



**WOUNDED WARRIOR PROJECT  
STATEMENT FOR THE RECORD**

**COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

***“FULFILLING OUR PACT: ENSURING EFFECTIVE IMPLEMENTATION OF  
TOXIC EXPOSURE LEGISLATION”***

**December 7, 2022**

Chairman Takano, Ranking Member Bost, and distinguished members of the House Committee on Veterans' Affairs – thank you for inviting Wounded Warrior Project (WWP) to submit this written statement for the record of today's hearing on the implementation of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (P.L. 117-168). WWP commends the Committee for its work on this landmark legislation, and we were proud to support its successful passage into law earlier this year. Providing access to health care and benefits for veterans suffering from health consequences associated with military toxic exposures was a top WWP priority in the 117th Congress, and we share and appreciate the Committee's continued commitment to ensure the full implementation of this historic law.

Wounded Warrior Project was founded to connect, serve, and empower our nation's wounded, ill, and injured veterans, Service members, and their families and caregivers. We are fulfilling this mission by providing more than 20 life-changing programs and services to over 179,000 registered post-9/11 warriors and over 45,000 of their family members. We continually engage with those we serve and strive to capture an informed assessment of the challenges this community faces.

Results from WWP's 2021 *Annual Warrior Survey* illustrate the extent to which post-9/11 veterans suffered toxic exposure during their service. Among those deployed in support of Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn, 72.8% reported serving near a burn pit, meaning a burn pit was located either on their base or close enough that they could see smoke. Of those, 67.4% reported being near a burn pit on a daily basis. Additionally, nearly all warriors (97.9%) reported some exposure to hazardous or toxic substances during military service, which include desert sands, petrochemicals, and powerful solvents. Unfortunately, less than one-third (31.9%) of warriors who filed a disability claim with the Department of Veterans Affairs (VA) for an exposure-related condition prior to the passage of the *Honoring Our PACT Act* reported being granted service connection for that condition.

Just as our nation has a responsibility to provide health care and benefits to veterans who suffer physical and mental injuries in service, we must also meet the needs of those who suffer

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from illnesses associated with toxic exposures, both on the battlefield and in peacetime. The *Honoring Our PACT Act* comprehensively addresses this issue by accomplishing each of WWP's priorities with respect to toxic exposure: guaranteeing access to VA health care for all veterans who were exposed to toxic substances; conceding exposure to burn pits and airborne hazards for veterans who served in areas where they are known to have been present; creating a list of presumptive conditions associated with those exposures; and establishing a VA decision-making model to create new presumptive conditions in the future. Together, these provisions represent the largest expansion of veterans' health care and benefits in decades, and WWP is pleased that VA has been proactive in their implementation. Still, gaps in data and certain unknowns at this early-stage prompt us to offer the following topics of discussion for the Committee to consider.

### ***Disability Claims Processing***

Prior to the passage of the *Honoring Our PACT Act*, many veterans who submitted VA disability compensation claims for toxic exposure-related conditions, particularly those who suffered exposures during post-9/11 deployments, often faced significant challenges to establish service connection. Since exposure to burn pits and other toxic substances was often not documented in the veteran's military record, and conditions often manifest several years after discharge, VA was often unable to determine a link (nexus) between the veteran's illness and their service, leading to a denial of the claim.

The *Honoring Our PACT Act* addressed this by establishing over 20 new presumptive conditions related to toxic exposures, allowing VA to presume these conditions are service connected for veterans who served in areas of known exposure. Most of these conditions are cancers and respiratory illnesses associated with Gulf War and post-9/11 service in Iraq, Afghanistan, and surrounding areas. The new law also established two new conditions associated with Agent Orange exposure, hypertension and Monoclonal gammopathy of undetermined significance (MGUS). Additionally, it expanded qualifying service locations for Agent Orange and radiation exposure.

As written, the *Honoring Our PACT Act* provided for a multi-year phase-in of the newly created presumptive conditions. However, VA chose to use its statutory authorities to make all new presumptive conditions effective the day the bill was signed – August 10, 2022. WWP believes this was the right decision because it will provide benefits more quickly to veterans and eliminates the need for VA to implement a complicated phase-in. Veterans have been encouraged to submit claims for all qualifying conditions now, and VA will begin processing them on January 1, 2023.

This large expansion of new presumptive conditions has understandably resulted in a significant influx of new VA disability claims. The Veterans Benefits Administration (VBA) states that they have received approximately 146,000 claims related to the *Honoring Our PACT Act* as of November 16, 2022, and they anticipate 700,000 claims by the end of Fiscal Year 2023. While VBA expects a temporary increase to the claims inventory and backlog, the agency believes it will be well-positioned to address the backlog with additional employees, improved

training, and enhanced technology. VA is confident that with an implementation date of January 1, 2023, they will have adequate time to put these improvements in place.<sup>1</sup>

To deal with the increased workload, VA plans to use Automated Decision Support (ADS) technologies. This technology is designed to scan a veteran's records to extract relevant information such as current medical treatment history and locations of service, and then generate an Automated Review Summary Document (ARSD), which is then reviewed by a claims processor with full adjudicative discretion for a decision. VA states that ADS will be ready to assist with claims for all *Honoring Our PACT Act* conditions by January 1, 2023. In theory, this technology could be especially useful in reducing the time it takes to reach decisions on presumptive conditions, when a current diagnosis and qualifying service location alone are often sufficient to grant the claim. WWP service officers have been briefed on ADS capabilities, although they have not yet received a demonstration of the system. While WWP is generally supportive of VA's efforts to implement ADS, the system must be proven to produce consistent, accurate, and timely results. We look forward to continuing to work with VA to evaluate this technology.

Additionally, to process and adjudicate *Honoring Our PACT Act* related claims in January 2023, VA has indicated plans to begin training VBA employees in December 2022. We suggest that this training is also provided to contract medical examiners, as they play an important role in the claim's development process. For instance, contract examiners should be trained on which new presumptive conditions apply to veterans who served in which locations, and instructed that a medical opinion is not required for presumptive conditions, and that examinations should only be used to determine severity. This will lead to a more efficient quality review process, and ultimately, more timely, accurate decisions.

As VA looks for ways to balance the influx of new claims with its current workload, we suggest they consider establishing *Honoring Our PACT Act*-specific claims processing teams. VA has used this strategy in the past when it was presented with a large number of exposure-related claims, such as Blue Water Navy, Camp Lejeune<sup>2</sup>, and radiation claims. This allowed VA to train designated staff on those specific issues and centralize research, development, and processing of related claims to increase accuracy and efficiency through specialization. We encourage VA to consider whether processing *Honoring Our PACT Act* claims with centralized teams would lead to better and faster outcomes for veterans.

We also encourage VA to consider whether mandatory overtime for VBA personnel may be an appropriate tool to help address the increased workload. VBA has instituted mandatory overtime many times in the past as a strategic effort during surges in the backlog. If VA determines that mandatory overtime was an appropriate policy to reduce the backlog created by *Honoring Our PACT Act* claims, WWP would support any additional funding needed to execute this policy.

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<sup>1</sup> *Department of Veterans Affairs Implementation of the SFC Heath Robinson Honoring our PACT Act*, Before the Senate Veterans' Affairs Committee, 2022, Mr. Joshua Jacobs, Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits, U.S. Department of Veterans Affairs.

<sup>2</sup> This should be distinguished from the federal cause of action created by Section 804 of the *Honoring Our PACT Act*, which does not address VA disability compensation.

Lastly, although *Honoring Our PACT Act* claims data is not available yet, WWP looks forward to a breakdown of claims based on conditions and era of service. We have undertaken similar efforts ourselves. For instance, of the *Honoring Our PACT Act related* claims submitted by WWP service officers on behalf of post-9/11 veterans, approximately 77% have been for asthma, rhinitis, and sinusitis; 10% have been for other respiratory conditions; and 13% have been for cancers. We believe tracking and filtering the data on all *Honoring Our PACT Act* claims will provide a better understanding of the current trends and future needs of exposed veterans, and WWP looks forward to receiving this information.

### ***Access to Health Care***

One of the key components of the *Honoring Our PACT Act* was that it finally guaranteed access to VA health care for all post-9/11 veterans who served in Iraq, Afghanistan, and other surrounding areas of known exposure. Unlike veterans who served in Vietnam, the Gulf War, and certain other areas of exposure, who have permanent access to VA health care enrollment under Priority Group 6, recently discharged post-9/11 combat veterans lost guaranteed access to care five years after discharge unless they could establish service connection or eligibility under some other authority. Since so few veterans were able to establish service connection for exposure-related illnesses, this left many without the care they needed later in life.

The *Honoring Our PACT Act* addressed this problem by extending the five-year enhanced enrollment eligibility period to ten years and creating a one-year open enrollment period for veterans who were discharged over ten years ago that began on October 1, 2022. For exposed veterans who miss the one-year open enrollment, it also created a ten-year phase-in for permanent access to Priority Group 6 enrollment based on the veteran's discharge date. It also grants VA the authority to modify the start date of any date in the phase-in to an earlier date as long as it has the resources to do so.

Wounded Warrior Project strongly advocated for these provisions because access to care is often the most pressing need for veterans who develop exposure-related conditions. Like Vietnam and Gulf War veterans, post-9/11 veterans who were exposed to burn pits and other toxic substances are an at-risk population, and it is absolutely critical that they have guaranteed access to clinical screening, early detection, and potentially lifesaving treatment if illnesses are diagnosed.

However, we also recognize that one-year open enrollment followed by the 10-year phase-in established by the *Honoring Our PACT Act* creates certain gaps in eligibility. For instance, a veteran who was discharged in 2006 after being exposed to burn pits in Afghanistan and who misses the one-year open enrollment period ending on September 30, 2023, would become ineligible for enrollment under the new statute until October 1, 2026 (unless they are able to establish service connection or eligibility under some other authority). If the veteran was discharged in 2007, they would be ineligible from September 30, 2023, to October 1, 2028.

While we understand that the 10-year phase-in was designed to avoid overwhelming the Veterans Health Administration (VHA) with a sudden influx of new patients, we would like to

offer suggestions that we feel would address any gaps in eligibility that may exist for exposed veterans. At present, we do not know how many veterans have enrolled VA for care under the new authorities of the *Honoring Our PACT Act* because VA is still updating its systems to capture that data. If, however, at the end of the one-year open enrollment period the data reflect that a relatively small number of veterans have taken advantage of this eligibility, perhaps due to lack of awareness or urgency among the post-9/11 community, we ask that Congress consider extending the open enrollment period for an additional year. Furthermore, we ask that VHA continuously evaluate the number of veterans who enroll for care under the *Honoring Our PACT Act* throughout the ten-year phase-in to determine the impact on the capacity to deliver high quality and timely care. If VHA has sufficient resources to meet additional demand at any point, we encourage VA to use its authority to modify the phase-in to an earlier date in order to grant permanent access to care for more exposed veterans sooner.

### ***Toxic Exposure Presumption Process***

In recognition of the challenges associated with establishing direct service connection for toxic exposure-related conditions, Congress has historically created mechanisms to require VA to decide whether to establish presumptive service connection when scientific data show a link between specific exposures and associated illnesses, as it did for Vietnam veterans with the *Agent Orange Act of 1991*. However, no law existed prior to the passage of the *Honoring Our PACT Act* to require VA determinations on illnesses associated with all toxic exposures, regardless of location or period of service.

The *Honoring Our PACT Act* addressed this by establishing a permanent VA working group to continuously review evidence and receive input from Veterans Service Organizations (VSOs) and the public on all potential exposure-related conditions in veterans and their family members who were military dependents, now and in the future. The established working group, referred to as the Military Environmental Exposures Sub-Council (MEESC), is tasked with making recommendations to the Secretary of Veterans Affairs on whether to establish a presumption of service connection for an exposure related condition. Upon receiving a recommendation, the Secretary will have 160 days to decide whether to establish a presumption or, if not, publish reasoning in the Federal Register. To form its recommendations, the MEESC will continuously review scientific literature, VBA claims data, and other factors including the level of disability and mortality caused by the condition, whether conditions are deployment-related, the rarity of conditions, and the quantity and quality of the information available.

Previous decision-making models that studied the health effects of airborne hazards present on post-9/11 deployments have been limited by a lack of good exposure characterization. For this reason, WWP encourages the MEESC to consider research on toxic exposures in the general population conducted by agencies such as the Centers for Disease Control and Prevention and the Environmental Protection Agency in forming its recommendations about conditions related to military exposures.

Additionally, WWP hopes that the MEESC expands the type of conditions it considers before association with burn pits and other toxic substances present on post-9/11 deployments beyond respiratory conditions and cancers. While these categories of conditions are certainly

relevant, they do not capture the full range of illnesses that exposed post-9/11 veterans are experiencing. In our most recent survey, the health condition veterans most commonly believed was associated with their toxic exposure were neurological problems (35.7%). Hypertension (31.5%), Chronic Multisymptom Illness (23.1%), and immune system problems (10.6%) were also conditions that veterans commonly believe are associated with exposures while in service. WWP looks forward to working with the MEESC to help identify these and other conditions that we believe warrant further consideration.

### ***Veteran Outreach***

In order for veterans to take advantage of the new eligibilities for health care and benefits created by the *Honoring Our PACT Act*, they must know about them and any actions they need to take. For instance, they may want to file a claim for a newly created presumptive disabilities or enroll for care under the one-year open enrollment period. For this reason, WWP has been conducting robust outreach to warriors and their families to inform them about the new law and what it means for them. These efforts include e-mail, social media, a dedicated page on our website, written materials, a summary video, live webinars, and co-sponsoring a nationally televised panel discussion on the passage of the *Honoring Our PACT Act* to reach veterans across the country in as many ways as possible.

The Department has also been conducting a broad outreach campaign as required by the legislation, including a dedicated webpage, email, newsletters, factsheets, and significant outreach to VSOs. It recently announced a “PACT Act Week of Action” that will include more than 90 in-person town hall events around the country to discuss new eligibilities and benefits with veterans. Nevertheless, we find that many veterans still have not heard of the *Honoring Our PACT Act* or do not know what it does. Due to ubiquitous advertising, many know only about the provision of the bill originally introduced as the *Camp Lejeune Justice Act*, which allows veterans and their family members who were exposed to contaminated drinking water at Camp Lejeune, NC to file lawsuits and recover damages. WWP looks forward to broad national outreach by VA that will continue to inform veterans of all the exposures covered by the *Honoring Our PACT Act*, to include burn pits and other airborne hazards.

As VA continues to expand its outreach, WWP recommends that they place a greater emphasis on accredited representation in the claims process. WWP and other accredited VSOs offer assistance in filing VA disability claims completely free of charge, but there are many unaccredited entities that wish to financially capitalize on veterans who may not be aware that free services are available. We hope all VA correspondence on the *Honoring Our PACT Act* highlights the service offered by accredited representatives.

### ***Concluding Remarks***

Once again, WWP thanks the Committee and its distinguished members for the invitation submit this statement for the record. The *Honoring Our PACT Act* is an historic law that finally grants the access to health care and benefits that all generations of exposed veterans need and have earned with their service. We stand ready assist when needed on this important issue and any others that may arise.