

Honoring our Promise to Address Comprehensive Toxics Act of 2021 PACT Act

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Statement of

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With Respect To

“Honoring our Promise to Address Comprehensive Toxics Act of 2021 (PACT Act)”

WASHINGTON, D.C.

Chairman Tester, Ranking Member Moran, and members of the Senate Committee on

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Veterans' Affairs, 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 our insights pertaining to the impact of the *Honoring our Promise to Address Comprehensive Toxics Act of 2021 (PACT Act)* on veterans and Department of Veterans Affairs (VA) operations.

At a joint hearing before the House and Senate Committees on Veterans' Affairs in March 2021, and in hearings in April and May 2021, the VFW called upon Congress to work in a bipartisan manner and with Veterans Service Organizations (VSOs) to develop a comprehensive solution for toxic exposure. Our message was heard, and several toxic exposure bills were put together to address the different pieces of the puzzle to take care of veterans from all eras. Along with more than forty veterans organizations, the VFW strongly supports the passage of H.R. 3967, *Honoring our Promise to Address Comprehensive Toxics Act of 2021 (PACT Act)*. We were encouraged when bipartisan and bicameral effort resulted in the House passage of the *PACT Act* on March 3, and are hopeful that the Senate will follow suit. On March 8, President Biden addressed the public from Fort Worth, Texas, and urged Congress to get this legislation to his desk for signature "immediately."

The *PACT Act* would help millions of toxic-exposed veterans. It would address the still lingering conditions and unrecognized locations of Vietnam War veterans exposed to Agent Orange. It would take care of Atomic veterans and veterans from the K2 base in Uzbekistan. It has a significant focus on burn pits and improving the VA disability claims process. The time is now to pass the *PACT Act* and finally address the needs of sick and disabled veterans.

The four main elements of the *PACT Act* are critical pieces of the puzzle. Without all four, veterans will not have access to both the health care and benefits they deserve. These four elements include health care for toxic-exposed veterans; a concession of exposure to burn pits for veterans who served in certain locations; a list of presumptive conditions related to burn pit exposure; and a framework for VA to review and grant new presumptive conditions for all toxic exposures, past, present, and future. Additionally, the bill includes critical training necessary for VA health care providers to better diagnose and treat veterans with conditions related to toxic exposures and for VA disability claims processors to understand how to properly rate and adjudicate toxic exposure claims.

Health Care

The health care expansion within Title I of the *PACT Act* is vital for toxic-exposed veterans who need treatment for current conditions and for preventive care. In the same way that Vietnam era veterans have access to VA health care even if they do not have service-connected disabilities, so should veterans from the Persian Gulf War and the Post-9/11 conflicts who were exposed to burn pits and other environmental toxins. VA has grouped at-risk veterans, such as Vietnam veterans who were exposed to toxic substances during service, into Priority Group 6 health care. This category also includes veterans who were

exposed to radiation and veterans exposed to contaminated water at Camp Lejeune. Veterans exposed to burn pits should be added to this priority group to give health care parity to veterans of the current era.

This shift would indeed increase the number of users of the VA medical system, but it is certainly necessary after more than twenty years of conflict and is something VA should have anticipated. By providing veterans care now, VA could deliver lifesaving, early detection for serious and rare conditions. Delaying access to medical care will only create a larger and potentially more costly problem in the future as some veterans will require significant care as their conditions worsen.

Framework

The process by which VA reviews and considers new presumptive conditions is fundamentally broken. Under the authority of the *Agent Orange Act of 1991*, VA entered into an agreement with the National Academy of Sciences (NAS)—now part of the National Academies of Sciences, Engineering, and Medicine (NASEM)—which assessed the strength of association between herbicide exposure and various health conditions. The legislation also provided VA with timelines to review the findings of NAS, determine whether a presumption of service connection was warranted for each condition, and issue proposed regulations. Under this framework, the majority of Agent Orange presumptive conditions were determined, but the two conditions of hypertension and monoclonal gammopathy of undetermined significance (MGUS) remain. NASEM determined in 2018 that there was sufficient evidence of an association for these two conditions, which is a level of association higher than some of the other conditions on the Agent Orange list. The fact that VA still has not added those conditions to the list points to the now- expired authority of the legislation and VA's unwillingness to add these conditions on its own without the passage of new legislation. The VFW supports adding hypertension and MGUS to the Agent Orange list of presumptive conditions.

It is clear that a new presumptive process is needed at VA. The VFW acknowledges that VA is currently in the process of developing a new presumptive pilot program, with the expressed goal “to lower the burden of proof for Veterans impacted by exposures and speed up the delivery of health care and benefits they need.” The VFW has not yet been presented with the full details of the pilot decision-making process, nor have VSOs been included in its development. This does not change the fact that we believe a new and effective framework must be codified by statute so that future administrations will continue to be held to the same standard.

Title II of the *PACT Act* would establish a toxic exposure presumptive process to review any exposure from past, present, and future conflicts, at locations domestic and abroad. This framework includes a permanent Formal Advisory Committee to review data on certain toxic exposures and recommend further review if required. A review body determined by the

VA Secretary would then conduct a formal evaluation, using the standard of positive association, of the exposures or conditions recommended by the advisory committee. This body would analyze scientific evidence, VA disability claims data, and other relevant factors and make recommendations as to whether a presumption of service connection should be established. The evaluation process would take no longer than 120 days. The Secretary would then have 160 days from receiving the recommendations to determine if a presumption of service connection is warranted, and would then promulgate regulation. If the Secretary determines a presumption of service connection is not warranted, that decision would be published in the Federal Register with the reasons for the decision.

The VFW supports the establishment of the new presumptive process with as much transparency as possible, including timelines and the standard of positive association. The VFW would like to work with VA and make recommendations as it uses what it learns from the current presumptive pilot program in the development of the formal evaluation process outlined in the *PACT Act*.

Concession of Exposure

VA reporting indicates that nearly eighty percent of toxic exposure disability claims related to burn pits are denied. The most difficult aspect veterans face in applying for these benefits is the inability to prove that an exposure took place. Without documentation from their service records, veterans often lack evidence that provides a nexus to their health conditions and the in-service event, which is a requirement to be granted service-connection.

In 1991, after decades of advocacy, Vietnam War veterans were finally presumed to have been exposed to herbicides known as Agent Orange. This is a “concession of exposure.” It is important because it is an acknowledgement that service members at certain locations during certain time periods were exposed to particular toxins, removing the burden of proof from the veteran. Title III of the *PACT Act* includes a concession of exposure to burn pits for those who served in Iraq, Afghanistan, and other key locations during the Persian Gulf War and the Global War on Terrorism. This would help veterans with serious health conditions more easily access the care and benefits they so desperately need.

Presumptive Conditions

Another key aspect of *PACT Act* is the list of presumptive conditions related to burn pit exposure. Title IV provides a list of serious respiratory conditions and cancers that are scientifically linked to exposure to the burning of waste. In nearly all wars and conflicts in American history, open-air burn pits were used to dispose of waste generated during deployments. It is illegal to burn trash in your backyard in the United States today, but our service members lived and slept near burn pits in Iraq, Afghanistan, and many other locations where literally tons of waste were burned each day.

Burn pits include chemicals, plastics, medical waste, human waste, metals, munitions, and they typically use jet fuel as the accelerant. There already exists a large body of research evidence pointing to the health effects of humans exposed to burning trash where jet fuel is the most common accelerant. The presumptive conditions listed in the *PACT Act* address some of the most serious conditions that veterans are facing, and are integral to accessing vital care and benefits in a timely manner.

Implementation and Recommendations

In anticipation of the increase in users of the VA health care system and the increased workload for disability claims processors, changes specifically suggested by VA were made to the text of the *PACT Act* to ensure the legislation could be fully implemented. Once those changes were made, the White House expressed strong support of H.R. 3967 in a Statement of Administration Policy on February 28, which was just days before the House vote on this bill. The VFW supports many of those changes and offers some additional suggestions for further improvement.

Title I: A change in the health care eligibility within the *PACT Act* added a “phase in” of veterans to access VA health care with two-year increments over the next ten years. These phases are based on discharge dates, locations, and toxic exposure risk activity. There would also be an extension of health care eligibility for combat veterans from five years after discharge to ten years, with a one-year open enrollment period for those who fall outside of that time frame. While these changes are intended to bring in veterans into the health care system in phases, the changes create gaps that would potentially leave some toxic-exposed veterans waiting until 2032 for health care. To close these gaps, the VFW recommends extending the health care eligibility for combat veterans beyond ten years after separation, lengthening the open enrollment period, or having periodic open enrollment. What we would like to achieve is Priority Group 6 health care at VA for all toxic-exposed veterans. This would allow at-risk veterans exposed to burn pits and airborne hazards to access VA health care for preventive care or if they become seriously ill.

Aside from this legislation, the VFW recommends that VA strongly considers adding all cancers to priority processing of claims, regardless of a terminal diagnosis, so these claims are expedited. The urgency for treatment from the moment of a cancer diagnosis is critical, and VA should do all it can to care for veterans before treatment is no longer an option.

Title II: The new presumptive process established in the *PACT Act* would be guided significantly by input from VA itself. Five out of the nine members of the Formal Advisory Committee would be staff from within VA and the formal evaluation process would be conducted completely by VA. Involving VA in the process to this extent would make it vulnerable to changes in administrations that may have differing views on the need to establish new presumptive conditions. The VFW recommends that there be a role added within the new toxic exposure presumptive process for an independent scientific body, such

as NASEM, so that veterans are guaranteed a fair review of the scientific evidence.

Title III: When first introduced, the *PACT Act* contained a list of toxic substances from burn pits and other airborne hazards detected during Department of Defense testing of air samples at various deployment locations. This list was removed from the concession of exposure and now gives the Secretary the authority to determine the substances, chemicals, and airborne hazards included. Giving VA the authority to determine the list of substances linked to burn pit exposure creates a risk that VA will not concede exposure to the full gamut of potential hazards associated with a variety of adverse health conditions, potentially limiting the ability for veterans to obtain service connection.

Title VII: The VFW acknowledges that the passage of the *PACT Act* would create an increased workload for VA claims processors due to an increase in veterans applying for disability benefits. To address this, two sections were added to the legislation. Section 709 would authorize thirty million dollars to be appropriated to the Secretary to support automation for claims processing. Section 715 would authorize one hundred fifty million dollars to be appropriated to the Secretary for continued modernization and expanded capabilities of the Veterans Benefits Management System for claims processing. The VFW has made and will continue to make annual budget recommendations as part of The Independent Budget VSOs for increased VA funding for information technology upgrades and improvements to automation to manage any potential increases of disability claims in the future.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you may have. Thank you.