

Congress of the United States
Washington, DC 20510

January 28, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, DC 20501

Dear President Biden:

We write to you today to raise our concerns with the privatization of the Department of Veterans Affairs (VA) compensation and pension (C&P) exam program. VA uses C&P exams to award benefits, making them a critical gateway to financial resources for veterans and their families. Amid the pandemic last summer, VA abruptly announced its plan to transition most C&P exams to private vendors.¹ VA has not candidly addressed that decision and its justification, leaving us concerned that VA is not looking before it leaps. Given the importance of accurate and timely C&P exams for our veterans, it is essential that VA carefully consider the benefits and timing of this decision.

Shortly after the coronavirus pandemic began, the Veterans Health Administration (VHA) suspended most C&P exams to focus on clinical care. The Veterans Benefits Administration (VBA) redirected these exams to private contractor vendors who already provided C&P exams before the pandemic but told Committee staff the adjustment was only temporary. Yet over the summer, VBA announced its intention to make the move permanent. While VBA maintains that they had long planned the transition, just months earlier in September 2019, its representatives testified before the House Veterans Affairs Committee² that the contract exam program was solely supplemental to the existing VHA program. Since the C&P transition announcement, VBA has not provided consistent information to reflect careful consideration of this decision or planning to ensure success.³

This lack of transparency is concerning. Each year, VA awards billions of dollars in contracts to private vendors. Its decision to increase these contracts substantially and effectively privatize the C&P exam program leaving oversight of this program in the hands of VA. The millions of veterans who rely on C&P exams to access benefits deserve a system that works

¹ VA says it will maintain a small number of C&P exams including: (1) Former Prisoner of War Protocol; (2) exams that require hospitalization or surgical evaluation; (3) veterans who are inpatients at a VHA facility, nursing home, extended care facility, or domiciliary including state-operated veterans' homes; (4) veterans who are employees of the contract exam vendor scheduled to conduct the exam; (5) veterans with complex behavioral risk, and (6) environmental hazard registry exams. It is our understanding these exams comprise an insignificant portion of overall C&P exams.

² See Disability Assistance and Memorial Affairs Subcommittee of the House Committee on Veterans Affairs, Oversight Hearing *Update on VA Contracted Exams, Quality Review Process, and Service to Rural Veterans* (September 19, 2019).

³ See [October 20, 2020, letter](#) from Chair Elaine Luria to Secretary Wilkie.

quickly and effectively. We urge your Administration to carefully examine this matter to ensure the best outcome for veterans and American taxpayers.

We respectfully ask that your team pay close attention to the following concerns:

- **Compliance with GAO's 2018 Recommendations to Improve Contractor Oversight.** To comply with the recommendations of the 2018 Government Accountability Office (GAO) report⁴, VBA continues its efforts to improve performance assessment of contract examiners and data transaction efficiencies. In FY 2020, VBA acquired a third-party independent validation and verification contract to address discrepancies between VBA and vendor information technology systems. Despite this progress, VA has not fully implemented GAO's recommendations and has given a compliance target date of December 31, 2021. Nevertheless, VBA has already migrated most C&P exams to contractor vendors. We believe compliance with the GAO recommendations is necessary before VA takes further action.
- **Specialty Exams.** C&P exams often evaluate disabilities unique to veterans and their service. For example, illnesses like Military Sexual Trauma, Posttraumatic Stress Disorder, Traumatic Brain Injuries, and some catastrophic injuries related to combat may be alien to a civilian practitioner. Stakeholders suggest that contract vendors' training may not fully compensate for VHA C&P examiners' years of prior clinical experience at VA hospitals. For these specialty exams, we want to ensure that VA has carefully compared the quality and cultural competency of exams conducted by contractors and VHA examiners. This comparison is the only way to preserve institutional knowledge and experience.
- **C&P Backlog.** The COVID-19 pandemic forced a temporary suspension of in-person C&P exams. Though VA has successfully resumed most in-person exams, its backlog now hovers around 356,000 exams. VBA continues to reduce the use of VHA C&P examiners while drastically increasing the demands on contract examiners to eliminate the backlog by June 2021.⁵ VBA did not provide details on contract vendors' ability to respond to this demand on short notice, specific production targets, or assistance provided by VA to enable compliance. At least one contract vendor reported it hoped to hire the terminated VHA C&P examiners to meet its growing demand for contract C&P exams. While we support VA's efforts to reduce the pending exam backlog, we question its approach. Given the ready availability of experienced, trained VHA C&P examiners to complete C&P examinations, we worry VBA is not optimizing its resources to clear the C&P exam backlog.⁶

⁴ GAO, VA DISABILITY EXAMS: Improved Performance Analysis and Training Oversight Needed for Contracted Exams, GAO-19-13 (Washington D.C., Oct. 12, 2018).

⁵ VBA recently stated it would continue to utilize some VHA C&P virtual and Acceptable Clinical Evidence exams throughout the pandemic but said it might halt the practice before eliminating the pending exam backlog. VBA could not provide any further details on how it would approach this decision.

⁶ If signed into law, the recently passed H.R. 7105 would immediately halt further termination of VHA C&P examiner positions until the pending C&P exam inventory is reduced to pre-pandemic levels. H.R. 7105, Section 2002(b).

The Honorable Joseph R. Biden, Jr.

January 28, 2021

Page 3

- **Elimination of VA C&P Examiner Positions.** VA says it does not expect to eliminate staff positions due to the transition to contract C&P exams, adding that VHA leadership and regional Veterans Integrated Service Networks would notify VHA C&P examiners of opportunities based on staffing needs and employee qualifications of both examiners and administrative staff. However, independent reports to this Committee indicate VHA C&P employees are losing their jobs, suggesting the closure of C&P facilities is more systemic than VA alludes.
- **Compliance with VA Office of the Inspector General (OIG) Recommendations from November 2020.** A recent VA Office of the Inspector General (OIG) report⁷ recommended VA further develop and test its strategy to address the backlog of C&P exams. OIG was similarly unable to obtain specifics regarding VBA's plan to reduce the pending exam backlog by mid-2021, exposing the need for further planning. The OIG report also found that following the pandemic, contractor vendors could not increase virtual C&P exam capacity because an in-person tele- presenter must be present to assist the veteran in the exam. This limitation may have exacerbated the backlog. While VHA had the capacity to provide more telehealth exams than contractor vendors, VA limited the increased capacity by shifting VHA examiners to frontline COVID-19 assistance. According to OIG, VBA also may not have the oversight mechanisms to properly monitor contractor vendors. As OIG concluded, VBA must plan to increase the use of virtual C&P exams and ensure that contractor vendors follow the Office of Disability and Medical Assessment telehealth guidance.

Thank you for your response to these issues. We look forward to working with you and your Administration in the coming months as we continue to ensure that our nation meets its obligations to our veterans. Should your team have questions please contact Julie Turner, Staff Director of the Disability Assistance and Memorial Affairs Subcommittee at Julie.Turner@mail.house.gov.

Respectfully,



Elaine G. Luria
Member of Congress

⁷ U.S. Department of Veterans Affairs, Office of the Inspector General, Report: Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams (Nov. 19, 2020) (online at <https://www.veterans.senate.gov/imo/media/doc/2020-11-20%20Letter%20to%20Wilkie%20re%20Contract%20CP%20Exams%20FINAL.pdf>)



Peter A. DeFazio
Member of Congress



Veronica Escobar
Member of Congress



Jared Golden
Member of Congress



Ron Kind
Member of Congress



Mike Levin
Member of Congress



Stephen F. Lynch
Member of Congress



Joseph D. Morelle
Member of Congress



Seth Moulton
Member of Congress



Lori Trahan
Member of Congress

The Honorable Joseph R. Biden, Jr.
January 28, 2021
Page 5

CC: Dat Tran, Acting-Secretary, U.S. Department of Veterans Affairs