

Pending Legislation

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Statement of

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Veterans of Foreign Wars of the United States

Before the

United States House of Representatives
Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs

With Respect To

Pending Legislation

Washington, D.C.

Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, 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 testimony with regard to this pending

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legislation.

H.R. 1083, Caring for Survivors Act of 2023

The VFW has been advocating for many components of this legislation for several years and strongly supports its swift passage. The rate of Dependency and Indemnity Compensation (DIC) paid to the survivors of service members who died in the line of duty or to veterans who died from service-related injuries or illnesses has only minimally increased since the benefit was created in 1993. Currently, DIC is paid at 43 percent of 100 percent permanent and total disability while all other federal survivor programs are paid at 55 percent. This legislation would increase DIC to 55 percent, finally reaching parity with other federal agencies.

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

In 2021, the VFW advocated for the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) maximum payouts to be increased from \$400,000 to \$500,000 to reflect inflation and the cost of living. This change was passed as part of the *Supporting Families of the Fallen Act* in October 2022 and came into effect on March 1, 2023. Before this increase, the maximum had not been increased since 2005. The VFW supports the *Fairness for Servicemembers and their Families Act of 2023* to require VA to review the maximum coverage for both SGLI and VGLI every three years. Service members and their families should have peace of mind when selecting either of these insurance policies and anticipating what their needs might be in the event of the individual's passing while considering overall rising costs over time due to inflation.

H.R. 3651, Love Lives On Act of 2023

As a resolutions-based Veterans Service Organization (VSO), the VFW does not have a position on whether survivors should retain their benefits upon remarriage. There are, however, provisions within this legislation that the VFW supports.

We support updating the definition of surviving spouse within title 38 of the United States Code. The last time the definition was updated was in 1962 and much has changed in the last sixty years. The change would remove the currently restrictive language that describes a surviving spouse as a person of the opposite sex to be more in line with current law that allows for same-sex marriages. The change also strikes the wording that states a surviving spouse may not live with another person or hold themselves out to be married. Survivors should not fear that living with another person could cause them to lose their benefits. This is outdated language that should be updated to reflect the marriage requirements of the current era.

The VFW supports eliminating the time limit for surviving spouses to use the Fry Scholarship. Following the death of their service members, surviving spouses may not be in the position to use this important education benefit for several years since they may suddenly be faced with finding stable employment, housing, child care or other critical needs. Survivors should be able to use this benefit without time limits.

The VFW also supports a surviving spouse regaining TRICARE benefits if the individual remarries and that marriage later ends. A survivor who remarries but that marriage later ends can regain DIC and Survivor Benefit Plan payments. TRICARE benefits to which unmarried survivors are entitled should be reinstated if their future marriages end in order to have parity with other survivor benefits.

H.R. 7100, Prioritizing Veterans' Survivors Act

The VFW supports this legislation that relocates the Office of Survivors Assistance (OSA) from its current placement in the Veterans Benefits Administration to the Office of the Secretary of the Department of Veterans Affairs (VA). As the large cohorts of Vietnam and then Gulf War veterans age and die, demand for OSA services will significantly rise. Survivors who may not be familiar with the military or VA will have to successfully navigate a bureaucratic process to access benefits while simultaneously coping with grief, significant upheaval, and loss of income. In this context, VA must robustly resource and optimally locate OSA to ensure maximum beneficial effect.

H.R. 7150, Survivor Benefits Delivery Improvement Act of 2024

The VFW supports this bill that would establish a data-informed survivors education and outreach program. Focused outreach using demographic data to confirm survivors most in need is a smart and efficient practice that would enable VA to best use its limited resources to accurately disseminate critical information, particularly in regard to immediately needed burial benefits. Also, the VFW wholeheartedly endorses Section 3's proactive, personal, and multi-media "Survivor Solid Start Act of 2024" in which VA would maintain a quarterly outreach to each eligible dependent until that person files a claim for a benefit. A particularly attractive feature is VA assisting survivors with accessing accredited representatives to file claims. This action would aid survivors coping with the loss of loved ones to fulfill basic needs as soon as possible, and hopefully debunk common misconceptions about VA benefits. For example, based on previous testimony, VFW Service Officers report that some survivors do not realize their deceased loved ones' VA benefits are not transferrable, resulting in a loss of income when the survivors start receiving lower DIC amounts. Last, the VFW supports the explicit mention of call center manning levels to facilitate this outreach and education plan, implying VA would ensure the program has adequate resources.

H.R. 7777, Veterans' Compensation Cost-of-Living Adjustment Act of 2024

Every year Congress introduces legislation to make cost-of-living adjustments to the rates of disability compensation for veterans with service-connected disabilities, and to the rates for DIC for survivors. These increases are the same percentage as that for Social Security benefits. The VFW supports this legislation that would provide automatic increases in the rates for these benefits when increases are made for Social Security each year. This would provide a guarantee to veterans and survivors that their payments would always be aligned to counteract inflation. We are grateful for the bipartisan and bicameral commitment to making sure cost of living is addressed each year, but we recommend this process be automatic to eliminate the need for subsequent legislation.

H.R. 7793, Veterans Appeals Options Expansion Act of 2024

The VFW supports this bill, with a few recommendations, to expand claimants' options during the appeals process and to research the most common reasons for appeals at the Board of Veterans' Appeals (BVA). While working as a VFW Appeals Consultant, I often worked with veterans who would have directly benefited from this legislation. When reviewing records in preparation for a hearing or informal presentation, it was not uncommon to find that the veteran had other appeals pending that were not allowed to be discussed during the upcoming hearing because they were not part of the original appeal. This resulted in unnecessary delays and frustration for everyone involved. This legislation would allow BVA to combine appeals and honor the original appeal's docket date, which would create a more efficient appeals process overall.

The VFW also supports the intent behind authorizing appellants to switch dockets or withdraw an issue within a claim as long as the claim has not been assigned to whomever is writing the decision at BVA. However, we feel this is a little unclear because the deadline can be moved based on workload at BVA or the speed of the individual working the claim. We recommend setting a more definitive deadline for switching BVA dockets.

Finally, the VFW supports effective notification and also believes that veterans should not be penalized for not understanding the complex laws of the VA claims process. This law provides authorization for VA to treat claims filed on the wrong form as an Intent to File, and requires BVA to notify claimants if their evidence was received after the submission deadline. Both of these provisions would offer veterans a second chance if they make mistakes while trying to navigate the appeals process.

H.R. 7816, Clear Communication for Veterans Claims Act

The VFW supports this proposal to streamline communication and messaging from VA. One of the primary challenges veterans encounter when reviewing their disability notification letters is the intricate language and terminology used. Legal jargon and medical terms can be overwhelming, especially for those without a background in law or medicine. This complexity often leads to confusion and frustration, hindering veterans from grasping the full scope of their benefits and entitlements.

Far too often, accredited representatives spend a great deal of time explaining letters that make sense to the trained eye, but not to anyone else. The VA disability system involves a multitude of regulations, policies, and procedures. Unfortunately, these guidelines can be subject to interpretation, resulting in inconsistencies in notification letters. Veterans often find it challenging to reconcile the information presented with their own experiences, leading to uncertainty about the accuracy of the provided details.

Understanding the full spectrum of benefits associated with a disability rating is another hurdle for veterans. The notification letter may mention various forms of compensation, health care coverage, and vocational rehabilitation, but veterans may struggle to connect these pieces of information and effectively access the services to which they are entitled. This lack of clarity can impede veterans' ability to make informed decisions about their health care and overall well-being.

Discussion Draft, Veterans Appeals Efficiency Act of 2024

Since the creation of the VA National Work Queue (NWQ) in 2016, VFW accredited representatives have seen numerous instances of claims and appeals that have been sent to the NWQ where they stagnate unassigned and unworked by VA staff. In a recent VA meeting with VSOs, it was stated that it is not uncommon for a claim to still be untouched in the NWQ six months after submission. Unfortunately, it is also a common occurrence with remanded BVA claims. With this proposed legislation, the VA Secretary would be required to track claims electronically, submit an annual report, and provide notice to veterans of the reasons why their claims are still waiting in the NWQ.

The VFW supports this intent, but feels there needs to be more guidance in regard to the actual method and delivery of the notifications to veterans. During the claims process, veterans are often inundated with different notifications from VA that can be confusing, overwhelming, and repetitive. Simply adding another notification to the veteran that the claim is pending will not solve the underlying issue of why the claim is waiting in the NWQ. Therefore, we recommend that any notifications created as a result of this legislation be reviewed and offered for comment by accredited VSOs to ensure that the messaging is clear and effective.

The VFW also supports improvements to BVA and the United States Court of Appeals for

Veterans Claims (CAVC). This bill expands the ability of BVA and CAVC to decide appeals in a few ways. First, it allows BVA to bypass the remand process if additional evidence is received after a BVA decision has been made if that evidence would satisfy the appeal. This idea is beneficial as it would prevent unnecessary remands, but there is no indication as to the timeframe in which the evidence would need to be received before BVA would remand the appeal. We recommend that the bill be amended to include a timeframe for BVA to receive new evidence before remanding the claim.

Additionally, the bill allows BVA to submit a request to the VA Office of General Council for an opinion if there is a question of law during an appeal. The VFW supports this as it would allow legal questions to be addressed without the need for an appeal to CAVC. Also included in this bill are provisions to allow BVA to aggregate appeals if they involve similar laws. While this may be beneficial in some cases, we must ensure that BVA does not sacrifice the accuracy of the decision in order to combine claims for efficiency.

Finally, this bill also authorizes CAVC to perform an administrative review of eligible claims upon request of the claimant. The VFW supports this as well, provided that it does not create an unnecessary backlog of appeals.

The VFW supports transparency and research and believes that a study to identify commonly appealed issues would help identify potential inefficiencies in the appeals process. The VFW also agrees with the requirement for VA to meet with a federally funded research and development center (FFRDC) to determine if BVA can issue precedential decisions and aggregate claims. However, when this assessment takes place, we ask that VA and the FFRDC be cognizant of the time it takes to render decisions and ensure that offering precedential decisions would not unduly slow down the appeals process.

Discussion Draft, Medical Disability Examination Improvement Act of 2024

The VFW appreciates the intent of this bill to help streamline Toxic Exposure Risk Activity (TERA) examinations, but we believe Section 2 of this proposed legislation could lead to fewer examinations, which would potentially result in missed opportunities to identify exposures.

We are concerned about the proposed language that would limit TERA examinations of veterans as identified in Section 1119(c) of title 38, United States Code, or anyone else who self-reports. Section 1119 basically covers veterans who deployed to areas in the Middle East. This would exclude countless veterans who had exposures in other areas where they served. Additionally, asking veterans who are not on the list of areas described in Section 1119 to self-report possible exposures could lead to missed identifications.

The critical component of the TERA examinations was for VA providers to probe patients about their possible exposures and try to identify areas where there might be risk. We believe this proactive approach is more beneficial to veterans because it may draw out information regarding risks that were unknown to the veterans.

However, there are portions of this proposal that we do support, such as identifying issues facing rural veterans and improving the training for processing medical examinations. We would recommend combining the two TERA proposals and taking the best parts of each bill to craft comprehensive legislation that would streamline efficiency without reducing necessary examinations.

Discussion Draft, Toxic Exposures Examination Improvement Act

The VFW believes we should help improve and streamline toxic exposure examinations, but we are concerned this proposal would also reduce the number of examinations for veterans. The PACT Act intentionally set a lower standard for exposure examinations to identify as many exposed veterans as possible. This process seeks to help identify a nexus through direct service connection and secondary service connection. We are concerned that this language change would limit veterans seeking service connections by raising the standard for examinations.

We have heard of veterans claiming toxic exposure illnesses due to seemingly non-connected issues. However, we believe an examination should still be conducted because of VA's duty to assist in order to determine possible connection. As unusual as it seems,

disabilities like tinnitus could be affected by certain exposures to toxins. Tinnitus is a neurological condition as well as a hearing condition, and toxins can affect our neurological systems. At face value there might not be an obvious connection with issues like tinnitus and toxic exposure, which is why examinations can be beneficial. An examiner may not grant an examination if this language were passed into law.

The VFW is encouraged by both proposals that seek to strengthen the TERA examination process. We look forward to working together in a bipartisan manner to hopefully produce a comprehensive TERA reform bill that would benefit all veterans and reduce inefficiencies.

Discussion Draft, Veterans Claims Quality Improvement Act of 2024

The VFW supports this legislation that would provide much needed training and oversight for those deciding VA claims. However, the addition of more oversight often comes with delays in timeliness if the program is not properly funded. This bill instructs the General Council to review each updated VA regulation, and to develop and administer a training program to ensure that those writing the regulations are properly trained. It also instructs BVA to create a training and quality assurance program. While training and oversight is essential, without proper funding for these programs, the development and execution could be severely impacted thus limiting the effectiveness of these programs.

As the former director for training and quality assurance in VFW National Veterans Service, I am keenly aware of how quickly and often VA regulations change as well as the need to ensure that updated regulations are understood by those who use them. Recently, I was representing a veteran who had a claim for service connection for a mental health condition denied by VA. The veteran had claimed post-traumatic stress disorder (PTSD) on the initial application for benefits. However, during his compensation and pension examination the examiner diagnosed him with a different mental health condition and provided a medical opinion linking the condition to his active military service. A VA rating officer denied the claim because the veteran did not have PTSD.

According to VA's M21-1 Manual, "It is impermissible to limit the scope of the claim for SC to the claimant's lay hypothesis about the nature of a specific mental disorder disability.

Because the Veteran is reasonably requesting benefits for symptoms of a mental disorder but is not competent to medically identify such symptoms, it is insufficient for the Department of Veterans Affairs (VA) to simply deny benefits for the claimed diagnosis and not address evidence in the record of other mental disorder diagnoses, as indicated in *Clemons v. Shinseki*, 23 Vet. App. 1 (2009).” Though the referenced CAVC case and the regulation both state that the rater was supposed to consider all mental health diagnoses of record, without proper training and plain language this regulation can easily confuse a VA Rating Veterans Service Representative and result in an unnecessary appeal.

Chairman Luttrell and Ranking Member Pappas, this concludes my testimony. I am happy to answer any questions you may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2024, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.