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**STATEMENT OF
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OF THE DAV (DISABLED AMERICAN VETERANS)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
DECEMBER 7, 2022**

Chairman Takano, Ranking Member Bost and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record for your oversight hearing titled, "Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation."

DAV is a congressionally chartered 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, more than 240 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). DAV currently represents more than one million veterans and family members.

Mr. Chairman, we are grateful for the historic passage of the SFC Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act, PACT Act. It will provide benefits and health care to millions of veterans exposed to burn pits, radiation, Agent Orange and other toxins. It was signed in to law on August 10, 2022 and since that time, VA Secretary McDonough has directed that all presumptive conditions in the PACT Act be applicable to that date. Additionally, VA has announced they will begin processing benefits claims after January 1, 2023. For these reasons, today's hearing is vitally important to ensure VA is poised and prepared to implement the most expansive toxic exposure legislation ever passed into law.

Based on our experience and history of service, we are pleased to provide our comments on PACT Act implementation, specifically claims processing, resources and the need for continued oversight.

CLAIMS PROCESSING

The Veterans Benefits Administration (VBA) has over 600,000 claims that are currently pending. As of November 26, 2022, VBA reported since August 10, 2022, they have received nearly 165,000 PACT related claims. Veterans and their families are

relying on VA to successfully process these claims, which includes providing adequate training, proper development for examinations and oversight of the new Automated Decisions Support technology.

VBA announced they are drafting formal regulations to implement certain sections of the PACT Act. VBA has prepared guidance in the form of a policy letter to more quickly implement VA's ability to begin processing claims rather than waiting to publish formal regulations, which typically take 18-24 months. Additionally, VBA has noted they are updating the Adjudication Procedures Manual (M21-1), VA's nationwide procedural guidance for all VAROs and existing training courses with PACT Act-related changes. VBA is developing a more detailed training on how to process PACT Act claims and will be targeting delivery to claims processors this month.

In reference to VBA updating procedural guidance and training courses, we cannot stress how critical this is. The Office of the Inspector General (OIG) has published multiple reports noting that training and proper guidance of claims processing is an ongoing concern within VBA. Therefore, all training and guidance needs to be provided and performed before any of the claims processors are allowed to develop and adjudicate PACT Act related claims.

A crucial part of the development process is determining whether a VA examination is required. VBA has stated that they are actively engaged with all contract medical examination vendors to ensure proper preparation for any increase in volume due to PACT Act related claims.

We are concerned that in an effort to process the increased amount of all claims, that VBA will be requiring examinations when they are not necessary. For example, claims based on presumptive diseases like cancer with evidence of it being active, do not require an examination. If the cancer is not active, then an examination would be warranted to determine the levels of impairment caused by the residuals of the cancer.

DAV has previously testified about VBA's penchant for over developing claims and requesting examinations when not required. Because of this, coupled with the negative impact the COVID pandemic had on pending examinations, we implore VBA to effectively train and monitor the examinations being requested for PACT Act related claims and presumptive diseases.

VBA has developed a new tool they refer to as the Automated Decisions Support technology, which is designed to assist claims processors in making fast, consistent, and equitable claim decisions. They have already coded the decision logic for many PACT presumptive conditions and claims that it will be completed prior to January.

The automation logic for a presumptive condition confirms exposure using VA and currently available Department of Defense (DOD) authoritative data, extracts medical information from examinations or private medical records, and pre-populates the VBMS evaluation calculator. The supporting data is then reviewed by a claims

processor, who has full adjudicative discretion to accept or modify the results of the automation process. The generated information is also stored as part of the veteran's official record so it is reviewable for independent verification and validation for quality reviews, further process improvements, and appellate reviews.

DAV is hopeful that this new technology achieves the intended purpose; however, this technology is new to VBA and has not been deployed nationwide. A concern we have regards the potential for the new technology to miss critical evidence and thus the future impact on the decision made. We recommend that stringent oversight by VA, VSOs and Congress be exercised on this new development tool.

Successful PACT Act implementation training, proper examination development and deployment of the Automated Decisions Support technology are crucial to ensure that veterans and their families are receiving timely access to their earned benefits. Ensuring that VA has the needed resources will be vital to its successful implementation.

RESOURCES

Sufficient resources and funding are essential elements to ensure VA can deliver the benefits and VA health care required by the PACT Act. Specific funding for information technology (IT) and increased staffing for VBA and the Veterans Health Administration (VHA) has been included in the PACT Act.

The Act does provide funding for IT and we must ensure the resources are used in the most cost-effective and efficient manner. As we indicated, VBA developed the Automated Decisions Support technology, which interfaces with the Veterans Benefits Management System (VBMS), VBA's electronic case file management.

Section 806 of the PACT Act provided \$500 million in appropriated funding for IT improvements and modernization for veterans' disability claims processing and customer experience. There must be an ongoing accountability of those resources and when needed, more funding must be provided to properly utilize technology and modernization efforts.

Additionally, this funding will be used to hire new employees for VBA and the Board of Veterans' Appeals. While there have been projections that VBA would need an additional 10,000 employees to process the estimated increase of claims, we believe that leveraging IT and new employees will have an immediate impact to pending claims. Since last year, VBA has hired more than 2,000 employees and trained nearly 4,000 new claims processors.

Title IX of the PACT Act reflects the investment needed in VA's workforce to successfully implement all sections in this new law. The Act provides a broad range of flexibilities for recruiting and retaining staff to serve veterans, their caregivers and survivors.

Eligibility for veterans health care has been significantly expanded in a critical way over the next 10 years. Every two years, another group of post-9/11 veterans will be provided eligibility to VHA. However, there are currently thousands of vacancies within the VA health care system. Thus it is imperative that all funding and avenues to fill vacancies is conducted in ways that will continue to provide veterans with the highest standards of care.

Successful implementation will rely on VA having the needed resources for information technology and increased staffing for VBA and VHA. Thus, effective oversight is required.

OVERSIGHT

Monitoring the implementation of the PACT Act will be key to ensuring veterans can access their benefits and services. It is imperative that Congress monitors the number of claims filed related to the PACT Act, how these claims impact the overall workload, and the quality of VA decisions.

In 2010, VA granted three new presumptive diseases for Agent Orange exposure, which dramatically increased VA's pending claims. Many believe that VA's implementation caused unnecessary delays, increased development and ultimately led to the 2013 crisis of backlogged claims reaching 1 million cases. It took over three years for VBA to reduce the backlog.

VBA has already projected a sharp increase in cases pending and a future increase in the backlog, which should be expected with the historic impact of these new laws. However, we must be vigilant in our watch over VA's management of the increased claims and try to prevent VA having record levels of backlogged claims.

As we mentioned earlier, we are greatly concerned with the quality of training, claim development and the new Automated Decisions Support technology. Congress must require VA to provide regular updates on the quality of their decisions including those claims granted and those denied as well as those that have elected either a Supplemental Decision, a High Level Review or an appeal directly to the Board of Veterans' Appeals.

Section 808 of the PACT Act requires VBA to provide an annual report on disability claims, beginning not later than 180 days after the date of the enactment on the PACT Act. The focus of the report is on Gulf War era and post-9/11 veterans. This means that the new presumptives for Agent Orange exposed veterans and those radiation exposed veterans are not required by law to be a part of the annual report. By excluding these different generations of toxic exposed veterans, the report will not provide an accurate picture of the success of the PACT Act. We recommend that Congress and VA to require these generations of veterans exposed be automatically included in the required reporting.

VHA eligibility is greatly impacted; however, the Act did not include any required reporting. We encourage Congress and VHA to monitor the incremental expansions every two years to determine if those two-year increments could be shortened based on enrollment and VHA capacity. Otherwise, many veterans may have to wait unnecessarily for that next two-year expansion.

We also urge Congress to hold regular oversight hearings over the next two years. This will assist VA in focusing on their 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.

Mr. Chairman, DAV believes with a proper focus on PACT Act claims processing, ensuring access to the necessary resources and continued oversight, VA can be successful for the veterans and families in desperate need of VA's life-changing benefits and health care. This concludes my testimony and we thank you for the opportunity to provide our comments.