

## U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED SEVENTEENTH CONGRESS

B-234 LONGWORTH HOUSE OFFICE BUILDING

WASHINGTON, DC 20515

<http://veterans.house.gov>

March 29, 2021

The Honorable Denis McDonough  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Dear Mr. Secretary:

We write today to encourage you to implement policy changes that will support survivors of Military Sexual Trauma (MST) in their benefits claims.

Sexual harassment and sexual assault during military service are well-documented, widespread, and have only worsened since 2016. MST remains one of the most harmful problems for the military and veteran communities, representing an insidious cultural failure throughout the Department of Defense (DoD) and Department of Veterans Affairs (VA).

Over the past two decades, VA has established itself as a leading service provider for survivors of sexual trauma, and has pioneered groundbreaking research and evidence-based practices within the Veterans Health Administration (VHA). Unfortunately, many of those practices have not carried over to the Veterans Benefits Administration (VBA), and survivors frequently find themselves at the mercy of a bureaucratic process that can be retraumatizing and triggering for survivors.

Survivors applying for benefits face barriers that can worsen mental anguish. VBA and VHA could improve coordination to ensure that veterans are aware that they can receive support through VHA.

According to survivors and their advocates, the MST claims process can be inherently traumatic. The veteran applying for benefits is asking a government agency to validate that a traumatic event happened to them, when, in many cases, institutionalized traumatic invalidation during the veteran's service is part of why the veteran is seeking benefits in the first place. The application process can be complicated and convoluted, and frequently requires survivors to tell--and re-tell--their story and its impact on their lives.

As you take the helm of VA and review policies to best support our nation's veterans, their families, caregivers, and survivors, we request that you consider implementing the following policies at VBA:

1. Formalize mental health support for veterans during the claims process.
2. Correspond with veteran-appointed representatives, rather than with the veteran.
3. Update regulations establishing a definition of “technological abuse” or a similar term to ensure access to healthcare and benefits for MST survivors who experienced it.
4. Bear responsibility for lost, destroyed, or non-existent records.
5. Review veteran statements prior to C&P exams.
6. Establish trauma-informed protocols.

The context and specific policy recommendation for each are detailed below.

### **1. Formalize mental health support for veterans during the claims process.**

Currently, survivors receive no formal mental health support as part of their application process. There are many resources that are already available within VA, typically at VHA. Without this support, the benefits process can cause veterans insomnia, suicidal ideations, and relapse into substance use disorders, among other mental health impacts.<sup>1</sup> For instance, survivors are not advised that a Compensation and Pension (C&P) exam or decision letter may cause additional trauma and that they may seek mental health services through VHA. VBA’s communication to survivors during the claims process does not provide information on how to make an appointment with a VHA mental health provider, contact information for a VHA MST coordinator, resources available through the Readjustment Counseling Service (Vet Centers), or the Veterans Crisis Line phone number. Although VBA has MST coordinators who assist veterans with obtaining the evidence needed to support their claim, survivors are not provided a victim advocate or peer support specialist. VBA or VHA could provide such trained individuals to survivors in the claims process. They would offer support and answer a survivor’s questions about what to expect during the MST claims process. These individuals would support the veteran and should not be involved in adjudicating the claim to ensure impartiality.

**Recommendation:** VBA should identify mechanisms to provide access to formal mental health support throughout the MST claims process. Such mechanisms may include:

- Creating a Victim Advocate or peer support specialist role within VBA. This individual would support the veteran throughout the claims process and would not be responsible for processing or adjudicating the survivor’s claim. Veterans may “opt out” rather than need to “opt in.”
- Coordinating with VHA to provide materials (such as outreach letters) on existing resources, such as VHA MST coordinators, MST-trained mental health providers, and peer support specialists to survivors during the claims process. These resources should be provided in line with major milestones, such as C&P exams and Board of Veterans’ Appeals (BVA) hearings.
- Providing literature for the Veteran Crisis Line in decision letters and during any other steps in the claims process, such as at C&P exams.

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<sup>1</sup> Testimony of Ms. Samantha Kubek, Staff Attorney, New York Legal Assistance Group, Hearing: “Examining How the Department of Veterans Affairs Supports Survivors of Military Sexual Trauma”. House Committee on Veterans Affairs, Subcommittee on Oversight and Investigations, February 5, 2020.

- Providing information to veterans on how to make an appointment with their mental health provider after a C&P exam, decision letter, or BVA hearing.
- Upon consent of the veteran, providing automatic notification to VHA that an existing patient has had or will soon have a C&P exam, decision letter, or BVA hearing.

**2. Correspond with veteran-appointed representatives, rather than with the veteran.**

During the MST claims process, a VBA MST coordinator may contact the veteran via phone, if necessary, to help identify additional evidence corroborating the in-service trauma. However, the VBA MST coordinator is not required to contact the veteran's accredited representative prior to calling the veteran. Many veterans choose an accredited representative such as a VSO or an attorney to represent them in the disability claims process. However, VA routinely contacts the veteran without corresponding with their representative. The representative not only helps with the claims process but can also help alleviate trauma inflicted on the veteran in the process. Upon consent of the veteran, VA should ensure the veteran's representative may participate during the VBA MST coordinator phone call to the veteran. To do otherwise should be considered a failure of VA's "duty to notify."<sup>2</sup>

**Recommendation:** VA, as in any other legal proceeding, should respect veteran-appointed representatives and inform them of scheduled communication between VA employees and the veteran (e.g. an informal conference or VBA MST coordinator phone call). VA should also allow representatives, upon consent of the veteran, to participate in proceedings where the veteran may be asked to provide oral testimony related to their claim.

**3. Update regulations establishing a definition of "technological abuse" or a similar term to ensure access to healthcare and benefits for MST survivors who experienced it.**

Technological abuse is the use of technology to intimidate, harass, or stalk a person. Examples include (1) posting personal information about a servicemember with encouragement to harass that individual; (2) repeated calls, emails, or texts in a harassing manner; (3) non-consensual sharing of sometimes sensitive images, particularly with family, co-workers, or a fellow servicemember; (4) impersonation of an individual on social media with intent to humiliate, or defame; and (5) use of GPS to stalk and harass. One of the most infamous examples involved a men-only Facebook group for Marines and veterans where members shared nude images of their female colleagues in the service without their consent and included their names, ranks, duty station, and social media accounts.

**Recommendation:** VA, in consultation with DoD, should develop a formalized definition of "technological abuse." Moreover, VA should specify in the regulations that those who experience MST through technological means may be eligible for healthcare and disability compensation. This would bring VA in alignment with both DoD's Uniform Code of Military Justice<sup>3</sup> and would reflect the reality of how many servicemembers currently experience abuse.

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<sup>2</sup> Title 38 U.S.C. § 5103

<sup>3</sup> Uniform Code of Military Justice, § 917. Art. 117a. Wrongful broadcast or distribution of intimate visual images.

#### 4. **Bear responsibility for lost, destroyed, or non-existent records.**

It is not uncommon for records pertinent to disability claims adjudication to be declared lost, unobtainable, destroyed, or nonexistent. This may be because records were destroyed in the National Personnel Records Center (NPRC) fire of 1973, lost in additional maintenance mishaps, or otherwise deemed unavailable by VA or non-VA repositories. The onus of this recovery should not fall solely on the veteran. VA should identify common circumstances in which records are lost and seek alternative sources of evidence, such as buddy statements, which gives the benefit of the doubt to the veteran. For example, VA should continue its procedures to reconstruct military records that were lost in the NPRC fire of 1973 and maintain its policy of accepting behavioral changes, called “markers,” as evidence of an in-service trauma. In addition, policy changes that would help veterans substantiate their claims, such as DoD’s introduction of the DD Form 2910-2 that allows MST survivors to replace lost or destroyed victim reporting statements, should be shared with those applying for benefits.

**Recommendation:** When records are unobtainable due to no fault of the veteran, VA should make a reasonable effort to find additional types of evidence to corroborate the claim. Veterans should not be denied benefits because government agencies lost, mismanaged, or have not found their files. VA should also inform veterans of policy changes that would enable them to further substantiate disability claims.

#### 5. **Review veteran statements prior to C&P exams.**

Currently, VA examiners are required to state whether they have reviewed a veteran’s electronic file before authoring their report. However, they are not required to review the file prior to meeting the veteran, which requires the veteran to rehash details that are already in the record and are potentially traumatizing.

**Recommendation:** VA should require examiners and VBA employees to review a veteran’s statement prior to C&P exams or any other conversation with the veteran regarding their assault.

#### 6. **Establish trauma-informed protocols.**

The language used in a C&P exam or in decision letters can have a profound effect on a veteran—especially in denial letters. In addition, trauma-informed processes must be comprehensively implemented through the VA, including in BVA hearings. VA must establish trauma-informed language and protocols to be consistently used across VBA--from claims adjudicators contacting veterans to the language in decision letters--to ensure VA is not creating further trauma when addressing survivors.

**Recommendation:** VA should audit all language in denial letters, in consultation with VSOs and other stakeholders, to ensure veterans are not unnecessarily re-traumatized through insensitive language. It should also address protocols with contract examiners to ensure trauma-informed practices are being followed. Additionally, BVA should conduct additional oversight of Veterans

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Law Judges to assess protocols to ensure they conduct hearings related to a MST claim in a trauma-sensitive manner.

Thank you for your assistance. Should you have questions about this request, please contact Andrea Goldstein, Senior Policy Advisor, Women Veterans Task Force, at [Andrea.Goldstein@mail.house.gov](mailto:Andrea.Goldstein@mail.house.gov); Matthew Tyrell, Professional Staff Member, Subcommittee on Disability Assistance and Memorial Affairs, at [Matthew.Tyrell@mail.house.gov](mailto:Matthew.Tyrell@mail.house.gov); and, Katherine Smith, Minority Staff Director for the Subcommittee on Disability Assistance and Memorial Affairs, at [Katherine.Smith@mail.house.gov](mailto:Katherine.Smith@mail.house.gov). Additionally, please copy any written response to this letter to the attention of Ms. Haley Wint, Committee Staff Assistant, at [Haley.Wint@mail.house.gov](mailto:Haley.Wint@mail.house.gov).

Sincerely,



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Elaine Luria  
Chair  
Subcommittee on Disability Assistance and  
Memorial Affairs



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Troy Nehls  
Ranking Member  
Subcommittee on Disability Assistance and  
Memorial Affairs



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Mark Takano  
Chairman  
House Veterans' Affairs Committee



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Mike Bost  
Ranking Member  
House Veterans' Affairs Committee



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Julia Brownley  
Chair  
Subcommittee on Health/ Women Veterans  
Task Force

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Mike Levin

Chair

Subcommittee on Economic Opportunity



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Chris Pappas

Chair

Subcommittee on Oversight and  
Investigations