBATANT ACTIVITIES.—This section does not apply to any claim for harm arising out of the combatant activities of the Armed Forces.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To revise the provision creating a Federal cause of action relating to water at Camp Lejeune, North Carolina.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

H.R. 3967

To improve health care and benefits for veterans exposed to toxic substances, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. INHOFE to the amendment (No. 5051) proposed by Mr. TESTER

Viz:

1 Beginning on page 114, strike line 3 and all that fol-
 2 lows through page 117, line 21, and insert the following:
 3 **SEC. 804. CAMP LEJEUNE, NORTH CAROLINA, CONTAMI-**
 4 **NATED WATER EXPOSURE COMPENSATION.**
 5 (a) IN GENERAL.—An individual, including a veteran
 6 (as defined in section 101 of title 38, United States Code),
 7 who resided, worked, or was otherwise exposed (including
 8 in utero exposure) for not less than 30 days during the
 9 period beginning on August 1, 1953, and ending on De-
 10 cember 31, 1987, to water at Camp Lejeune, North Caro-
 11 lina, that was supplied by, or on behalf of, the United

1 States, or the legal representative of such an individual,
2 may file a claim for compensation with the Attorney Gen-
3 eral to obtain appropriate relief for harm that was caused
4 by exposure to the water at Camp Lejeune.

5 (b) DETERMINATION AND PAYMENT OF CLAIMS.—

6 (1) ESTABLISHMENT OF FILING PROCE-
7 DURES.—

8 (A) PROCEDURES.—The Attorney General
9 shall establish procedures for submission of
10 claims under subsection (a) for compensation
11 under this section.

12 (B) BURDEN OF PROOF.—The burden of
13 proof shall be on the party submitting a claim
14 under subsection (a) to show it is more likely
15 than not that the water at Camp Lejeune
16 caused the claimed harm.

17 (2) DETERMINATION OF CLAIMS.—

18 (A) IN GENERAL.—(i) The Attorney Gen-
19 eral shall, in accordance with this section, de-
20 termine whether each claim filed under sub-
21 section (a) meets the requirements of this sec-
22 tion.

23 (ii) All reasonable doubt with regard to
24 whether a claim meets the requirements of this

1 section shall be resolved in favor of the claim-
2 ant.

3 (B) CONSULTATION.—The Attorney Gen-
4 eral shall, in consultation with the Secretary of
5 Health and Human Services, the Secretary of
6 Defense, and the Secretary of Veterans Affairs,
7 establish guidelines for determining what docu-
8 mentation is necessary to establish a basis for
9 eligibility for compensation for an injury or con-
10 dition based on exposure to water at Camp
11 Lejeune.

12 (C) PAYMENT OF CLAIMS.—

13 (i) IN GENERAL.—The Attorney Gen-
14 eral shall pay, from amounts available in
15 the Camp Lejeune Fund, claims filed
16 under subsection (a) that the Attorney
17 General determines meet the requirements
18 of this section.

19 (ii) HEALTH AND DISABILITY BENE-
20 FITS RELATING TO WATER EXPOSURE.—
21 The Attorney General may offset from any
22 compensation awarded to an individual
23 under this section by the amount of any
24 disability compensation, payment, or ben-
25 efit provided to the individual—

4

1 (I) under—

2 (aa) any program under the
3 laws administered by the Sec-
4 retary of Veterans Affairs;5 (bb) the Medicare program
6 under title XVIII of the Social
7 Security Act (42 U.S.C. 1395 et
8 seq.); or9 (cc) the Medicaid program
10 under title XIX of the Social Se-
11 curity Act (42 U.S.C. 1396 et
12 seq.); and13 (II) in connection with health
14 care or a disability relating to expo-
15 sure to the water at Camp Lejeune.16 (iii) VETERANS AND LABOR OFF-
17 SETS.—The Secretary of Veterans Affairs
18 and the Secretary of Labor may each off-
19 set from any award made to an individual
20 under a provision of law administered by
21 the respective Secretary compensation
22 awarded under this section to such indi-
23 vidual.24 (iv) RIGHT OF SUBROGATION.—Upon
25 payment of compensation pursuant to a

5

1 claim under subsection (a), the United
2 States Government is subrogated for the
3 amount of the payment to a right or claim
4 that the individual to whom the payment
5 was made may have against any person on
6 account of injuries referred to in such sub-
7 section.

8 (v) GUIDELINES.—The Attorney Gen-
9 eral shall establish guidelines for deter-
10 mining amounts of compensation under
11 this section for injuries or conditions, in-
12 cluding reasonable compensation for med-
13 ical expenses, lost wages, and pain and
14 suffering.

15 (D) ACTION ON CLAIMS.—

16 (i) IN GENERAL.—(I) The Attorney
17 General shall complete the determination
18 on each claim filed under subsection (a) in
19 accordance with the procedures established
20 under paragraph (1)(A) not later than 12
21 months after the date on which the claim
22 is filed under such subsection.

23 (II) For purposes of determining
24 when the 12-month period ends, a claim
25 filed under subsection (a) shall be deemed

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1 filed as of the date of its receipt by the At-
2 torney General.

3 (III) In the event of the denial of a
4 claim under this section, the claimant shall
5 be permitted a reasonable period in which
6 to seek administrative review of the denial
7 by the Attorney General.

8 (IV) The Attorney General shall make
9 a final determination with respect to any
10 administrative review under subclause (III)
11 within 90 days after the receipt of the
12 claimant's request for such review.

13 (ii) ADDITIONAL INFORMATION.—The
14 Attorney General may request from any
15 claimant under this section any reasonable
16 additional information or documentation
17 necessary to complete the determination on
18 the claim in accordance with the proce-
19 dures established under paragraph (1)(A).

20 (iii) PAYMENT WITHIN 6 WEEKS.—
21 The Attorney General shall ensure that a
22 claim filed under subsection (a) that is ap-
23 proved under this section is paid not later
24 than 6 weeks after the date on which such
25 claim is approved.

7

1 (E) PAYMENT IN FULL SETTLEMENT OF
2 CLAIMS AGAINST THE UNITED STATES.—Except
3 as otherwise authorized by law, the acceptance
4 of payment by an individual under this section
5 shall be in full satisfaction of all claims of or
6 on behalf of that individual against the United
7 States that arise out of exposure to water con-
8 tamination at Camp Lejeune under subsection
9 (a).

10 (F) JUDICIAL REVIEW.—(i) An individual
11 whose claim for compensation under this sec-
12 tion is denied may seek judicial review within
13 180 days of denial solely in a district court of
14 the United States.

15 (ii) The court shall have jurisdiction to re-
16 view the denial on the administrative record
17 and shall hold unlawful and set aside the denial
18 if it is arbitrary, capricious, an abuse of discre-
19 tion, or otherwise not in accordance with law.

20 (c) ATTORNEY FEES.—

21 (1) GENERAL RULE.—Notwithstanding any
22 contract, the representative of an individual may not
23 receive, for services rendered in connection with the
24 claim of an individual under this section, more than

8

1 that percentage specified in paragraph (2) of a pay-
2 ment made under this section on such claim.

3 (2) APPLICABLE PERCENTAGE LIMITATIONS.—

4 The percentage referred to in paragraph (1) is—

5 (A) 2 percent for the filing of an initial
6 claim; and

7 (B) 10 percent with respect to—

8 (i) any claim with respect to which a
9 representative has made a contract for
10 services before the date of the enactment
11 of this Act; or

12 (ii) a resubmission of a denied claim.

13 (3) PENALTY.—Any such representative who
14 violates this section shall be fined not more than
15 \$5,000.

16 (d) EXCEPTION FOR COMBATANT ACTIVITIES.—This
17 section does not apply to any claim for harm arising out
18 of the combatant activities of the Armed Forces.

19 (e) PERIOD FOR FILING CLAIMS.—A claim filed
20 under this section may not be commenced after the date
21 that is two years after the date that the Attorney General
22 establishes the procedures required by subsection
23 (b)(1)(A).

24 (f) REPORT.—

1 (1) IN GENERAL.—No later than one year after
2 the effective date set forth in subsection (f) and not
3 less frequently than once each year thereafter, the
4 Attorney General shall, in consultation with the Sec-
5 retary of Health and Human Services, the Secretary
6 of Defense, the Secretary of Veterans Affairs, and
7 the Secretary of Labor, submit to the appropriate
8 committees of Congress a report on activities under
9 this section.

10 (2) CONTENTS.—Each report submitted under
11 paragraph (1) shall include the following:

12 (A) The total number of claims filed under
13 this section.

14 (B) A description of the harms claimed.

15 (C) The number of approved claims.

16 (D) The number of claims under review.

17 (E) The number of denied claims.

18 (F) The amount of each approved claim.

19 (G) The total amount of approved claims.

20 (H) An analysis and descriptions of offsets
21 made to approved claims.

22 (3) APPROPRIATE COMMITTEES OF CONGRESS
23 DEFINED.—In this section, the term “appropriate
24 committees of Congress” means the Committee on
25 the Judiciary, the Committee on Armed Services, the

1 Committee on Veterans Affairs, and the Committee
2 on Health, Education, Labor, and Pensions of the
3 Senate.

4 **SEC. 805. CAMP LEJEUNE FUND.**

5 (a) ESTABLISHMENT.—There is in the Treasury of
6 the United States an account to be known as the “Camp
7 Lejeune Fund” (in this section referred to as the
8 “Fund”).

9 (b) DEPOSITS.—There is appropriated to the Fund,
10 out of any money in the Treasury available for appropria-
11 tion, such sums as may be necessary to pay claims that
12 are determined by the Attorney General under subsection
13 (b)(2)(C)(i) of section 804 to meet the requirements of
14 such section.

15 (c) USE OF FUNDS.—Amounts in the Fund may be
16 used to provide payment of compensation under section
17 804.

Statements for the Record

STATEMENT OF

KRISTINA KEENAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

FOR THE RECORD

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

WITH RESPECT TO

**The Department of Veterans Affairs Implementation of the SFC Heath Robinson
Honoring our PACT Act**

WASHINGTON, D.C.

November 16, 2022

Chairman Tester, Ranking Member Moran, and members of the Senate Committee on Veterans' Affairs, 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 insights pertaining to the implementation of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022* or the *Honoring our PACT Act of 2022*.

The VFW is grateful for the support of the chairman, ranking member, and the members of this committee in passing the PACT Act, which was signed into law on August 10, 2022. The VFW's National Veterans Service department, which oversees the organization's network of over two thousand Department of Veterans Affairs (VA) accredited service officers, is closely monitoring the implementation of this legislation. VFW national staff have already received positive feedback regarding PACT Act claims, while there are also some concerns and questions.

Feedback from VFW Service Officers

Last month, the VFW conducted a survey of our professionally trained, VA-accredited service officers on the impact of the PACT Act on the veterans they represent. Of those who participated in the survey, two-thirds reported that they had an influx of activity related to the PACT Act. About one-third reported that they have already seen PACT-Act-related claims adjudicated and some granted by VA, primarily for Vietnam War veterans with hypertension and for those who served in Thailand. Even though VA currently has the authority to grant these claims under direct service connection, accredited representatives report that some of these awards cite the PACT Act as one of the bases on which the claims were granted. The most common conditions about which veterans have been asking VFW representatives are hypertension, followed by conditions related to burn pit exposure, Agent Orange exposure, Post-9/11 exposures, and Camp Lejeune contaminated water. In addition, though VA has made statements that it will begin processing PACT Act claims in January 2023, the VFW has found that VA has been sporadically

processing partial ratings, granting or denying non-PACT-Act conditions, then deferring PACT-Act-related conditions for future adjudication. This is positive as it means some veterans will receive ratings for their non-PACT-Act illnesses or injuries without waiting for the rest of their claims to be reviewed in January. Also, Compensation and Pension examination contract vendors have reported to the VFW an increase in requests, and veterans have indicated that examinations are timely and appropriate.

VA Claims Workload and Processing

VA reports an approximate twenty percent increase in claims submitted since the passage of the PACT Act. At the same time, VA is processing claims faster, with an increased output of nineteen percent. This is only a slight increase in the remaining workload. While the VFW will be monitoring the overall claims workload, we are encouraged to see that there is an increased number of veterans filing claims and we are comfortable with VA's output comparatively. This will help to alleviate fears of an unmanageable backlog like in past years.

VA is able to keep pace with the increased number of claims due to utilizing overtime for staff responsible for processing veterans' claims. Additional resources for overtime were included in the recent COVID-19 legislative packages during the 117th Congress, and VA utilized those additional resources to increase output. The hiring and training of additional Veterans Service Representatives (VSR) and Rating Veterans Service Representatives (RVSR) is ongoing, but it is not yet at the needed level. Until there are sufficient staffing resources to process VA claims, the VFW recommends maintaining the same overtime resources to manage the potential sustained increase in claims.

VA is also testing the automation of certain background business processes to speed up the overall claims process through its Automated Decision Support system. One of the first conditions on which this process is being tested is hypertension. We are hopeful it will help with new and existing hypertension claims, and also increase the overall speed with which information is processed. The VFW has been working with VA in the development of its new automated system, and so far we are optimistic about its potential efficiency. To be clear, VA's use of automation is designed to assist RVSRs in adjudicating claims. Much like other automated tools that Americans use in everyday life, VA's automated system is designed to help facilitate human decision-making through the efficient use of technology. Uber does not replace drivers, it connects them to passengers. Door Dash does not replace chefs, it connects them to hungry customers. VA's Automated Decision Support does not replace RVSRs, it places needed information at their fingertips to efficiently rate claims.

This automation has been used on a very limited basis, as VA ensures it works as intended. VA has communicated consistently with Veterans Service Organizations on this process. We will continue monitoring the rollout to ensure there is always consistent human oversight ingrained in the automated process.

The VFW is pleased with the steps VA has taken to implement the PACT Act to date. However, our accredited representatives have noted some issues that still need to be addressed:

- VA is holding certain claims until January 2023, although we believe it already has the authority to grant them through current regulations. VA Regional Offices (VAROs) should be instructing VSRs and RVSRs to begin granting approvals for claims now, instead of waiting until January.
- There is not currently a method for VA to track specific PACT-Act-related claims. We recommend a specific reporting code be created so claims solely related to the PACT Act can be properly reported.
- The VFW believes a Special Mission VARO is unnecessary for PACT Act claims. We want to see the National Work Queue utilized to the fullest extent possible to streamline workflow.
- We caution VA against overdeveloping claims related to toxic exposures. Any previous claims or existing medical records should be cross-referenced to prevent the ordering of unnecessary examinations.

VA Policies Regarding the PACT Act

The PACT Act included twenty-three conditions associated with toxic exposures. Some cancers, such as respiratory or reproductive, have the potential to include dozens of specific cancers. VFW Service Officers are assisting veterans with their claims for a variety of cancers that would reasonably be included within these groupings. VA must establish clear policies and guidelines regarding PACT Act presumptive conditions so that veterans and their representatives have the most accurate information when filing their claims.

There is also a need for clear policies on the offset incorporated in the PACT Act for Camp Lejeune veterans who file lawsuits. In the months since the PACT Act was enacted into law, there has been confusion about how VA, the Department of Justice (DOJ), and the Department of Defense (DOD) plan to implement this offset. Meanwhile, veterans are endlessly bombarded by predatory law firms urging them to file lawsuits with promises of large payouts.

The VFW understands that Congress elected to offset amounts awarded through lawsuits by amounts claimants have received from VA disability awards, payments, or health care in connection with exposure to contaminated water at Camp Lejeune. As written, the law is not clear on how the offset is to be implemented or calculated, and the VFW strongly opposes any efforts to reduce or reclaim earned VA benefits.

Though VA has published statements informing veterans that their disability benefits administered by the Veterans Benefits Administration will not be affected, the explicit offset language in Section 804 of the PACT Act leaves this subject open to a broad and potentially detrimental interpretation as we await implementation. As an example, VA's past handling of Federal Tort Claims offsets for 1151 claims—which are similar but focus solely on illness or injury of employees or contractors providing services on behalf of VA—has resulted in veterans having their service-connected benefits withheld and, in some cases, having to reimburse VA for cost of care because of accepting a settlement. This offset was not made clear or was never disclosed to veterans prior to filing lawsuits.

To that end, the VFW has the following questions: How has DOJ directed VA to implement the offset included in Section 804 of the PACT Act? How will the offset be calculated and account for non-disability compensation benefits such as VA health care? How will the offset impact future VA benefits? Particularly, if a claimant applies for earned VA health care or benefits after receiving relief through a successful Camp Lejeune lawsuit, will there be a monetary offset on future benefits? How do DOJ, DOD, and VA plan to account for legal fees? Specifically, will the offset be total award amounts or only amounts claimants receive after legal fees?

Addressing these questions is critical to providing veterans with the best information possible to make informed decisions while considering their options. This is time-sensitive due to the two-year limit on filing Camp Lejeune lawsuits.

Messaging and Outreach

While law firm advertisements dominate the media targeting Camp Lejeune veterans and our service officers are assisting with many hypertension claims for Vietnam War veterans, the PACT Act will largely affect burn-pit-exposed Gulf War and Post-9/11 veterans. Outreach to all veterans and survivors affected by the PACT Act is incredibly important. VA has been regularly including PACT Act updates in their newsletters and social media content, which the VFW appreciates. We have not seen a significant number of communications around the one-year open enrollment period for VA health care—a provision within the PACT Act that allows for Gulf War and Post-9/11 veterans who were exposed to burn pits to receive health care regardless of disability status. This provision is important for toxic-exposed veterans who need health care now, including preventive care. Eligible veterans who missed the one-year open enrollment, which will end in September 2023, will have to wait to enroll in VA health care based on separation date or disability percentage.

The VFW is also contributing to the outreach efforts. In addition to sharing pertinent information with our members, we have delivered extensive training to our global network of VA-accredited representatives who meet with veterans every day to represent them in the complex VA benefits process. However, the VFW is not stopping at just our traditional outreach methods to our professional and grassroots networks. Recognizing the generational impact that the PACT Act will have, we are engaged in a concerted marketing campaign to ensure veterans understand their benefits and can be easily referred to an accredited advocate for free PACT Act claims help.

The VFW is proud to announce the launch of www.PactActInfo.org as the centerpiece of our effort. This site explains the basics of the PACT Act, warns veterans against scams and predatory actors who may seek to illegally charge for benefits assistance, triage veterans for initial eligibility for PACT Act benefits, and streamline referrals to VFW's network of accredited representatives for free claims representation.

The VFW understands that clear communication and easy access to accredited representatives will be critical to delivering benefits to veterans. Tragically, in just a few short months since the PACT Act was signed into law, the marketplace has been flooded with confusing messaging from actors who may not always have veterans' best interest in mind. Whether it is aggressive marketing from Camp Lejeune lawyers or targeted online ads from predatory claim sharks, the

mixed messages have left veterans wondering just how the PACT Act affects them and who they should turn to for help. The VFW believes that www.PactActInfo.org will help provide veterans with the resources they need.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you may have. Thank you.

**STATEMENT OF
LAWRENCE W. MONTREUIL
LEGISLATIVE DIRECTOR
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
IMPLEMENTATION OF THE SERGEANT FIRST CLASS HEATH ROBINSON
HONORING OUR PACT ACT OF 2022**

NOVEMBER 16, 2022

Chairman Tester, Ranking Member Moran, and distinguished members of the Committee, on behalf of our 1.6 million members, The American Legion thanks you for the opportunity to offer this statement on implementation of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (Robinson PACT Act). This historic piece of legislation is the greatest expansion of access to Department of Veterans Affairs (VA) healthcare and benefits since the Servicemen's Readjustment Act of 1944. While this legislation impacts a broad range of issues and exposures, the focus of this statement will be on the implementation of Section 804, better known as the Camp Lejeune Justice Act.

Contaminated Drinking Water at Marine Corps Base Camp Lejeune

From August 1953 to December 1987, servicemembers and their families were exposed to contaminated drinking water at Marine Corps Base Camp Lejeune, North Carolina (CLNC). For at least 34 years, servicemen and women, their families, and on-base staff drank, bathed and cooked with water containing known carcinogens, up to 280 times the standard safety limits.²

During the 112th Congress, H.R. 1627, *the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012*, was signed into law (Public Law 112-154), and thereby established presumptive conditions for those exposed to contaminated drinking water to include the following conditions: esophageal cancer; lung cancer; breast cancer; bladder cancer; kidney cancer; leukemia; multiple myeloma; myelodysplastic syndromes; renal toxicity; hepatic steatosis; female infertility; miscarriage; scleroderma; neurobehavioral effects; and non-Hodgkin's lymphoma.¹

Presumptive conditions shift the burden of proof away from the veteran, which streamlines and simplifies the disability claims process for those exposed to toxic drinking water at CLNC. The bill also requires VA to provide healthcare for family members who resided at CLNC during the specified timeframe and VA has since implemented the Camp Lejeune Family Member Program, by which VA will reimburse a family member's healthcare costs if they are diagnosed with one of the 15 presumptive conditions listed above.²

¹ "H.R. 1627 - 112th Congress (2011-2012): Honoring America's Veterans and ..." Accessed November 14, 2022. <https://www.congress.gov/bills/112/house-bills/1627>.

² "Veterans Affairs." Go to VA.gov, January 30, 2015. <https://www.va.gov/COMMUNITYCARE/programs/dependents/CLFMP.asp>.

Camp Lejeune Justice Act

While the establishment of presumptive conditions for those exposed to contaminated drinking water at CLNC provides access to healthcare and benefits, it does not address the entirety of the harm suffered by veterans and their families. The Camp Lejeune Justice Act seeks to provide another means of recourse for veterans and their families by allowing those, “*who resided, worked, or were otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina to bring an action in the United States District Court for the Eastern District of North Carolina to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.*”³

While the passage of this historic legislation was a watershed moment for the veteran community, bad actors have emerged to take advantage of veterans and their access to new benefits. Predatory law firms charging exorbitant fees have engaged in aggressive advertising to include, but not limited to, television, radio, and social media digital marketing campaigns targeting veterans through sponsored content. Veterans and families across our nation have been inundated with traditional television and marketing advertisements along with a much more targeted social media advertising campaign based on data mining and analytics by law firms attempting to get what the Congressional Budget Office assess will be approximately \$6 billion dollars of payments from the federal government over the next ten years.⁴

These firms have not only have engaged in aggressive marketing campaigns and attempted to get veterans to agree to exorbitant fees while promising large pay-outs, but also failed to inform them of the exclusive remedy clause which requires the award be offset by the amount of benefits received through programs at VA, Medicare, and Medicaid. Section 804 (e) (2) states:

“Any award made to an individual, or legal representative of an individual, under this section shall be offset by the amount of any disability award, payment, or benefit provided to the individual, or legal representative—

(A) under--

(i) any program under the laws administered by the Secretary of Veterans Affairs;

(ii) the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

(iii) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

*(B) in connection with health care or a disability relating to exposure to the water at Camp Lejeune.”*⁵

³ “Text - S.3373 - 117th Congress (2021-2022): Honoring Our Pact Act of ...” Accessed November 14, 2022. <https://www.congress.gov/bill/117th-congress/senate-bill/3373/text>.

⁴ “Congressional Budget Office Cost Estimate.” Accessed November 14, 2022. https://www.cbo.gov/system/files/2022-02/HR3967_RCP.pdf.

⁵ “Text - S.3373 - 117th Congress (2021-2022): Honoring Our Pact Act of ...” Accessed November 14, 2022. <https://www.congress.gov/bill/117th-congress/senate-bill/3373/text>.

Failure to educate potential clients on this clause may result in them agreeing to fees that they would not otherwise agree to. While firms have promised veterans awards in the millions of dollars, they have declined to inform them that even one of these offsets, depending on the interpretation, could result in the veteran having to forfeit their award.

Camp Lejeune Justice Act: The Path Forward

The American Legion has long been supportive of the CLJA and was encouraged to see its inclusion in the Robinson PACT Act earlier this year. Notwithstanding that support, we believe it is necessary to make modifications to the language to streamline implementation and protect veterans from the actions of unscrupulous actors. It is in keeping with the intent of Resolution No. 15: *Oversight of Camp Lejeune Justice Act* that we make the following recommendations.⁶

Limit Legal Fees

VA regulations require VA-accredited law firms charge “reasonable fees” when representing veterans before the Board of Veteran Appeals (BVA). Under 38 CFR § 14.636, 20 percent or less is presumed to be reasonable while fees that exceed 33.3 percent are presumed to be excessive.⁷ Furthermore, under the Federal Tort Claims Act attorneys may not charge a contingency fee in excess of 25 percent.⁸ While protections against excessive legal fees exist in other areas, none of the aforementioned statutes or regulations apply to those seeking a cause of action under the CLJA.

Eliminate vague, impractical, and unrelated offsets

The offsets required by Section 804 (e) (2) are at times vague, impractical, and overly expansive. Medicare and Medicaid are benefits that veterans, and their civilian counterparts, would be entitled to regardless of their exposure to contaminated toxic water at CLNC. It would be an unnecessary injustice to penalize veterans for utilizing a benefit that is available to all other American’s and has limited direct connection with their exposure to toxins at CLNC. Additionally, to offset the award by, “any program under the laws administered by the Secretary of Veteran Affairs,” could potentially penalize veterans for utilizing VA benefits they have rightfully earned and have no connection with the CLJA.

Furthermore, non-disability compensation offsets, particularly healthcare, would be extraordinarily difficult to calculate at the individual level. It would be extremely challenging to determine what healthcare was required exclusively for a veteran’s Camp Lejeune-related disabilities. For instance, Bladder Cancer, Lung Cancer, Leukemia, Multiple Myeloma, and Non-Hodgkin’s Lymphoma are all presumptive conditions associated with exposure to both agent orange exposure and contaminated drinking water at CLNC. It was not uncommon for veterans to have served in Vietnam and other designated locations with a concession to exposure to agent

⁶ Committee, American Legion. National Executive. “Resolution No. 15: Oversight of Camp Lejeune Justice Act.”

⁷ “38 CFR § 14.636 - Payment of Fees for Representation by Agents and Attorneys in Proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.” Legal Information Institute. Legal Information Institute. Accessed November 13, 2022. <https://www.law.cornell.edu/cfr/text/38/14.636>.

⁸ “28 U.S. Code § 2678 - Attorney Fees; Penalty.” Legal Information Institute. Legal Information Institute. Accessed November 13, 2022. <https://www.law.cornell.edu/uscode/text/28/2678>.

orange from 1962-1975 and also have served at CLNC from 1953-1987. With 13 years of overlap between these two exposures and five shared presumptive conditions it would be difficult for VA to determine the exact source of the veteran's condition. Not only would it be nearly impossible to determine the source in these situations, but it would also be challenging to assign a dollar value to the treatment of said conditions. Given these complexities, we believe there should be no offsets whatsoever for healthcare veterans have received from VA.

Ensure that no veteran loses access to healthcare or disability benefit payments

Deference should be shown to the veteran in the application off any remaining offset and under no circumstances should any award jeopardize their access to VA healthcare or future disability payments.

The American Legion Acts

In response to the overwhelming marketing campaigns, misleading information, and excessive fees, the National Executive Committee of The American Legion passed Resolution No. 15: Oversight of Camp Lejeune Justice Act, which urges Congress, *“to provide the necessary oversight during the implementation of the Camp Lejeune Justice Act to ensure veterans receive fair consideration of their lawsuits and protections against predatory law firms.”*⁹

The American Legion has also signed a memorandum of understanding with a VA-accredited law firm, Bergman & Moore, to assist veterans and potential plaintiffs in navigating legal action associated with the CLJA.¹⁰ The intent is to provide veterans with a trustworthy and vetted firm to prevent them from being preyed upon by unscrupulous actors and ensure they have access to representation with reasonable fees. Each veteran will be provided an initial consultation to determine if it is in their best interest to pursue legal action or apply for traditional VA disability benefits. Bergman & Moore currently also assists The American Legion with training service officers and representing veterans before BVA.

Conclusion

Chairman Tester, Ranking Member Moran, and distinguished members of the Committee, The American Legion thanks you for your efforts to ensure veterans receive the benefits and care they rightfully deserve. We are grateful for the opportunity to voice the perspective of our nearly 1.6 million members on this critical matter and look forward to continuing to work with you to take care of our nation's veterans. Please contact Mr. Lawrence Montreuil, Legislative Director, at lmontreuil@legion.org for additional information or questions regarding this testimony.

⁹ Committee, American Legion. National Executive. “Resolution No. 15: Oversight of Camp Lejeune Justice Act.” Home, October 1, 2022. <https://archive.legion.org/handle/20.500.12203/15091>.

¹⁰ The American Legion. “Legion Inks MOU on Camp Lejeune Justice Act.” The American Legion, October 25, 2022. <https://www.legion.org/veteransbenefits/257191/legion-inks-mou-camp-lejeune-justice-act>.

Written Testimony of Rosie Torres

Before the Senate Committee on Veterans Affairs

Hearing on the Department of Veterans Affairs Implementation of the Sargent First Class Heath Robinson Honoring our PACT Act

November 16, 2022

Chairman Tester, Ranking Member Moran, and Members of the Committee, thank you for letting me submit this written testimony as you explore the implementation of the Sargent First Class Heath Robinson Honoring our PACT Act.

My name is Rosie Torres. I, along with my husband, Army Captain Le Roy Torres, founded Burn Pits 360 to advocate for veterans exposed to toxic burn pits while deployed, many of whom have endured severe and often fatal health consequences as a result. I have had the honor of working with many of you personally on the PACT Act and am eternally grateful for your tireless work to ensure veterans are given the health care and benefits they deserve after serving our country.

My husband, Le Roy, was deployed to Camp Anaconda in Iraq for years. This air base was home to the largest burn pit on the globe. In 2008, Le Roy returned home to Texas, he quickly fell ill with devastating respiratory symptoms. The deterioration of Le Roy's health impacted him personally and ended his dream career as a Texas State Trooper since he was no longer able to perform the duties of the job. Despite this enormous impact on our lives, we did not know what was happening and why he was suffering these debilitating health impairments

Despite repeated attempts to get help for his deteriorating conditions from the VA, our family was consistently faced with the injustice and denial of specialized health care. We spent several years and depleted our personal life savings traveling the country in search of a diagnosis for Le Roy. We needed the diagnosis to find a diagnosis and determine a path for treatment – if it was possible. **We were close to going into foreclosure on our home while we simultaneously had no clue how severe his condition was and how long he might have to live. And to this day, we still don't have answers to these questions, even though we now have a diagnosis.**

Le Roy suffers from shortness of breath, headaches, autoimmune and gastrointestinal issues, memory loss, toxic brain injury and more. He is constantly in and out of the hospital. In fact, he could not be here today for these hearings because he is back in the hospital. And while we do

finally have diagnoses – constrictive bronchiolitis, fibrosis of the lungs, and toxic encephalopathy – we do not have a treatment plan, nor do we know how much time we will have together or whether he will get to see our children and grandchildren grow up. This is in large part because even though we have a diagnosis, the VA has not been able to provide access to the proper health care services to determine the status of his disease since the diagnosis, nor putting a treatment plan into place for his future.

I worked for the VA for 23 years prior to Le Roy's health problems. "Even though I thought I understood the system, I knew it would be complicated to navigate the VA and help my husband arrive at a quick and accurate diagnosis of his condition, establish a treatment plan, and claim his benefits. And our experience was even more frustrating and challenging than I ever could have imagined. So, after spending years and our life savings navigating VA and private health care systems seeking the certainty of a diagnosis, I started Burn Pits 360 to advocate for burn pit victims and to create a community for the thousands of other veterans and families suffering a similar fate. This is what brought us to Congress to advocate for the PACT Act. It became – and still is – my life's mission to ensure that no other veteran nor their family faces the obstacles we did. It was the honor of a lifetime to work with Congress and veterans advocates across the country to ensure the creation and passage of the PACT Act. But the work does not end there. In fact, the work just begins there. Now, we must ensure that the VA implements this legislation quickly and effectively, so veterans are no longer left helpless when their health is suffering from deployment-related exposures.

I want to focus on one of if not the most common symptoms of deployment-related exposure: unexplained shortness of breath. Like many veterans, shortness of breath was one of our first clues something was wrong with Le Roy. Unfortunately, we were bounced around from hospital to hospital to find an answer as to why Le Roy's was experiencing these symptoms, and it was not until he was finally given a surgical lung biopsy that we were able to receive a diagnosis. While this sounds "easy," it is in fact the opposite. We were afraid we would end up homeless by the time we were through with it. We had to travel to Nashville, pay tens of thousands of dollars out of pocket, and the procedure itself was barbaric and invasive. It took Le Roy almost a year to recover from that procedure. In addition, lung biopsies are risky, with about a one percent fatality rate. Because of this experience, Le Roy does not want to undergo another biopsy, and consequently the VA has no other way to determine how much his condition has deteriorated since the biopsy. As a result, today I have no idea as to how severe his condition is. Every time he is admitted to the hospital, I am left to question how long he has left with us. How can we put our veterans through this after all they have already suffered?

Based on the data we have in the Burn Pits 360 registry, we estimate that hundreds of thousands of the 3.5 million deployers have undiagnosed respiratory issues, for which shortness of breath could be the first sign that something is wrong. Now that the PACT Act has passed, the VA is frantically staffing up with clinicians, nurses and administrative resources to cope with the expected influx of veterans seeking care. Modalities such as pulmonary function tests, chest x-rays and high-resolution CT scans are not always useful, as they don't provide insight into actual lung function. The VA does not have the resources to perform these tests on all these veterans about to enter the system for the first time.

So as the VA starts to implement PACT, how can the Department ensure other veterans do not suffer the way Le Roy has? And how can Congress provide proper oversight to make sure this is done quickly?

For situations where shortness of breath presents, like they did for Le Roy, the VA needs to create a clear intake process for veterans suffering from lung injuries to get access to medical screenings using available technologies that are now on the market. I have learned of technologies that can quickly and painlessly give doctors clarity and details about a veteran's lung conditions. With this information, veterans can get access to better treatment and avoid invasive and expensive biopsies. In fact, the House FY23 Appropriations Subcommittee Military Construction, Veterans Affairs, and Related Agencies included report language supporting a pilot addressing this exact issue – something we encourage Congress to ensure is carried through in the final FY23 bill and implemented immediately. The language is as follows:

Burn Pit Population Surveillance. —The Committee continues to express its concern regarding the devastating effects that toxic particulate matter from sources such as burn pits, dust storms and sulphur mine fires have had on veterans who were deployed to Iraq, Afghanistan, Southwest Asia, and other theaters of operations in the period after 9/11. While the Department has attempted to quantify the number of veterans who were exposed to airborne hazards, a full accounting of the scope and severity of the impacts of these exposures across the affected population has not been undertaken. The Committee is aware of emerging technology that uses existing x-ray imaging and equipment to derive four-dimensional models of lung function, to identify respiratory illnesses and accompanying loss of lung function earlier than was previously feasible. The Committee urges the Department to evaluate this technology for the purposes of conducting a population-wide surveillance of veterans who have likely been exposed to airborne hazards, in order to conduct a full accounting of the health impacts suffered by veterans and to provide full and effective medical care to this population.

These technologies are affordable for the VA, non-invasive, and accurate, and would be easy to implement at any VA health care center. **One technology, for example, doesn't require any new hardware or personnel and can screen many, many more veterans in a much shorter period of time by providing four-dimensional lung images from x-rays that would be taken under a general chest x-ray referral the veteran would receive anyway. This technology simply needs to be included as an option when a veteran is being referred for an exam as a result of pulmonary symptoms. For many, this would avoid the surgical lung biopsy, saving lives, time, money, and suffering.**

The VA also needs to train their staff on how to recognize burn pit exposure symptoms and how to move veterans into the new screening process so that doctors can quickly identify their needs. In the month since implementation went live, wait times have already started to increase. Veterans have waited long enough and suffered long enough. **Increased wait times and barbaric, invasive diagnostic procedures cannot be the way forward for our nation's heroes.** Every day that the VA delays implementation or makes a veteran wait for diagnosis and treatment is another US flag draped on a coffin.

Congress and the VA have a real opportunity to end the nightmare that veterans and their families are living every day due to burn pit exposure. I urge you to do so and ensure we do not fail our veterans again. Our veterans have suffered enough as this war has followed us home. This has broken our family into pieces. Due to Le Roy's health, we have missed family events and functions and have been forced to rely on our tribe – our family and community – to raise our children when we couldn't be there ourselves. I look at my husband every single day now and I don't know how much longer I have with him. We would give anything to have the time and resources back that we spent trying to get his diagnosis and hoping for a treatment plan. While we will never have that time back, you can give it to others. Do not let the VA fail others the way it failed us. I urge you with everything I have in me to make sure no other families have to suffer the way we have. **Ensure the VA implements PACT immediately. Ensure the VA has a system in place to field the tens of thousands of veterans who will be beating down the doors for a diagnosis. Get them their treatment and benefits as fast as humanly possible.** These veterans have put their lives on the line for us, and they have returned, but not unharmed. They have the right to live. And it is your responsibility to ensure they are given that right and that they are supported in their desire to live. Thank you.