

# Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation

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Statement of

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For the Record

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Committee on Veterans' Affairs

With Respect To

**Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation**

WASHINGTON, D.C.

Chairman Takano, Ranking Member Bost, and members of the House Committee on Veterans' Affairs, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our insights pertaining to the implementation of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022* or the *Honoring our PACT Act of 2022*.

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

### **Feedback from VFW Service Officers**

Last month, the VFW conducted a survey of our professionally trained, VA-accredited service officers on the impact of the PACT Act on the veterans they represent. Of those who participated in the survey, two-thirds reported that they had an influx of activity related to the PACT Act. About one-third reported that they have already seen PACT-Act-related claims adjudicated and some granted by VA, primarily for Vietnam War veterans with hypertension and for those who served in Thailand. Even though VA currently has the authority to grant these claims under direct service connection, accredited representatives report that some of these awards cite the PACT Act as one of the bases on which the claims were granted. The most common conditions about which veterans have been asking VFW representatives are hypertension, followed by conditions related to burn pit exposure, Agent Orange exposure, Post-9/11 exposures, and Camp Lejeune contaminated water. In addition, though VA has made statements that it will begin processing PACT Act claims in January 2023, the VFW has found that VA has been sporadically processing partial ratings, granting or denying non-PACT-Act conditions, then deferring PACT-Act-related conditions for future adjudication. This is positive as it means some veterans will receive ratings for their non-PACT-Act illnesses or injuries without waiting for the rest of their claims to be reviewed in January. Also, Compensation and Pension examination contract vendors have reported to the VFW an increase in requests, and veterans have indicated that examinations are timely and appropriate.

### **VA Claims Workload and Processing**

VA reports an approximate twenty percent increase in claims submitted since the passage of

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

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

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

This automation has been used on a very limited basis, as VA ensures it works as intended. VA has communicated consistently with Veterans Service Organizations on this process. We will continue monitoring the rollout to ensure there is always consistent human oversight ingrained in the automated process. The VFW recommends that VA reviews its claims processing metrics so that claims developed through automation do not negatively impact VSR's and RVSR's performance goals.

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

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

## **VA Policies Regarding the PACT Act**

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

At a hearing held last month by the Senate Committee on Veterans' Affairs on PACT Act implementation, VA reported that 166,000 toxic exposure health screenings had already been conducted at VA medical centers around the country. It was also reported that more than a third of those veterans believed they may have been exposed to toxins recognized in the PACT Act. The VFW believes participation in one of these screenings should start an automatic process that allows veterans with health conditions associated with toxic exposures to begin the claims process immediately. Specifically, this process should include

a warm hand off to an accredited claims representative.

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

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

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

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

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

## **Messaging and Outreach**

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

Outreach to transitioning service members also needs to be addressed. Information about toxic exposures, associated health conditions, and the claims process related to the PACT Act should be included in both DOD's Transition Assistance Program as well as VA's Solid Start Program. Outreach through Solid Start phone calls bolster VA outreach efforts during that critical and most vulnerable first year after separation from the military, ensuring these veterans receive toxic exposure screenings, access to medical care, and start the process to apply for additional benefits.

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

accredited advocate for free PACT Act claims help.

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

The VFW understands that clear communication and easy access to accredited representatives will be critical to delivering benefits to veterans. Tragically, in just a few short months since the PACT Act was signed into law, the marketplace has been flooded with confusing messaging from actors who may not always have veterans' best interest in mind. Whether it is aggressive marketing from Camp Lejeune lawyers or targeted online ads from predatory claim sharks, the mixed messages have left veterans wondering just how the PACT Act affects them and who they should turn to for help. The VFW believes that [www.PactActInfo.org](https://www.PactActInfo.org) will help provide veterans with the resources they need.

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