



**STATEMENT FOR THE RECORD
OF
THE AMERICAN LEGION**

TO THE

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

"PENDING AND DRAFT BILLS"

APRIL 10, 2024

EXECUTIVE SUMMARY

BILL	POSITION
Draft Bill - Veterans Appeals Efficiency Act of 2024	Support
Draft Bill - Medical Disability Examination Improvement Act	Support
Draft Bill - Veterans Appeals Options Expansion Act of 2024	Support
H.R. 2911 - Fairness for Servicemembers and their Families Act of 2023	Support
Draft Bill - Prioritizing Veterans' Survivors Act	Support
Draft Bill - Toxic Exposures Examination Improvement Act	Support
Draft Bill - Clear Communication for Veterans Claims Act	Support
Draft Bill - Veterans Claims Quality Improvement Act of 2024	Support

**STATEMENT FOR THE RECORD OF
PHILIP DU
DEPUTY DIRECTOR OF BENEFITS AND CLAIMS
NATIONAL VETERANS' AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
PENDING AND DRAFT BILLS**

APRIL 10, 2024

Chairman Luttrell, Ranking Member Pappas and distinguished members of the Subcommittee on Disability Assistance and Memorial Affairs on behalf of National Commander Daniel Seehafer and The American Legion, the country's largest service organization for veterans, comprised of over 1.5 million dues-paying members, we thank you for the opportunity to offer this statement for the record on the following pending and draft Bill.

The American Legion is directed by active Legionnaires who dedicate their time and resources to serve veterans, servicemembers, their families, and caregivers. As a resolution-based organization, our positions are guided by more than 105 years of advocacy and resolutions that originate at the grassroots level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

Draft Bill: Veterans Appeals Efficiency Act of 2024

To improve the efficiency of adjudications and appeals of claims for benefits under laws administered by Secretary of Veterans Affairs, and for other purposes.

The Board of Veterans' Appeals (BVA) reviews appeals filed by veterans and dependents from adverse decisions of the Veterans Benefits Administration and other Department of Veterans Affairs (VA) "agencies of original jurisdiction" (AOJ). The appeals before BVA include those filed after February 19, 2019, under the Appeals Modernization Act (AMA) as well as those filed under the previous, or "Legacy," system. At the same time, BVA must address decisions remanded by the Court of Appeals for Veterans Claims (CAVC) and those returning to BVA following a remand an AOJ. By law, BVA is required to give priority to claims in certain categories, which are "advanced on the docket." BVA is consistently failing to meet its timeliness goals for rendering decisions on appeals, resulting in a growing backlog of cases, with veterans waiting multiple years to have their case reviewed by a Veterans Law Judge.

When President Trump signed the AMA at The American Legion's 2017 National Convention in Reno, National Commander Charles E. Schmidt described the Bill as "a simple, fair and appropriate way to ensure that our nation's veterans — and their families — receive their earned

benefits in a timely and efficient manner.”¹ This draft Bill would require BVA to track the progress of claims for benefits on a more specific basis, and report progress in reducing the appeals backlog annually to Congress. It would also grant BVA authority to aggregate claims involving similar factual or legal issues for resolution as a group, rather than individually as it does at present. BVA would also be authorized to request an opinion from the VA’s Office of General Counsel if an appeal or group of appeals involves a question of law that would benefit from such an opinion.

American Legion *Resolution No. 5: Department of Veterans Affairs Appeals Process* supports any Bill that calls on VA to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner.²

The American Legion supports this draft Bill as written.

Draft Bill - Medical Disability Examination Improvement Act of 2024

To amend title 38, United States Code, to improve matters relating to medical examinations for veterans' disability compensation, and for other purposes.

Recent passage of *Promise to Address Comprehensive Toxics (PACT) Act* granted 3.5 million Post 9/11-era veterans and ~52,000 surviving Vietnam War-era veterans exposed to Agent Orange in previously unrecognized locations immediate eligibility for exposure-connected disability and healthcare benefits.³ While the Department of Veterans Affairs (VA) is commended for already having screened over 5.3 million veterans for toxic exposures, VA’s current strict interpretation of recently passed *PACT Act* has arbitrarily created prolonged wait times due to VA’s inability to expeditiously conduct *PACT Act* related Compensation and Pension (C&P) exams. As of March 2024, VA reported that it has already processed more than 1.1 million *PACT Act* related claims, with over 60 percent still pending.⁴

Ensuring timely access to VA C&P exams is an issue that The American Legion as previously supported under Senator Tester’s then-proposed *Update Rural Access to Local (RURAL) Exams Act of 2021*.⁵ With steep grades and mountain passes, more dramatic weather effects, long distances required, and cost of time and money potentially lost, the VA Office of Rural Health has acknowledged that a lack of reliable transportation is a top-five reason for veterans to cancel or

¹Henry Howard, “Trump signs appeals modernization act at American Legion convention”, The American Legion Website, August 23, 2017, <https://www.legion.org/convention/238958/trump-signs-appeals-modernization-act-american-legion-convention>.

²The American Legion Resolution No. 5 (2016): [Department of Veterans Affairs Appeals Process](#)

³“Don’t Wait to File for *PACT Act* Care, Benefits,” *Legion Online*, Vincent J. “Jim” Troiola, May 18, 2023, <https://www.legion.org/commander/258886/don%E2%80%99t-wait-file-pact-act-care-benefits%C2%A0>

⁴Department of Veterans Affairs, *VA PACT Act Performance Dashboard*, issue 29 https://department.va.gov/pactdata/wp-content/uploads/sites/18/2024/03/VA-PACT-Act-Dashboard-Issue-29-031524_FINAL_508.pdf.

⁵U.S. Congress, Senate, Press Release: *Rural Veterans’ Access to Medical Disability Examinations*. November 16, 2021, Retrieved from: [Tester, Moran Champion Bipartisan Bill to Improve Rural Veterans’ Access to Medi... \(senate.gov\)](#)

not attend a scheduled VA C&P appointment.⁶ As nearly 57 percent of all Veterans Health Administration (VHA)-enrolled veterans reside in a rural area,⁷ securing adequate examination access in rural America must be a priority.

This proposed Bill will not only remove unnecessary delays, but will add additional funding, training, personnel support, and other initiatives to better streamline the examination and claims workflow to ensure that environmentally exposed veterans have their disability claims processed expeditiously. Waiving the medical exam currently required in section 303 of *PACT Act* for veterans who already have well-documented indications of environmental exposures within their records from previous VA medical examinations would help clear the current claims backlog. Allowing this waiver would also address VA workload burnout, a concern raised recently by VA leadership after implementing mandatory overtime for claims personalists upon *PACT Act* rollout. Lastly, Sen. Tester's proposed pilot rural program authorizing for reasonable in-home screenings accommodations or the option to receive a C&P exam from a more localized Community Care vendor would alleviate the arduous travel for rural veterans who face mobility hurdles, geographic barriers, and/or are housebound or autoimmune compromised.

Mandating a direct mechanism for VA contractors to upload any submitted medical evidence introduced by veterans as new evidence during an exam will relieve the duplicative and onerous recordkeeping tasks expected of our ailing veterans. While electronic portals already exist to exchange patient information, only participating external health providers currently have access to VA's electronic health information exchange.⁸ Allowing contracted VA examiners a mechanism to gain access will maximize efficiency, curtailing unnecessary redundancy and wait times.

As this proposed Bill reduces unnecessary redundancies and arbitrary bottlenecks, offers alternative access points for rural veterans who face travel or mobility challenges, and ensures adequate staffing and training, The American Legion provides support through *Resolution No. 14: Quality Assurance for Department of Veterans Affairs (VA) Contracted Compensation and Pension (C&P) Examinations*,⁹ which urges Congress to pass Bill that will ensure the quality and timeliness of C&P examinations performed by VA contractors, and ensure that they provide veterans with professional, high-quality service. The American Legion also supports this Bill through *Resolution No. 118: Environmental Exposures*,¹⁰ which resolves that veterans reporting to VA medical care facilities claiming exposure to such environmental hazards be provided examinations and treatment which are thorough and appropriate.

The American Legion supports this draft bill as written.

⁶ Thomas F. Klobucar, PhD, "VHA: An Introduction to the VA Office of Rural Health (ORH) by new Executive Director," (presentation, quarterly rural health VSO workgroup held virtually on May 5, 2021).

⁷ Ibid

⁸ U.S. Department of Veterans Affairs, *Veterans health Information Exchange (VHIE)*, accessed September 8, 2023, https://www.va.gov/VHIE/VHIE_Participating_Partners.asp.

⁹ [The American Legion Resolution No. 14 \(2021\): Quality Assurance for Department of Veterans Affairs \(VA\) Contracted Compensation and Pension \(C&P\) Examinations](#)

¹⁰ The American Legion Resolution No. 118 (2016): [Environmental Exposures](#)

Draft Bill - Veterans Appeals Options Expansion Act of 2024

To amend title 38, United States Code, to provide an individual with a claim for benefits under the laws administered by the Secretary of Veterans Affairs with more options to appeal a decision of the Secretary with respect to such claim to the Board of Veterans' Appeals, and for other purposes.

The *Veterans Appeals Improvement and Modernization Act of 2017* (AMA) introduced stringent requirements for form submissions and established fixed deadlines for various actions, such as submitting additional evidence and changing appeal lanes. While these measures were well-intentioned, the rigidity of the "correct form" and "timely submission" requirements are leading to unintended and adverse consequences for veterans and other claimants. The current application of the AMA by the Department of Veterans Affairs' (VA) intake staff poses several challenges for veterans. When an application is submitted on a "wrong" form, it is considered as a rejection and requires a resubmission on the appropriate form. This means that consideration of the claim is not started until a completed application on the correct form is received and may also result in the loss of an earlier effective date for earned benefits. The AMA's strict deadlines for submitting additional evidence and for changing appeal lanes without regard for whether the appeal is ready for review by the Board of Veterans Appeals (BVA) are also inflexible.

The American Legion supports a "no wrong door" approach. We also support allowing flexibility to submit additional evidence or change from one appeal option to another if the change does not impose a significant burden on BVA's staff. The draft Bill would require BVA to treat a "wrong form" submission as an intent to file, easing the harshness of claim rejection. It also allows veterans to change appeal dockets until their case is assigned to a BVA employee for review, with no adverse impact on BVA's operations. Additionally, this Bill would require VA to provide notice to veterans who submit evidence outside fixed windows, including their potential opportunity to change dockets.

The American Legion has urged Congress and the VA to address these appeals issues since 2016 when adopting *Resolution No. 5: Addressing growing inventory of appeals in an expeditious and accurate manner*¹¹ and *Resolution No. 369: Restore VA's Informal Claims and Appeals Process*¹² urging the VA to accept any written correspondence as an intent to file.

The American Legion supports this draft bill as written.

¹¹ The American Legion Resolution No. 5 (2016): [Department of Veterans Affairs Appeals Process](#)

¹² The American Legion Resolution No. 369 (2016): [Restore VA's Informal Claims and Appeals Process](#)

H.R. 2911 - Fairness for Servicemembers and their Families Act of 2023

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to periodically review the automatic maximum coverage under the Servicemembers' Group Life Insurance program and the Veterans' Group Life Insurance program, and for other purposes.

The Veterans' Group Life Insurance (VGLI) is a term life insurance catering to the needs of servicemembers transitioning from active duty to civilian life. It allows servicemembers the opportunity to convert their Servicemember's Group Life Insurance (SGLI) coverage into renewable term insurance, ensuring continued financial protection for themselves and their families. This program represents one of the many commendable efforts by the Department of Veterans Affairs (VA) to provide comprehensive insurance coverage to servicemembers and veterans who might otherwise face challenges in obtaining insurance benefits from private companies due to the unique risks associated with military service or service-connected disabilities. Once enrolled, veterans can augment their coverage by \$25,000 on their one-year anniversary of enrollment and subsequently once every five years thereafter, up to the current legal maximum of \$500,000, extending coverage until the age of 60. No proof of good health required.

Although VGLI proves to be a popular program for veterans and families, the maximum coverage remained static from year 2006-2023, until passage of *Supporting Families of the Fallen Act* in October 2022, where maximum coverage of SGLI and VGLI were raised to \$500,000.¹³ When justifying raising the maximum coverages of SGLI and VGLI to account for inflation, the analysis from Military Officers Association of America noted that the \$400,000 coverage back in 2005 would be worth \$622,565 in September of 2022, after adjustments.¹⁴ However, Bill accounting for inflation adjustments should not wait for another 17 years as surviving military members struggle financially. Instead, inflation should be automatically adjusted.

The American Legion has long advocated for the adoption of more frequent reviews of VA compensation and benefits amount to accurately reflect the ongoing economic environment. Under the *Resolution No. 19: Protection of Veterans' Disability & Compensation*,¹⁵ The American Legion supports Bill to amend for a periodic cost-of-living adjustment increase and an augmentation of the monthly rates of disability compensation. Also, *Resolution No. 377: Support for Veteran Quality of Life*¹⁶ urges Congress and the VA to enact Bill and programs aimed at enhancing, promoting, restoring, or preserving benefits for veterans and their dependents.

The American Legion supports H.R. 2911 as written.

¹³ "Cornyn, Colleagues Introduce Bill to Help Adjust Military Life Insurance for Inflation", U.S. Senate, April 26, 2023, <https://www.cornyn.senate.gov/news/cornyn-colleagues-introduce-bill-to-help-adjust-military-life-insurance-for-inflation/>

¹⁴ Mark Belinsky, "Long-Overdue SGLI, VGLI Coverage Increase Now Law, But Work Remains", MOAA, October 24, 2022, <https://www.moaa.org/content/publications-and-media/news-articles/2022-news-articles/advocacy/long-overdue-sgli,-vgli-coverage-increase-now-law,-but-work-remains/>

¹⁵ The American Legion Resolution No. 19 (2023): [Protection of Veterans' Disability & Compensation](#)

¹⁶ The American Legion Resolution No. 377 (2016): [Support for Veteran Quality of Life](#)

Draft Bill - Prioritizing Veterans' Survivors Act

To amend title 38, United States Code, to clarify the organization of the Office of Survivors Assistance of the Department of Veterans Affairs.

In 2008, Congress established The Department of Veterans Affairs (VA) Office of Survivors Assistance (OSA) to serve as a “principal advisor” to the Secretary of Veterans Affairs on all policies and programs affecting the veteran survivor community. But this office was moved out of the Secretary’s office.¹⁷

Currently, there are four full-time employees within OSA tasked to handle the influx of questions and casework associated with the passage of the *Promise to Address Comprehensive Toxics (PACT) Act*. OSA’s staffing level is simply insufficient to meet the demand for the increasing size of clientele as the result. While VA confirmed the pensions office is trained in survivors’ issues, survivors continue to decry the inability of the OSA helpline to address their concerns. It must be noted that VA OSA was not only tasked to facilitate access to benefits for bereaved families but also to deploy subject matter experts strategically, ensuring their proximity to enterprise-wise policies and decisions impacting veterans, thereby amplifying the voices of survivors.

With this proposed Bill mandating VA OSA be placed back within the Secretary’s office rather than the Veterans Benefit Administration, it would comprehensively address all VA benefits and services for survivors. Without this crucial aspect of appropriate office placement, the core mission of advising the Secretary on policies and legislative matters concerning survivors cannot be fulfilled.

The American Legion resolves to support survivors to the greatest extent feasible and empower VA to pursue its mission. As it stands, the OSA is unable to provide the internal policy guidance and oversight to VA in the name of survivors it was intended to do. American Legion *Resolution No. 18: Comprehensive Supports for Caregiver Support Program*,¹⁸ resolves for VA to extend follow-on support and programs for survivors to the greatest extent feasible for bereaving family members and/or caregivers.

The American Legion supports this draft bill as written.

¹⁷ Kathleen McCarthy, “Chairman Bost Delivers Opening Remarks at Oversight Hearing to Support Surviving Family Members of Fallen Servicemembers”, U.S. House Committee on Veterans’ Affairs, January 30, 2024, <https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6365>

¹⁸ The American Legion Resolution No. 18 (2022): [Comprehensive Supports for Caregiver Support Program](#)

Draft Bill – Toxic Exposures Examination Improvement Act

To amend title 38, United States Code, to modify the duty of the Secretary of Veterans Affairs to provide a veteran with a medical examination in connection with certain claims for disability compensation.

In August 2022, President Biden signed the *Promise to Address Comprehensive Toxics (PACT) Act* into law and expanded benefits and services for veterans with toxic exposures during service. The expansion includes toxic exposure screening, education, research, and a new process to handle toxic exposure claims. According to law, if a veteran files a claim for disability and the term “PACT Act” is referenced, a toxic exposure risk activity report, or “TERA Memorandum,” is compiled for the Department of Veterans Affairs (VA) medical examiner to review before providing an opinion. 38 U.S.C § 1710 (e)(4) defined “toxic exposure risk activity,” or TERA, as a type of military activity that may expose the service member to occupational or environmental hazards. Specific types of activities are required to be logged into the tracking system.

The process of drafting a TERA Memorandum by a VA Veteran Service Representative (VSR) consists of two primary steps: first, identifying whether the veteran engaged in any TERA activities, and second, examining the veteran's Service Treatment Records (STR) within the Individual Longitudinal Exposure Record (ILER) to document any relevant “entries.” However, due to lack of definition of what should constitute as an “entry” in ILER, VA clinicians, claims adjudicators, and benefits advisors must shift through all Department of Defense (DoD) data entries captured by ILER for occupational and/or environmental health exposures -- even if the entries may be objectively unrelated to the veteran's TERA. While 38 U.S.C. § 1168(b) offers guidance to the Secretary on exceptions regarding TERA exams, ambiguity persists in the existing statutes. This leads to situations where VSRs continue scheduling TERA exams unnecessarily, resulting in overdevelopment of claims.

This proposed Bill would provide a clear definition of the ILER “entry” and allow VA Compensation and Pension examiners and claims adjudicators to assess whether there is already adequate evidence to reach a decision more effectively. Ultimately, this Bill would eliminate the necessity for unnecessary and repetitive VA-initiated examinations for each TERA-related claim, thereby releasing essential VA resources to address the backlog of PACT claims.

The American Legion supports this Bill through *Resolution No. 123: Increase the Transparency of the Veterans Benefits Administration's Claim Processing*,¹⁹ which petitions Congress to pass Bill that requires VA to be held accountable to VA Secretary's stated goal of achieving an operational state in which no VA claim is pending more than 125 days.

The American Legion supports this draft bill as written.

¹⁹ [The American Legion Resolution No. 123 \(2016\): Increase the Transparency of the Veterans Benefits Administration's Claim Processing](#)

Draft Bill – Clear Communication for Veterans Claims Act

To amend title 38, United States Code, to direct Secretary of Veterans Affairs to enter agreement with the Federally Funded Research and Development Center (FFRDC) for an assessment of VBA notices letters sent to claimants.

The American Legion commends Department of Veterans Affairs' (VA) continuous efforts in improved communication of pertinent information and next steps required for claimants in filing claims. In the legacy system, the VA would often list various regulations and statutes in lengthy Statements of Case to justify claim denial decisions. These convoluted and challenging-to-understand notification letters left claimants feeling alarmed and disheartened, prompting many to seek assistance from veteran service officers or attorneys to navigate the legal language and understand the next steps. While VA has since moved away from this practice, some autogenerated letters are still overly complex. For instance, a simple acknowledgment letter from the VA claims processing center could generate a 20-40 page letter, including a redundant "What We Might Need from You" section, despite the initial claims submission already containing necessary medical opinions and documentation listed in acknowledgement letter. Another trend observed involves a two-page notice letter from the Board of Veterans' Appeals acknowledging a Notice of Disagreement (NOD) or the chosen docket the veteran chose. However, this generic notification letter often lacks any meaningful confirmation that all necessary steps for the chosen appeals "lane" has been completed and no further actions are required on the claimant's behalf. The American Legion service officers have long suggested that a VA-generated checklist would offer more clarity and utility to ensure accurate correspondence and timely follow-through on claims.

This proposed Bill would require an independent research agency to assess whether the VA's current computer-generated notification letters are overly complicated with legal jargon, and whether they should be more tailored to each veteran's specific needs to provide clearer guidance. As claimants and veterans service officers often find themselves rereading auto-generated notice letters multiple times to decipher the exact next steps required, The American Legion welcomes outside agency review.

The American Legion supports this Bill through *Resolution No. 123: Increase the Transparency of the Veterans Benefits Administration's Claim Processing*,²⁰ which petitions Congress to pass Bill that requires VA to be held accountable to VA Secretary's stated goal of achieving an operational state in which no VA claim is pending more than 125 days.

The American Legion supports this draft bill as written.

²⁰ Ibid

Draft Bill - Veterans Claims Quality Improvement Act of 2024

To amend title 38, United States Code, to provide for certain revisions to the manual of the Veterans Benefits Administration and to improve the quality of the adjudication of claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

Department of Veterans Affairs (VA) adjudicators are guided by procedures manual, a set of internal instructions promulgated by VA. The manual provides guidance, for example, on the circumstances under which a veteran is entitled to a VA medical examination in connection with the processing of a claim under the VA's duty to assist. The manual reflects the requirements of statutes enacted by Congress as well as VA's own implementing regulations. However, the courts have held that the manual is neither a law nor a regulation. If the manual provision fails to accurately reflect the law or regulations, it will have a material effect on the adjudication of veterans' claims, such as failing to complete appropriate development under the duty to assist, or ordering unnecessary examinations.

The quality of claims processing has been a longstanding concern of The American Legion. We testified at a DAMA hearing in January of 2015 that, "nearly 75 percent of claims presented at Board of Veterans' Appeals (BVA) have either been improperly denied at a VA regional office, or inadequately developed and denied prematurely. Many claims were also appealed because their claims adjudicators failed to follow their legally mandated duties to assist veterans."²¹

This draft Bill requires that any proposed manual revision that would have a material effect on the adjudication of a claim for benefits be reviewed by VA's Office of General Counsel (OGC). The draft Bill also requires OGC to develop and implement a program for training VA employees responsible for drafting rules, guidance, or other issuances regarding the need for OGC review of provisions that would have a material effect on the adjudication of claims. Additionally, the draft Bill introduces comprehensive reforms to enhance the efficiency of BVA and to reduce unnecessary remands.

The American Legion supports this Bill through *Resolution No. 5: Department of Veterans Affairs Appeals Process*.²² It underscores the Legion's support for Bill that aids the VA in expeditiously and accurately addressing all claims, including its growing appeals inventory.

The American Legion supports this draft bill as written.

²¹ Marty Callaghan, "Legion: VA claims appeals can be 'adjudication purgatory'", Legion Online, January 22, 2015, <https://www.legion.org/legislative/225794/legion-va-claims-appeals-can-be-'adjudication-purgatory'>

²² The American Legion Resolution No. 5 (2016): [Department of Veterans Affairs Appeals Process](#)

Conclusion

As always, The American Legion thanks this subcommittee for the opportunity to elucidate the position of the over 1.5 million veteran members of this organization. For additional information regarding this testimony, please contact The American Legion Director of the Legislative Division, Julia Mathis, at jmathis@legion.org.