

IMPLEMENTING THE PACT ACT: ONE YEAR LATER

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

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IMPLEMENTING THE PACT ACT: ONE YEAR LATER

WEDNESDAY, JULY 26, 2023

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

The Committee met, pursuant to notice, at 3 p.m., in Room SR-418, Russell Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

Present: Senators Tester, Murray, Brown, Blumenthal, Sinema, Hassan, King, Moran, Boozman, Tillis, and Tuberville.

OPENING STATEMENT OF HON. JON TESTER, CHAIRMAN, U.S. SENATOR FROM MONTANA

Chairman TESTER. I am going to call this hearing to order. Good afternoon. I want to start by thanking Dr. Elnahal and Josh Jacobs for being here today to discuss VA's implementation of the PACT Act.

It was about a year ago that we came together to pass the bipartisan Sergeant First Class Heath Robinson Honoring our PACT Act. It was a historic bill. It was a long-overdue victory for toxic-exposed veterans and their families. Now it is on the VA to implement this law as seamlessly as possible, which is not an easy task because it tends to be pretty popular.

And that is why I held several town hall meetings throughout Montana to hear firsthand from veterans about what they have been experiencing. And what I hear, which I think most of my colleagues on this Committee are also hearing, is that the expansion of health care benefits has been well received by toxic-exposed veterans and their families.

VA has received more than 744,000 claims for the PACT Act benefits, and has completed more than 409,000 PACT Act claims, approving about 80 percent of them. More than 103,000 veterans with PACT Act-related eligibility have enrolled in the VA health care system. VA estimates more than 3.8 million veterans who were already enrolled in the VA system were impacted by the PACT Act.

To ensure the VA is effectively serving all veterans following the increase in demand for its programs and services, the PACT Act also invested in VA's infrastructure and workforce. The VA has leveraged these tools to hire more than 43,000 new staff to process claims and provide health care, work toward opening 31 new clinics and research facilities in 19 different States and use technology to

streamline the claims process and tackle the significant increase in PACT Act claims.

But our efforts are only as good as VA's success in getting the word out to every potential affected veteran and survivor. During today's hearing I would like to hear about the Department's efforts to reach disadvantaged populations like veterans in rural Montana who still lack access to broadband and do not have reliable cellphone service. It is also critically important VA works to make its website easy to find and even easier to navigate. I heard over and over again from veterans who say the VA website are complicated and unnecessarily so. For example, the Burn Pits Registry needs to be more streamlined and easier to use.

However, much is working as planned. I am pleased that the VA is using the PACT Act framework for researching and determining the health impacts of the toxic exposures to decide whether it should expand benefits to veterans who suffer from leukemia and myeloma. My hope is that VA will continue to do the same with other exposures such as contaminated water at Red Hill, the high rate of cancer among missileers who served at Malmstrom Air Force Base, and other global strike command locations.

I look forward to hearing from you, Dr. Elnahal and Mr. Jacobs, on how you plan to tackle these and other challenges you have encountered during the past year while you have implemented the bill that we passed, the PACT Act.

With that I will turn it over to Ranking Member Jerry Moran for his opening statement.

**OPENING STATEMENT OF HON. JERRY MORAN,
RANKING MEMBER, U.S. SENATOR FROM KANSAS**

Senator MORAN. Mr. Chairman, thank you. Thank you for holding this hearing. Thank you for the efforts that this Committee went through in regard to enactment of the Sergeant First Class Heath Robinson Honoring our PACT Act, which was signed into law now a year ago.

I am going to say some of the same thing that you said but certainly not as articulately as you did.

Dr. Elnahal and Dr. Jacobs, you have each had an important task in implementing the PACT Act over the last year. We recognize the challenges. We talked about them as one of our concerns from the very beginning is how does the VA implement this major piece of legislation in a way that takes care of the veterans that we want to include but does not do anything damaging to those who are already part of the system. And we know, recognizing the challenges, but recognize that the benefits that come from creating these new benefits we think outweigh the challenges and the detriments that might come to others.

This legislation, the PACT Act, impacts virtually every aspect of the Department's operation, delivering health care and benefits and leasing VA medical facilities, conducting research into toxic exposures, and recruiting and retaining employees at the VA. Congress gave the VA a number of tools to expand the services available to toxic-exposed veterans and their survivors, and we want to help you accomplish that goal.

I do have some concerns or questions that I would raise. One of the tools we gave the VA is a 1-year open enrollment for post-9/11 combat veterans who separated from service more than 10 years ago. That deadline is rapidly approaching. I have concerns. I just want to be reassured that the VA has not sufficiently informed this group—let me say that in a positive way. I want to make sure that those individuals have been informed and have the opportunity to enroll before the time is up.

I also would like to be reassured that the VA is adequately tracking how many veterans are enrolling in the VA health care system due to the PACT Act, and I remain concerned about the impact the PACT Act is having on the backlog for veterans and survivors, toxic exposure or not, and we want to make sure that wait times should not be a second longer than necessary in receiving benefits. I would like to hear how the VBA is staying on top of the backlog and using resources Congress provided to work through these claims quickly, without loss of the quality of claim decisions.

We continue to hear—I continue to hear from veterans who have been exposed to toxins in locations or circumstances not included in the PACT Act. This could be veterans who were exposed to burn pits in Kosovo or herbicides in Panama.

A key aspect of the PACT Act was directing the VA to carry out a fair and transparent process to identify, evaluate, and grant presumptions for additional toxic exposures and related diseases not spelled out specifically in the legislation. The VA, CDC, the National Academies have expertise and now the congressional mandate to listen to veterans, to act to address their toxic exposure-related health concerns as needed.

I was glad to see the VA announced this week that the Department is going to use the new PACT Act process to consider three additional new presumptions. I hope to hear from our witnesses, from you today, more about that and about additional conditions the VA may be considering through the next framework in this process.

As the PACT Act made clear, caring for veterans who are sick and suffering or may become so as a result of toxic exposures they experienced in the military is a moral imperative for the VA and for this Committee. The men and women who were exposed to Agent Orange, burn pit smoke, radiation, and other dangerous toxins deserve nothing less.

I look forward to hearing how I and this Committee can be of help to you in accomplishing the goals that we mutually share in the implementation of the PACT Act. And Mr. Chairman, I yield back.

Chairman TESTER. Thank you, Senator Moran. I appreciate those comments.

Today's hearing has one panel with two leaders responsible for implementing the PACT Act. First we have Dr. Shereef Elnahal, who is the Under Secretary for Health. He has been in front of this Committee numerous times this year. Thank you for coming back again.

Next we have Josh Jacobs, who is the Under Secretary for Benefits. Josh, we appreciate you being here in a confirmed position in a big, big way, so thank you.

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

STATEMENT OF HON. SHEREEF ELNAHAL, MD, MBA, UNDER SECRETARY FOR HEALTH, DEPARTMENT OF VETERANS AFFAIRS

Dr. ELNAHAL. Thank you very much, Chairman, Ranking Member Moran, and other Members of the Committee. Under Secretary for Benefits, Josh Jacobs, and I thank you for the opportunity to appear before you today to discuss the Department of Veterans Affairs' implementation of the PACT Act. This landmark legislation has already empowered VA to provide more care and more benefits to more veterans than ever before, as well as their caregivers and survivors.

One of those veterans is Wendell Griffin. Mr. Griffin was exposed to toxins while stationed in Thailand in the early 1970s, and had developed several related health conditions. On January 1st of this year, thanks to the PACT Act, Mr. Griffin was granted service connection, and today we are providing him all the care he needs to manage his Parkinson's disease, diabetes mellitus type 2, and peripheral neuropathy, and the change is noticeable. He said, quote, "It used to be that what we got was a small amount of VA care. Now I can go in and ask for what I need, and they provide it." Mrs. Griffin adds that these expanded benefits provide much needed financial relief so that they can focus on her husband's health. This is why we do what we do at VA, and we are committed to fighting for Mr. Griffin and the hundreds of thousands of veterans now covered by the PACT Act.

Since the passage of the legislation we have launched an aggressive outreach campaign to encourage veterans to apply for benefits and get their toxic exposure screenings. Alongside Mr. Jacobs and our partners at VBA we have hosted more than 2,000 PACT Act outreach events across the country. And as we approach two important deadlines, the end of the special enrollment period and the last day to submit a claim to have it backdated to August of last year, we are hosting another 125 events at facilities across the Nation this summer during our Summer Vet Fest.

We have also placed heavy emphasis on training our teams to better serve veterans impacted by toxic exposures. As of July 10, 2023, over 140,000 clinicians completed mandatory VA military exposure training, and over 45,000 employees have participated in PACT Act 101 training. Further, we trained more than 88,000 providers from across disciplines to perform toxic exposure screenings and recently screened our four-millionth veteran for exposures during their service.

As we welcome new veterans and provide more care to those already in our system we are also focused on building capacity to meet veteran care needs through hiring, improvements to access, and expansion of our infrastructure. Thanks in large part to the new hiring authorities in the law, our health care system's total workforce has grown by 4.9 percent through June, the highest growth rate in over 15 years. We hired almost 44,000 new employees this fiscal year alone and have also improved retention. We are

continuing to improve the hiring process to reduce the time it takes to onboard folks into vacant positions, and we are focused on that diligently.

And as we continue to grow our team, we are working our hardest to improve access. This year we are already outpacing goals for hiring medical support assistance and other critical support staff. We are also working on improving our scheduling systems for both direct and community care, to have better visibility into provider schedules and ease the workflow for staff, all while empowering veterans to schedule appointments directly with community providers themselves. Further, we are standardizing appointment links and expectations for bookable hours to optimize the time our clinicians spend in clinic.

To accommodate the future needs of veterans as a result of the PACT Act we are also seeking to leverage PACT Act authorities to expand our physical infrastructure. Recently we entered into memorandums of understanding with some of our academic affiliates that will lead to new clinical space that will serve veterans.

For veterans who receive health care because of the PACT Act, I want to highlight that today, for the first time ever, the Centers for Medicare and Medicaid Services included VA facilities in their annual overall hospital star ratings, and I am very proud to share that 67 percent of our facilities received either four or five stars, compared to only 41 percent of non-VA hospitals.

The excellence of our system and the success of PACT Act implementation would not be possible without the trust of veterans, the dedication of our employees, and our partnership with all of you. So I want to thank this Committee and Congress as a whole for the authorities we have to provide more care and more benefits to veterans and the tools and the budgetary resources necessary to do so.

The importance of robust funding in the last omnibus and the hiring and infrastructure authorities granted in the PACT Act cannot be understated. As we build on the success of last year we appreciate your support for fully funding the VA budget request and your efforts to make VA more competitive through the VA CAREERS Act.

Chairman Tester, Ranking Member Moran, thank you again for the opportunity to appear before you today and for your continued support. We look forward to your questions.

[The joint statement of Dr. Elnahal and Mr. Jacobs appear on page 29 of the Appendix.]

Chairman TESTER. Thank you, Dr. Elnahal, and there will be questions.

Mr. Jacobs, you have the floor.

STATEMENT OF HON. JOSHUA D. JACOBS, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. JACOBS. Good afternoon, Chairman Tester, Ranking Member Moran, and Members of the Committee. I appreciate the opportunity to appear before you to discuss VA's ongoing implementation of the PACT Act. It has been nearly 1 year since Congress passed

and President Biden signed the PACT Act into law, and more than 7 months since VBA started full implementation of the law.

The new benefits provided under the PACT Act and our aggressive sustained outreach efforts to connect veterans and survivors with those benefits have resulted in an increasing number of veterans pursuing their earned benefits. Veterans and their survivors have filed more than 772,000 PACT Act-related claims since August 10th, and thanks to the efforts of our dedicated staff, 425,000 of those claims have been completed, with a nearly 79 percent approval rate for PACT Act-related claims. And as we work through each and every incoming claim, we are reminded that behind each claim is a veteran, family member, or survivor.

Dr. Elnahal told you about Wendell and the care he receives from the VA health care system. Wendell initially pursued service connection for Parkinson's disease, diabetes, and peripheral neuropathy in 2016, due to exposure to Agent Orange while he was stationed in Thailand in the early 1970s. His previous claims and appeals were denied because we did not have sufficient evidence to provide him a grant of benefits through direct service connection, and his service in Thailand was not considered a presumptive.

But that all changed with the PACT Act. Wendell filed his claim, and on January 1, 2023, was granted 100 percent service connection for 13 disabilities and dependents' educational assistance. Not only will these earned benefits provide long-overdue recognition of the service and sacrifice made by Wendell, but they will also provide access to other life-changing benefits and health care for him and his wife, who helps care for him.

Wendell is one of the many veterans who benefited from this historic bipartisan law, and we were able to deliver these long-overdue benefits because of the authorities and funding provided by Congress as well as our decision to make all presumptives effective the day the bill was signed into law rather than over several years, to start processing all PACT claims on January 1st, instead of waiting 18 to 24 months for regulations, because of the planning, coordination, and months of hard work that have gone into the implementation, and most importantly because of the talented and mission-focused VBA colleagues who help deliver on the promise of a grateful Nation.

To ensure timely service to veterans like Wendell, VBA has been aggressively hiring. Even before President Biden signed the PACT Act into law, VA began actively hiring new employees to prepare for the expansion of benefits, and over the last 18 months, VBA has grown by 22 percent, with a total end strength of more than 30,000 people. We have also been scaling up our examination capacity. Through the end of June, we have completed 1.9 million exams, which is a nearly 22 percent increase over the same time last year.

And while we have much to celebrate, our implementation has not been without challenges. For example, we have heard about the need to streamline and revise the PACT Act training, about the complexity of applying the new Toxic Exposure Risk Activity (TERA) requirements in the law, and about the pressure that has been experienced by our hard-working claims processors who are doing their best to learn the nuances of this once-in-a-generation

legislation while continuing to meet their production and quality standards.

And we are using that feedback to make improvements to our PACT training, to develop tools to help employees make uniform and consistent decisions regarding the application of TERA, by providing our claims processors with the relief they need to adjust to the new requirements, and by increasingly leveraging automated tools to make our employees more effective and efficient.

The PACT Act is the biggest expansion of health care and benefits for veterans in generations, and it provides groundbreaking coverage of more than 300 conditions. But we know it is not and cannot be the end, and that is why we are telling all veterans who think they may be eligible for PACT benefits to submit an intent to file by August 9th in order to preserve the earliest possible effective date. And it is why we cannot rest until we understand whether there is a connection between other deadly conditions and the service of our Nation's heroes.

We will continue to search for answers through our forward-leaning scientific research efforts and the analysis of claims data, and we will use the new presumptive decision-making process, codified in the PACT Act, to formally consider whether we can establish new presumptive conditions.

In addition to the many direct benefits provided to veterans and survivors, the PACT Act has also fostered greater collaboration and jointness across the Department. Whether through our joint outreach efforts, the presumptive decision-making process, data-sharing, or other key initiatives, the PACT Act has required all of VA, and particularly VBA and VHA, to work together in new and more collaborative ways, and I look forward to continuing to work with Dr. Elnahal to make this the new normal so we can better support the men and women we are privileged to serve.

Thank you for your continued support of veterans, their families, caregivers, and survivors. I look forward to your questions.

Chairman TESTER. Thank you both for your testimony. I appreciate it very much. I will start.

We are here on the PACT Act, but I want to go a little parochial for a second because there are issues that are happening in the Montana VA. Recently, the VA announced a comprehensive review of VA Montana, which is consistent with calls that I have made via letter hearings and direct conversation with you and Secretary McDonough, Dr. Elnahal. I think you saw some of those concerns when you were out and visited Montana last December.

So for you, Dr. Elnahal, what can veterans and VA employees in Montana expect as this comprehensive review gets underway?

Dr. ELNAHAL. Thank you, Chairman. We are very focused on the many issues affecting VA Montana, but the first thing I want to say is that veterans in Montana should continue to seek care there. We are working our hardest to make sure that care is the highest quality possible. That is what veterans in Montana deserve.

And the issues that have surfaced, the investigations by the OIG and most recently our Office of the Medical Inspector, were not issues that I could sit on. So I have worked with the network director over VISN 19 to ensure that two very talented senior executives in our system came into that facility, diagnosed all of the issues,

and began the process to address them systematically, Wade Vlosich and Wayne Gill, whom I spoke with personally this week to ensure that we are on the same page and that each issue is surfaced and addressed. That is what the veterans in Montana deserve, and I know you equally care for that facility to get on the right path, Chairman.

Chairman TESTER. It is critically important it does. Can you give me any kind of an idea about how long you anticipate this takes, or is that not a question you can answer at this moment in time?

Dr. ELNAHAL. I think at a high level, Chairman, as long as it takes to correct the issues, but I do hope that we get better insight into the exact plan of action on each of them over the next couple of months, and we will keep in touch with you and your staff throughout that entire process.

Chairman TESTER. You answered part of my second question, and that is can I get a commitment from you that VA Montana will get the resources and support that it needs from VA Central Office as this review goes on?

Dr. ELNAHAL. I commit to that, Senator.

Chairman TESTER. And beyond.

Dr. ELNAHAL. Absolutely.

Chairman TESTER. All right. Thank you.

Mr. Jacobs, as I predicted, the PACT Act has been very popular. Veterans have been waiting generations, if not centuries, for these benefits. That said, 744,000 PACT Act claims, and 1.3 million non-PACT claims is a bunch to handle. I know your team has hired thousands of claim processors to deal with the influx of claims, as you pointed out, yet we hear from some in VBA that VA is so focused on production quotas that it risks reducing the quality of the claims decision.

So how are you balancing the need for the quick process with the unprecedented level of workload while maintaining high quality?

Mr. JACOBS. Thanks very much for that question, and I will tell you, that is a question that I get at every regional office that I visit. It is a constant tension in a production-oriented environment to deliver timely benefits to veterans, particularly in an environment where more and more veterans are coming, seeking the benefits that they have earned while delivering them in a quality and accurate manner. And so the bottom line is, it is not either/or. It is both/and.

And I will add to the two dimensions that you have mentioned, which is timeliness and quality. We are adding a third, which is veteran experience. We can deliver a timely, high-quality decision, but if the veteran does not feel respected, if they feel like they have been ignored, that could be the difference between them pursuing other earned benefits or turning their back and not coming back to VA.

So, the way that we balance it is with our performance standards. We have high performance standards that measure both production and quality, and we constantly are reevaluating them to make sure that they are delivering the right outcomes that we have designed.

Chairman TESTER. Okay. Dr. Elnahal, I am encouraged by the VA's hiring successes. Part of that is your good work. Part of it is

the tools we gave you in PACT. There are some provisions that have not been implemented, some, in fact, that I have championed. Can you provide an update on VA's national rural hiring strategy?

Dr. ELNAHAL. Yes, Chairman. That report and that guidance cannot come soon enough to the field. We are working very hard on that. We hope to get that guidance out to the field in the fall. And that is an intensive effort that is happening with multiple research components of our organization but also our workforce management infrastructure as well.

We have 12 VISNs involved who mostly represent rural areas, have largely rural populations within their VISNs, contributing directly to this, so it has field input as well as the expertise of our efforts over these particular areas.

So, I do think this will be a good product, and it will provide direct, useful guidance to our rural-serving VA facilities.

Chairman TESTER. One quick question, final question, before I turn to Senator Moran. Where are you with the contract buyout provision?

Dr. ELNAHAL. We have implemented it, Chairman. In other words, it is available to the field. The uptake is not nearly as much as I had hoped right now, to be candid with you. We have less than 10 providers who we have bought their contracts at this point. So, I am going to double back and see why uptake is not greater because I do think this should be much more robust.

Chairman TESTER. Okay. Senator Moran.

Senator MORAN. Chairman, thank you. Dr. Elnahal, the 1-year enrollment period for post-9/11 combat veterans who left military more than a decade ago, do not have a service-connected condition, and make above VA income limits will end on September 30, 2023, about 2 months from now. How many of those veterans were not enrolled in the VA health care system when the PACT Act was enacted, and how many of them have enrolled since the 1-year open enrollment period started October 1, 2022?

Dr. ELNAHAL. We estimate, Senator, that it is in the hundreds of thousands of veterans who could potentially qualify for the 1-year special enrollment. Right now we just got critical updates to our health care enrollment eligibility system that will shed light on a much more precise number of folks who took advantage of that particular window of eligibility. Right now we can only estimate.

What I can tell you is overall over 100,000 veterans in the outreach population that we defined right after the passage of the PACT Act have enrolled. Once we get more precision in that data we will present it to you and react to it. We do have until September 30th, so we are going to work very, very hard to maximize the opportunity. And I have been frustrated, frankly, with how long it is taking to get some precision on folks who are taking advantage of that specific authority. But once we surface that information we can be much more targeted on our outreach.

And I will just say that over 2,000 outreach events, Senator, including over 100 early this summer alone. We are messaging to those veterans in a broad way to come in. But we need to be much more targeted in our outreach, and we will make sure we do that.

Senator MORAN. Anything that I or we can do to be of help to you? I also think Congress has a role to play in messaging and out-

reach. If you have any suggestions of how we can help you find or veterans find you that fit this category in the next 2 months, please put me to work.

Dr. ELNAHAL. The more you and your offices amplify that window of opportunity for vets who separated more than 10 years ago, the post-9/11 vets, to directly enroll in VA health care, the better. We are trying to amplify that message as much as possible, so thank you for that.

Chairman TESTER. Jerry, if I might just add, there are opportunities out there for PSAs that some of the Veterans Service Organizations are asking us to do. I just got one yesterday.

Senator MORAN. That is good. I assume we know that. That is good to have it broadcast and into my brain. I am always looking forward to the opportunity for you to tell me what I can do.

Chairman TESTER. No. Just opportunities to see you successful.

Senator MORAN. Mr. Jacobs, this is a question you and I have talked about before, and it is the Ready for Decision title that a veteran receives and then waits and waits and waits for an answer. Ready for Decision generally means something is around the corner. How is the VA working across the VA to better communicate to veterans, survivors, and other stakeholders about where a claim is in the process of being decided and manage expectations for how long an individual will have to wait for that final decision?

Mr. JACOBS. Yes. Thank you very much, and I appreciate you raising this issue. When we last spoke, the Ready for Decision inventory was significantly higher. The team has done an incredible job of bringing that down. We actually have a different problem that we are working to manage, is to make sure that we have enough claims in the Ready for Decision file to execute on because we have so many coming in that are in the evidence stage.

One of the things that we are doing is we are working with our Veteran Experience Office to work to do human-centered design engagements and make sure that as we communicate we are simplifying that.

We had a PACT Act offsite. One of the things we have done over the last year is we have held four quarterly offsites to make sure that we are talking through implementation. We got direct feedback from our Veterans Service Organizations partners that were in the room as well as staff from the Committee about how we go about doing that. And so, it is updates to not only the website but also to the call centers, and making clear, in a less bureaucratic manner, what this means.

The challenge for us is providing a clear expectation for how long an individual claim may proceed. Because we can talk averages, but we know averages include outliers. And so, trying to provide precision and a common expectation and understanding without over-promising and under-delivering.

Senator MORAN. Is that label still of value? Ready for Decision still is something that should be being said to a veteran?

Mr. JACOBS. No. In fact, that is one of the things that we are looking at. We are looking at changing the nomenclature. It means something to people who process claims and know the process. It means something very different, to your point, to veterans who are going through the process.

So, one of the key decisions that we are working to make is how we communicate where you are in that process. We have got multiple stages in the process, so we are trying to cut it down to maybe five and change the language to be clearer.

Senator MORAN. That is a good point for me to recognize, is this was really intended for internal use.

Mr. JACOBS. Correct.

Senator MORAN. It became used externally and created an expectation that is difficult to meet.

Mr. JACOBS. Yes. And I think that is one of the biggest takeaways here for me, in the past year. We have an incredibly knowledgeable and mission-oriented staff who have been doing this, in some cases, for decades, and they all want to do the right thing. But sometimes we forget, and our focus on the day-to-day, that what makes sense to us does not make sense to everyone else outside of our building. So that is why it is so important for us to work externally, to open it up to talk about what we are doing, and to get input, both from the veterans and our external partners who can provide that impartial feedback.

Senator MORAN. Thank you. Let me thank both of you in this hearing, particularly on the PACT Act, recognizing the tremendous increase in work, you and your teams. I have had significant faith in both of you, Mr. Jacobs, Dr. Elnahal, from the moment I met you, when you were nominated to your confirmation hearing and the hearings in between. And I am glad to have you both in the circumstance that you are, in the positions that you are in, to lead us forward to get this right. So thank you very much.

Chairman TESTER. Thank you, Senator Moran. Senator Brown.

**HON. SHERROD BROWN,
U.S. SENATOR FROM OHIO**

Senator BROWN. Thank you, Mr. Chairman. Thank you all for your work on the PACT Act, and this is how government should operate. When this Committee does its work and addresses a problem we get together, under Senator Tester's leadership. A lot of us worked on this bill. It passed in August. Already I know, talking to VA employees and VA leaders prior to passage, who were already planning on its passage and began to scale up. Passage was signed in August, ready in January. Thousands of veterans went to the VA in Chillicothe, in Dayton, in Cincinnati, Cleveland, and Columbus, and got those benefits, if they presented with any of the 23 illnesses, and that is the way it should work. So our job on this Committee, and other Members of the Senate and the VA, is to make sure that veterans know about this.

Since its passage, or right before, around the time of its passage, since before it began to take effect, I began to do roundtables in Ohio with Tom Wike, a staff person who is here today, in Ohio, a veteran himself. We have done 35 roundtables. Ohio has the good fortune of being one of the States that has a Veteran Service Office in all 88 counties. So I sat with the veteran service officer from that county, some of their staff. Some of those county VSOs are as small as two employees. Some are as large as Cleveland and Columbus, with 40 or 50 employees. Usually meet at a VFW or American Legion hall or other veteran organizations and talk to the

community. We will have 10 or 15 or 20 veterans sitting around a table, and their job, because they are active in veteran organizations, is to get the word out.

So thank you for the work that you do. Twenty-four thousand veterans in Ohio have already submitted PACT Act claims. I would encourage the VA to continue to be creative about your outreach, particularly looking at how to reach veterans who are not connected to the VA. We have talked in this Committee a number of times about the disconnect between active service, coming home. The VA does not really know where they are. They do not connect with the VA because they do not think about it. And then when they need help we need to be there. So just an opening statement, if I could.

Secretary Elnahal, I heard from a constituent this week in northeast Ohio, Cleveland, Akron, Lorain, Lake County area, who lost her husband a month ago to pancreatic cancer that was likely connected to his service in Desert Storm in Iraq. The husband went in for his toxic exposure screening but was not referred for any diagnostic testing until he became visibly ill. When he finally was referred for testing they found stage IV pancreatic cancer, but it was too late.

So my question, Mr. Elnahal is, after a veteran receives a toxic exposure screening, walk me through the steps taken to get that veteran to follow-up care as quickly as possible. How do we make sure that that transition to care happens as quickly as it should?

Dr. ELNAHAL. Thank you for the question, Senator Brown. I want to express my deep concern, condolences for the veteran you are talking about.

You know, we have had too many cases over the years which, frankly, led to the expansion of coverage for cancers like pancreatic cancers associated with toxic burn pits, as the legislation establishes. So we have now screened more than four million veterans across the country for toxic exposures. It is a standard questionnaire, happening in every primary care clinic increasingly more types of clinics like mental health and specialty care.

And should a veteran indicate that they have been exposed to one of these toxins they are then referred to a stage 2 screening, which allows us to understand better what their specific concerns are, their current diagnoses are canvassed, and we call this exposure-informed care because we have now trained tens of thousands of clinicians to do the screening, but over 140,000 clinicians who treat veterans on what these exposures might mean for future conditions.

So, in other words, it alters the care in a beneficial way. It allows us to anticipate conditions associated with these exposures. And very importantly, we have an excellent relationship with Under Secretary Jacobs' team, whereby every veteran is supposed to get a letter directly from the Veterans Benefits Administration to encourage vets to apply for further benefits, even if they are already enrolled.

I do not know if my colleague wants to describe further.

Mr. JACOBS. Yes. We are continuing to find more creative ways, and to your earlier question about outreach. And what I would add is we have a data-driven process where we are able to identify the

percentage of veterans that are accessing their earned benefits on a county-by-county basis, and that is one of the reasons, I think, why we have been successful. In Ohio we have had, I think, 139 events, and then we are trying to target our resources as effectively as possible.

Chairman TESTER. Senator Tuberville.

**HON. TOMMY TUBERVILLE,
U.S. SENATOR FROM ALABAMA**

Senator TUBERVILLE. Thank you, Mr. Chairman. Thanks for being here today, both of you. Thanks for what you do for our veterans.

We talked earlier about people—you can have all the money you want, but if you do not have the people working for you it is not going to work. We all know that. We all know the situation we are in right now, looking to hire people. But with all the disability claims and the demand for veterans seeking care it has got to be unbelievable.

So the PACT Act provided numerous hiring authorities for the VA, including incentives such as student loan repayment and signing bonuses. However, I continue to see reports of burnout, and you are going to have burnout in everything, amongst your employees.

But this is for both of you. While I understand the VBA is onboarding employees daily, combined with the burnout rate, are we netting employees? Are we gaining ground? Both of you.

Mr. JACOBS. Yes. I will say we have grown by 22 percent over the last 18 months. We started at about 24,000-plus employees 18 months ago. We are now at 30,000. We have never been at this place in terms of the total workforce.

And at the same time that we are continuing to recruit and hire and onboard and train, we are also very focused on retention. And so, we have an attrition rate of about 6 percent. It is a little bit lower than it has been historically. And part of the reason we are very focused on it is if we bring in all these new employees and we lose all of our experienced employee it is going to do no one any good.

This is a workforce who has been doing an incredible job. We are 16 percent above where we were last year in terms of total production, but that comes at a cost.

Senator TUBERVILLE. Mr. Elnahal?

Dr. ELNAHAL. And I will just add, Senator, that hiring faster and more competitively is my most important foundational priority. We have to execute this legislation to its fullest extent. We cannot do that without enough people. So I am pleased to report that we have grown by almost 5 percent across our total workforce. We are on pace to exceed 400,000 VA health care employees for the first time. And as a result of both the combined focus on hiring but also retention, because of the safety culture we are trying to establish with high reliability, lifting the focus of our clinicians and the voices of our clinicians in addressing things like burnout, we have been able to retain employees at much higher levels than in the past several years, especially in the context of the pandemic.

So I think all of that accounts for our success so far, but we are not taking our foot off the gas. We still have a goal of hiring 52,000

external hires this fiscal year ending September 30th. We have already hired more than 43,000, so we are on pace to beat it, but we will not stop until we do. And then we have to hire strategically more and more to be able to execute this.

Senator TUBERVILLE. So the increase, how does that compare to the last 5 years, before we started the PACT Act? Is it the same? Better? The increase.

Mr. JACOBS. This is the fastest and the most explosive growth we have ever had in the last 20 years, is my understanding.

Dr. ELNAHAL. We have hired more people this fiscal year, in the first 9 months, than we ever have in the agency's history in the health care system, and it is the highest total employee onboard growth rate in more than 15 years.

Senator TUBERVILLE. So what is the VBA onboarding rate for hiring outside the VA versus hiring within the VA, given that hiring from within the VA creates more vacancies to fill? I mean, how does that work? How is that working? Both of you.

Mr. JACOBS. I will have to get back with specific number for the record, but what I will say is we have been very intentional about hiring externally, and those numbers have increased.

But the point you are making is a good one. As an example, we staff our call centers with a lot of incredible workers. They have taken advantage of these hiring opportunities to pursue career growth. They are going to be veteran service representatives. That creates an opening that we then have to backfill, particularly in our call centers, but we are mindful of that. We are also mindful of changing the culture so that we are more expansive in considering the types of skill sets that could be successful doing this type of work. And I will get you the specifics.

Dr. ELNAHAL. And I have directed my team, Senator, to only count external hires, for the exact reason you just mentioned. So the 43,000 number is external hires into the system.

Senator TUBERVILLE. You said 43,000?

Dr. ELNAHAL. Yes, 43,000 since October 1st of last year.

Senator TUBERVILLE. Man. Our unemployment rate ought to be going down with all you all are hiring. That is unbelievable.

I am out of time. Thank you, Mr. Chairman.

VA Response:

Through July 29, 2023, the Veterans Benefits Administration (VBA) has seen a near even split of internal and external VA hires in fiscal year (FY) 2023.

In FY 2023, VBA has hired 9,320 employees. The following provides a breakdown of the hiring:

- 50% (4,641) were external to VA
- 19% (1,786) were internal transfers to VBA from other VA offices or administrations
- 31% (2,893) were internal movements within VBA

The total hires from outside VBA (6,427) is proportionate to 25% of VBA's personnel count at the beginning of FY 2023, which was approximately 26,000 employees.

Chairman TESTER. Senator King.

**HON. ANGUS S. KING, JR.,
U.S. SENATOR FROM MAINE**

Senator KING. Thank you, Mr. Chairman. I would like to thank both of these gentlemen for coming to Maine in the month of July. That is a good time to come to Maine. And particularly, when I interviewed Mr. Jacobs at the initiation of his nomination I realized very quickly that we were really talking about customer service, about how to respond and how to respond efficiently and effectively. So I suggested to him that he come to Maine and talk to one of our companies that has an amazing record of customer service, L.L. Bean.

So about 2 weeks ago, Mr. Jacobs and two members of his team came up, had a fascinating meeting, and I sat in on it, with the L.L. Bean customer service team. I would just like to get your reflections on that meeting, what you took away from that.

Mr. JACOBS. First of all, Senator, thanks for suggesting the idea and helping us connect it, to have that meeting and joining us.

I was blown away by the approach that they have had. This is a culture that they have focused a significant amount of attention on. In addition to their operational concerns, their growth, their profit, they focus extensively on building and maintaining the culture that defines the brand.

And one of the things that really stuck with me, and it is something that I think about a lot, is something they call the "net promoter score," which is how are your customers going to come back, how are they going to kind of bring in others, talk about it. And I think about it in the context of VBA because we know we are the front door for other benefits and health care, and we want to encourage veterans to come in and access those other earned benefits.

And what I found striking is that the highest channel for net promoter growth was customers who engage through call centers and what they do to promote that culture as well as the differences between the in-person experience and the online experience.

But I think a lot of it just comes down to culture, which is something we are focusing on, and a really strong work ethic.

Senator KING. Well, I want to thank you for making the visit. It says a lot that you were willing to come and listen and learn and bring your team with you.

Mr. JACOBS. The only thing I regret is I was not able to stop at the L.L. Bean store because I had a 5-hour drive to Caribou after that, that evening.

Senator KING. And you get credit for that too, as well.

Our VHA and VBA people have done an amazing job. We are screening at 10 percent above the national average, and they have really done a great job on the outreach.

We have got the backlog, and we know it is going to grow probably to close to 400,000 or 500,000. Talk to me about how we use automation without losing the personal touch and the customer relationship that we are talking about.

Mr. JACOBS. Yes. So, when we talk about automation we are not talking full end-to-end automation. What we are talking about is automated decision support. So, we are automating the administrative tasks to make it easier, less time consuming for our employees to search through records, to—

Senator KING. And that was one of the things L.L. Bean shared, as I recall.

Mr. JACOBS. Yes.

Senator KING. Their people that answer the phone have an amazing access to data, that they can answer a question immediately instead of a long delay or a callback.

Mr. JACOBS. Correct. And so we are looking to provide those tools, including at the Togus Regional Office, where they are one of our pilot sites. They are benefiting from the hard work of folks in the Montgomery RO, which were one of the earlier prototype sites, kind of at the bleeding edge.

Senator KING. And we are talking about a 40-day reduction in decision time.

Mr. JACOBS. Yes.

Senator KING. Significant decision.

Mr. JACOBS. We are significantly reducing the amount of time it takes to process claims, to get to the first decision. We are enabling our employees to have more capacity to deliver more timely, more accurate, and more consistent decisions, and it is tools like this that have the potential to enable us to move away from things like mandatory overtime, which we have had to rely on to ensure that we are delivering the benefits that veterans deserve, at the pace at which they are filing.

Senator KING. Well, I am encouraged with the data that you both shared about staffing because as I think it was Senator Moran said, you can have all the good intentions, but if you do not have the people to execute. And so you are being very aggressive, and it looks like staffing is not going to be a bottleneck.

Mr. JACOBS. No. We have been incredibly successful, thanks to our HR team and Central office, but also the help of all of our regional offices. We have learned along the way, as we have done an extensive amount of hiring fairs, we have learned how to streamline and increase the percentage of hires.

Senator KING. Are you streamlining—one of the things we have discussed in this Committee is the long period between a hiring decision and onboarding. How are we doing on that front?

Mr. JACOBS. Yes. OPM has a standard goal of doing that within 80 days. At the end of June, we made about 10,000 employment selections with 85 percent hired within 80 days.

Senator KING. How about you?

Dr. ELNAHAL. I think, Senator, that the issue that we have in VHA with hiring is primarily what you just said. Right now our median is about 165 days to bring folks on.

Senator KING. Yes, and you are going to lose good people in that time.

Dr. ELNAHAL. You can lose significant numbers of good people, especially talented health care professionals. We want the most talented folks in America to be serving veterans.

Senator KING. What is the bottleneck? What takes so long? Is it security clearances or other factors?

Dr. ELNAHAL. Part of it is some government-specific rules that OPM asked us to do, especially for Title 5 employees. But a lot of it is just our process, which needs to be made more lean and more efficient, to be honest with you.

So we are very focused on that. We just released our standard, much more streamlined hiring process a few weeks ago. We are undergoing extensive training of every HR department in our networks, our 18 VISNs, and we hope and anticipate in the next couple of months that time will go down. It is a little bit down from earlier this calendar year, but we need to get much closer to what VBA is performing on onboarding time.

Senator KING. Thank you. Thank you, gentlemen. Thank you, Mr. Chairman.

Chairman TESTER. I was just wondering, Senator King, if you could help me get a men's trail model waterproof three-in-one jacket through L.L. Bean.

[Laughter.]

Senator KING. To quote a great American, I know a guy.

Chairman TESTER. Senator Boozman.

**HON. JOHN BOOZMAN,
U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. I just want to follow up on Senator King about the hiring because it is so important. Most people cannot put their lives in limbo to wait that long. During the pandemic we gave expedited authority, I believe. Did we see any ill effects of that, when you were bringing people on in a matter of weeks?

Dr. ELNAHAL. So Senator, to my knowledge that authority was commensurate with the national public health emergency, and yes, during that time we were bringing folks on in just a short number of days.

Senator BOOZMAN. But we have that experiment—

Dr. ELNAHAL. We do.

Senator BOOZMAN [continuing]. That we did, and, you know, did it work or did it not work?

Dr. ELNAHAL. It definitely worked on bringing folks on. At the back end, we had to do all of the credentialing and privileging and quality checks to determine suitability, and our overseers have called out some issues with our suitability determinations in the past. And so it always a tough balance, Senator, between getting the number of folks on board as fast as you can with getting the right quality of individuals, for example, who do not have things like State licensing board citations and tort claims, things that would surface during the normal process.

So we are happy to talk to you and your staff about ways that we might think authorities might help with the onboarding times. What I can tell you is the PACT Act authorities have helped tremendously. The fact that we can offer, for example, lump sum recruitment incentives up front I think have encouraged more people to wait it out to be able to get that incentive, which has helped. But we should really shorten that process, and I am dead focused on that.

Senator BOOZMAN. Well, let us help with that. I think all of us are interested in trying to—you know, that certainly does not happen in the private sector, but there are reasons for that. But again, we need to fix that. You are simply not going to get the quality of people that you need when they have to sit around for 18 months wondering if they are going to get the job or not.

So most of my questions have been answered, and you have done a good job of answering. I want to reiterate how important it is, looking at the backlog. You know, we wanted to tier the presumptives. You all felt like you could go forward without that, so we are going to be watching that. I know you all are watching that. Let us know how we can help.

But we have worked so hard to get things under control, and we certainly do not want that to spiral out of control. So, like I say, you all assured us that you could do that, and it looks like that you are on the way to doing that.

The other thing about getting the word out regarding the deadline and all of those kinds of things, one of the concerns that we have coming from Arkansas, coming from really all the States represented here, we have very rural areas. Are we doing anything different about the rural areas or are we feeling like we are doing enough adequately to take care of those, where sometimes information is just a little bit more difficult. Yes, that is where so many of our veterans come from.

Mr. JACOBS. Yes. We are actively pursuing various means of outreach to get the word out. In addition to all of the usual modalities, whether it is TV or radio or social media, we are working with our partners in various communities. Senator King mentioned I was in Maine. I went up to Caribou, and I was out there in a community event. One of the things we learned is do not necessarily host the outreach events in VA facilities. Go to the community where the veterans are.

And we have tools and data to identify where there are underserved veterans and underserved parts of our communities. So working with our local leaders, working with the States and with the counties, we are able to identify and get the word out.

But I think the important takeaway for us is we are pushing toward this deadline for us—it is August 9th—to file a PACT claim to preserve the earliest possible effective date. Dr. Elnahal is pushing for the open enrollment. We cannot stop at these deadlines. We have got to continue this approach of proactive outreach and trying to reach veterans where they are.

Senator BOOZMAN. Good. Very good. I am just thinking out loud, and you all can chime in, but as somebody that has run a lot of campaigns through the years, you know, trying to reach people for different reasons, rural radio is something that in those areas is very effective. If you are not doing that, again, that is a group, too, that I think would be very willing to do the public service announcements to get the word out. They realize how important it is. But that is another tool. If you are not doing it, that is something that you might ought to look at focusing on.

Mr. JACOBS. Yes, Senator. I did a satellite media tour with, I think, 25 or 30 local television and radio stations to get the word out about PACT, and I think we got about 8 million impressions. My hope is that they keep replaying it and that increases. But efforts like that, and I know Dr. Elnahal is doing the same, trying to reach veterans where they are, is important.

I will add in Winston-Salem, I just got briefed by our regional office director who has got a very data-driven, forward-leaning outreach effort, working to identify where we need to go and holding

those leaders accountable to doing that outreach. So there is a good model. We have a number of good models across the country in making sure that we are identifying those best practices and exporting them elsewhere.

Senator BOOZMAN. Thank you, guys. We do appreciate your hard work.

Chairman TESTER. Senator Hassan.

**HON. MARGARET WOOD HASSAN,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator HASSAN. Thank you, Chairman Tester, and to the Ranking Member as well. I was really proud to work with everyone here on a bipartisan basis to develop and pass the PACT Act into law. And it has already helped over 1,000 New Hampshire veterans enroll in VA health care and file more than 2,000 disability claims. So I am excited by that progress, but obviously we have more progress to make.

Dr. Elnahal, I want to start with a question to you. The VA's Burn Pits Registry is one way for veterans to document their exposure to toxic substances and can help veterans access their VA disability benefits. But this online questionnaire is lengthy and can be hard for veterans to navigate on their own.

Just one example. My staff recently met with Ed McCabe from Dover, New Hampshire. Ed is a 100 percent disabled combat veteran who served in Iraq and Afghanistan. He was exposed to burn pits at an air base in Iraq. Ed told us that he has had a hard time joining the Burn Pits Registry because he ran into technical problems on the VA's website.

I understand that the VA is actively working to overhaul the Burn Pits Registry, but how are you going to ensure that the updates will be more user friendly for veterans like Ed?

Dr. ELNAHAL. Thank you, Senator. I think it is a very apt question, Senator, and the first thing I will say is I had a great visit to Manchester recently. I had a chance to meet the excellent team there, who are really taking the PACT Act seriously, doing a lot of outreach events.

We are very focused on making the registry much more user friendly. In fact, we think that the work we are doing now will largely eliminate the need to do the over 100 questions on the website. We already have so many sources of information that can automatically populate the information needed in that registry. We intend to take every advantage of that. We will be sharing more with this Committee and with you and your staff once it is available.

Senator HASSAN. Well, it really does make a huge difference, as you know, in terms of uptake, in terms of efficiency, and in terms of veterans actually getting registered, so I look forward to hearing more about that and working with you on it.

Mr. Jacobs, I know that earlier you talked about the importance to you and to the VA of the veteran's experience as they are interacting with the VA and getting critical services. Many Granite State veterans have contacted my office because they have concerns about how far they have had to travel to get a medical exam for their VA disability claim.

Recently, the VA Office of the Inspector General found that the VA was not adequately monitoring how far veterans were actually driving for their exams. So I appreciate the work that the VA has done to improve its oversight following that report, but I am still concerned that veterans do not know what options they have when these appointments get scheduled. So do I want one quicker, but I am going to have to drive further? Do I want to stay closer to home and wait a little bit longer?

So you have talked about how important the veteran's experience in interacting with the VA is. What are you doing to ensure that all veterans know the availability and timing of appointments that are close to home?

Mr. JACOBS. Well, Senator, thanks for raising that question. It is a concern that I share as well. We know that when a veteran goes to his or her C&P exam it is often a pain point. There is this question of what is actually happening. Am I getting clinical care or am I getting examined for a disability? Sometimes, to your point, it is too far away. Sometimes these are in locations that are not sufficiently marked.

So we are working with our vendors to make sure that there is clarity in terms of the process. There are steps that veterans can take when they receive their examination notice and they feel that the timing and/or location is not appropriate, but we have got to do a better job of this. And that is exactly why we are working with the Veteran Experience Office.

Senator HASSAN. Well, that is great because this is really an important—I am using the term “customer service” but I do not think it really conveys how important it is, especially if you are somebody with a medical issue or disability, long travel can be really difficult.

Mr. JACOBS. I will add the other thing that we are trying to do is we are trying to prevent unnecessary exams and overdevelopment. If we do not need a veteran to travel to an exam, we should not do that because that is time the veteran has to take off of work, they lose paid time off, maybe they lose pay itself. We just do not want to do that unless it is necessary and beneficial for the veteran.

Senator HASSAN. Okay. I look forward to hearing more about it and staying in touch about it.

Last question, back to you, Dr. Elnahal. The bipartisan PACT Act directed the VA to consider new research exploring how servicemembers' health has been impacted by exposure to toxic substances. In your written testimony you stated that the Veterans Health Administration is currently studying the impacts of PFAS exposure on veterans. These studies are really critical to New Hampshire veterans who were exposed to PFAS while serving at the former Pease Air Force Base.

So can you tell me more about these studies and how the VA is collaborating with DoD and the National Guard Bureau in gathering the data?

Dr. ELNAHAL. Absolutely, Senator, on multiple fronts. So we do have an interagency working group that just met this month that is investigating this question alongside many other exposures and potential conditions associated with them. On top of that, we, in particular, collaborate with the components of Health and Human

Services who are looking into PFAS, which is a concerning substance. But we do not know, for example, what safe levels or quote/unquote “normal levels” are and what the association is with specific diseases yet.

And so that is science that needs to mature, but we, of course, are working with them and contributing to that so that we can then bring that knowledge to veteran care and better develop the research.

Senator HASSAN. Thank you, and thank you, Mr. Chair.
Chairman TESTER. Senator Tillis.

**HON. THOM TILLIS,
U.S. SENATOR FROM NORTH CAROLINA**

Senator TILLIS. Thank you, Mr. Chairman. Thank you, both of you, for being here.

I worked a lot on the PACT Act. The TEAM Act was in there, Camp Lejeune toxics, and then I voted against it, one of probably only 8 or 10. And the reason I voted against it clearly was not a policy problem. We were very much invested in it. But it was really related to what I thought was additional work we should have done to get ahead of some of the operational challenges that I want to talk about today. So this is a well-intentioned discussion on how do we make it work, and I hope you will take my questions in that spirit.

Mr. Jacobs, the decision was made before you were confirmed, actually before you were confirmed. The PACT Act contained a phasing-in of benefits eligibility. We included this language after a lot of negotiation. A lot of that had to do with just moving it in and making sure the implementation would be smooth. But I believe that that was really dropped almost immediately, and now we are seeing substantial volume.

So I guess the question I have, with the claims submissions outpacing completions, are you confident the VBA can actually hire up to the level to address what we are seeing now are bad trends?

Mr. JACOBS. Senator, I am familiar with that decision, and I think intuitively it would make sense that you have a phased-in approach because you want to be able to segment the workload and manage it appropriately.

But what we found through a significant amount of analysis was it would have actually increased our workload because what would happen is we would receive claims in, for example, hypertension from Vietnam veterans, which was scheduled, I think, to be effective in fiscal year 2027. We would have to consider them through a direct service connection. We would not be able to grant them, so then we would just have to hold onto them. That is a bad veteran experience, and it would increase the total workload because it would require us to touch those types of claims twice. As it happens, hypertension is the most frequent condition we have received so far for PACT conditions.

So somewhat counterintuitively, the decision to kind of make the effective date immediate upon enactment has enabled us to process more claims more effectively.

Senator TILLIS. Well, that is good feedback. We will make sure our office catches up with the decision process, but that sounds rational. Having said that, we still have a problem.

Mr. JACOBS. Yes.

Senator TILLIS. And so I think in your testimony you said currently VBA is 51 percent below tracked backlog projections and peak backlog is supposed to be estimated between 450,000 and 730,000 by October 2023 and April 2024, respectively.

Mr. JACOBS. Yes.

Senator TILLIS. Is that accurate?

Mr. JACOBS. Yes. So we are anticipating an increase in the total inventory and the total backlog over the next year before we are able to crest. And the reason I have confidence in our ability to tackle this workload is because of the significant amount of people, process, and technology solutions that we have been implementing and will continue to implement.

And I think it is important to note, we have, over the last year, been conducting the most aggressive, forward-leaning outreach effort to try to connect veterans with these earned benefits, and it is working. We have received almost 35 percent more claims today than we had at the same point last year.

We have also produced more claims than we have ever done in our history as an organization. So today we have completed about 16 percent more claims than we did at the same point last year, which was the highest year ever, 1.7 million claims.

And the way that we have been able to kind of keep track with this work is through the aggressive hiring. This is a people-driven business. We are trying to drive more efficiencies through automation and the leveraging of those technologies and the process improvements to drive out inefficiencies. But it is largely people-driven. We have increased by 22 percent over the last 18 months. That is what has enabled us to be well above our projections. But we know that the workload is increasing, and we are doing everything in our power to deliver those benefits in a timely way.

Senator TILLIS. Yes, I am glad you are optimistic and you look at your hiring practices. But I cannot go to a health care provider and not talk about labor and shortfalls on recruiting. They are the very same basic people that you are going after. In the private sector that is going to mean more expediting hiring, signing bonuses, compensation. So we will leave it for the record to just talk about how you are mitigating against that, and I will have a few questions for the record.

I did just want to ask one final question that had to do on the—I did not lead with this because it was not the economics that concerned me about the PACT Act. It was some of the implementation issues. But in the interest of time I am not going to read through the setup here, but can somebody fill in that blank?

[The information referred to by Senator Tillis appears on page 63 of the Appendix.]

Mr. JACOBS. The total funding request?

Senator TILLIS. Yes.

Mr. JACOBS. Yes, I would not be able to, Senator.

Dr. ELNAHAL. We would be happy to get that back to you for the record.

Senator TILLIS. Yes, we will take it for the record because the other piece was how much was it really going to cost and how are we going to be able to sustain this. And at some point you only have so much money, and it is going to create stressors. So we are just trying to get an idea of what the most up-to-date number is.

Dr. ELNAHAL. Yes, and I appreciate you have a constitutional responsibility to provide this oversight and ask these questions. I feel a great sense of responsibility as well to deliver on the promises that this country has made to the men and women who have served this country, as I know you do, and so happy to provide that information and continue the conversation.

Senator TILLIS. Thank you all. We will be in touch with your office. Thank you, Mr. Chair.

Chairman TESTER. Thank you, Senator Tillis. And I also want to echo that, and that is the funding is expensive. We knew this was going to be expensive. When we sent the kids off to war in the Middle East nobody talked about this kind of stuff, but this is one of the costs of war. So I appreciate that line of questioning, Senator Tillis.

VA Response:

The Cost of War Toxic Exposures Fund (TEF) established by section 805 of the PACT Act authorized Congress to fund increased costs above the FY 2021 level for health care and benefits delivery for Veterans exposed to any number of environmental hazards, such as burn pits in Iraq and Afghanistan or Agent Orange in Vietnam.

The FY 2024 Budget request of \$20.3 billion for the TEF is consistent with Congress's authorization; it is limited to this increase only and excludes costs not associated with exposure to environmental hazards. The FY 2024 Budget requests that Congress provide all other funding needs in the traditional discretionary appropriations accounts to ensure that Veterans have the care and benefits they earned. The discretionary appropriations request has been adjusted accordingly to account for expenses requested in the TEF that would have been provided in other accounts in the past. The FY 2024 Budget includes an estimate of \$33 billion in net budget authority in FY 2030 for the Toxic Exposures Fund.

I just have a question. How many folks in the audience are interns? Raise your hand.

[Show of hands.]

Chairman TESTER. My God. You were just in the longest job interview you are ever going to have in your life.

[Laughter.]

Chairman TESTER. I want to thank you all for being here. I know we lost a couple, but I want to thank you guys for being here and showing interest. Hopefully you learned something in this Committee hearing, so thank you for being here.

A big thanks to Dr. Elnahal and Mr. Jacobs for being with us.

I think this PACT Act is making a real difference in veterans. I hear from them all the time. Folks like Travis from Missoula, Montana, who deployed to Somalia, was diagnosed with lymphoma. Because of the PACT Act he is receiving benefits, and his family are receiving benefits that he earned because of his service to this country.

And together—and I do mean that, together—Congress passed a bill, but man, it does not do any good unless we have got partners

that will implement it. And I want to express my appreciation on the work that you guys are doing. And I know it is not easy, and I know we are sitting here looking over your shoulder. That does not make it easier. But you guys have stepped up in a big, big way, and done a good job. That does not mean we are not going to be critical of you if you screw up, okay? But thank you very much for what you are doing.

This record will be kept open for one week, and we are adjourned.

[Whereupon, at 4:04 p.m., the hearing was adjourned.]

A P P E N D I X

Prepared Statement

**STATEMENT OF
SHEREEF ELNAHAL, MD, MBA, UNDER SECRETARY FOR HEALTH
AND
JOSHUA D. JACOBS, UNDER SECRETARY FOR BENEFITS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS**

PACT ACT IMPLEMENTATION

JULY 26, 2023

Chairman Tester, Ranking Member Moran, and other 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 Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (the PACT Act, P.L. 117-168). The PACT Act, which was signed into law on August 10, 2022, marked the largest and most significant expansion of Veterans' care and benefits in decades, empowering VA to deliver additional care and benefits to millions of Veterans and their survivors. We are grateful for this opportunity and have been working diligently to implement the law in a way that is seamless, efficient, and timely for the Veterans and Survivors we serve—and most importantly, ensures that eligible Veterans and survivors can receive the care and benefits they deserve.

Thanks to the new authorities provided in the PACT Act, VA is providing more care, more benefits, and more services to more Veterans, family members, and Survivors than ever before. In fiscal year (FY) 2021, before passage of the PACT Act, the Veterans Benefits Administration (VBA) set an all-time record for compensation and pension rating disability claims production with more than 1.5 million claims completed. In FY 2022, VBA completed 1.7 million claims, beating the record by 12%. We are on track to break that record this fiscal year—completing nearly 16% more claims than last year so far. At the current rate of completions, VBA could complete more than 2 million claims in fiscal year 2023.

Delivering these benefits and services to Veterans, family members, and their Survivors would not be possible without our workforce. To help meet the increasing demands for VA benefits, we have aggressively sought to expand our workforce through hiring fairs and partnerships with organizations such as Handshake; expanded upon VA's relationships with Historically Black Colleges and Universities (HBCUs) and law schools for marketing; utilizing virtual information sessions for potential applicants, utilizing contacts with the Office of Personnel Management (OPM) to access distribution lists to help target larger applicant pools, partnerships with local Regional Offices to market to local communities and collaboration with Veteran and Military Spouse Talent Engagement Program's (VMSTEP). Though these efforts, VBA's total workforce is now over 30,000 strong, a 17% increase since the start of FY 2023, the largest workforce VBA has ever had and the highest growth rate in personnel in the past two decades.

To meet the needs of Veterans with Military Environmental Exposures (MEE) impacted by the PACT Act, hiring faster and more competitively is another top priority for the Veterans Health Administration (VHA). Thanks in large part to agency-wide implementation of the law, VHA's total workforce has grown by 18,739 employees in the first 9 months of FY 2023 — and is now up to 398,568 total employees. As of July 1, VHA's workforce has grown 4.9% this year, compared to 0.5% last year, the highest annual growth rate in over 15 years.

PACT Act Implementation

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

Once signed into law, VBA took immediate action to ensure claims processors received the guidance and training needed to begin processing claims as soon as possible. Rather than waiting to publish formal regulations, which typically takes 18-24 months, VBA prepared and issued sub-regulatory guidance to its field personnel in December of 2022, so they could begin processing these claims as soon as possible. Additionally, as part of this effort, VBA updated training courses and developed an extensive Standard Operating Procedure (SOP) that includes all procedural guidance needed to process PACT Act claims. VBA has and will continue making all sub-regulatory guidance publicly available to maximize transparency during implementation.

In November 2022, VBA released updated forms to help claimants specifically address PACT Act-related claims. VA Form 21-526EZ, "*Application for Disability Compensation and Related Compensation Benefits*," included specific updates related to exposure information and the PACT Act. The updates streamlined the claims process by providing Veterans the necessary information to indicate whether they are claiming a condition related to a toxic exposure, the location of exposure, and dates of exposure. The VA Form 21-526EZ thereby fulfills VA's duty to notify claimants of evidence needed for explicit PACT Act claims. The VA Form 21-534EZ, "*Application for DIC, Survivors Pension, and/or Accrued Benefits*," includes an easy-to-use checkbox for applications wishing to request reevaluation of a previously denied Dependency and Indemnity Compensation claim.

Most recently, in April and June 2023, VHA amended relevant VHA Directives 1601A.01(2), "Registration and Enrollment" and 1601A.02(4), "Eligibility Determination," to include updates based on the PACT Act and other changes in law and provide guidance to assist VHA Enrollment and Eligibility staff in determining eligibility. Major changes consisted of updating eligibility definitions and providing instructions for determining priority group assignment and eligibility criteria. In support of changes to the Veteran Enrollment System, VHA held training sessions and updated Job Aids in support

of the PACT Act. To date, 5,757 VHA Enrollment and Eligibility field staff received PACT Act eligibility training via 14 training sessions.

VBA has also ensured that Veterans appealing claims decisions are entitled to review under the same tools, policies, procedures, and quality oversight. VBA's Office of Administrative Review (OAR) implemented training and procedural updates to ensure that decision reviews and appeals properly address conditions under the PACT Act. OAR and the Board of Veterans' Appeals (Board) regularly collaborate on PACT Act-related claims and issues to ensure timely and accurate decisions to Veterans, family members, and survivors. Since VBA began processing claims under the PACT Act on January 1, 2023, OAR has completed approximately 1,600 legacy appeals related decisions and approximately 18,000 Appeals Modernization Act decision reviews that involved one or more PACT related condition. This has resulted in an estimated \$41 million dollars in retroactive benefits being paid to Veterans and their families.

As VA continues PACT Act implementation, we remain fully committed to an immediate, deliberate, forward-leaning approach that tackles questions of environmental exposure. Title II of the PACT Act formalizes the presumptive decision-making process by which VA may streamline presumptions of service connection based on toxic exposure in a clear and transparent manner. Under the new authorities, VA will share and seek public input on our plans to formally evaluate a condition. The first Federal Register Notice in response to Title II will be released on July 26th for the scientific review to assess whether an association exists between acute and chronic leukemia and multiple myeloma and fine particulate matter from airborne hazards and open burn pits in Southwest Asia.

Identifying and Responding to Emerging Challenges

Though our effort to start processing all PACT Act related claims on January 1st was the right, Veteran-centric decision, it required us to do a tremendous amount of complicated work in a very short period of time. As a result, we are already applying many of the lessons learned to refine and improve our processes and outcomes moving forward.

For example, we received feedback from VBA field personnel about the need to streamline and revise the PACT Act training, about the complexity of applying the definition of a Toxic Exposure Risk Activity (TERA) given the current state of exposure tracking data maintained, and about the pressure experienced by our hardworking claims processors, who are doing their best to learn the nuances of this once-in-a-generation legislation while continuing to meet their production and quality standards. We're using that feedback to make improvements to our PACT training, as well as our VBA training more broadly. We have also developed a TERA memorandum tool, which guides employees to make uniform and consistent decisions regarding the application of TERA.

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

VBA is actively engaged with all of its contract medical examination vendors to ensure additional network capacity to complete the increased volume of PACT Act-related examinations. From October 1, 2022, through June 30, 2023, 1,704,847 total medical examination scheduling requests (ESRs) have been completed by VBA. Of the total, 459,024 (or 26.9%) were related to PACT Act. To increase capacity, VBA has contracted with a fourth contract exam vendor, in the western region of the United States, servicing a population of Veterans in a unique geographic space that includes Alaska and Hawaii. The other three regions each have three contract exam vendors.

Title II of the PACT Act also presents VBA with the challenging, but extremely important task, of identifying all claims for disability compensation that were previously submitted, subsequently denied, and are now potentially eligible for a new decision based on new presumptive conditions and/or locations. VBA informs these claimants of their potential eligibility through an outreach letter that is accompanied by the form needed to apply. In addition, Survivors who had previously submitted a claim for Dependency and Indemnity Compensation (DIC), were subsequently denied, and are now potentially eligible for a new decision based on new presumptions are contacted via an outreach letter in the same method. These survivors may elect a reevaluation of their previously denied DIC claim, and if granted, may be entitled to retroactive compensation.

As of January 1, 2023, approximately 285,000 outreach letters have been sent to previously denied Survivors informing them of potential benefits and how to apply for DIC and the reevaluation of their claim. Additionally, the public comment period for VBA's proposed rulemaking related to the PACT Act, RIN 2900-AR76 *Reevaluation of Claims for Dependency and Indemnity Compensation*, closed on May 22, 2023. VBA received 3 total comments, including one substantive comment, and is currently drafting the final rulemaking which will codify this regulatory amendment regarding the reevaluation of previously denied claims for DIC, however interim procedures are in place to process applicable claims in conformance with PACT Act.

VA's aggressive outreach on PACT Act yielded impressive results. As of July 1, VA has received more than 764K claims since the August 10, 2022, passage of the PACT Act, and as of July 1, 2023, 45.9% of pending rating inventory claims have at least one PACT related contention. Since the beginning of the fiscal year through July 16, 2023, VBA has received 1,763,923 claims, compared to 1,317,905 claims during the same period in FY 2022 which is a 33.8% increase in our receipts. While VBA's historic hiring increases have shattered claims production records, the claims backlog has continued to grow, with 243,308 claims in backlog at the end of June. VBA projects the inventory peak between 934,000 and 1.29 million, between September 2023 and February 2024, with peak backlog between 450,000 and 730,000 between October 2023

and April 2024. VBA is currently 51% below backlog projections, but we are seeing accelerating growth of claims pending over 125 days.

In short, VBA continues to expect the backlog to increase into FY 2024 and return to a stable level of around 100,000 or less in 2025, dependent on hiring, retention, claim receipts, technology deployment schedule, and claims complexity. A critical enabler to meeting claims processing goals is continued scaling of C&P examination capacity. Along with new employee hiring to process incoming claims, parallel increases are needed to meet examination needs due to increased PACT receipts and the implementation of the TERA requirements. VBA has completed 44% more examinations in May 2023 than were completed in May 2022.

VBA actively engages the workforce through a variety of avenues to ensure they have the knowledge and resources needed to successfully implement the PACT Act. VBA has held open town hall meetings with VBA leaders on PACT Act as well as local town halls led by the Regional Office Directors. Field managers regularly engage with labor partners and claim processors to ensure the workforce is equipped with the necessary information to process PACT Act claims and resolve concerns. VBA is committed to providing claim processors with the necessary training, information, and tools to ensure the high-quality processing of PACT Act claims. Training events include computer-based training as well as live training events.

In addition, VBA created a PACT Act inquiry tool, which went live on January 3, 2023, and allows the field claims processors direct access to policy experts for questions. The PACT Act Inquiry tool provides the field a direct communication link to VBA Central Office for guidance and questions related to the PACT Act when their questions cannot be addressed locally. To date, over 300 questions have been received in the tool.

While VBA has had success implementing PACT Act requirements, it faces hurdles moving forward as the volume of requests for decision reviews continues to rise above historical levels. VBA is working to hire and train new employees to better align VBA's appeals processing workforce with the increased demand. Initial requests for decision reviews following the implementation of the PACT Act have reflected challenges for employees associated with applying PACT development to the legacy appeals records and developing disability compensation claims based on TERA.

Research into the health effects of toxic exposure

Title V of the PACT Act elevates the timely progress of exposure science through a whole-of-government approach. The effects of military toxic exposures on health outcomes have long been, and remain a concern for Servicemembers, Veterans, their families, and our Nation. VA is implementing focused research using novel proactive approaches across VHA, in partnership with other Federal agencies and through collaborations with other organizations such as the National Academy of Sciences,

Engineering, and Medicine, Academic partners and private industry. VHA Health Outcomes Military Exposures (HOME), performs ongoing surveillance, original research and longitudinal studies of Veteran cohorts regarding MEE.

Examples of Veteran cohorts currently being studied by HOME include both Gulf Wars, Karshi-Khanabad, Palomares, Enewetak, Qarmat Ali, Chemical Weapons Agents, United States Air Force (USAF) Fighter Pilots, Missileers, Vietnam Era, Khamisiyah, and Women Veterans, among others. Exposures actively under study include Agent Orange, Ionizing Radiation, Depleted Uranium, Jet Fuels and Per- and Polyfluoroalkyl Substances (PFAS), among others.

Under the provisions of the PACT Act, VHA also continues to move forward on a wide variety of research studies on cancer rates among Veterans, ranging from examining the health trends of Post 9/11 Veterans (Section 504), examination of cancer rates among Veterans (Section 505), health effects of waste related to Manhattan projects on certain Veterans (Section 506), toxic exposure and mental health outcomes (Sections 507) and health effects of jet fuels used by Armed Forces (section 510). These studies continue to support the VA's commitment to addressing the health effects of harmful MEE.

Additionally, in accordance with Section 501, an interagency Toxic Exposure Research Working Group (TERWG) was established. The TERWG currently consists of 35 representatives from 9 Federal departments and several agencies. The TERWG collaboratively identifies available resources and research activities across the Federal landscape to develop and execute a 5-year strategic plan for participating agencies to carry out collaborative research activities.

Toxic Exposure Screenings

VHA has taken aggressive steps to enhance the health care of Veterans. VHA began providing Toxic Exposure Screenings (TES) on November 8, 2022, within 90 days of enactment and has screened over 4 million Veterans since then. Of the Veterans screened, approximately 43% reported that they may have experienced one or more toxic exposures or had additional questions that required follow-up. Of these, based on the specific concerns reported, 96% have been provided necessary connections to benefits, registry and/or clinical assessment resources.

Veterans who screen positive for a toxic exposure also receive a letter from VBA with information on how to file for a PACT Act claim. Veterans have received more than 1.6 million connections for follow-up resources. Of the 1.6 million positive TES, VBA has sent 1.5 million letters to Veterans. We are engaging providers across all services and specialty care areas, empowering them to engage in TES.

Workforce Improvements

Several PACT Act provisions have directly contributed to VA workforce improvements, hiring, and retention. For example, since the passage of the PACT Act:

- VA has increased student loan repayments from 544 last year to 821 this year. VA has dramatically increased recruitment incentives from 2,101 last year to 5,815 this year.
- VA has increased special contribution awards, from 25,050 last year to 31,700 this year.
- The hiring authorities provided in the PACT Act has allowed VBA to hire more processors and support staff than ever before. As of July 21, 2023, VBA currently has more than 30,000 full time equivalent employees.

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

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

Employees are key in identifying, implementing, and refining ADS efforts. Since the initial proof-of-concept launch in December 2021, VBA has received feedback from claims processors and internal checks, which has provided excellent lessons learned and has been used to further refine and improve automation functionality. Currently, initial automation efforts were deployed at eight VBA Regional Office (RO) prototype sites, which include New York, New York; Pittsburgh, Pennsylvania; St. Petersburg, Florida; New Orleans, Louisiana; Montgomery, Alabama; Detroit, Michigan, Des Moines, Iowa, and Boise, Idaho. Feedback from subject matter experts ensures the system meets the needs of all employees and drives the development of training tools and materials for further expansion.

Additionally, as of May 2023, VBA expanded to eight additional RO pilot sites where automation processes have been refined, based on feedback received from the prototype sites and functionality is deployed to assess readiness for national deployment. These locations include, Huntington, West Virginia; Little Rock, Arkansas; Wichita, Kansas; Denver, Colorado; Portland, Oregon; Los Angeles, California; Hartford, Connecticut; and Togus, Maine.

VA's Office of Information Technology (OIT) has made significant improvements to benefits IT systems since the passage of the PACT Act. In December 2022, OIT released Automated Issue Management (AIM) functionality that allows prioritizing claim types by issue, automating specific types, and quickly processing them without breaking up the overall claim. This directly benefits the Veteran by speeding up the processing of certain issues within the overall claim, rather than waiting for the entire claim to be processed.

Since January 2023, automation has reduced claim development touches by 30%, and overall claim touches by 23%. This technology streamlines the claim development, allowing claims to move through the adjudication process more efficiently. In June 2023, OIT deployed Smart Search technology, allowing claims processors to conduct intelligent searches of the entire Veteran's eFolder of documents, formerly a manual process. This capability increases employee efficiency by accelerating the ability to search for relevant information to expedite PACT Act claims processing. Over 260 million Veteran records are now available to claims processors through Smart Search, and about 1 million records are added each day, the normal daily number of documents uploaded to the Veteran document repository.

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

OIT is steadily rolling out efforts to stabilize and create more robust systems and architecture. The Corporate Database (CRP), which houses all Veteran data, was recently upgraded to increase security and resiliency. OIT will continue modernizing current technologies and developing new technologies over the next 5 years, using funding appropriated by the PACT Act to automate and modernize IT capabilities for benefits delivery.

Medical Leases

VA appreciates the approval of FY 2023 major medical leases, the funding and other changes for leases which continue to allow VA to move forward with planned leases expanding access for Veteran care.

Of the 31 leases authorized by section 702 of the PACT Act, 24 Architect/Engineer contracts have been awarded (the remaining seven to be completed in-house) and 30 of 31 Broker Task Orders have been awarded. One lease solicitation has been posted by the General Services Administration (GSA) and 9 lease solicitations have been posted by VA's Office of Real Property. Furthermore, several initiatives have been identified as opportunities to leverage the authority granted in section 704 of the PACT

Act for Academic Affiliates. These initiatives are in the initial stages and require significant development over the next several months. As an example, VHA has initiated Memorandums of Understanding with the University of Pennsylvania and Stanford University to explore such opportunities that would expand our ability to provide health care services to Veterans.

The authority provided through amendments to titles 10 and 38 made in section 706 of the PACT Act strengthens our ability to work with DoD to construct and lease joint facilities. VA and DoD continue to develop the initial VA-DoD joint project list and establishing milestones and schedules, including aligned funding year(s), for each initial joint project. VHA supported the implementation of this authority and project plan by increasing hiring and creating a playbook for the implementation of the new leasing authorities. VHA continues to develop supporting policy to accomplish this implementation.

Outreach and Communication Efforts

VA's nationwide PACT Act Veteran outreach campaign is the largest coordinated outreach campaign in VA history. The campaign has one goal: ensuring that every eligible Veteran and survivor gets the PACT Act-related health care and benefits they have earned. VA has successfully raised awareness of the PACT Act nationwide and driven record numbers of applications for VA benefits. Highlights of the campaign to date include:

- **VA.gov/PACT:** Within one hour of the passage of the PACT Act into law, VA launched [VA.gov/PACT](https://www.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 more than 13.4 million page views from 10 million unique visitors.
- **Earned Media:** VA is executing an aggressive national and local earned media campaign, seeking to inform Veterans and survivors about the PACT Act and encourage them to apply. Not counting the initial wave of articles about the passing of the PACT Act on August 10, 2022, these efforts helped generate 28,000+ news articles and 20,000+ broadcast items about the PACT Act (through July 15, 2023).
- **Paid Media:** VA is executing a nationwide, targeted advertising campaign across streaming video (Hulu, Roku, YouTube); print (Military Times, Military.com, USA Today); radio (satellite, traditional); podcasts; signage (including [Times Square](#) ads, DC Metro ads, airports, billboards, and more); sponsorships (such as Military and Armed Forces Bowls); digital advertising, including Search (Google and Bing), Twitter, Facebook, Instagram, Spotify, iHeartRadio, ESPN online, RallyPoint, and more.

- As of July 26, 2023, VA has spent more than \$7.5 million on PACT Act advertising, driving millions of visitors to VA.gov/PACT, and generating hundreds of millions of impressions. Through Public Service Announcement distribution along with vendor negotiations, VA has also achieved \$7.9 million in added value between October 2022 and May 2023, more than doubling the media value of PACT Act efforts. This campaign is focused on reaching all eligible Veterans and survivors, especially those who have not previously come to VA for benefits or care.
- Additionally, VA has engaged in Satellite Media Tours with 50 total stations (TV and radio), and an audience reach of over 21 million.
- **Events:** Since August 10, VA has hosted hundreds of PACT Act-related events across all 50 states, DC, and Puerto Rico with Veterans, their families, caregivers, survivors, and Veteran advocates. This includes a [PACT Act Week of Action in December](#), when VA hosted more than 120 events across the nation, and the ongoing "PACT Summer Vet Fest" featuring at least two events in each state plus Puerto Rico and Guam. At these events, Veterans apply for benefits, get screened for toxic exposures, enroll in VA health care, and learn more about what the PACT Act could mean for them and their families.
- **Print, digital, and video resources:** VA has developed a library of PACT Act flyers, videos, and fact sheets to help Veterans understand what this new law means for them. The [videos](#) have been viewed more than 4 million times across platforms, and the [resources](#) have been shared directly with Veterans, VA facilities, Veterans Service Organizations, and other partners nationwide. VA has also released [PACT Act flyers and information](#) in more than 10 languages, including Arabic, Chinese, French, Haitian Creole, Japanese, Korean, Polish, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.
- **Direct mail:** VA has sent more than 300 million PACT Act-related e-mails to Veterans, their families, caregivers, and survivors, which were opened more than 94 million times.

VA's senior leaders are highlighting the PACT Act across a wide-ranging series of events with Veterans, families, Survivors, VSOs, members of Congress, and others, including two satellite media tours which consisted of 50 total media interviews (37 television and 13 radio), resulting in more than 21.5 million impressions. The Under Secretaries for Benefits and Health also participated in a live town hall along with Michael Figlioli, Director of National Veterans Services at the Veterans of Foreign Wars, hosted by South Florida PBS to discuss PACT Act.

Conclusion

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

We want to express our appreciation for your continued support of Veterans, their families, caregivers, and survivors. VA thanks Congress for its tremendous work to pass this historic law and values our common goal of serving Veterans and survivors as well as those who have served this country. We also appreciate your staff's involvement with our quarterly PACT Act implementation offsite events and the Committee's side-by-side relationship during implementation of this historic law. In addition, we would like to acknowledge our VSO partners, and others in the Veteran community who work with us to provide the best care and services for Veterans and their families.

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

Questions for the Record

ANSWERS TO QUESTIONS FOR THE RECORD
SUBMITTED TO JOSHUA JACOBS, UNDER SECRETARY FOR BENEFITS AND
SHEREEF ELNAHAL, UNDER SECRETARY FOR HEALTH
DEPARTMENT OF VETERANS AFFAIRS (VA)

VETERANS' AFFAIRS COMMITTEE
UNITED STATES SENATE

"IMPLEMENTATION OF THE PACT ACT: ONE YEAR LATER"

JULY 26, 2023

Questions for the Record from Senator Joe Manchin

Question 1: Hiring Initiatives: I am impressed with the number of employees the VA has been able hire in light of the passing of the PACT Act. I see that there have been 38,000 employees hired alone in the Veteran's Health Administration and around another 5,000 in the Veteran's Benefit Administration. But in spite of this surge in hiring, there are more than 300 jobs vacant on USAJobs for VA facilities in West Virginia, and I'm concerned with working from home impacting diligence in providing our Veterans with the standard of care they have earned. What initiatives has the VA undertaken to increase hiring since the passing of the PACT Act? How successful have these initiatives been? How many VA employees are working remotely, and how is their performance being monitored?

VA Response: The Veterans Health Administration (VHA) hired a record 61,942 new employees in FY 2023 in anticipation of an increased demand for VHA services as a result of the PACT Act. Combined with improved retention VHA grew the workforce by 7.4% in a single year compared to the average growth of 3% per year. The improvement in retention is due at least in part to the use of PACT Act flexibilities associated with special salary rates and incentives specifically designed to improve retention. Positions continue to be recruited to backfill positions due to employee attrition, but the number of active recruitments in VHA has decreased significantly in response to the increased staffing that has been achieved.

While some of VHA's workforce has the option to telework or work remotely, the large majority (approximately 84%) of VHA employees work on-site in hospitals and clinics caring for the Nation's Veterans in person. The availability and expansion of telemedicine is a great benefit both to patients and staff, providing an opportunity to receive and provide care, when appropriate, where they live. Only 6.3% of VHA's staff are 100% remote/telework, and another 8.6% telework at least 1 day per pay period.

The Veterans Benefits Administration (VBA) obtained a Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act direct hire authority (DHA) from the Office of Personnel Management through September 2027 to fill mission critical positions in the following occupations:

1. Human resources management;
2. Human resources assistant;
3. General legal and kindred; and
4. Veterans claims examiner.

VBA developed a system of posting recurring national job announcements in support of PACT Act hiring. This is a surge hiring best practice providing the following results:

1. A steady flow of eligible/available applicants for selection at predetermined timeframes.
2. Improved metrics in filling the claims processor training courses.

VBA has leveraged in-person and virtual hiring fairs throughout the country offering same day job offers to attendees. Additionally, it also has increased marketing and partnerships with local colleges and universities to include historically black colleges and universities and the Hispanic Association of Colleges and Universities. Using the military spouse hiring authority VBA has hosted information sessions and hiring events at Fort Campbell, Kentucky; Fort. Moore, Georgia; and Fort. Cavazos, Texas to fill remote vacancies within our national call centers. Remote flexibility provides an increased sense of job security to military spouses as they are able to remain employed when their spouse receives permanent change of station orders.

VA has established a target goal of 58% of the new hires be onboarded within 80 days. From October 1, 2022, through September 30, 2024, VBA hired 21,494 employees including 14,064 external candidates, with 85% onboarded within 80 days during fiscal year (FY) 2024.

Approximately 95% of VBA's employees telework at least 1 day per pay period. Overall VBA has seen an increase in rating claims production. VBA uses a graduated performance standard for employees working claims. The standard assesses a requirement for more work to be completed as the individual gains experience. This is the same for all in the position, regardless of location or telework status. VBA's systems capture employee work accomplishments automatically. It is not a self-reported value. In addition to the volume of the work, employees are also accountable for timely processing of assigned claims and quality of work. In FY 2024, VBA had a record fiscal year for completions, with more than 2.5 million claims completed. VBA achieved its highest ever month of output in July 2024, with 229,538 claims completed in a single month. Four of the top five highest production months occurred this calendar year. In FY 2024, VBA completed 2,517,519 claims which is approximately 27.03% more claims completed than compared to FY 2023.

Question 2: Training and Retaining Talent: You mention several initiatives the VA has taken to increase hiring to process claims related to the PACT Act, but as many of us know it can take time until a new hire is fully trained before they can begin assisting in processing claims. Ideally, we would maintain a strong VA workforce to ensure employee turnover does not disrupt the current pace of processing claims, which could potentially lead to more backlogs. Are there ongoing initiatives to retain that talent you do have in order to save the time and resources it takes in training new staff?

VA Response: In 2022, VBA developed and deployed the Stay in VBA (SIVBA) Program. SIVBA is a retention strategy focused on increasing employee retention and engagement and enhancing the employee experience through Stay Touchpoint meetings. SIVBA promotes a trusting environment for employees to express their ideas and experiences to supervisors, managers, and the leadership. Likewise, supervisors and managers can learn more about employees and how best to capitalize on their skill sets. This program has proven to be an effective tool to help retain talent. VBA has experienced a relatively low attrition rate of 8.20% in FY24, compared to the 6-year average of 10.06%.

Question 3: Ensuring Access to the PACT Act for All Veterans and Troops: I was wondering if you happened to have demographic data of those who have initiated a PACT Act claim or receive a toxic exposure screening? I ask this because I want to ensure that all Veterans or troops who are now eligible for this benefit, are aware of it and are receiving a toxic exposure screening or attempting to initiate a claim. I'm afraid there may be a gap between older Veterans and younger Veterans or those who are still serving, from knowing if they are eligible for the PACT Act and want to ensure this isn't a group that is being overlooked.

VA Response: VA shares your commitment to serving all Veterans. To help assess how the implementation of the PACT Act is serving all Veterans, VA published demographic data on the implementation of PACT Act as a quarterly supplement to the existing VA PACT Act Performance Dashboard. The first quarterly demographic supplement was published in September 2023, and is found here: [VA_PACTActQuarterlyDemographic_Issue1_Final_508.pdf](https://department.va.gov/pactdata/wp-content/uploads/sites/18/2023/12/VA_PACTActQuarterlyDemographic_Issue1_Final_508.pdf)¹ and the most recent supplement published in May 2024 is found here: [VA-Quarterly-Demographic-Supplement_Issue2_508.pdf](https://department.va.gov/pactdata/wp-content/uploads/sites/18/2024/05/VA-Quarterly-Demographic-Supplement_Issue2_508.pdf).²

The first Quarterly Demographic Supplement featured demographic analysis for race/ethnicity, gender, and age for service metrics in the VA PACT Act Performance Dashboard, including claims submitted and toxic exposure screenings. The analysis specifically identifies meaningful differences that may indicate where VA can do more to serve all Veterans.

¹ https://department.va.gov/pactdata/wp-content/uploads/sites/18/2023/12/VA_PACTActQuarterlyDemographic_Issue1_Final_508.pdf

² https://department.va.gov/pactdata/wp-content/uploads/sites/18/2024/05/VA-Quarterly-Demographic-Supplement_Issue2_508.pdf.

VA's preliminary analysis shows two areas where younger Veterans are proportionally less represented than in their relevant baseline populations. These areas are as follows: claims submitted and toxic exposure screenings completed. A more detailed summary of these areas is as follows:

- A demographic analysis of claims submitted indicates that Veteran age groups below age 54 years of age represent a lower percentage of claims (43.0%) than they do in the baseline living PACT Act planning population (57.6%). This may be due to a number of factors such as awareness, knowledge of health care risks, and trust in VA. (Quarterly Demographic Supplement, quarter 4, FY 2023 issue, page 3).
- Younger Veterans, ages 25 – 44 complete toxic exposure screenings (17.1%) proportionally less than their representation in VA enrollment (22.7%). This may be related to their lower representation amongst those who are active users of VA for primary care, which would mirror national trends for less health care utilization by younger age groups. (Quarterly Demographic Supplement, quarter 5, FY 2023 issue, page 5).

At the same time, younger Veterans represent a proportionally higher percentage of new enrollees from the PACT Act planning population. This suggests that VA is reaching younger Veterans through its ongoing outreach efforts. (Quarterly Demographic Supplement, quarter 4 FY 2023 issue, page 7).

Regardless, to ensure VA is reaching and serving all Veterans, VA will continue its massive outreach effort, which has included outreach to younger Veterans and Veterans from historically underserved communities, including rural communities. VA's PACT Act campaign is the largest coordinated outreach campaign in VA history, with one goal in mind: ensuring that every eligible Veteran and survivor is made aware of and gets the PACT Act-related health care and benefits they have earned. For example, since the enactment of the PACT Act in August 2022, VA has utilized a multi-channel outreach approach using a variety of methods such as letters, emails, social media activity, standard advertising, virtual and in-person outreach events, etc., to connect with eligible Veterans and survivors who may be eligible for benefits through the PACT Act.

Question 4: Processing PACT Act Related Claims: I understand that processing claims, particularly PACT Act related claims at the moment can be lengthy, over 100 days. I was curious to know based on your expert opinion, what is the most difficult or lengthy part of processing claims? Is there anything you believe would be helpful from Congress to do on our end to ensure a more efficient or timely processing of claims?

VA Response: In general, the longest part of the claims process is the development of the evidence phase. As it relates to the PACT Act, VA notes a particular provision in

section 303 (codified in 38 U.S.C. § 1168) that has proved to be complex and time-consuming. The law provides that if a Veteran submits a claim for compensation for a non-presumptive condition with evidence of a disability and participation in a toxic exposure risk activity (TERA) in service, then a VA medical examination and opinion will be requested to determine if the Veteran's claimed disability is medically linked to the in-service TERA(s). The development process for these types of claims is designed to ensure claims from veterans who may have experienced toxic exposure are given full consideration. However, this also means that the development process is more complex, and the completion of these claims is taking over 35 days longer on average than other claims. Under 38 U.S.C. § 1168, claims processors are required to research evidence of a TERA even when Veterans do not explicitly claim the disability is due to a TERA.

To ensure claims related to toxic exposure are appropriately considered, additional upfront research is required when VA receives the claim. In practice, we observe that this has also resulted in a higher number of medical disability examinations and opinions being requested. Despite this additional research and examinations, VA has not observed a significant impact on decisions. For example, through November 16, 2024, for completed issues where TERA was considered, claims processors grant service connection 20.7% of the time (79.3% denial rate) based on the TERA evidence of record. VBA created a TERA Data Work Group to analyze the overall impact of TERA over time. The workgroup is conducting file reviews to capture trends in the TERA process. The results will be available once the data capture and analysis are complete.

VA appreciates Congress's interest in our continued improvement in the processing of disability claims to include the use of technology to automate administrative tasks and workflows. By leveraging best practices from industry leaders, VA is able to extract information from typed and handwritten documents to assist claims processors in searching through hundreds, and sometimes thousands, of documents in adjudicating claims. Additionally, the information is run through a rules-engine to determine whether sufficient evidence is available for a claims processor to decide the claim, and, if not, the automation service submits an examination request. This technology not only creates a better user experience for claims processors, but also provides a better experience for Veterans and their family members by delivering claim decisions more quickly, fairly, and consistently than ever before. During FY24, automation improved the average days to complete disability compensation claims from 157.8 days under the traditional process to 140.1 days using automated decision support. Gains through technology and hiring efforts aided in VBA's ability to produce 27.03% more claims in FY 2024 compared to FY 2023. With Congress's continuing support, VA was able to expand automation support to all PACT Act conditions beginning in January 2023, with continued expansion to non-PACT Act conditions projected through the end of fiscal year 2025.

Questions for the Record from Senator Thom Tillis

Question 1: Although the decision was made before you were confirmed, the PACT Act, as passed contained a phasing in of benefits eligibility. Congress included this language after much consultation and negotiation between both ends of Pennsylvania Avenue, but it was abandoned almost immediately. This volume was not what the legislation intended. With claims submissions outpacing completions, are you confident that VBA can hire, onboard, and train sufficient personnel to handle these disability claims and return timely decisions to Veterans?

VA Response: After the passage of the PACT Act, VA convened senior VBA leaders to discuss how and when to implement the provisions related to presumptive conditions and decided that a Veteran-first approach was necessary. While VA believes the staged effective dates were well-intended and designed to help manage the significant increase in claims inventory and backlog created by the PACT Act, VA also believes that using the Secretary's discretion under title IV of the bill to implement all conditions effective upon enactment is both more Veteran-centric and operationally advantageous. Under the phased-in approach, between 900 thousand and 1.5 million Veterans would have had to wait up to 4 years for a decision. The acceleration of applicability dates avoids making toxic-exposed Veterans wait years to have their claims processed. This is important, given the serious nature of exposure to toxins in combat zones, the associated health effects from such exposure, and the health and benefits consequences of delay.

Allowing all PACT Act presumptions to have an applicability date concurrent with the date of enactment of the PACT Act also provides a more straightforward policy for Veterans and their families to understand, and it allows for more streamlined and consistent implementation by VA. Additionally, this straightforward policy approach allows VA to process claims more efficiently, since the efforts to automate claims processing actions would be far more complex and costly if multiple applicability rules were required to phase-in the PACT Act presumptions, resulting in fewer Veterans waiting in the backlog than through phased-in implementation.

VBA is confident in its ability to hire, onboard, and train sufficient personnel to handle these disability claims and return timely decisions to Veterans. The PACT Act is a historic generational expansion to VA benefits and health care, with the Veteran community responding strongly, filing claims at rates previously unseen in VA history, in part due to tremendous VA outreach efforts to Veterans and their families. Based on lessons learned from prior expansions of presumptive benefits and the coronavirus disease 2019 pandemic, VBA has a multi-year plan to reduce inventory and restore pre-pandemic timeliness through aggressive hiring and training; expanding the evidence supply chain capacity; and investing in technology solutions. Below are some of the actions completed and ongoing to support backlog reduction.

- **People-Hiring.** To ensure timely service to Veterans, VA has hired and trained claims processing staff to manage the increase. To ensure quality of decisions, newly hired claims processors undergo 6 months of intensive training and mentoring before working claims independently. We continue to hire and use all available tools, such as DHA, job fairs, and Warrior Training Advancement courses, to onboard the most qualified personnel. VBA has aggressively hired and grown by 23.3% in FY 2023 and VBA has aggressively hired and grew by 23.3% in FY 2023 and 9.9% in FY 2024, with a total end-strength of almost 35,000 people.
 - VBA's hiring to support military environmental exposures processing in 2022 was accelerated in FY 2023 and sustained into FY 2024 to support the PACT Act expansion of benefits.
 - The FY 2023 appropriations supporting PACT allowed VBA to significantly increase the claims processing capacity, including approximately 2,415 more Veterans service representatives (VSR) and 2,520 more rating Veterans service representatives (RVSR) over FY 2022 levels. Including the National Contact Center and requisite support positions and leadership, VBA added nearly 7,000 positions across the field.
 - For FY 2024, there were 4,981 total students who graduated from initial training including 2,904 VSRs and 2,077 RVSRs to decide claims, get earned benefits to Veterans, and reduce the backlog.
- **Process – Examinations.** VBA is scaling up contracted examination capacity. With the support of VHA and contract examination vendors, VBA completed over 2.38 million examinations in FY 2023, a 29.50% increase over FY 2022. VBA completed over 3.2 million examinations in FY 2024, a 34.4% increase over FY 2023, which aligned with the anticipated claims activity for FY 2024.
 - VBA actively engaged with all contract medical examination vendors to ensure additional network capacity to complete the increased volume of PACT Act-related examinations. In FY 2023, 33.6% (1,001,761) of the 2,979,028 examination scheduling requests (ESR) received were related to PACT Act. In FY 2024, VBA received 3,584,799 total ESR requests, of which 38.5% (1,378,705) were related to the PACT Act.
- **Process – Federal Records.** VA continues to work closely with military archivists to obtain access to records at the National Archives and Records Administration (NARA) and at their branch archival facilities to support claim research. The PACT Act improves the ability to establish exposure but increases research complexity due to a broader span of exposure locations and date ranges. This increases the scope of research required for claims that fall under the PACT Act. From a pandemic high of 32,000 pending research requests, VBA had approximately 2,800 requests pending, as of the end of FY24.

- **Technology – Automation.** VBA is expanding the use of automated decision support tools and training our processors on how to use them. VBA is early in the process of leveraging automated tools, with the full potential yet to be realized. However, the potential benefit is twofold – improving the efficiency of our claims processors and potentially reducing the number of unnecessary examinations Veterans must attend.

By the end of FY 2025, with the resources listed above and with sustained improvement to the claims evidence supply chain, VBA aims to meet the Secretary's goal of reducing claims pending over 125 days to approximately 100,000.

Question 2: Your testimony states VBA is currently 51% below backlog projections the peak back log is supposed estimated to be between 450,000 and 730,000 between October 2023 and April 2024. What is VBA doing to prioritize the claims that are in the backlog and of those being prioritized, are Veterans that don't have PACT claims, waiting longer for their claim to be completed?

VA Response: VBA is delivering more benefits to more Veterans than at any other time in our history. In FY 2024, VBA completed a record breaking 2.5 million rating claims, 27% more than compared to FY 2023, which, itself, was a record-breaking year.

VBA has been working hard to deliver timely claims decisions and reduce the disability claims backlog. The backlog peaked on January 4, 2024, at 423,179 claims, and as of September 30, 2024, fewer than 240,000 claims were backlogged, which was a 44% decrease in just over 8 months. Additionally, since the beginning of FY 2024, the total rating claims inventory has decreased from 1,091,853 to 979,236 at the end of FY 2024, a reduction of 10.3%.

PACT Act claims are eligible for the same VA prioritization as any claim received by VBA. VA prioritizes certain claims such as Veterans experiencing homelessness or financial hardship, terminally ill Veterans, Veterans who are 85 years of age or older, and Medal of Honor or Purple Heart recipients. These prioritization categories apply to all PACT Act and non-PACT Act claims. Additionally, PACT Act claims related to cancers are afforded prioritization. As of November 9, 2024, VA completed Veteran claims without PACT Act related contentions in, on average, 128.7 days, while Veteran claims with at least 1 PACT-related contention were completed in 167.9 days. It is important to note that 34% of the PACT Act claims pending on January 1, 2023, were already in the backlog when the law became effective and before VA could begin processing claims. This directly impacted the timeliness numbers. As of November 9, 2024, 374,330 PACT Act claims were pending, of which 261,219 were pending for more than 125 days.

Question 3: I am concerned that VA is not adhering to the intent of the law when it comes to allowing Veterans and their doctors to determine what is in the Veteran's best medical interest. The patient-provider relationship is a sacred one

and bureaucratic red tape should not interfere with it, much less overturn a clinical decision that a patient and their provider have mutually discussed and agreed on. However, in testimony regarding the Veterans' HEALTH Act – a bill that Ranking Member Moran and Senator Sinema introduced, and I have cosponsored – VA opposed the idea that decisions between Veterans and their doctors about best medical interest should not be overturned by bureaucrats. VA defended that position by saying that Veterans and their doctors “may not always have the specific information needed” and the doctor “may be unaware of a Veteran’s other conditions” – which is an epic failure for what is supposed to be an integrated health care system, if that is the case. Including the best medical interest criteria in the MISSION was always intended to ensure that Veterans and their providers had a say in determining that Veteran’s treatment course. We are attempting to clarify that in the HEALTH Act because we continue to hear from Veterans and VA staff that decisions about best medical interest are overturned by so-called Referral Coordination Teams who are not a part of the Veteran’s care team without reason or transparency. Can you explain to me, as a doctor yourself, how you can defend that?

VA Response: We agree that the Veteran and the clinical teams caring for the Veteran should determine what is in the Veteran’s best medical interest. The decision to use best medical interest as a criterion for community care eligibility is made between the referring provider, usually a primary care provider, and the Veteran. However, there are instances where the receiving clinical team or subspecialists may recommend a different treatment plan on further clinical review either based on their specialized knowledge, the evolution of the underlying disease, or when new information becomes available through the results of diagnostic tests ordered by the referring provider. This flexibility for clinicians to tailor the treatment plan based on these factors is important to ensure that Veterans receive the best medical treatment. Additionally, the referral coordination teams also share health care options with the Veteran, including VA and community care options, to put the Veteran in control of where, when, and how they receive their care, and to support VHA’s goal to empower Veterans to make the health care choices that are right for them.

Question 4: Late last year, as part of the Consolidated Appropriations Act, Congress required the VA to start calculating appointment wait times as follows: “the Secretary shall measure from the date of request for the appointment, unless a later date has been agreed to by the Veteran in consultation with a health care provider of the Department, to the first next available appointment date relevant to the requested medical service. Given this explicit requirement, can you confirm whether or not VA wait times listed as AccessToCare.Gov now reflect this standard?”

VA Response: Section 121 of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 (the Cleland-Dole Act; Division U of the Consolidated Appropriations Act, 2023, Public Law 117-328) added a new 38 U.S.C. § 1703(d)(4) to require that, in determining whether VA facilities

are able to furnish care in a manner that complies with the designated access standards described above, VA must measure from the date of the request. VA staff use this calculation when determining wait times for an individual Veteran during a review of his or her community care eligibilities. This has been VA's practice since the implementation of the Veterans Community Care Program (VCCP) in June 2019. Separate and apart from the calculations for purposes of determining VCCP eligibility VA also reports many types of health care information, including average wait times for VA services, that are helpful for Veterans, caregivers, and the public online at www.AccessToCare.va.gov. The average wait time information available on this website is not subject to the limitation in section 1703(d)(4) referenced because it is never used for purposes of determining VCCP eligibility.

Question 5: The Consolidated Appropriations Act also requires the VA to develop a plan no later than October 1st—just over two months away—to inform Veterans of expected wait times for both community care and VHA treatment. What progress has your agency made on developing this plan?

VA Response: VA developed a plan to inform Veterans about expected wait times for both community care and through VA providers by October 2023 as required by section-122 of the Cleland and Dole Act. VA updates the plan periodically to reflect the latest status of enhancements to systems and other related initiatives that allow VA to shift from not only average wait times but also to expected wait times. This shift will be a multi-year effort based on incremental advances to our scheduling capabilities and access to community care provider scheduling systems. VA's plan is multifaceted based on whether the care is provided within VA (direct care), by a community provider (community care), and how the Veteran engages with VA staff to identify the need for an appointment – such as in-person, by telephone, or online. A more detailed summary of the aspects of direct care and community care are set forth below:

- **Direct Care:** Currently, Veterans can freely access information on appointment availability and schedule with certain types of VA providers through the VA.gov portal (previously known as VA online scheduling). Veterans can view and request most appointments at VA, cancel appointments, and join VA video connect telehealth appointments. Primary care and mental health care are currently the only mandated care types that VA sites must have enabled for digital self-scheduling. As part of the plan, VA plans to expand this capability by increasing the number of VA specialties available for the Veteran to view availability and schedule appointments.
- **Community Care (CC):** VA is also working to make CC appointment scheduling easier and more convenient for Veterans, including more readily communicating about appointment availability. Community care Veteran self-scheduling (CC VSS) allows eligible Veterans to contact a community provider's office directly to schedule CC appointments once they receive an approved CC consultation. While there are no current online self-scheduling options with CC VSS, Veterans can obtain information on appointment availability with community providers.

VA's larger ongoing effort, external provider scheduling (EPS), will allow VA staff to inform Veterans about appointment availabilities at community providers in real time. The EPS Program is aiming to be live in up to 47 VA medical centers by the end of fiscal year 2025, approximately one third of the enterprise, and intends to begin rolling out to the rest of the facilities in subsequent years.

Question 6: The VA's Budget request for FY 24 was \$20.3 billion, yet the Congressional Budget Office (CBO) did not project the TEF to reach \$20 billion until FY30, six years from now. I'm concerned that this may become a slush fund for priorities that don't go directly towards the treatment and benefits of toxic exposed Veterans. Can you confirm that the TEF is not being used for costs associated with diversity and inclusion training, abortion assistance, and gender affirming care?

VA Response: Based on audits and reviews to date, we have not found instances where the Toxic Exposures Fund (TEF) has been used for diversity and inclusion training, abortion assistance, or gender affirming care.

Questions for the Record from Senator Tommy Tuberville

Question 1: Mr. Jacobs, it is reasonable to assume that, given the amount of PACT Act disability claims being submitted every week that some percentage of these claims will be appealed. How is VBA working with the Board of Veterans Appeals to plan for an increase in appeals, given the ongoing delays in currently pending appeal decisions?

VA Response: As of October 30, 2024, VBA had received approximately 63,000 PACT Act-related decision review requests and claims, through either higher-level review (HLR) requests or pending legacy appeals with PACT Act related conditions. VBA has decided approximately 46,000 legacy appeals and HLR claims. VBA continues to coordinate and share information with the Board of Veterans' Appeals on workload forecasting, modeling, and claims/appeals estimates to better inform planning efforts.

Question 2: Dr. Elnahal, Section 801 of the PACT Act requires the VA to conduct a study on the health trends of Veterans who served at Fort McClellan. I hear about McClellan a lot from Veterans in Alabama, and many more across the country whose service took them to Fort McClellan. Can you provide some insight, both to us here today and Veterans watching from home, the value of this type of study to help better understand health challenges experienced by those Veterans who served at Fort McClellan and how we can best care for them?

VA Response: Section 801 of the PACT Act directs VA to conduct a study on the health trends of Veterans who served in the Armed Forces at Fort McClellan (FtMc) at any time during the period between January 1, 1935, and May 20, 1999, when the base was closed under base realignment and closure.

Epidemiology is the study of or health experiences in populations, and the determinants of these experiences, in order to apply this knowledge to preventing or solving health problems. Epidemiological research of health trends over time can be used to gauge if some population members have different health trajectories or different disease experiences than others. If a study were to identify an increased risk for specific diseases in those who served at FtMc, earlier or more frequent screening for disease could be employed to aid with early diagnosis and treatment. Knowledge regarding disease occurrence in a population can also support the introduction of health promoting behaviors that may lower risk for disease and enhance Veteran functioning and healthy aging. The results of the study will also support the evaluation of health risks experienced by Veterans who served at FtMc and could inform decisions on granting presumptive service connection for diseases if elevated risks are identified.

Questions for the Record from Senator Sherrod Brown:

Question 1: Can you please elaborate on what “stage 2 screenings” and “toxic informed care”, which you mentioned during the hearing, are?

VA Response: Stage 2 of the toxic exposure screening connects Veterans who report exposure to or are uncertain about service-related exposures with registry, benefits, and clinical resources that meet their specific needs. It also compels entry of the reported exposure into the Veterans diagnosis list in support of exposure informed care. Exposure informed care is when clinicians incorporate reported military exposure history in longitudinal care considerations. This practice promotes having a higher index of suspicion or a lower threshold for work-up when evaluating emerging symptoms that could potentially be related to certain conditions.

Question 2: When is a Veteran referred to “stage 2 screenings?” And how many patients have been referred to these screenings since the passage of the PACT Act?

VA Response: Stage 2 of the toxic exposure screening is triggered anytime a Veteran reports exposure to or is unsure about whether they have been exposed to service-related toxic substances during a screening performed by staff other than a doctor, physician assistant, or advanced practice registered nurse. It should be noted that anytime the screen is initiated by one of these providers, both stages are presented as one comprehensive screen. As of October 1, 2024, stage 2 screenings were indicated for 2,736,889 Veterans.

Question 3: What education or guidance has VA shared with VA health care professionals on “toxic informed care” or when to refer a patient to a “stage 2 screening”?

VA Response: All health care providers are required to complete module 1 of the War-Related Illness and Injury Study Center Overview of Military Environmental Exposure.

More than 95% of new employees have completed the training within 3 months, and 100% of providers who have been at VA for a longer period have completed the training. Other training is available at the sites below.

A full list of our military exposure education is available here:
<https://www.warrelatedillness.va.gov/WARRELATEDILLNESS/education/provider-training/index.asp>.

Upcoming webinars can be accessed outside of the VA through TrainingFinder Real-time Affiliate Integrated Network (TRAIN). TRAIN links are available at:
<https://www.warrelatedillness.va.gov/WARRELATEDILLNESS/education/webinars/save-the-dates-2024.asp>.

We encourage providers to become certified in military exposures. We have a free level 1 and level 2 certification programs available online at:
<https://www.acpm.org/Education-Events/Military-Environmental-Exposures-Certification>.

Question 4: Mr. Jacobs, what records are needed to successfully adjudicate a disability claim related to the PACT Act? And how are PACT Act claims prioritized by VA?

VA Response: The PACT Act expanded disability compensation benefits in two main areas. The first is the expansion of presumptive conditions and the locations of exposure. For these types of claims, the primary records VA must review are as follows: 1) the application for benefits and any records provided by the Veteran; 2) military service records, which allow VA to verify service in a presumptive location (this also includes reviewing the Individual Longitudinal Exposure Record (ILER), since this repository contains deployment information); and 3) private medical records and VA clinical records, to include the medical disability examination, which allows VA to verify the diagnosis and severity of the disability.

The second area relates to a new authority in section 303 of the PACT Act, which impacts Veterans who have participated in a TERA and are claiming a non-presumptive condition. Under 38 U.S.C. § 1168, if a Veteran submits a claim for compensation for a non-presumptive condition with evidence of both a disability and participation in an in-service TERA, then (if the evidence is not sufficient to grant a claim), a VA medical examination and opinion will be requested to determine if the Veteran's claimed disability is medically linked to the in-service TERA. The records required for this avenue of service connection are generally the same as described above but the process for reviewing the records may be longer and more complex. For example, to determine if a veteran participated in a TERA, VA is required to perform in-depth reviews of military treatment and personnel records and more comprehensive searches of ILER. Specifically, section 302 of the PACT Act requires the use of an exposure tracking database, such as ILER, by claims processors to verify toxic exposure. This new requirement, along with the TERA requirements defined under 38 U.S.C. § 1168, has resulted in claims processors spending more time reviewing and researching a

Veteran's military treatment records, personnel records, and ILER to determine all potential TERAs to ensure the opinion considers all possible exposures of the Veteran. As of November 16, 2024, PACT related claims with TERA assessments take an average of 37 days longer (188.1 days) to complete than PACT claims without TERA assessments (150.4 days). This additional review is enables VA to ensure all toxic exposures are considered prior to deciding a claim, helping to lower the burden on the veteran to submit additional documentation.

PACT Act claims are eligible for the same VA prioritization as any claim received by the Veterans Benefits Administration (VBA). VA prioritizes certain claims such as Veterans experiencing homelessness or financial hardship, terminally ill Veterans, Veterans who are 85 years of age or older, or Medal of Honor or Purple Heart recipients. These prioritization categories apply to all PACT Act and non-PACT Act claims. Additionally, PACT claims related to cancers are afforded prioritization.

Question 5: How is the VA coordinating with the appropriate records management offices to prioritize PACT Act inquiries, to prevent delays in Veterans receiving their benefits?

VA Response: VA works closely with NARA to rapidly obtain Veterans and Service members' official military personnel files (OMPF) in support of their claim for VA benefits. VBA established an on-site scanning capability at NARA's National Personnel Records Center (NPRC) that scans and uploads approximately 1,500 OMPFs each day. These digitized documents are uploaded into VBA's claim processing system, the Veterans Benefits Management System (VBMS), within 48 hours of delivery from NPRC. In 2022, VBA began proactively bulk-scanning OMPFs in anticipation of these Veterans submitting a claim for VA benefits. Through the end of FY24, more than 6.8 million OMPFs have been scanned under this initiative, significantly reducing the wait time for these documents and ensuring Veterans and their families receive their VA benefits in a timely manner.

Additionally, VA worked with NPRC to proactively identify and scan more than 170,000 OMPFs for Veterans who, while not having filed a previous claim, could potentially be eligible for VA benefits under the PACT Act. This initiative was completed ahead of schedule, ensuring VBA claims processors have access to these records on the same day a Veteran's claim is received. VBA continues to partner with NARA to identify and digitize additional types of Veteran and Service member records used in support of claims for VA benefits. Digitizing these records reduces NARA's administrative burden to maintain these records, streamlines VBA's claims process, and reduces the Veteran's wait time for a claim decision.

For records that are sensitive or classified, VBA also placed staff and contract staff onsite at various Federal archive facilities to enable the appropriate handling of VA's requests and to ensure the oldest/priority research requests are being addressed. Additionally, VBA has contract staff scanning archival documents, when possible, to grow the VA Document Repository allowing for more timely responses to

research requests. VBA has hired and onboarded additional staff onsite at branch archive facilities to increase records research capacity.

Questions for the Record from Senator Kyrsten Sinema

Question 1: Increased eligibility means nothing if there are not enough resources and staff available to treat those that that are owed VA care. This is especially true in Arizona's rural areas. Given staffing shortages across VA facilities, what is the VA doing to ensure timely processing of claims and that access-standard appointment times are available for Veterans to receive care?

VA Response: VHA increased the size of its workforce by 7.4% in FY 2023, exceeding its goal of 3% through the record hiring of nearly 62,000 new employees. VHA also had near-record retention rates, with a total employee loss rate of 8.4%, a 2.6 percentage point, or 24% relative decrease, from the previous year. Additionally, VHA has continued to grow the workforce strategically in areas of need by 2.1% in FY 2024. This helped to increase the workforce by 36,838 more staff since the end of FY 2022. . This positions VHA to see more patients than ever before while continuing to improve access to care, with faster availability to appointment times for the Veterans we serve.

In addition, the Office of Integrated Veteran Care is leading an effort aimed at optimizing the time our clinicians spend in clinic by implementing standards for bookable hours and appointment lengths. The bookable hour initiative will ensure clinicians are filling 80% of their schedules with patient appointments. Implementing the bookable hours and appointment length standards is a significant advance in both improving Veterans' access to care through more efficient uses of resources locally and across the enterprise, as well as ensuring a more equitable workload across providers.

Finally, we are leveraging every modality available to reach Veterans with timely, appropriate care. Through VA Health Connect, Veterans can call 24 hours a day every day to talk to a nurse about a health concern; a medical support assistant to help with scheduling an appointment; a pharmacist to reorder a prescription; and when clinically appropriate, meet with a provider using a video appointment. Further, we are utilizing clinical resource hubs to provide virtual care options to increase access to VHA clinical services for Veterans when local facilities have gaps in care or service capabilities.

To ensure the timely processing of VA benefit claims, VBA established an on-site scanning capability at NPRC that scans and uploads approximately 1,500 OMPFs each day. These digitized documents are uploaded into VBMS, within 48 hours of delivery from NPRC. Additionally, VA worked with NPRC to proactively identify and scan more than 170,000 OMPFs for Veterans who, while not having filed a previous claim, could potentially be eligible for VA benefits under the PACT Act. This initiative was completed ahead of schedule, ensuring VBA claims processors have access to these records on the same day the Veteran's claim is received. VBA continues to partner with NARA to identify and digitize additional types of Veteran and Service member records used in support of claims for VA benefits. Digitizing these records reduces NARA's

administrative burden to maintain these records, streamlines VBA's claims process, and reduces the Veteran's wait time for a claim decision.

From October 1, 2022, through October 5, 2024, VBA's workforce grew by 9,160 employees, or 35.5%. VBA's total workforce is 34,942. This is a slight decrease from VBA's growth rate from October 1, 2022, through August 24, 2024, (35.9%) which was VBA's highest growth rate in personnel in the past two decades.

VA Response: VA has employed an enterprise-wide, comprehensive outreach plan, as required by section 111(c) of the PACT Act and submitted to Congress on December 1, 2022. This plan, which includes coordination with VA stakeholders, targeted the following:

- Veterans not already enrolled in VA health care;
- Veterans receiving VBA benefits but not enrolled in VA health care;
- Veterans enrolled in VHA but not active users of health services;
- Current VA health care enrollees;
- Family members, survivors, caregivers and friends of non-enrolled Veterans;
- Veterans by period of service or discharge date;
- Veterans based on geographic location;
- Transitioning military Service members;
- Veterans previously determined to be ineligible;
- Veterans who had insurance through an employer but may now need other health care, (for example: retirement, loss of benefits, and others);
- Other Veteran segments where there is low representation;
- Women Veterans (proportion of VA enrollees to total Veterans is lower than that of men);
- VA staff, including those working in Vet Centers, who have direct contact with Veterans; and
- Veterans Service Organizations, military service organizations, state Veterans' affairs offices and community stakeholders who could serve as health care ambassadors.

VA conducted an email and letter campaign to provide direct outreach to unenrolled Veterans, providing details of the PACT Act; what it means for Veterans, their family members and survivors; and inviting the recipients to learn more and apply at <https://www.va.gov/PACT>. Overall, VA sent 1,180,109 emails and 1,770,194 letters to non-enrolled Veterans.

In the first year, VA's paid, earned, and social media campaigns have achieved considerable impact, resulting in over 34,000 news articles; more than 27,500 broadcast items; and 850 million total paid media impressions alongside over 6 million clicks. Over the subsequent 2 years VA's national social media accounts promoted information regarding the PACT Act through Facebook, X, and Instagram, leading to an increase in followers and the accumulation of over 300,000 engagements and nearly 1 million impressions.

Leading up to the September 30, 2023, deadline for certain post 9/11 combat Veterans to apply for enhanced enrollment VHA launched another surge of media and messaging, including an additional email, text, and postcard campaign directly to eligible Veterans and the first-ever text campaign to notify Veterans they may be eligible to enroll. For this campaign VA sent 982,020 emails through 3 different sends, sent 609,551 text messages through 2 different sends, and mailed 472,722 postcards.

VA's PACT Act outreach efforts over the last two years have resulted in thousands of outreach events at VA medical facilities and in communities across the country, including D.C. and Puerto Rico. VA recently completed its Summer VetFest outreach campaign, which resulted in 537 events held nationwide. These family-friendly events provided opportunities for Veterans to learn about the PACT Act, enroll in VA health care, receive a Toxic Exposure Screening, and file a disability claim or complete a previous intent to file. VetFest events, held between June and September of this year, saw over 70,000 attendees, which included Veterans, their family members, members of Congress, state Veterans' advocates, media, and others who support Veterans. In addition to spreading the message of the PACT Act, these VetFest events resulted in 4,155 VA health care enrollments and over 32,000 claims or intents to file submitted. Many of these outreach events were supported by a newly developed VA Centralized Outreach Module (VACOM), which allows VA to determine areas where many eligible, unaffiliated Veterans – Veterans not enrolled in VA health care nor receiving VA benefits – reside and to target outreach in those areas.

Question 3: If a Veteran is examined in a VA facility in Phoenix, it is a reasonable expectation that they should receive the same standard of care had they gone into the Prescott facility, instead. What more should the VA and DOD be doing to screen for toxic exposures throughout the life of a servicemember and Veteran to not only standardize those initial consults, but to ensure routine follow-ups address potential health impacts of toxic exposures?

VA Response: VA expects that Veterans treated in a large VA medical center should receive the same care as they would if they were in a smaller clinic. Toxic exposure screening is standardized across the VA system. Therefore, whether it be in Phoenix or Prescott, when a Veteran presents with concerns about service-related toxic exposures, the screening process and the subsequent care are identical based on the following essential aspects of exposure-informed care:

- a standardized screening process by trained screening personnel;
- supporting the Veteran with standardized information regarding their specific exposure concerns as well as available services, benefits and resources;
- supporting the Veteran in connecting with the claim submission process;
- entering the Veteran's exposure concern into the electronic health record problem list so that it will be kept in mind as a part of care planning;
- ensuring that any reported symptoms for which clinical assessment is warranted are evaluated and managed using standard evidence-based practices; and
- repeating toxic exposure screening every 5 years to ensure related concerns are kept in mind over the lifetime of the Veteran's experience within VHA. All of these are essential aspects of VA exposure-informed care.

VA defers to the Department of Defense regarding its current practices or anything more it could do in this area.

**Department of Veterans Affairs
December 2024**

Submission for the Record

**OPERATIONAL IMPLICATIONS DUE
TO IMPLEMENTATION OF TOXIC
EXPOSURE FUND**

FY24

FY30

63

**CBO
PROJECTION: \$5.4 B \$20 B**

**ACTUAL VA
BUDGET
REQUEST: \$20.3 B ???**

Statements for the Record

**Senator Sinema
Statement for the Record
Senate Veterans' Affairs Committee
Implementing the PACT Act: One Year Later
07/26/23**

Senator Sinema Statement

Thank you, Chairman Tester, for holding this hearing and thank you to our witnesses for being here today.

Arizona is home to a large veteran community, making up almost 10 percent of our state's population. Last year, at least 1 million post-9/11 combat veterans potentially exposed to toxic substances were unable to access VA care due to unrealistic eligibility requirements. I was an original cosponsor of Chairman Tester's Health Care for Burn Pit Veterans Act, an essential building block of the PACT Act that expanded treatment eligibility for those impacted by toxic exposure. Therefore, I am incredibly pleased that the PACT Act is now law and the affected veterans are getting the essential health care they are owed.



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

HEARING ON

"IMPLEMENTING THE PACT ACT: ONE YEAR LATER"

JULY 26, 2023

Chairman Tester, Ranking Member Moran, and Members of the Committee:

The American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record on today's hearing titled "Implementing the PACT Act: One Year Later." AFGE represents more than 750,000 federal and District of Columbia government employees, 291,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. This includes the Veterans Benefits Administration (VBA) workers responsible for the processing veterans' newly eligible claims under the PACT Act and answering veterans' complex questions about their benefits.

With this firsthand and frontline perspective, we offer our observations and recommendations for effective implementation of this historic new law. Specifically, AFGE will identify current issues and needed solutions related to:

- Significant problems with performance standards for VBA employees. These include:
 - The constantly changing and haphazard approach VBA makes to procedures and performance standards without utilizing input from frontline workers.
 - The failure to grant credit to employees who perform work on claims that are not ready to advance to the next step of the claims process.
 - Intentionally not recognizing the variation in complexity of claims and failing to adjust performance standards for the benefit of veterans.
 - Prioritizing quantity over quality at VBA National Call Centers to the detriment of veterans.
- Addressing the critical need for staffing with the rapid influx of new PACT Act claims.
- Ensuring the training for VBA employees is adequate, nationally consistent, and beneficial.

- Requiring VHA to put its employees in a position to succeed by:
 - Monitoring that VHA has the staff it needs to meet the increased demand created by the PACT Act.
 - Ensuring that VHA is using the compensation tools it gained in the PACT Act to benefit lower-grade front line clinicians.
 - Restoring full HR functioning at the facility level through additional hiring, training, and decentralization.

We hope you find these suggestions constructive, and we stand ready to work with the Members of the Committee to make necessary and positive improvements to the VA.

Performance Standards for VBA Employees

For many years prior to the passage of the PACT Act, AFGE has highlighted the many problems with the VBA performance standards faced by its employees. When asking bargaining unit employees in the VA's Regional Offices (VARO) to identify the single biggest obstacle they face to successfully performing their duties and serving veterans, the universal answer is constantly changing performance standards. These standards are often introduced and implemented for VBA staff in a haphazard manner and are overly focused on metrics that prioritize quantity over quality, providing a disservice to the veterans they are intended to benefit. Unfortunately, these problems have not been solved by the PACT Act, but instead further highlighted with increased demand from the PACT Act.

Frequency of Changes to Processes

A classic example of VBA's constant change to performance standards was the implementation of new performance standards for Veteran Service Representatives (VSR) and Rating Veteran Service Representatives (RVSRs) on October 1, 2020, with a three-month

acclimation period. Since the implementation of these standards, VBA made changes to these standards in November 2020 and December 2020, and then announced at the end of the end of December 2020 that it would make more changes leading to another three-month acclimation period. These standards were changed again in January of 2021, again in March of 2021, and were finalized on April 1, 2021. For context, these standards are incredibly complex and take time to learn, requiring acclimation periods to allow the employees to fully understand them. Having six changes made in six months was severely disruptive and made it difficult for staff to perform their duties and effectively serve veterans. Had VBA worked collaboratively with AFGE representatives from the beginning when changing these standards to gain employee perspectives and input, many of these problems could have been avoided and VBA would have been able to process claims in a more efficient and timely manner.

The implementation of the PACT Act has led to changes in performance standards for numerous positions. VBA has designed and is continually updating standards for Authorization Quality Review Specialists, Rating Quality Review Specialists, Fiduciary Program Specialists, Veterans Service Representatives, Rating Veteran Service Representatives, Quality Review Specialists in the National Call Center, and others. AFGE and VBA have reached agreement on the performance standards for many of the covered positions but have not yet agreed on standards for Veterans Service Representatives and Rating Veteran Service Representatives. As these and other performance standards are updated, AFGE urges VBA to work in good faith with AFGE to design fair and attainable standards that prioritize quality over quantity, and best serve veterans. As part of this, AFGE supported the decision by VBA to in March announce a “60 Day Quality Grace Period” to employees as they adjust to the law and its inherent changes and urges VBA to continuing monitoring the need for future extensions.

Additionally, AFGE was pleased that VBA is improving its consideration of employee input and appreciates VBA Undersecretary Josh Jacobs' participation in the VBA National Labor Management Forum the week of May 8, 2023, and hopes the dialogue started there leads to positive change. AFGE also urges the committee to perform oversight on the developments of new VBA production and quality standards in response to the PACT Act to ensure that these standards enable employees to serve the best interests of veterans.

Granting Rating Veteran Service Representatives Credit for Deferrals

Rating Veteran Service Representatives (RVSRs) frequently complain about their performance standards because they do not get production credit for determining that a claim is not ready to "rate" or advance through the claims process, and instead needs further consideration (a deferral). This ignores the amount of work required to reach the conclusion to defer a claim, even though the decision to defer was in the veteran's best interests. When an RVSR starts to review a claim, they do so without prior knowledge and do not know if the claim is ready to rate. An RVSR who spends hours trying to rectify problems on a claim and then concludes that a determination cannot be made receives no credit for the portion of the claim (which may be the entire claim) that was deferred. This imperils the employee's ability to meet their standards and may lead to discipline through Performance Improvement Plans (PIPs), and in turn limited promotional opportunities, a desire to find another job outside of VBA, or termination. This practice cynically encourages employees to advance or deny claims prematurely, with a significant risk of harming the veteran. These decisions should not be rushed, and employees should not be punished for taking the time to work on a claim and then determine that the claim is not yet ready.

Under the PACT Act, the problems created by lack of credit for deferrals have been highlighted in the Louisville, Kentucky VARO, particularly for RVSRs who process Camp Lejeune Contaminated Water (CLCW) claims. The Louisville VARO is the office that receives all CLCW claims that have been determined unratable under the rules in effect prior to the PACT Act and require a more specialized analysis. Prior to the implementation of the PACT Act this year, VBA had held CLCW claims that could not be granted under pre-PACT Act rules for adjudication so they could be considered after the PACT Act took effect. AFGE supports this decision as it benefits veterans, but we object to the way the VBA has implemented this decision. Because of the hold on CLCW claims, RVSRs who worked on CLCW claims and had the claims they rated deferred, received no credit for their production or quality quotas and unnecessarily suffered the consequences of an arbitrary case assignment. Furthermore, while the VBA has the authority to avoid unfairly punishing employees by offering “excluded time,” which removes the time used on a deferral from the performance average of the employee, the Louisville VARO, like many other VAROs, had until recently not approved excluded time for the full rating of claims that result in a deferral. This changed in April of 2023, and left the approval of excluded time to an RVSR’s coach’s discretion, which is still inconsistent for RVSRs, and is time consuming in and of itself, further making it harder for RVSRs to meet their standards. AFGE urges the VA to award credit to RVSRs for the portions of claims that are deferred and asks the Committee to question the VBA about why it arbitrarily refuses to count the work performed on deferred claims.

Earning Credit for Each Issue in a Claim

Clearly, every veteran is supposed to be treated equally by the VA, but VBA performance standards can cause disparate treatment depending on the claim filed. When evaluating claims, VBA does not easily distinguish the number of issues or contentions each veteran makes in their claim, instead using a complex tier system that unnecessarily hurts the ability of VSRs and RVSRs to meet their standards. This is arbitrary and punishes employees who get assigned claims with a significant number of contentions, but not enough to earn additional credit. This can unfairly punish veterans who, through no fault of their own for the number of contentions they submit in a given claim, receive negative decisions affecting their claims.

The PACT Act has led to the filing of many claims with significantly more contentions and distinctions. We strongly urge VBA to fairly recalibrate its employee production standards and new training programs and procedures to factor in the additional work and time that will be required to process these new claims and urge the committee to monitor the implementation of these performance standards.

National Call Centers

For years, AFGE has raised concerns to this committee about the VBA's measure of the timeliness or "talk time" component for Legal Administrative Specialists (LAS) who answer veterans' questions at VBA's eight national call centers. Each LAS is allotted a certain amount of time they can be on the phone with a veteran based upon the employee's GS level. This can be as little as eight minutes and thirty seconds. This is a one size fits all standard that does not consider common issues veterans often call in about including a "first notice of death call" where a veteran's spouse is calling to inform the VA that the veteran has passed away. Such a call may take 20-30 minutes. The standard also does not take into account the numerous older veterans who have difficulty communicating or veterans who have more than one question or issue to resolve.

Additionally, the standard effectively disincentivizes an employee from making a suggestion to a veteran about a benefit or program he or she may be eligible for but does not know to ask about, because it would take more time on the phone.

With passage of the PACT Act, there has been a predictable surge in calls to the national call centers with numerous questions for VBA employees. Despite the fact this problem that was easily anticipated by VBA leadership, employees, including those in the National Call Centers, have not been given any additional time to meet their talk time standards, and were only provided with a short generic script to respond to a veteran's complex questions.

An employee whose primary responsibility is to answer a veteran's questions should not have their performance measured by how quickly they can get a veteran off of the phone, and the VA should not prioritize a contrived metric over providing valuable customer service to veterans, especially in the wake of a massive and complex expansion of benefits to millions of veterans. VBA should remove Talk Time as a critical component of employee performance.

Furthermore, it has come to AFGE's attention that on October 20, 2022, VBA instituted new performance standards for the call centers that further restricted the use of "wrap up time" at the end of the day for LASs to input data, prepare mail to veterans and complete other tasks that they could not handle during calls. This change was also accompanied by a new availability standard that substituted percentages for raw minutes, further increasing stress on workers, and unnecessarily increasing the difficulty of the job. These rules, which result in unnecessarily limiting bathroom breaks, are pennywise and pound foolish, and decrease the quality of service that veterans receive.

VBA Staffing and Backlog

The enactment of the PACT Act has resulted in a need to increase the size of the VBA workforce to process the expected surge in claims from newly eligible veterans. In a presentation made to AFGE representatives, VBA conveyed that the current backlog is approximately 210,000 claims. Additionally, according to the data on staff vacancies required by Section 505 of the VA MISSION Act, VBA has 3,220 vacancies as of the end of the first quarter of Fiscal Year 2023. Despite this, while the VBA has hired many new claims processors, AFGE has heard reports of slow hiring for employees, one example being the Cleveland, OH VARO, which is having a delay in hiring candidates who are disabled veterans. These delays have taken months, causing some applicants to accept other jobs. Additionally, given the months it takes to effectively learn to process claims, this delay is worsening the backlog to the detriment of veterans. AFGE urges the VBA to continue to quickly ramp up its staffing and training of claims processors and allow it to better manage the backlog of claims, instead of relying upon mandatory overtime.

Training

The PACT Act mandates several new VA workforce training initiatives. However, the information shared with employees since enactment has been greatly inadequate. Employees have received five Talent Management System Courses and three separate iterations of a Standard Operating Procedure (SOP) document to read. Live training on the SOP document has varied from office to office. When it has been conducted, the training has been conducted over Microsoft Teams and consists of senior employees trying to interpret the document for other employees while attempting to understand it themselves. To date, no hands-on training or opportunities to ask questions of a live instructor have been offered.

This has also foreseeably created inconsistency between the different VAROs creating different determinations. AFGE urges the VBA to increase training, including ample

opportunity to ask questions, and add training based upon the frequency of those questions. For PACT training to be effective, it is essential that management solicit input from the labor representatives' rank and file members who are actually working with PACT Act claims as to what training would enable them to better serve veterans.

Collectively, the insufficient and inconsistent training and rushed timeline has resulted in a higher percentage of erroneous rating decisions to veterans and affected the benefits they have earned.

VHA Staffing, Compensation, and Other Workforce Issues

As a result of the PACT Act, VHA is facing an unprecedented increase in demand for medical care. The hiring and training of additional health care personnel will be essential to meet the screening and treatment needs of newly eligible veterans in virtually every medical center service line, in particular primary care clinics, emergency rooms (ER), cardiology, pulmonology, urology, gastroenterology and dermatology. Unfortunately, an informal survey of our members reveals very limited efforts to hire, train or carry out other activities for an effective rollout of new PACT Act health care initiatives and increased demand for services.

Staffing

There is an urgent need for VHA to address the chronic short staffing that significantly worsened during the pandemic. VA staffing shortages remain an ongoing cause of concern for both veterans and the AFGE members who care for them. According to VA's 2023 first quarter vacancy report, VA turnover, now at 9.95 percent, has increased in recent quarters. Although VA reports a net hiring of 7,364 employees through March, its own data—inaccurate even five years after the Mission Act passage—still show over 70,000 vacancies. A recent survey of AFGE membership, conducted by the Veterans Healthcare Policy Institute (VHPI) with AFGE support,

showed that 96 percent of VHA respondents believe their facility needs more frontline clinical staff to provide the level of care veterans deserve. Seventy-five percent said their facility needs more administrative staff. Seventy-seven percent said that there are vacant positions for which no recruitment is taking place.

AFGE has received very troubling reports from our locals at numerous facilities that medical center directors who received retention incentive funds provided by the PACT Act have not distributed them to front line clinicians even in the face of high vacancy rates. Also, the job listings posted by medical centers in many locations failed to align with the much higher vacancy rates used to justify these retention incentive dollars. More generally, congressional oversight of the deeply flawed and unreliable vacancy data that is currently collected and published by the VA is badly needed.

Compensation

The pay grades of a number of lower wage VHA positions, including the nursing assistants and licensed practical nurses who make up the core of VA community living center workforces, are still too low to recruit and retain sufficient staff. Similarly, medical support assistants who handle patient scheduling and other critical support functions are already working at a low grade that causes a lot of attrition and in some cases are facing downgrades to even lower positions. While it is encouraging that the PACT Act may make it easier to hire more housekeepers to keep medical facilities clean and safe, this position has had a high attrition rate for many years. VA needs to raise their pay grades to make them more competitive with the private sector.

Other VHA Workforce Matters

Veterans in need of screening and treatment for toxic exposure need and deserve the thorough, specialized, comprehensive care that only the VA provides. We received a concerning report from VISN 23 that veterans may be shortchanged by a new “bookable hours” policy that cuts the time that a provider can spend to assess a new patient from sixty to thirty minutes. It is equally urgent that the VA reverse the harmful effects of HR modernization that have greatly slowed and confused the process for hiring new providers and other personnel. In addition, the counterproductive centralization of HR functions away from the medical centers must be reversed. Front line personnel and their labor representatives are in desperate need of being able to interface with knowledgeable HR specialists *at the facility level* in order to resolve routine personnel matters.

Our members report that the online training on new screening tools that has been provided is a good first start but that more comprehensive training is needed to ensure that all clinicians and support personnel have a full understanding of the specialized screening processes and treatment needs of veterans with toxic exposure.

AFGE thanks the Senate Veterans’ Affairs Committee for the opportunity to submit a Statement for the Record for today’s hearing. AFGE stands ready to work with the committee and VA to address the issues affected by PACT Act implementation and strengthen the VA workforce to best serve our nation’s veterans.



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**STATEMENT OF
 SHANE L. LIERMANN
 DEPUTY NATIONAL LEGISLATIVE DIRECTOR
 FOR THE RECORD OF THE
 COMMITTEE ON VETERANS' AFFAIRS
 UNITED STATES SENATE
 JULY 26, 2023**

Chairman Tester, Ranking Member Moran and Members of the Committee:

We are pleased to submit our testimony for the record for this oversight hearing. DAV is a congressionally chartered and VA-accredited national veterans' service organization (VSO) of more than one million wartime service-disabled veterans. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

Mr. Chairman, the historic passage of the SFC Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act, is now providing benefits and health care to veterans exposed to burn pits, radiation, Agent Orange and other toxins. Starting in January 2023, VA has been adjudicating PACT Act claims.

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

POSTIVE IMPACT OF THE PACT ACT

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

After the passage of the PACT Act, VA announced they would start processing all PACT Act related claims on January 1, 2023. However, on December 12, 2022, the Veterans Benefits Administration (VBA) took the initiative to grant benefits for terminally ill veterans in cases where service connection for a PACT Act presumptive condition could be established. VA completed 4,844 claims for terminally ill veterans, 3,118 of which were granted.

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

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

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

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

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

PACT ACT AND THE BACKLOG

To truly understand VBA's pending claims and backlogged claims, we need to understand that VA defines a case as being backlogged if it has been pending over 125 days. Also, we need to understand how VBA's workload has changed over the past

decade to include the pending claims prior to the pandemic and prior to the PACT Act passing into law.

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

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

In February 2022, VBA's case load was 615,000 pending claims with over 259,000 pending more than 125 days. The PACT Act became law in August 2022, which dramatically increased the number of claims being submitted and, in February 2023, VBA had over 742,000 claims pending with 197,353 of them pending for more than 125 days.

VBA's claim inventory, as of July 7, 2023, was over 861,000 claims, of which 252,000 are backlogged. Additionally, the report reflects that over 1 million claims were decided since October 1, 2022. While all of this data reflects the significant increase of claims submitted over the past three years, it notes that the current number of backlogged claims does not exceed those backlogged in February 2022, six months prior to the passage of the PACT Act.

As of July 7, 2023, VA reported it has received over 706,000 PACT Act related claims and has adjudicated over 380,000 of those claims, while managing the current total case load. Within the past two months, the number of backlogged claims has increased by nearly 40,000. Although VA has mitigated this increase of backlogged claims, the sheer number of claims will simply add to the existing backlog. As VA continues to manage the backlog, we urge Congress to continue oversight measures to eliminate any potential miscues in the adjudicatory process that would negatively impact pending claims and the backlog.

VA IMPLEMENTATION MISCUES

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

Upon passage of the PACT Act, VBA issued immediate processing guidance to all VA Regional Offices (VAROs). On September 9, 2022, VBA followed up with more detailed interim guidance, which provided procedural steps to processing PACT Act

related claims. Part of that guidance advised claims processors to hold claims that could not be granted until January 2023, when full PACT Act processing would begin.

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

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

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

Additionally, there is confusion within the veterans' community on whether breast cancer for female veterans is considered a reproductive cancer. Breast cancer is a PACT Act cancer; however, it is not easily found on VA sites or on any comprehensive lists. We argue that this can be blamed on the lack of VA regulations specific to the PACT Act and the diseases related thereto. In the meantime, we recommend that VA issue a simple fact sheet or list of those conditions it considers as presumptive diseases under the PACT Act.

VA can mitigate these miscues by increasing awareness and outreach to the veterans' community and their continued collaboration and partnership with the VSO community.

OUTREACH AND COLLABORATION

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

Outreach

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

In June, VA announced more than 50 PACT Act related events would be held in all 50 states over the summer. As of today, over 30 of those events have taken place. Today, the Vancouver VA Medical Center in Vancouver, Washington, is hosting the 34th event.

DAV has been actively involved in PACT Act outreach. We have dedicated a part of our website to burn pits and toxic exposure information, as well as regularly providing information through our magazine, web and social media platforms. In June 2023, DAV completed 27 information seminars on benefits and the PACT Act in local communities within 19 different states.

Collaboration

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

Due to our previously raised concerns, VBA has recently shared with the VSO community, its established training for the PACT Act and the related claims and development process. We commend VA on its commitment to intense veteran outreach and VSO collaboration. While we are pleased with VA's inclusion and implementation to this point, we do have some concerns as they move forward.

DAV CONCERNS

Continued oversight of VA will be key for successful implementation of the PACT Act. It is imperative that Congress and the VSO community monitor and collaborate with VA throughout the process. Overall, DAV is pleased with VA's efforts; however, we have the following concerns:

- **Backlog of claims**—As we noted above, VBA to this point, has managed all of the incoming claims, PACT Act claims and the backlog effectively. Although the backlog of claims has not increased beyond the numbers of February 2022, it has not been reduced. Currently, VBA has over 800,000 pending claims. The backlog of cases has risen steadily over the past two months. We are concerned that the backlog may get out of control without correct resources and monitoring.
- **Hiring and Training New Claims Processors**—VBA keeps us advised on its recruiting efforts to hire 2,000 new claims processors. Knowing that it can take 18 to 24 months to fully train a rating specialist, we do have concerns that VBA may not be able to onboard new employees timely to avoid our concerns over a looming increase in backlogged claims.
- **VA PACT Act training**—As we noted previously, there have been some miscues in training and subsequent rating decisions. VA will need to continuously update and monitor its training throughout this implementation.
- **PACT Act regulatory provisions**—VA has published some rule changes in the Federal Register, such as its notice of sub-regulatory guidance in December 2022, updating the presumptive radiations locations based on the PACT Act on March 13, 2023 and the reevaluation of claims for DIC on March 22, 2023. However, VA has not published overarching proposed rule changes since the December 2022 guidance.
- **VA's presumptive disability decision-making process**—Since the passage of the PACT Act, VA has not announced any additional disabilities related to any exposures. Also, we are not aware of any actions of VA's Working Group or if it has even been created, as mandated by law.
- **Individual Longitudinal Exposure Record (ILER)**—As required by the PACT Act, the Department of Defense and VA were to coordinate veteran access to ILER. As of this date, we are not aware of any actions taken by either agency to address ILER access. A review of VA's website notes that updates will be provided in September 2023.

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

Mr. Chairman, DAV believes that with a proper focus on PACT Act claims processing, the backlog of claims and continued oversight, VA can be successful for

veterans like Alfred Lewis, Jr. We stand ready to assist the Committee and VA in PACT Act implementation. This concludes my testimony and we thank you for the opportunity to provide our comments.

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WOUNDED WARRIOR PROJECT
Statement for the Record

COMMITTEE ON VETERANS' AFFAIRS
U.S. SENATE

“Implementing the PACT Act: One Year Later”

July 26, 2023

Chairman Tester, Ranking Member Moran, and distinguished members of the Senate Committee on Veterans' Affairs – thank you for inviting Wounded Warrior Project (WWP) to submit this statement for the record of today's hearing on implementation of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (P.L. 117-168). WWP continues to share your commitment to veterans suffering from the health consequences of military toxic exposure. Just as we were pleased to help inform your efforts to pass this landmark legislation, we are grateful for the opportunity to assist your oversight to ensure the successful implementation of this historic law.

Wounded Warrior Project was founded to connect, serve, and empower our nation's wounded, ill, and injured veterans, Service members, and their families and caregivers. We are fulfilling this mission by providing more than a dozen life-changing programs and services to over 192,000 registered post-9/11 warriors and 48,000 of their registered family members. In addition to programs focused on mental and physical health, our advocacy before the Committee is informed by financial wellness services that include assisting veterans with their Department of Veterans Affairs (VA) disability claims. An increasing amount of those claims have been focused on toxic exposure.

For two decades, Service members who were deployed to post-9/11 battlefields were exposed to dangerous fumes from burn pits and other toxic chemicals. Consequently, many veterans now suffer from respiratory conditions, cancers, and other serious illnesses, but have historically struggled to obtain service connection. The *PACT Act* comprehensively addressed this issue, representing the largest expansion of VA benefits in decades. VA deserves praise for moving swiftly to deliver lifechanging benefits to exposed veterans who need them, many of whom have been waiting for years; however, implementing such significant legislation understandably has its challenges. WWP's views and suggestions to address those challenges are offered in the spirit of partnership with VA and are informed by our network of accredited National Service Officers, our staff members who respond to phone calls and emails in our Resource Center, and the warriors both teams interact with on a daily basis.



Disability Claims Processing

Prior to the passage of the *PACT Act*, many veterans who submitted VA disability compensation claims for toxic exposure-related conditions (particularly those who suffered exposures during post-9/11 deployments) often faced significant obstacles when attempting to link their illnesses to service. Establishing an in-service “injury” was challenging because burn pit (and other toxic substance) exposure was rarely documented in the veteran’s military service or medical record. Establishing a connection to service, or “nexus,” was made difficult by the fact that many medical conditions associated with toxic exposure are more likely to manifest several years after discharge and be related to those undocumented exposures. These factors would most often culminate in VA finding insufficient evidence to establish service connection.

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

These new policies have understandably resulted in a significant influx of new disability claims. As of July 21, 2023, the Veterans Benefits Administration (VBA) has received 744,701 *PACT Act*-related claims since the bill was signed into law on August 10, 2022, representing 36.1 percent of the total claims received over that time period.¹ Although this larger workload has created an increase to the claims backlog, we believe this is necessary to ensure that exposed veterans, many of whom have been filing claims unsuccessfully for years, are finally able to access the health care and benefits they need. VA has already begun implementing provisions of the legislation that granted the ability to hire additional employees to address the increased workload, and WWP believes it is critical that Congress continues to fully fund these important authorities.

One strategy VA is utilizing to address the increased workload is Automated Decision Support (ADS) technologies. This technology is designed to scan a veteran’s records to extract relevant information such as current medical treatment history and locations of service, and then generate an Automated Review Summary Document (ARSD), which is then reviewed by a Veterans Benefits Administration (VBA) claims processor with full adjudicative discretion for a decision. VA is currently using ADS for 56 diagnostic codes – numeric codes associated with

¹ U.S. DEP’T OF VET. AFFAIRS, *VA PACT Act Performance Dashboard 2*, July 21, 2023, available at https://www.accesstocare.va.gov/pdf/VA_PACTActDashboard_Issue11_072123__508.pdf.

specific medical diagnoses – and states that the technology is significantly improving processing times. WWP service officers report that all ARSDs that they have reviewed have been accurate and presumably helpful in the processing of the claim. WWP believes that ADS shows great potential for further expansion beyond *PACT Act* claims.

Since VA began processing for all *PACT Act* claims, VBA has completed over 371,716 claims, 78.9 percent of which have been approved.² As less than one-third of respondents to WWP’s 2022 Annual Warrior Survey reported success on their toxic exposure disability claims, these post-*PACT Act* figures indicate a significant improvement.³ Still, WWP has noticed a degree of inconsistency with the way *PACT Act* claims are processed, particularly with respect to unnecessary TERA exams and nexus opinions being ordered when the evidence in the file – which includes documentation of service in a designated exposure area and a diagnosis of a presumptive condition – is sufficient to grant the claim without further development. If not caught by a WWP (or other) service officer, these unnecessary exams could slow down the claim and, if the exam results in a negative nexus opinion, could result in an erroneous denial.

Another error is occasional failure by VBA processors to recognize the list of the most common presumptive cancer diagnoses recognized by the *PACT Act* and found on pages 24 to 28 of VBA Policy Letter 20-22-10.⁴ If uncorrected, this could also lead to an incorrectly adjudicated claim. We encourage VBA to consider whether supplemental training may be necessary to increase consistency and accuracy of claims processing.

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

Toxic Exposure Presumption Process

In recognition of the challenges associated with establishing direct service connection for toxic exposure-related conditions, Congress has historically created mechanisms to require VA to decide whether to establish presumptive service connection when scientific data show a link between specific exposures and associated illnesses, as it did for Vietnam veterans with the

² *Id.* at 1-2.

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

⁴ See U.S. DEP’T OF VET. AFFAIRS, VBA Letter 20-22-10 (Dec. 22, 2022) (*available at* <https://www.regulations.gov/document/VA-2022-VACO-0002-0176>).

⁵ See U.S. DEP’T OF VET. AFFAIRS, VA ADJUDICATION PROCEDURE MANUAL M21-1, PART II, SUBPART II, CH. 3, 3.1.b-c (2022).

⁶ See U.S. DEP’T OF VET. AFFAIRS, VA ADJUDICATION PROCEDURE MANUAL M21-1, PART VIII, SUBPART I, CH. 1, 1.A.1.a. (2021).

Agent Orange Act of 1991 (P.L. 102-4). However, no law existed prior to the passage of the *PACT Act* to require VA determinations on illnesses associated with all toxic exposures, regardless of location or period of service.

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

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

On July 25, 2023, VA announced that it will conduct a scientific review to determine if there is a relationship between three conditions – acute leukemias, chronic leukemias, and multiple myeloma outside of the head and neck – and toxic exposures for Service members deployed to Iraq, Afghanistan, Somalia, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, and the entire Southwest Asia theater of operations.⁷ This is an encouraging step forward. Although regulations for the *PACT Act* have not yet become final, VBA is currently processing claims in accordance with a policy letter that was published in the Federal Register on December 22, 2023.⁸ Among other guidance, this letter outlines 72 diagnostic codes that fall under the 23 new presumptive disabilities umbrella categories enumerated in the legislation. While WWP is generally pleased with this guidance, we were disappointed to see that leukemia, a rare and potentially deadly cancer that some exposed warriors are experiencing, was not included under the categories of “Lymphoma cancer of any type” or “Lymphomatic cancer of any type.”⁹ Leukemia and lymphoma are similar diseases in that they are both considered hematologic cancers¹⁰ and we are hopeful that VA’s actions that follow its July 25 announcement will help close this critical gap. WWP is similarly looking forward to working

⁷ Press Release, U.S. Dep’t of Vet. Affairs, VA to Review Possible Connections Between Toxic Exposures and Acute Leukemia, Chronic Leukemia, and Multiple Myeloma (July 25, 2023) (available at <https://news.va.gov/press-room/connections-between-toxic-exposurescancer/>).

⁸ *Processing Claims, Honoring Our PACT Act of 2022*, 87 Fed. Reg. 78,543 (Dec. 22, 2022).

⁹ Pub. L. No. 117-168, § 406.

¹⁰ CTNS, FOR DISEASE CONTROL AND PREV., *Hematologic Cancer Incidence, Survival, and Prevalence*, 30 U.S. Cancer Stat. (Sept. 2022), available at <https://www.cdc.gov/cancer/uscs/pdf/USCS-DataBrief-No30-September2022-h.pdf>.

with VA to help identify these and other conditions that we believe warrant further consideration.

Access to Health Care

Under the *PACT Act*, recently discharged combat veterans now have a 10-year enhanced enrollment period (up from 5 years), and veterans who were discharged more than 10 years ago have a limited one-year period to enroll for care (October 1, 2022, to September 30, 2023). For exposed veterans who miss the one-year open enrollment, there is a 10-year phase-in for permanent access to Priority Group 6 enrollment based on discharge date.

Wounded Warrior Project is concerned that the one-year open enrollment followed by the 10-year phase-in leaves some potential gaps in eligibility. From August 2022, when the *PACT Act* became law, to July 2023, there were 311,635 new VA health care enrollees.¹¹ Of those, it is estimated that only 103,731 were from the *PACT Act* eligible population. We believe this is a relatively small number in a system of over 9 million enrollees.

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

Veteran Outreach

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

Since the *PACT Act* became law, VA's outreach efforts to VSOs and veterans have been exceptional. From their *PACT Act* "Week of Action" events in all 50 states, to town halls and awareness events that WWP staff have personally attended, to claims clinics and outreach letters mailed directly to veterans and survivors that VSOs can view within electronic claims files, VA is clearly committed to reaching as many potential beneficiaries as possible. VA, in collaboration with the Department of Defense, has also proactively engaged with Active-Duty

¹¹ U.S. DEP'T OF VET. AFFAIRS, *supra* note 1, at 1.

Service members to educate them on the *PACT Act* and how to access their benefits. VA's *PACT Act* webpage is highly informative and easy to navigate, and their biweekly *PACT Act* Performance Dashboard is a model of transparent communication. WWP commends VA for its robust outreach, and we support their continued efforts to educate potentially eligible veterans and survivors about *PACT Act* benefits. We do, however, encourage both VA and Congress to increase outreach as we get closer to the deadline to file claims eligible for a retroactive effective date (August 9, 2023) and the deadline to enroll for VA health care before the phase-in period is initiated (September 30, 2023).

CONCLUSION

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