

HEARING ON PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES SENATE

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WEDNESDAY, APRIL 28, 2021

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3 p.m., via Webex and in room 216, Hart Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

Present: Senators Tester, Sanders, Brown, Manchin, Sinema, Hassan, Moran, Boozman, Tillis, Sullivan, Blackburn, and Tuberville.

OPENING STATEMENT OF CHAIRMAN TESTER

Chairman TESTER. I want to call this hearing to order, and I want to say good afternoon. Thank you for joining us today to hear views from the Department of Veterans Affairs and veteran service organizations on pending legislation.

Every year, Congress considers numerous exposure-related bills, each focusing on a specific generation of veterans or one particular disease or condition. What has emerged is a broken process and disjointed coverage for veterans. While each legislative victory is a step in the right direction, it is clear that our next step must be bold, and veterans deserve nothing less. And, in my opinion, that step should be comprehensive legislation that is veteran-focused, consistent, and science-based. As Chairman, that is my top priority this Congress. I know I share that priority with many of the folks here today.

We must provide health care and benefits to all veterans suffering from the effects of toxic exposure, past, present and future. It is a cost of war. That is pure and simple. And I am confident that we can do so because this is not a partisan issue. It is a matter of doing what is right for the people who served this country.

I am thankful for the bipartisan leadership for members of this Committee, and I commit to working with each of you on your priorities as we move forward. To our witnesses, I ask that you help us understand the impact of these bills, how they can work together, and what gaps need to be addressed. If we work together, we can finally fulfill our promise to our veterans, and reassure them that when they fight for us we will fight for them.

That fight, of course, is not just limited to toxic exposures. Today we learn about a variety of efforts to improve the delivery of health care and benefits for veterans. I look forward to a productive hearing from our witnesses, and helping us in that regard.

I will tell you what my schedule is. There are a number of bills out there. They all have good points to them. We need to put those bills together, and we will, in a comprehensive package that I hope to mark up in this Committee before Memorial Day. If we are able to do that, I believe that gets us time to get something done this year.

With that, I turn it over to the Ranking Member, Senator Moran.

OPENING STATEMENT OF SENATOR MORAN

Senator MORAN. Chairman Tester, thank you. Thank you for explaining and outlining that schedule, which I fully agree with and support, and will be trying to help you accomplish that goal.

Chairman TESTER. Thank you.

Senator MORAN. Chairman Tester and each of our many witnesses, thank you for providing your expertise on important topics of benefits for veterans and their families, including health care for veterans who have been exposed to toxic substances during their service. Although the VA has the authority to grant benefits to those veterans who are impacted by their exposures to toxic substances, the Department's sluggishness in creating a pathway to those benefits suggests that legislation is necessary to mandate a clear process.

To that end, on today's agenda is Senator Tillis' bipartisan TEAM Act, which I support and co-sponsored. This legislation was brought to Congress by a coalition of more than 30 VSOs to reform the way veterans exposed to toxic substances access health care. It is my hope that we can come to a consensus on how to perfect this concept in this bill so it can be approved by this Committee and ultimately passed into law.

While the number of bills related to toxic exposure on today's agenda suggest the topic is to be the focus of today's hearing, I do want to acknowledge the importance of legislation related to the lives and benefits of severely disabled veterans and the surviving children and spouses of those veterans and servicemembers who have passed.

Particularly, I want to highlight that our agenda includes the Colonel John M. McHugh Tuition Fairness for Survivors Act, which would expand in-State tuition eligibility for families of veterans who have passed away due to service-connected disabilities. To honor his memory and the ultimate sacrifice he and his family made, this bill is named after U.S. Army Colonel John McHugh, who was killed in Kabul, Afghanistan in 2010, while he and his family were stationed at Fort Leavenworth, Kansas.

Last, I want to say thank you to the TAPS, DAV, VFW, VVA, and WWP for being our eyes and ears on the ground and to help this Committee make sense of the Fargo of veterans' benefits as we work to create clear and impactful legislation.

Mr. Chairman, thank you for the opportunity.

Chairman TESTER. Thank you, Senator Moran. Today we are going to hear from the VA and veterans' advocates about the toxic exposure and benefits legislation pending before the Committee. I am going to introduce the folks who are going to testify today. You will speak in the order that I am introducing you in.

First I would like to introduce Ron Burke, who is Deputy Under Secretary for Policy and Oversight for Veterans Benefits Administration, to deliver the VA's opening Statement. Mr. Burke, you, after all the Statements are done, as with all of you, we will be asking you questions. You have a number of people with you, which I will introduce in a moment, that you can defer the questions to if you so choose.

Mr. Burke is accompanied by Beth Murphy, who is Executive Director for Compensation Services at VBA; he is accompanied by Dr. Pat Hastings, Chief Consultant for Post Deployment Health Services at VHA; and Paul Brubaker, Deputy Chief Information Officer for Account Management at the Office of Information and Technology.

Before I introduce the VSO folks I just want to say to Mr. Burke and the other folks from the VA, thank you for being here. Thank you for being a part of this panel.

Then we are going to hear from Shane Liermann from DAV—we all know Shane; Aleks Morosky from the Wounded Warrior Project—the same; Patrick Murray from VFW; John Rowan from the Vietnam Veterans of America; and Candace Wheeler, from the Tragedy Assistance Program for Survivors, or TAPS. Mr. Burke, you have the floor.

STATEMENT OF RONALD BURKE, ACCOMPANIED BY BETH MURPHY; PATRICIA R. HASTINGS; AND PAUL BRUBAKER

Mr. BURKE. Thank you, sir. Good morning, Mr. Chairman, Ranking Member Moran, and members of the Committee. I appreciate the opportunity to appear before you today, along with my colleagues, who are here in person and virtually, to discuss pending legislation, including bills pertaining to disability compensation, health care, education, transition assistance, and other benefits.

In the opening Statement of his confirmation hearing, Secretary McDonough made it clear that VA would provide veterans with timely, world-class health care, and ensure veterans and their families have timely access to their benefits. It is clear by the number of toxic exposure bills before us today that military toxic and environmental exposure is a critical congressional interest item.

For decades, veterans and their families have sought answers to questions about health issues and potential connections to service-related toxic exposures. Secretary McDonough is committed to taking immediate and deliberate steps to ensure the Department leans forward in its approach to getting answers to key environmental exposure questions. We recognize that to succeed, the new approach will require the collective efforts of VA, our academic partners, other Federal agencies, and Congress.

Secretary McDonough has outlined a list of priorities that form the foundation for the work that he has directed the Department to undertake. To ensure an in-depth analysis of high-priority issues, the Secretary re-established the VA Executive Board, consisting of subject matter experts and senior leaders. The VAEB met on March 23d of this year and received clear guidance to focus on issues related to toxic exposures and providing input to inform solutions.

Historically, VA's presumptive decisionmaking process has been guided by statutory requirements. However, certain provisions of the Agent Orange Act and Persian Gulf War Veterans Act, notably those governing the use of the National Academies of Sciences, Engineering, and Medicine reports, and requiring the Secretary to respond to such reports within 60 days have expired.

With that expiration, we see an opportunity. VA is creating a new, comprehensive, modernized decisionmaking model for determining presumptions based on environmental exposures. Our model includes leveraging improved science and surveillance, better use of VA benefit claims data, and consideration of other factors. We are moving with a sense of urgency and hope to share the proposed model with Congress, VSOs, and other key partners for feedback within the next 180 days.

In order to do a better job researching exposure to toxic substances and military environmental hazards, we need more insight into the health issues that veterans are experiencing. Our research indicates that an overly cumbersome process and an assumption of denial discourages veterans from filing toxic and environmental exposure-related claims. At the Secretary's direction, we are undertaking efforts to encourage veterans who believe that their symptoms are related to toxic exposure to participate in health registries. Part of that effort will include encouraging veterans to get an exam and to submit a claim.

With one in three veterans reporting a possible exposure to military environmental hazards, and one in four veterans reporting health concerns due to deployment exposures, VA must take decisive action. While Secretary McDonough's end-to-end review is being completed, VA will take the following additional steps: (1) Expand training for health care providers; (2) Improve science, surveillance, epidemiology, and research; (3) Make better use of benefits data and consider other factors; and (4), and most importantly, encourage veterans to file the claim.

I refer you to the written testimony for additional details regarding these steps.

As indicated in VA's written testimony submitted before this hearing, and Mr. Frueh's testimony last week before the HVAC Subcommittee on Economic Opportunity, VA does not support S. 1093, which would establish the Veterans Economic Opportunity and Transition Administration within VA. While VA appreciates the Committee's intent to improve the services and resources offered by these programs, the current structure of the Department appropriately reflects the significant interrelationship of all veterans' benefits programs. The current structure provides for a single advocate for veteran benefits at the Department, working to ensure resources among the other administration and staff offices.

Mr. Chairman, this concludes my testimony. My colleagues and I are prepared to respond to any questions that you or other members of the Committee may have.

Chairman TESTER. Thank you, Mr. Burke. A couple of house-keeping things before we get to the further witnesses. There will be two votes starting at 3:30, so there will be people filing in and out. Senator Moran and I will be exchanging the gavel for a few times there. That is No. 1.

No. 2, as I said at the last hearing we had, I will be giving priority to the people who are in person when it comes to asking questions, and then we will take the folks online.

And No. 3, for the folks who are testifying, try to keep your testimony to 5 minutes. We have your written testimony. It will be in the record in full. Shane, you have the floor.

STATEMENT OF SHANE LIERMANN

Mr. LIERMANN. Thank you. Chairman Tester, Ranking Member Moran, and members of the Committee, on behalf of DAV's more than one million members who have wartime service-related wounds, injuries, diseases, and illnesses, we thank you for the opportunity to offer our views on the multiple bills impacting service-disabled veterans, their families, and the programs administered by the VA. Our written testimony discusses all of the bills that will be before us today, as I will focus my remarks on just a few of them.

Mr. Chairman, as of April 26th, VA reports more than 11,000 veteran deaths related to COVID-19. We are concerned that survivors of some service-disabled veterans will be denied benefits because their death certificates list the cause of death as COVID-19 but does not mention the service-connected conditions which may have been contributing factors.

DAV supports S.89, the Ensuring Survivor Benefits During COVID-19 Act, which would address this issue by requiring the VA to seek a medical opinion in the case of any veteran who has a service-connected condition and who passes away due to the coronavirus. If a veteran's death is due to their service-connected disabilities or if they have been totally disabled for ten consecutive years, their survivors are entitled to dependency and indemnity compensation, or DIC. We are concerned that since its creation in 1993, major improvements for DIC have been legislated only once.

DAV supports S.976, the Caring for Survivors Act, as it would increase the rate of compensation for DIC to 55 percent of a totally disabled veteran's compensation. This would correspond with what Federal employee survivors currently receive.

Additionally, instead of requiring veterans to be totally disabled for 10 years, S. 976 would modify DIC and allow survivors, starting with veterans totally disabled for 5 years, to be eligible for 50 percent of the total DIC benefit, increasing until the 10-year threshold, when the maximum DIC amount is awarded. We need to ensure that veterans' families and survivors are provided the resources they need, which is why DAV supports S. 976, the Caring for Survivors Act.

Mr. Chairman, for more than 100 years, our fighting men and women have been vulnerable to the horrors of mustard gas, atomic radiation, Agent Orange, oil fires, nerve agents, burn pits, and other lethal hazards. Too often our Nation has been slow to provide these men and women with the needed health care and benefits they have earned. Right now there are more pieces of legislation addressing toxic exposures than ever before. Individually, not one of these bills will solve the toxic exposures puzzle, but collectively, they can address issues of direct service-connected benefits, health

care, presumptive diseases, and establish a framework for the future.

S.437, the Veterans Burn Pits Exposure Recognition Act, would concede exposure to dozens of chemicals, for all veterans who served in areas where burn pits are known to have been widely used, meaning those seeking health care and benefits for illnesses not yet considered presumptive would no longer have to provide specific evidence of such exposures.

S.927, the TEAM Act, would provide permanent health care enrollment eligibility for all veterans who were exposed, regardless of their disability claim status. It would also create a framework with an independent commission charged with establishing additional presumptive conditions that stem from all toxic exposures, foreign and domestic, now and in the future.

S.952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act, would extend presumptive service connection for more than 20 serious respiratory conditions and cancers that may be linked to exposures to burn pits and other chemicals. After two decades, it is unreasonable to ask critically ill veterans to continue to wait for more data and more science that might never come. We can help them today.

Mr. Chairman, we have a unique opportunity to address toxic exposures, remove barriers for direct service connection, provide health care, establish presumptive diseases, and create a future framework. For the estimated 3.5 million veterans exposed to burn pits and other toxic hazards, we must not miss this opportunity.

This concludes my testimony, and I look forward to any questions you and the Committee may have.

Chairman TESTER. Thank you, Shane. Next we have Aleks Morosky from Wounded Warrior Project. Aleks?

STATEMENT OF ALEKSANDR MOROSKY

Mr. MOROSKY. Thank you. Chairman Tester, Ranking Member Moran, and members of the Committee, thank you for inviting Wounded Warrior Project to testify at today's hearing, to offer our views on pending legislation. Although we have already submitted positions on other bills on the agenda today, I will limit my Statement to three bills that address the issue of toxic exposure, a top priority for our organization and the warriors we represent.

This year will mark the 20th anniversary of the beginning of the global war on terrorism, and an estimated 3.5 million post-9/11 veterans served in areas where they were exposed to burn pits and other toxic substances. Now many of them have developed rare and early onset diseases, like cancers, respiratory conditions, and other serious illnesses, and due to the unique challenges associated with toxic exposure claims, long latency periods, and inability to produce evidence of exposure that was often never documented, and the unwillingness of many examiners to offer a favorable nexus opinion, most of these veterans have been unsuccessful in their attempt to have their illnesses accepted by VA as service connected.

Compounding these issues is the fact that after two decades of war the science remains disappointingly inconclusive. While the National Academies have yet to find an association between these conditions and exposures, they have made clear that this is due to

insufficient data. As a result, they recommend new epidemiologic studies, but these can take years, and that is time that many seriously ill veterans just do not have.

To bypass this scientific gridlock, Wounded Warrior Project strongly supports S.952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act, which would establish a presumption of service connection for any veteran who served in an area of known exposure and is now suffering from any one of over 20 different cancers, serious respiratory conditions, or certain other illnesses. For them, disability compensation would be a lifeline, giving them a chance to support themselves and their families while they continue to battle their illnesses, and those whose conditions are terminal would be afforded a sense of peace, knowing that their families would have the support of DIC after they pass.

Already far too many of them have lost their health, their jobs, and even their lives. With no end in sight, it is unreasonable to continue to ask them to wait for science that may never come, when we clearly have the ability to help them now. For this reason, we believe S. 952 must be included in any comprehensive toxic exposure solution this Congress.

The second key bill I would like to highlight is S.437, the Veterans Burn Pits Exposure Recognition Act, which would concede exposure to burn pits and other toxic substances for veterans who served in areas where they are known to have been in use. All too often, a veteran's claim is denied simply because they are unable to produce evidence of an exposure that was never documented in the first place. Current law grants concession of exposure for Vietnam veterans, many of whom lack documentation of where and when they were exposed to Agent Orange. Current-era veterans deserve concession of exposure for the same reason.

We note that even if the list of presumptive disabilities was established for burn pit exposures, a concession of exposure would still be necessary for veterans claiming direct service connection for any illness that is not on the list. And for this reason we strongly support S.437, and see it as another critical piece of any comprehensive toxic exposure solution.

Finally, I would like to highlight S.927, the Toxic Exposure in the American Military, or TEAM, Act. This forward-thinking bill would grant permanent VA health care eligibility to all veterans who served in areas of known exposure, regardless of their disability claim status. This would prevent veterans who were already ill for having to wait months while their claims are decided, to access potentially lifesaving care, and those who were exposed but may not be ill will have access to preventative care. Veterans of previous generations who were exposed have permanent access to care for these reasons, and we see this as absolutely critical for the current era and beyond as well.

The TEAM Act would also establish a permanent independent commission and a scientific framework to trigger VA determinations on additional conditions for presumptive service connection, and unlike previous frameworks, this would not be limited to specific conflicts or exposures.

What is truly remarkable about the TEAM Act is that it would extend, on a permanent basis, two important components of any

toxic exposure legislation: health care eligibility and a scientific framework to apply to all toxic exposures, regardless of era or location, foreign or domestic, now and in the future, and this would finally ensure that the next generation of veterans who are exposed to toxic substances are not, once again, starting from square one, like every generation before them.

Furthermore, when taken together, S.952, S.437, and S.927, we see these three complementary bills fitting together like pieces of a puzzle, to fully address toxic exposure concerns not only for the current generation but for future generations as well. Accordingly, we ask this Committee and Congress to pass all three pieces of legislation, finally creating a lasting solution for all veterans who have been made ill as a result of military toxic exposures.

Chairman Tester, Ranking Member Moran, thank you once again for offering Wounded Warrior Project the opportunity to testify today. This concludes my Statement, and I look forward to your questions.

Chairman TESTER. Thank you, Aleks. Next, virtually, we have Patrick Murray, from the Veterans of Foreign Wars. Patrick?

STATEMENT OF PATRICK MURRAY

Mr. MURRAY. Chairman Tester, Ranking Member Moran, and members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this Committee.

The VFW's top priority for the 117th Congress is comprehensive toxic exposure reform. Toxic exposure is a cross-generational issue that affects almost every veteran who has ever worn the uniform. In World War I, troops were exposed to gas, in World War II, radiation, in Vietnam, Agent Orange, the Gulf War, oil fires, and in Iraq and Afghanistan they were exposed to burn pits and other environmental hazards. Toxic exposure for our troops has been synonymous with service for more than 100 years, but every time we are faced with sick veterans we act as if it has never happened before, or asked them for proof.

Since we seem to expose nearly 100 percent of our troops to hazardous substances and environments, it is entirely unreasonable that almost 75 percent of their claims are denied for exposure. For this reason, it is time for Congress to change the framework through VA care and benefits are granted for individuals with conditions associated with toxic exposures and environmental hazards.

All of the toxic exposure-related bills listed in this session only have portions that, if combined, would form a complete package that would cover as many veterans as possible. The VFW believes all of these proposals are complementary, and in combination would accomplish the goal of true toxic exposure reform for all generations of veterans. We ask that Congress assemble the various parts of each bill, just like pieces of a puzzle, to form a finished product that will provide care for all veterans, past, present, and future.

The Presumptive Benefits for War Fights Exposed to Burn Pits and Other Toxins Act would extend presumptive service connection to more than 20 serious respiratory conditions and cancers that

may be linked to exposure to burn pits and other chemicals. This would provide immediate care for veterans with serious illnesses resulting in exposure. It also proposes a petition model that would allow for veterans' voices to be heard regarding new exposures.

The Veterans Burn Pits Exposure Recognition Act would concede exposure to dozens of chemicals for all veterans who served in areas where burn pits are known to have been widely used, meaning those seeking health care and benefits for illnesses not yet considered presumptive would no longer have to provide specific evidence of such exposures.

The TEAM Act would provide permanent health care enrollment eligibility for all veterans who were exposed, regardless of their disability claim status. It would also create a framework with an independent commission charged with establishing additional presumptive conditions that stem from all toxic exposures, foreign, domestic, now, and in the future.

S.952 will take care of veterans right now. S.437 will definitively link veterans exposed to these hazards. S.927 will provide health care eligibility for anyone linked to those hazards. Together, these three bills, along with others such as K2 Care Act, Fair Care for Vietnam Veterans Act, Gulf War veterans' coverage bills, and training packages will align like the pieces of a puzzle to solve this problem once and for all.

Additionally, the VFW has long supported the creation of a fourth administration under VA, with its own Under Secretary, whose sole responsibility is the economic opportunity programs. This new Under Secretary for Economic Opportunity will refocus resources, provide a champion for these programs, and create a central point of contact for VSOs and Congress.

We urge Congress to pass this legislation that would establish a fourth administration within VA, to oversee benefits such as GI Bill, VR&E, home loan, and other economic opportunity-centered benefits. We believe we should separate the C&P programs and the economic opportunity programs from each other so that each can receive the full attention of their own leadership and IT resources. Both areas necessitate their own focus, and by creating a fourth administration it would allow VA to properly manage and grow these programs that they each rightfully deserve.

Last, the VFW strongly opposes S.1071. VA should never charge veterans to receive the care and benefits they deserve. Entering into formal agreements with companies who charge veterans for the claims services signals to veterans that VA is OK with them having to pay for what was already earned through service. VA should never officially endorse agreements such as these.

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

Chairman TESTER. Thank you, Patrick. Next, virtually, we have John Rowan with Vietnam Veterans of America. John?

STATEMENT OF JOHN ROWAN

Mr. ROWAN. Chairman Tester, Ranking Member Moran, and the other members of the Committee, and for that matter, all of your colleagues in the House, I commend you all for finally bringing to-

gether all of the issues related to toxic exposure that we have been dealing with as Vietnam veterans for over 50 years.

The bills that are in this batch that are all connected, we support everything, and we agree with everything my colleagues said ahead of me. The truth is that this is an unbelievable time, and we are very grateful to the House and Senate's efforts on our behalf.

All of the different bills have a little piece of the pie, and it is interesting. It seems like somebody cleaned out the Committee's file cabinet when we start seeing discussions about K2 and discussions about the atomic veterans, going back to the 1960's. Even the Palomares incident that I think was in 1966, and those poor veterans have been trying to get benefits ever since. And so we are really, again, grateful for everybody's efforts to bring all of these things into the light, and to create, I believe, also, that you will create an omnibus bill that will hopefully take care of all of these veterans, and all of the problems that they have been having from their exposures for all these years.

We also are very interested in some of the non-exposure bills as well. S. 89, as was mentioned earlier, the issue with the death certificates is a very important one with regards to COVID. We were realizing this very early last year, when we started to have some problems with some of our veterans applying for dependency and indemnity compensation, their families actually applying, and having problems because the VA was saying, "Well, the service-connected illness isn't listed on the death certificate."

So we actually had some conversations with the National Association of Coroners and Medical Examiners and the National Association of Medical Examiners, and they highlighted the fact that the certificate form itself allows for more than one issue with regards to what was the cause of death. And we want to make sure that, yes, we understand COVID may have started this whole thing, but it was really the underlying conditions that really killed the veteran, and we want to make sure that their families are going to get their due.

There are several other of the programs—we are also in favor of the fourth administration to try to deal with economic development issues for veterans. We believe also that should be a separate organization.

One of the things that concerns us, however, while all of these exposure bills particularly have been very good and cover a lot of areas that have been forgotten about, in many cases, for many years, the one thing we did not see much about, and we hope to see that changed as we go forward, and perhaps in your discussions on this omnibus bill, is the issue of the children of exposed veterans. We know, from our own experiences, Vietnam veterans, that many of our children have all kinds of developmental disabilities, all kinds of physical disabilities, that we believe were associated with our exposure to Agent Orange. We are still, I believe, the only veterans who have children who can get their own benefits because of exposures for spina bifida, and a little bit more if you are a female veteran, there are other issues involved.

We think that issue, multigenerational effects of these toxic exposures, needs to be understood much much more significantly. The research needs to go into it, and we need those programs that were

supposed to be researched by the VA to finally get done. And we would hope that Congress reviews its oversight powers with the VA to make sure they proceed with those cases.

So again, we want to thank everybody for really coming to the table with a lot of these bills, coming to finally deal with the issue of toxic exposure once and for all, and making sure that all veterans, no matter when you served, are going to get what you are entitled to. It is bad enough that you got exposed to things that you should never have been exposed to in the first place, but now we have to realize what we can do with the people involved.

So again, I thank you all, and I look forward to a big bill, and if you have any questions I would be certainly happy to answer on any specific piece of legislation. And again, as was mentioned earlier, it is interesting now people are starting to put together these three bills already, S.952, 437, and 927. I am going to be looking forward to see what the final legislation looks like.

So again, thank you for the opportunity. Thank you for coming forward with all of these bills, and I want to thank all of the members, particularly with the idea of being that veterans, thank God, are the only bipartisan thing I think left that Congress can talk about, so we appreciate everybody on all sides. Thank you.

Chairman TESTER. Thank you, John. I appreciate your testimony and your kudos.

Finally, we have got Candace Wheeler, who is the Tragedy Assistance Program for Survivors, otherwise called TAPS. Candace?

STATEMENT OF CANDACE WHEELER

Ms. WHEELER. Chairman Tester, Ranking Member Moran, and distinguished Committee members, the Tragedy Assistance Program for Survivors appreciates the opportunity to testify on behalf of over 500,000 survivors of military and veteran loss. Every survivor in our Nation benefits from the critical work of this Committee, and we thank you.

TAPS is grateful to Chairman Tester and Senator Boozman for reintroducing the Caring for Survivors Act of 2021. This important legislation increases dependency and indemnity compensation for more than 450,000 eligible beneficiaries, and reduces the timeframe a veteran needs to be rated totally disabled from ten to 5 years, allowing more survivors to eligibility for DIC.

For survivors like Katie Hubbard, an increase in DIC would help put food on the table and reduce her monthly worries. We ask that the base rate be increased the same for all DIC recipients, pre and post 1993, and that added monthly amounts are protected. Increasing DIC is a top priority for TAPS and the survivor community, and we urge passage this year.

TAPS thanks Ranking Member Moran and Chairman Tester for introducing the Colonel John M. McHugh Tuition Fairness for Survivors Act of 2021. There are nearly 152,000 eligible recipients of dependence education assistance under Chapter 35, which includes dependents of 100 percent disabled veterans or those who died of a service-connected death. Chapter 35 pays \$11,000 per year for all college expenses, half of Montgomery GI Bill, and minimal compared to the post-9/11 GI Bill and Fry Scholarship. Survivors using Fry, dependents using transferred entitlement, and veterans using

the post-9/11 GI Bill are all eligible for in-State tuition, at any State school in the country. Survivors using Chapter 35 are excluded. Guaranteeing in-State tuition for these families is a no-cost lift that will drastically improve education options and reduce their need for student loans.

TAPS appreciates Senators Lankford and Carper for introducing the Fry Scholarship Enhancement Act, which expands eligibility to families of those who die in the 120-day release from active duty period. If a veteran dies from a service-connected injury or illness with the 120-day REFRAD period, they are considered to have died on active duty, for all benefits except the Fry scholarship. Currently, these families are eligible for Chapter 35 but not Fry. Passing this bill will provide long overdue parity for these surviving families.

TAPS thanks Senators Sinema, Tillis, Shaheen, Boozman, Blumenthal, Warren, and Coons for reintroducing the Ensuring Survivor Benefits During COVID-19 Act of 2021. Veterans who pass away from the coronavirus may have their cause of death labeled as COVID-19, without accounting for service-connected disabilities that may have contributed to their death. This bill will ensure these disabilities are taken into account by the VA to ensure family members have access to the survivor benefits they are eligible to receive.

TAPS applauds members of this Committee for introducing significant legislation which collectively addresses the devastating effects of Agent Orange, burn pits, and toxic exposure on our veterans, their families, caregivers, and survivors. TAPS strongly supports all eight bills. As the leading voice for the families of those who died as a result of illnesses connected to toxic exposure, TAPS supports every effort to ensure veterans receive the health care and benefits they have earned and that we honor our commitment to their survivors.

Exposures to deadly toxins as a result of military service are not new. Generations of veterans have been exposed to toxins, and many have died as a result. We must do more to prevent exposures, properly diagnose and treat illnesses, and provide benefits to impacted veterans and their survivors. Their loved ones will make up a large portion of the next generation of TAPS.

Thirty-one percent of all military survivors connecting with TAPS have experienced the loss due to illness. Sadly, we project this number to increase by more than 2,300 each year. We must provide answers to our survivors of illness loss. So many are left wondering how their loved one survived multiple deployments and returned home safely, only to succumb to illnesses or rare cancers.

Coleen Bowman, surviving spouse of Army Sergeant Major Robert Bowman, States, "Had we known Rob had been exposed to toxins, we could have shared the information with doctors, and it wouldn't have taken 6 months of misdiagnoses before we learned he had Stage IV inoperable cancer. Had we known earlier he might still be alive today."

TAPS appreciates the opportunity to testify, and I welcome your questions. Thank you.

Chairman TESTER. Candace, thank you for your testimony. I want to thank everybody for their testimony today. There will be 5-minute rounds of questions and I will start.

This is for you, Mr. Burke. For decades, the VA and Congress have relied on National Academies to summarize the latest scientific research and association between health effects and a particular toxic exposure. Historically, VA and Congress extended presumptions for conditions in the second-highest category of association. Apparently, that is not good enough.

For example, when the National Academies placed hypertension in the second-highest level of association with Agent Orange in 2014, and the highest level in 2018, VA decided that they needed more evidence, more scientific evidence. I believe that the VA has all the information it needs right now to presume that veterans who were exposed to Agent Orange have a higher rate of hypertension than a veteran who has not. The National Academies have reported that already.

So, Mr. Burke, I guess to quote my older brother, the Vietnam War has been over for nearly 50 years. What does the VA expect to find in another study?

Mr. BURKE. Mr. Chairman, thank you for that question, and more importantly, thank you to you and the Committee for your interest on this very complex matter. Very important matter, as well.

What I can tell you is that our Secretary has taken a very strong position on this matter, and one that he is moving out with urgency on. In fact, the new approach that our Secretary has directed us to take will leverage not only existing partnerships but also build on new partnerships—the collection of data, the better use of science and innovation. And so we believe that a more thorough review, a different review, one that encompasses our I CARE values of advocacy, respect, our commitment, is exactly what the Secretary is asking us to do today.

We want to do this right. This is extremely important, as evident by the number of bills on toxic exposure specifically. And I can tell you that this has not been lost on our Secretary or the employees of the Department of Veterans Affairs.

So we are committed to using the framework that is being established by our Secretary. He is leveraging the experience and input from the VA Executive Board, and again, leveraging existing partnerships that we have used throughout time, but also building on the ability to extend partnerships and build those coalitions going further. So I hope that answers your question, sir.

Chairman TESTER. Yes. Well, I would just say this. Partnerships and coalitions are very, very important. What I do not need to point out, because I know you know this, is Vietnam veterans are getting older. We have been talking about this for a while. We were very close to getting hypertension in last Congress. I believe it was not put in because of cost reasons. That is not how we should look at it, and I think everybody on this Committee understands that money is important and how we spend taxpayer dollars are important.

But I think we also understand that taking care of our veterans is the cost of war. And I appreciate the Secretary's attention to this matter, but in the end—and I think Mr. Rowan would attest to

this—Vietnam veterans have been talked about a long time. We just never have provided what they have needed, and hypertension is a huge issue.

The VA's testimony mentions new criteria to determine if associations are causal. Does that mean the VA is going to require causation to establish new presumptions?

Mr. BURKE. Thank you for that question. I am going to ask my colleague from VHA to assist with this response, and so I will refer this one to Dr. Hastings from VHA.

Chairman TESTER. You bet. Dr. Hastings.

Dr. HASTINGS. Sir, we are not looking at causal, but we are looking at a better scientific framework. And as Mr. Burke mentioned, pulling in those things that we know about from the claims, working the National Academy but with other organizations, to get the best science. Because when we look at the framework, it does need to have a focus on science, but we need more surveillance, we need more epidemiology, and more research.

So we are not looking at causation, but we are looking at criteria, that would be the Bradford Hill criteria, looking at the strength of an association, looking at the consistency, looking at the biological causability, a couple of other things, and looking at what we call equipoise, which is basically tie goes to the runner. If it is more likely than not, the benefit, the decision would go to the veteran. So that is what we are looking for, and have put together for the Secretary's consideration.

Chairman TESTER. Okay. Mr. Rowan, I would like you to respond. If the VA required causation, which I am told they are not, but if they did for Agent Orange presumptions, how would that have impacted Vietnam veterans? That is for you, John Rowan.

Mr. ROWAN. I think some of that could be very problematic, to be honest. I mean, we went through this whole thing originally with Vietnam veterans, with causation and all the rest of it, and they tried to pinpoint every dot on the map, where Agent Orange had been sprayed and everything else, and finally they gave it up and just said, "Listen, if you stepped foot in Vietnam you were exposed, and that is all there is to it."

So I think that that is the way a lot of this needs to be done, and that is what is going to happen to the newer veterans, at least with the burn pits and others. So to try to make a very specific causation on things I think just makes it harder and harder, and they always denied us for many years. I mean, we have had to jump through all kinds of scientific hoops.

Chairman TESTER. Yes. Thank you, John.

This is for each of the VSOs that are a part of this hearing, to ensure that you have your opportunity to express your toxic exposure priorities. So for each witness, what are the top one or two most pressing concerns for your members, right now, when it comes to changing the way VA handles toxic exposure? And we will start with you, Shane.

Mr. LIERMANN. Thank you, Chairman. I think the top two priorities for DAV and our members, specifically, would be start to look at burn pits and toxic exposures, as we mentioned, and S. 437. And another big priority for toxic exposures is Agent Orange. When we start looking at 810, adding hypertension as well as the bill to in-

clude veterans who served in Thailand as well, those are two huge priorities for DAV, burn pits and the Agent Orange bill that are currently pending.

Chairman TESTER. I appreciate that. Aleks?

Mr. MOROSKY. Mr. Chairman, our priorities are focused primarily on the post-9/11 generation and beyond. When we look at previous generations, like the Vietnam generation, we see that they have access to care without having to establish service-connected disability, they have a framework to establish presumption, they have a list of presumptions, and they have concession of exposure. Those are our priorities for the current era. We believe that we deserve parity with previous eras, sir.

Chairman TESTER. Thank you. Patrick Murray.

Mr. MURRAY. Thank you, Senator. The biggest thing that we need to address is actually getting these claims through and accepted and approved by VA. VA mentioned, in their testimony, that there is an assumption of denial. That is not correct. It is a reality. It is not an assumption. Over 70 percent of claims get denied. That is what we need to change. One hundred percent of our servicemembers are exposed. They need to stop denying claims at such a high rate.

Chairman TESTER. Thank you. John Rowan.

Mr. ROWAN. Yes, that's interesting, the access to care. I mean, one of the things that I think the COVID crisis has proven is when the VA started to give out the shots, they ended up doing such a great job, and I commend the Congress for enabling us to bring every veteran in to get a shot, as well as their spouse. Frankly, my wife and I have been hiding out now for over a year because of COVID, and it was really crazy that I went and got a shot a month and a half earlier than she did, because she had to deal with the regular system, and she lives with me. So that was not very helpful.

So I think access to care is very crucial, and it is a good thing we can build that into the system, and just bring all of the veterans in. I do not know we exclude people.

Chairman TESTER. Thanks, John. Candace Wheeler?

Ms. WHEELER. Yes. Thank you, Chairman Tester. We want to make certain that our veterans get the health care and benefits that they have earned, and that we continue to look to their survivors and their caregivers and make sure that we are giving them all the support necessary, and the benefits that they are eligible to receive.

What we are also concerned about is the amount of misdiagnosis that we see within the community. We want to see that treatment and care is delivered right away, because our veterans do not have the time on their hands. We are seeing more and more aggressive cancers that are taking lives very quickly. And so we ask that we really look at access to care, but timely access to care.

Chairman TESTER. Thanks, Candace. Senator Moran.

Senator MORAN. Mr. Chairman, thanks. Let me see if Senator Tillis needs to ask his questions before I do.

SENATOR THOM TILLIS

Senator TILLIS. That would be very kind of you. We are keeping count of those voting. For everybody watching this, we are in the middle of a vote.

Senator MORAN. [Presiding.] Senator Tillis is recognized.

Senator TILLIS. Thank you. Chair Tester and Chair Moran do an excellent job of getting these meetings right in the middle of a vote, so I apologize for the members who come back and forth.

Mr. Morosky, thank you so much for your leadership and hard work with the Wounded Warrior Project and the TEAM Coalition. I think it has been a great effort, and I appreciate everybody who is formally in the TEAM Coalition or others who have support the bill.

But I do want to go back to your testimony and highlight that key statistic. Approximately 750,000 current-era veterans who served in areas known for exposure are present ineligible for VA health care, and that list is growing. So this is a group of people who would be turned away and told to return, at this point, until they can prove that it is service connected. Is that correct?

Mr. MOROSKY. That is correct, sir.

Senator TILLIS. Do you believe that the TEAM Act fixes that and puts us on a better posture for current-era warriors?

Mr. MOROSKY. Absolutely, sir. You know, the TEAM Act would grant Priority Group 6 health care eligibility on a permanent basis to all veterans who served in areas of known exposure. Now right now, post-9/11 veterans have a 5-year eligibility, but any condition that manifests after that 5 years is over, they are turned away until they can establish a service-connected disability. We do not think that this should happen for a veteran that was exposed to toxic substances, and like you said, with 750,000 now sort of operating without a safety net, we think the TEAM Act provision for health care is absolutely a must-pass.

Senator TILLIS. Mr. Burke, I understand that right now the VA is not taking a specific position on the bills before us. Is that correct, pending the work that you are going to be doing?

Mr. BURKE. That is correct, sir. We believe that legislation at this point is premature, and does not give the Secretary the opportunity to implement his changes in the way that we approach these very sensitive matters.

Senator TILLIS. I, for one, think that it has been a long time coming, trying to get the framework. So right now I know that is not what you said but I will consider silence to be consent. We are going to continue to press forward and hopefully harmonize it with a best way to implement it. So I encourage the VA, as they are moving through it, to give us advice on some of the contours of the bills before us, but I think at the end of the day we know what we need to do, we have got a great framework, and the various titles in the TEAM Act, some of other bills before us that I do think are the puzzle pieces that need to come together. I would be happy to meet with you all outside of a committee hearing to hear any concerns, and keep track of your progress as you move forward.

For all the VSOs, just reading through your testimony, many of you are calling for a permanent framework to get some certainty, and after we have gotten the new information on toxic exposures,

we are getting additional data to try and create the links. That is what these legislative proposals are about.

Because we have so many witnesses, if I can get some yes-or-no questions related to some of the elements of the TEAM Act, just going around the horn. Do you support the framework that the TEAM Act establishes? We will start here in the chamber, and then move forward.

Mr. LIERMANN. Yes, Senator. DAV supports the TEAM Act and the framework.

Senator TILLIS. You better.

Mr. MOROSKY. We do, Senator. We thank you and Senator Hassan for introducing this bill.

Senator TILLIS. Thank you, Mr. Morosky. I do not have the list of virtual attendees before me. If you all can chime in and just say whether or not you have taken a former position on the TEAM Act provisions.

Ms. WHEELER. Senator Tillis, this is TAPS. It is Candace with TAPS. And having worked really closely with you we absolutely support the TEAM Act.

Senator TILLIS. Thank you.

Mr. MURRAY. Yes, Patrick Murray. The VFW strongly supports the framework reinstatement of the TEAM Act.

Senator TILLIS. We should have at least two others, perhaps three virtually? I do not have the list.

Mr. ROWAN. John Rowan from VVA. We support the general concepts. We like the idea of merging them with the other bills. One thing in particular about the War Fighters Act is setting the specific timelines for getting the VA to do things.

Senator TILLIS. I guess the last question I will have—and again, thank you, Ranking Member Moran, for letting me ask the questions—you know, it would seem to me where the VA wants to go, at least with the way we have structured the elements of the TEAM Act, it is where the TEAM Act wants to go as well. So do you all support—I have got a list now—do you all support the whole framework that we are trying to establish for addressing these criteria?

And we will just go down the list here, with Shane and Aleks, and then we'll move to Patrick, John, and Candace. Just yes or no, framework make sense? Need any changing?

Mr. LIERMANN. We believe it does make sense, because without the framework we would be in the position that we were with the five different disabilities for Agent Orange exposure.

Senator TILLIS. Right.

Mr. LIERMANN. So having that framework established now, and time requirements, absolutely is a must.

Senator TILLIS. Thank you. Aleks?

Mr. MOROSKY. Sir, the framework is absolutely necessary. We support it 100 percent.

Senator TILLIS. Patrick?

Mr. MURRAY. It is necessary so we do not need to come back every couple of years with new veterans who are sick and need care immediately.

Senator TILLIS. John?

Mr. ROWAN. Yes, sir, I agree.

Senator TILLIS. Candace?

Ms. WHEELER. Yes, we are actually in support of that, and we believe we need a framework to protect our veterans and their survivors.

Senator TILLIS. Well, thank you all again, Aleks and all the members of the TEAM Coalition. I would really encourage the VA, as you are moving forward, it may be helpful to take a look at some of the bills before us and have them be instructive in a way that—I know that you all are looking at operational—you have got to create an operational framework that makes sense within the complexities of the VA. But I think you would be well served to let those absolutely guide some of the boundaries, the contours of whatever you would recommend.

Mr. BURKE. Senator, if I could, you have our commitment that we will continue to work with Congress, moving forward, without a doubt.

Senator TILLIS. Thank you. Thank you all. Thanks to all the VSOs for the awesome work you do.

Senator MORAN. Senator Tillis, thank you for your questions and thank you for your leadership on this particular piece of legislation, but generally in this Committee.

Senator Hassan, your colleague on this topic.

SENATOR MARGARET WOOD HASSAN

Senator HASSAN. Well, thank you very much, Ranking Member Moran, and I want to thank you and the Chair for this hearing. I want to thank all of the witnesses, both here and virtually, for your testimony and for your service.

I really just want to echo what Senator Tillis has been saying about the TEAM Act. I was proud and honored to be able to join him in introducing the TEAM Act earlier this year, and I just want to emphasize, again, the VA, we have so many veterans who were exposed to toxic substances, lasting detrimental impacts upon their health. They really need to be able to get treatment, and they need to have the certainty, and we need this framework. So I would look forward to being part of the group that works with you on this bipartisan bill.

I also just want to drill down on one aspect of the bill. The TEAM Act would also, in addition to all the other things that we talked about, require the VA to develop a questionnaire to be used in primary care appointments to help physicians determine whether a veteran was exposed to toxic substances during their service.

So, Mr. Burke, can you please speak to how a questionnaire would provide targeted data from veterans that could lead to further research, health care, disability benefits for veterans exposed to toxins, and would the VA consider just doing this, even without the bill?

Mr. BURKE. Thank you, Senator, for that question and the comments, and again, you have our reassurance that we will continue to work with Congress, moving forward.

I am going to ask Dr. Hastings to speak about that specifically, but one of the things that I will say, it is of utmost importance that I stress and impart our commitment to addressing these toxic exposures. This is a critical and important issue for the Secretary, but

I have to stress that he is determined to do it right, and that will be done collaboratively.

Senator HASSAN. Right.

Mr. BURKE. But I will refer your specific question about the questionnaire to Dr. Hastings. Thank you.

Senator HASSAN. Thank you. Dr. Hastings?

Dr. HASTINGS. Ma'am, we have been working with DoD in the Deployment Health Working Group and also with VBA on what is called the SHPE, the Separation Health Physical Exam, and at the time that a person leaves service they have the option of a medical exam, and most people opt into that. And we are including exposures in that, because we do recognize that that is critically important, and want to document it as soon as possible.

We also have training that we give for the VA physicians that is available online, and I would be happy to share that with you.

Senator HASSAN. That would be helpful. We will reach out to do that, because, obviously, collecting this information—I think we are all in agreement, it sounds like, that collecting this information is critical, moving forward.

The other thing I will just add is I appreciate the Secretary wanting to do this right, all of you wanting to do it right. I will say our job is to think about it from the veterans' perspective, from the patient's perspective, and to push the institution to do what it needs to do. So we will keep doing that, because that is really who should be at the center of this discussion.

Mr. Burke, I wanted to talk to you a little bit about the 2020 report by the VA Office of the Inspector General, which found there were widespread and severe staffing shortages in many occupations at VA health facilities. To help address this issue, I joined Senator Braun in introducing legislation that would help veterans with a health care background gain employment at the VHA. The Hire Veteran Health Heroes Act directs the VA to recruit and hire Department of Defense medical department personnel who are transitioning out of military service for open positions at the VA, by referring them to the appropriate hiring authority.

So can you please speak to the number of open jobs in the medical field at the VA has, and how referring medical personnel who are leaving military service to the VA might help with recruitment?

Mr. BURKE. Yes, ma'am. Thank you for your interest in this and your question. I am going to again defer to my colleague from VHA, on this as well. So, Dr. Hastings.

Senator HASSAN. Thank you.

Dr. HASTINGS. Coming from DoD, one of the things that is great is we sort of know how the Veterans system, how the VA system will work and being Veterans, we are committed to other Veterans.

We do the targeted outreach at the time that we know that people are getting within 1 year of their departure from service. The change in this bill will have a recruiter there. I do not know that that will be necessary, but certainly getting people from the DoD at the time they are leaving for DoD is an excellent idea.

Senator HASSAN. Thank you. I have one more question that I will submit to Mr. Murray for the record, but I just wanted to note that I am a co-sponsor of the VET OPP Act, and I would look forward to additional commentary from Mr. Murray on how veterans would

benefit from stronger institutional emphasis on employment and education benefits within the VA, and I will submit that for the record. Thank you.

Senator MORAN. Senator Hassan, thank you. Ms. Wheeler, I want to thank you and TAPS for their ongoing advocacy and engagement with this Committee to advance important measures that are beneficial to surviving families. It was an honor for me to introduce the Colonel John McHugh Tuition Fairness for Survivors Act, and I thank Chairman Tester for joining me in that introduction. It would extend the in-State tuition requirement to recipients of dependent education assistance to align with all other VA education programs.

My question is, would you explain for the Committee, in a little bit more depth, how this change will positively impact survivors nationwide, and why this is common-sense parity change to align with other VA educational benefits.

Ms. WHEELER. Thank you, Senator, for the question. We greatly appreciate it.

As a military family, we have moved every two to 3 years, sometimes even after a 10-month assignment. And our veterans' families, and ultimately our surviving families, may not consider home where they are currently living, or they may not have ever lived in their veteran's home of record.

Extending in-State tuition to recipients choosing dependence education assistance, under Chapter 35, will provide these survivors nationwide with more flexibility and school choice. It also ensures these benefits go further, since Chapter 35 pays less in tuition assistance. Those receiving the Fry scholarship and post-9/11 GI Bill are already eligible for automatic in-State tuition, but our Chapter 35 recipients are excluded from previous bills. And your bill rightfully addresses this inequity and will bring parity to these surviving families, and we thank you.

Senator MORAN. Thank you for that explanation. I am going to turn now to toxic exposure, and let me start with you, Mr. Burke. Rather than provide feedback on the legislation before this Committee pertaining to toxic exposure, you have laid out the VA's regulatory plan. Your testimony lays out the VA's regulatory plan to provide health care and benefits for veterans exposed to toxic substances during their service.

A bit concerns me, because although you have the authority to grant benefits to this group through regulatory action, the VA has continued to drag its feet when it comes to taking action. Some of the toxic exposure bills on today's agenda are proposals driving by the VA's lack of action. The TEAM Act mandates a path forward for the VA, similar to what you outlined today, yet you came—well, let me say it this way—you declined to provide views on that legislation.

Am I to assume that it is your testimony today that the Department has the statutory authority to grant benefits to this class of veterans, including the enrollment of VHA Priority Group 6?

Mr. BURKE. Senator, thank you for that question. If I could be very clear, there is a big difference between direct service connection and presumption of service connection. We are encouraging veterans to file claims, because we are deciding claims on a direct

basis. And so any veteran that has a claim that they believe is a disability as a result of exposure to toxins, burn pits, et cetera, we are asking them—we are encouraging them to file a claim.

Those claims are reviewed not on a presumptive basis but on a direct basis, which means the evidentiary record for each claim is reviewed, and service connection can be granted. So we do have the authority, and we do exercise that authority to decide claims, not on a presumptive basis but on a direct service connection, and that is ongoing.

Senator MORAN. Well, let me ask—explain to me why you did not provide commentary on the bills that are being considered by the Committee today.

Mr. BURKE. Great question, sir, and I appreciate that. I will say that in the absence of giving a position, we do believe it is premature to legislate these very important issues. Primarily, our Secretary has directed us, and we believe in this direction, to look at this in a different way, a way that would be faster for veterans, one that would include more data analysis, one that would utilize not only existing partnerships but create new ones. And he has a sense of urgency. This is not something that the Secretary has an interest in delaying. But it is imperative that we do this right.

And again, I spoke earlier in this hearing about our I CARE values. We are committed to veterans. We are advocates for veterans, and we respect their service. And so I believe the Secretary's vision is going to serve us well. It is going to have us look at things, you know, differently than in the past. It is going to include things that we have looked at before, but include opening the aperture on the amount of data and analysis that we use to make these very important decisions.

Senator MORAN. So this may not be the way you would say it, but this is the way I take what you are telling me now, is there are not bills that the Committee is considering today that VA—and I will help you in your answer by saying there is no bill in this Committee's agenda in regard to toxic exposure that currently the Department of Veterans Affairs supports?

Mr. BURKE. There are no bills with respect to toxic exposures that we have a position on, sir.

Senator MORAN. Have you reviewed the bills sufficiently to reach a conclusion whether there are things in there that are of value for us to know?

Mr. BURKE. Sir, our commitment to working with Congress is sound. There is, in each of these bills, there is goodness in each of these. But this needs to be more of a holistic approach. Our position of implementing the Secretary's vision should not be seen or taken as our lack of value for what is in these proposals. I think it needs a more holistic review, and I believe the Secretary's vision, how he has charged us to look at this, and who he has charged us to collaborate with, will get us to that picture.

Senator MORAN. Mr. Burke, I hope you understand that I am not in any way trying to attempt to cause you to say something that you do not want to say. In fact, I wanted you to have the opportunity to explain the reason that you have not taken positions on these bills.

Mr. BURKE. Understood, sir. Thank you.

Senator MORAN. Let me ask Mr. Morosky, you noted in your testimony, and several other witnesses did as well, the importance of health care eligibility for veterans affected by toxic exposure. Can you speak to the critical nature of making certain that veterans have access to preventive care and the opportunities for early diagnosis of any toxic exposure related to health effects?

Mr. MOROSKY. Yes, Senator. Thank you for that question. You know, certainly any veteran that is already sick and has been exposed to toxic substances should have access to VA health care, but even those who were exposed and are not sick yet should have access to preventative care. You know, we find that when a veteran becomes so ill that a cancer or another serious illness is diagnosed in the emergency room, the prognosis is much worse than when it is caught in routine tests, and so forth. So we think that preventative care is very important for veterans' health outcomes.

Senator MORAN. Thank you very much for that answer, and I now turn to Senator Blackburn.

SENATOR MARSHA BLACKBURN

Senator BLACKBURN. Thank you, Mr. Chairman. I appreciate that, and I appreciate the attention that has been given to toxic exposure. At Fort Campbell, we have the K2 veterans, and those that served there, and, of course, the Burn Pit Registry is something that we have worked on, and we continue to make that a priority.

I want to talk just a little bit with you all about various IT programs that have really led to delays in delivering critical projects, including initial implementation of the Forever GI Bill, a 2-year delay of the Caregivers Program expansion, and there have been some advancement, but whether it is procurement, whether it is delivery of service, whether it is wait times, whether it is getting the IT right, which, by the way, VA spends \$4 billion a year on this, and just cannot seem to get these systems implemented, which is incredibly frustration.

You know, the VA Technology Reform Act is something that we are pushing. Mr. Burke, I think I am hearing for you that you all do not support this—you have no position on it, or do not support. So you mentioned, in your written testimony, that you did not support the VA Information Technology Reform Act—I will say it that way—and you laid out several concerns with the language of the bill, most notably within proposed Section 8175, Information Technology, and I am quoting you, “Information technology matters to be included in budget justification materials for the Department.”

So does the VA believe it is unnecessary for Congress to have a report on resources spent on the project to date, planning expenditures for the upcoming fiscal year, scheduled completion date, any known deviations from schedule to date, and what the IT project will deliver for veterans?

Mr. BURKE. So, Senator, thank you for that question. Joining today, virtually, this panel, is a member of VA's Office of Information and Technology, and I will defer that question to him to respond.

Mr. BRUBAKER. Yes, ma'am. This is Paul Brubaker with the Office of Information and Technology. While we do not support the language in its current form, we do agree with some of the objec-

tives here, which is really about shoring up our program for IT investment management. We do believe that you should receive reports, but they should be insightful and substantive and really focus on cost schedule and, most importantly, the performance impacts of the investments we make as an organization.

We have undertaken, over the course of the last year, a pretty aggressive move toward implementing a number of provisions in existing law, regulation, and policy, designed to get at exactly that—accountability, transparency, traceability, and report to Congress as well as ONB—

Senator BLACKBURN. Okay, let me ask you this. You are talking around my question. What kind of completion date, where are you on scheduling a completion date? When are you looking at implementing? And tell me how long you have been over there, at the IT Department?

Mr. BRUBAKER. Well, ma'am, I have been within the Office of Information and Technology for about a year and a half, all in total service. I spent a little time over at the Department of Energy and then came back—

Senator BLACKBURN. Okay. What is the scheduled completion date for the project, for the implementation?

Mr. BRUBAKER. Well, the CARMA project that you cited, ma'am, was completed last fall, and it was successfully deployed. The issue with any delays that you might have in processing those applications is not related to the technology. In fact, we have had a record number of applications as we modernize the CARMA program. So the technology itself is successful, but what we need to do is ensure that as a Department we are taking a much more holistic view of the people, processes, and technologies that have to come together to deliver outcomes for our Nation's veterans, and we are doing that as part of our—

Senator BLACKBURN. So is it lack of training—not to interrupt you, I know it is more difficult to do when you are not here in person. So is it lack of training by personnel at the VA, or is it lack of desire to use this system?

Mr. BRUBAKER. Well, ma'am, I think it is structural. I think it is related to the framework that we have in place and have not had in place in the past for managing our IT investments. We are required by OMB Regulation A-130 and A-11 to construct business cases around programs and projects that we ask for funding for, and in the past we have not been as rigorous and disciplined as we needed to be in order to ensure both Congress and the administration that we are focusing our investment strategy on moving the needle on improvements, on measurable improvements to mission and operational performance.

The investment management framework that we are putting in place, and that we would welcome the Committee's collaboration with, is designed to make much more informative IT investment and management decisions, No. 1, and No. 2, ensure that you can track the effectiveness of those over a period of time.

We think that we have got an alternative reporting structure that we would love to talk to you and your staff about, and we would look forward to working with you on improving some of the language that would leverage some of the existing model regulation

policy that applies, but also shoring up some deficiencies that we see, that we think will achieve the objectives that you have.

Senator BLACKBURN. I would appreciate that conversation, because as we look at DoD systemwide, we should have as a goal to begin a record, a medical record, for everyone, the day they enlist, and have this follow them throughout their career, and into their time as a veteran, and they should be appropriately honored and cared for during that time. And we have talked about those that have been adversely impacted by the toxic exposures.

It would be so helpful—we work with so many veterans—it would be so helpful if all that information was in one place, and there was ready access to that information. It would be better for them. It would be better for you all. They would get care more quickly and in a more timely manner.

So I think each of us on this Committee are tired of hearing excuses of we cannot do this because of that, and we cannot meet this deadline because this other deadline did not get met. And so my hope is that we will indeed see some improvement before the next time that you all join us. So thank you.

I yield back, Mr. Chairman.

Senator MORAN. Senator Blackburn, thank you, although you have nothing to yield back. Senator Brown?

SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Thanks, Senator Moran, to you and Senator Tester, thank you for holding this hearing. I have worked with both of you on toxic exposures over the years. I was heartened to learn of Secretary McDonough's end-of-year, end-to-end review. It is time that we start delivering benefits for veterans.

Mr. Burke, I would like to ask you a question, understanding what you said of wanting to look at this in a holistic way.

Two weeks ago, Senator Portman and I, my Republican colleague, bipartisan, from Ohio, introduced the SFC Heath Robinson Burn Pit Transparency Act on what would have been Heath's 40th birthday. I have a short Statement from Senator Portman, Senator Moran, that I would like to include in the record, if I could.

[No response.]

Senator BROWN. I guess that means yes. Doing this remote.

Heath was twice named Noncommissioned Officer of the Year by the Ohio Army National Guard. He was deployed to Iraq. He was exposed to so many toxic burn pits. He was later diagnosed with Stage IV cancer. Last year he died. Our bill would require VA to report how many veterans report burn pit exposure, how many make disability claims, what the outcome of those claims are, a comprehensive list of conditions reported by burn pit-exposed veterans. It seems that part of your VA review would do the same thing.

So, Mr. Burke, again understanding your reluctance now and your desire for something holistic, I want to just pose a question. We hope that the information will help to make a connection between the illnesses and burn pit exposure so veterans can get additional benefits. Do you think VA will make a similar correlation after your review?

Mr. BURKE. Senator, thank you for that question. I do believe that our holistic approach will lead us to some resolutions such as what you mentioned. I will also defer to my colleague from VHA, Dr. Hastings, to see if she has any input there. But the real goal of the end-to-end review is to take a look at everything that we are doing with respect to this approach to toxic exposures, to include looking at our internal processes. But I do believe the conclusions that you referenced are what we are hoping a holistic review will accomplish for us. But Dr. Hastings, if you had anything you can add.

Senator BROWN. But before, if I could, Mr. Burke, Dr. Hastings, before you answer that let me throw in sort of a side question for you to put together. Is DoD providing its environmental health site assessments to you, and what additional data would you need to make a determination about what chemicals were airborne? So answer that sort of together, if you would.

Dr. HASTINGS. Yes, Senator Brown. We have the Deployment Health Working Group, and we will be meeting with them, in fact, Thursday. We meet once a month. We share information back and forth. DoD is very open. They have given us the POEMS, the Periodic Environmental Monitoring Surveys, the POEMS. Those are going into what is called ILER, the Individual Longitudinal Exposure Record, which does create an exposure record for a soldier, for an airman, a marine, a servicemember, at the time they enter service, and follows them across to the VA when they do terminate service, either at retirement or electively earlier. But yes, DoD shares that with us.

I would like to note that with the National Academy report, some of that did not make sense to us, so Dr. Stone and the Secretary asked us to do a relook at some of the data, using good science, as well as claims data. And we have gone forward. We have put together a report that has gone to the Secretary that does have some findings that we have used with the VA. Our epidemiologic research, a lot of that comes from my office. And I think we will have better answers with the new framework that the Secretary is putting together.

Senator BROWN. Thank you, Dr. Hastings. Let me follow that. How is VA ensuring, Dr. Hastings, that community practitioners are trained and held to the same standard, the same high standard, as VHA professionals?

Dr. HASTINGS. You are absolutely correct. you know, they do not train physicians, nurse practitioners, and PAs in school to look at environmental exposures, in general, or military environmental exposures, toxic exposures. And we have a very robust training program in VA. There are some things that VA does very well. We take care of amputations. We take care of trauma. We are really good at PTSD. We are also good at military environmental exposures.

We want to help the community physicians. We do have the training that is available to the VA physicians and nurse practitioners and PAs available to civilians on a platform called TRAIN. We get information out to the field. We work through the Community Care office to get that out to the field. I would be very happy to share that training with you so you can take a look at it.

Senator BROWN. Thank you. And I want to also hear—Dr. Hastings, thank you for that answer—I know the VA is outstanding at those and a number of other things, but I want to hear especially how you are going to reach out. I know you can do the training and the right kind of instruction to community health providers, but whether you can reach them, and how you do that, how you sort of pre-empt that is just really important. So Anna Gokaldas on my staff, and Drew Martineau, will be reaching out to you. But thank you so much.

Dr. HASTINGS. Absolutely.

Senator BROWN. Senator Moran, thank you for allowing me 40 extra seconds.

Senator MORAN. You were the best-behaved member of the Committee today, Senator Brown.

Senator BROWN. And, if I could add, that Senator Moran, I just found out today, has had his first two grandchildren during the pandemic. So that is pretty cool.

Senator MORAN. It is the only two grandchildren we had during the pandemic. Sherrod, thanks.

Let me make sure there is no other member of the Committee that is online. I do not believe that is the case. Is anybody on that I did not recognize?

In the absence of Senator Tester's return, and before I go vote, I have got a couple more questions that I would like to ask them. This is for Mr. Murray, Mr. Rowan, and Mr. Liermann. I know your three organizations have been long in their strong support for the creation of a fourth administration at the VA, which would lift up all the economic empowerment services such as education, employment services, transition assistance, home loans, voc rehab, those kinds of programs, out from under the VBA and into its own administration, which would presumably allow the rest of VBA to focus on claims processing and the backlog.

Let me ask each of you if you would expound on why you think that this realignment and changes are important to occur, why you believe that creating this new administration would benefit veterans and improve their economic stability, and what would you say to individuals who argue that it would just create another level of bureaucracy at the Department, and how would you refute the VA's pushback on this legislation, that these programs are already running smoothly and, therefore, do not need their own administration? Mr. Murray, Mr. Rowan, and Mr. Liermann.

Mr. MURRAY. Thank you, Senator, for bringing up this important subject. A fourth administration we believe has been needed for years. The programs you described—GI Bill, home loans, VR&E—have had a series of problems over the past few years, and so to say that they are running smoothly I do not believe is totally accurate, in a defense of that. Two years ago, student veterans went bust without any kind of payment because of an IT resource issue.

Right now, in this hearing, we are asking VBA to take on a huge undertaking with this toxic exposure effort that we are trying to pass through. We think allowing them to separate and focus on this, and allow GI Bill and VR&E and home loans, all the other great economic benefits to grow and thrive is what is best for everybody involved.

Senator MORAN. Thank you. The others?

Mr. LIERMANN. Yes, Senator Moran. Thank you. DAV does support it, and we believe that it is going to be lopsided either way you look at it. A few years ago there was definitely some serious issues within education and voc rehab. A few years ago, they started pouring more and more resources into that. Now we have a backlog of cases and some other issues within VBA.

So our concern is, when you are trying to split your priorities on two major groups, issues and benefits, it is always going to be lopsided, and you are never going to have it even. By elevating economic opportunities to a separate department, you are advancing those issues, and, at the same time, you are allowing VBA to focus on what VBA does well—rate claims and give veterans benefits.

So we believe, yes, they should be separate, and that is why.

Senator MORAN. Mr. Rowan?

Mr. ROWAN. Yes, Senator, this is John Rowan from VVA. Yes, we have always been in support of this bill, this idea of a fourth administration. We found it was always getting short-shrift on employment issues, work-study programs, all of those things.

I also think it is interesting to look at these younger veterans today. They are very much business oriented, they are very much more entrepreneurs, perhaps because they are so tech oriented, which leads to a whole different way of doing business today. And they need all the help and assistance they can get, and to get lost into the VBA has been a problem forever, and we wholeheartedly support this, and have for many years.

Senator MORAN. Thank you very much. The Chairman is en route.

Mr. Burke, your testimony is that VA opposes S. 89, citing that the VA should not require an additional medical opinion in the case of an individual whose death certificate States the cause of death being as a result of COVID-19, despite the fact that veterans could have had an underlying health issue due to service-connected disabilities, which we now know makes this population more susceptible to succumbing to the effects of COVID-19.

In your testimony, you said, quote, “The VA issued a specific reminder to claims processors on April 23, 2020, regarding the processing of service-connected death claims. There have been many COVID-specific changes that Congress has passed that have been narrowly tailored to respond to the adverse impacts that we have seen of COVID-19. This bill is another example of that.”

Would you agree that an unprecedented pandemic like we have seen that there is a possibility that without this legislative change veterans’ surviving families would not receive the same benefit they would have received if they had died as a result of their underlying service-connected disability, had COVID never been a factor? Expand upon your analysis or explanation of the value of S.89.

Mr. BURKE. Senator, first let me congratulate you on your two grandchildren. I also had my first and only two grandchildren during the pandemic as well.

Senator MORAN. I am pleased to share that with you. Congratulations to you.

Mr. BURKE. Thank you. Thank you, sir.

With respect to S.89, we believe, through 38 CFR, that we already have sound guidance and principles in processing these very important claims. Specifically, we issued guidance at the beginning of the COVID-19 pandemic, reminding our claims processors of the policies and procedures relative to utilizing the information on the death certificate to process these claims.

In fact, since COVID, we have conducted a special focus review, and that focus review shows that we are compliant with the policies and procedures in excess of 95 percent of the cases that we have sampled. We do not believe that this legislation is necessary because of the parameters of 38 CFR that we apply to processing these cases.

In fact, the clear instructions sent to our field claims processors reminded them that on the death certificate, as somebody alluded to in their prior testimony, there is space for both the principal and contributory cause of death. And so when a death certificate comes in, I will use an example of a veteran that has service connection for a foot condition, but COVID listed on the death certificate. Our claims processors will look at the information on the death certificate and also a review of the evidentiary record, and in a case such as that, a medical opinion would not be beneficial. In fact, from the fiscal steward perspective, requesting medical opinions on every claim is not only financially unsound but would also add to the claims inventory unnecessarily.

And so we believe that we are following sound practices. Our special focus review validated that, and it is something that we treat with a high level of importance and continue to monitor.

Senator MORAN. Thank you for that answer, Mr. Burke, and again, congratulations with the grandchildren.

Mr. BURKE. Thank you, sir. Same to you.

Chairman TESTER. [Presiding.] Senator Boozman?

SENATOR JOHN BOOZMAN

Senator BOOZMAN. Thank you, Mr. Chairman, and thank you, Senator Moran, for this hearing on pending legislation before the Committee. These bills are wide-ranging, covering toxic exposures of different generations, veterans' benefits, and support to veterans' spouses. I am grateful for the bipartisan work on this Committee. We must continue to honor those who have sacrificed so much for our country. I would like to say thank you to our panel for participating today and all the great work you do in support of our veterans.

I want to thank the Military Veterans Advocacy and other VSOs on this panel for support of S.657, which supports veterans who were exposed to toxic herbicide agents while serving in Thailand during the Vietnam War.

I also want to highlight and thank an Arkansas native, Sharri Briley for her Statement in support of Senate Bill 976, Caring for Survivors Act of 2021. Sharri's husband, Chief Warrant Officer Donovan Briley, paid the ultimate sacrifice in 1993, as a Black Hawk helicopter pilot supporting Special Forces in Mogadishu, Somalia. The events of that tragic day were depicted in the film, "Black Hawk Down."

The film actually showed the moment that Chief Warrant Officer Briley attempted to call Sharri before the mission. She was not there to pick up the phone, and he never got to say goodbye that day. This Committee must work to honor Sharri's sacrifice and ensure they are supported. Mr. Chairman and Senator Moran, thank you for your leadership on this issue, and I look forward to working to get this bill passed.

Mr. Morosky, WWP, in your testimony you mentioned that the Dependency and Indemnity Compensation, the DIC program, has been historically resistant to modernization, and excludes benefits to certain survivors of veterans. Can you expand on some of the existing challenges with the DIC program and how the Caring for Survivors Act would improve benefits for the families of fallen veterans like Sharri Briley?

Mr. MOROSKY. Yes, Senator. Thank you for that question. And, you know, resistant to modernization, I think to put that another way, just needs an update. It has been too long, and the Caring for Survivors Act would do just that. You know, No. 1, under no circumstances should DIC payments be at a lower rate than other Federal survivor benefits. They need parity with that.

And as far as the 10-year rule that it addresses, 10 years is a long time for a veteran to be permanently and totally disabled before their spouse qualifies for full DIC benefits, probably too long. Five years is a long time too, but it is not as long, and so we support switching from the 10-year to the 5-year rule, and we strongly support this bill.

Senator BOOZMAN. Thank you very much. Mr. Murray of the VFW, your organization has continually been supportive of legislation that would include veterans who served in Thailand with the same presumption of service connection for exposure to toxic herbicides. Can you briefly explain why the current law does not make sense and why it is important that S.B. 657 be passed?

Mr. MURRAY. Thank you, Senator Boozman, for your leadership on this issue. The current set of standards for those veterans exposed is expecting that Agent Orange is, for some reason, going to follow arbitrary lines on a map. The veterans who were in one part of the base using Agent Orange are potentially covered, but veterans who were standing ten feet away from them, or the chow hall, or wherever it might be, are not. As we learned in Vietnam, Agent Orange is so pervasive. It gets in the water. It gets in the soil. It gets in the air. It is everywhere, and we cannot keep asking a chemical that we have no control of to not expose people, because we did not draw the lines on a map the way that we wanted it to.

Senator BOOZMAN. Very good. Again, thanks to the panel, and thank you, Chairman Tester.

Chairman TESTER. Thank you, Senator Boozman. Senator Sinema?

SENATOR KYRSTEN SINEMA

Senator SINEMA. Thank you, Chairman Tester and Ranking Member Moran, for organizing this important hearing, and thank you to our witnesses for participating today and for your continued efforts to support veterans and their families.

I reintroduced the Ensuring Survivor Benefits During COVID Act with Senator Tillis because of continued calls from veteran-serving organizations and survivors, expressing concerns that survivors of veterans who die from COVID-19 may not be granted their survivor benefit if the death certificate does not list that service-connected disability as a contributing cause.

My Arizona case work team is working on a case right now to help a surviving spouse in this situation. In February 2021, our office was contacted by a representative from a local VSO, requesting assistance for a surviving military spouse whose husband passed away after contracting COVID-19. The constituent's husband served in Vietnam and was a 100 percent service-connected disabled veteran. Her husband was suffering from cancer related to his Agent Orange exposure, and sadly he passed after being hospitalized for COVID.

The constituent was informed by a service officer that she would not be eligible for survivor benefits because her husband's death certificate did not state that the cause of death was related to his service-connected disability. She was obviously extremely disappointed, and expressed to our office that being denied her survivor benefit added a great amount of stress to her life, so soon after losing her spouse. Our office coordinated with the local VSO office and we ensured that the constituent did have assistance applying for her survivor benefit.

After submitting her application, we then followed up with the VA's Pension Management Center and conveyed her request that her late spouse's medical history and service connection be taken into consideration when determining her eligibility for survivor benefits. Her application is currently being processed.

If our bill is signed into law, this spouse, and other survivors like her, would have more certainty in the process as the claim is adjudicated. The VA maintains that they have enough guidance to ensure that survivors are not overlooked, but the VA has not offered any data to back up that statement. When we asked for that analysis, the VA told us that they cannot track survivor claims related to COVID-19 deaths because the IT system is not set up for this kind of analysis. That is not an acceptable answer.

So my first question is for Mr. Burke. I spoke with Secretary McDonough in March, emphasizing the importance that the VA back its opinion that survivors are not being denied benefits with data. We are still waiting for a briefing on the outcome of the VA's special focus review of COVID-19 claims to understand whether this review can provide data to back up the VA's assumption. It is tentatively scheduled for next week. Have you reviewed the findings from the special focus review?

Mr. BURKE. Senator, yes, ma'am, I have, and, in fact, I know that we are scheduled for the briefing with you and your staff next week, but I have, in fact, reviewed those results.

Senator SINEMA. And based on that review, is the VA able to conclusively rule out that there are no barriers to survivors applying for DIC benefits in cases where the veteran has died of COVID-19 and the death certificate only states COVID-19 as the cause of death?

Mr. BURKE. Ma'am, based on the review of the cases and the analysis that I received and what we are prepared to share with you and your staff next week, it shows a 95-plus percent compliance rate with the 38 CFR provisions and the refresher materials that we provided to our claims processors. Based on that review, I would say I am confident, highly confident, in the accuracy of the claims processing.

With respect to the overall impact and angst caused by COVID-19, certainly this and other areas are ones where I would say continued outreach and partnership are in order. I am happy to have the conversation with you and your staff next week, ma'am, and see where we need to go from there. But the reviews were hopefully something that you will find helpful as well, next week.

Senator SINEMA. I appreciate that, Mr. Burke, and I look forward to that briefing. I also look forward to determining how we can resolve cases like my constituent's, if indeed those are aberrations from the standard practice.

I want to thank each of the VSOs on the panel for supporting S.89, and I would like to give you a little more opportunity to talk about why it is so important to pass this legislation. So, Ms. Wheeler, TAPS has been a great partner since we introduced this legislation last Congress. Can you tell me what you have seen and heard from survivors in this situation and how this legislation will help?

Ms. WHEELER. Yes, thank you very much for the question and for introducing this legislation for us. What we are hearing, first of all, is if a veteran's death certificate States COVID-19, as you Stated, and does not take into account their service-connected injury or illness, these surviving families must prove service connection before receiving benefits. And what we are hearing is that the VA's current practice is to have a second processor review each case before a decision is made.

But this is not being done every single time. We are hearing from survivors that processing errors are occurring. In addition, the second processor review is creating a longer wait time for these families. For example, the Hickock family is the first National Guard family to have lost a guardsman after his exposure to COVID-19. He had an underlying heart condition that was in the process of being service connected by the VA. It has been over a year since his death, and his family is still waiting for benefits as late as this month.

TAPS wants to see this regulation codified in law to protect surviving families like the Hickocks, in perpetuity, and we fully support this legislation, and we thank you.

Senator SINEMA. Thanks. Mr. Chairman, I would love to hear from the other VSOs but I see that my time has expired, so I will have my team followup with them individually after the hearing. Thank you so much.

Chairman TESTER. Yes, thank you, Senator Sinema. Senator Sanders?

[No response.]

Chairman TESTER. Okay. I have a couple of questions here. These are for you, Mr. Burke. VA testimony speaks to authorities and requirements under the Agent Orange Act of 1991, that has

expired, including the requirement to respond to National Academies reports with a decision to create or defer new presumptions.

The testimony goes on further to say that this is an opportunity to create a new, comprehensive, modernized decisionmaking model for determining presumptions based on environmental exposures. I am encouraged by this position, which is a significant change from past Statements, and look forward to seeing this proposed model.

So, Mr. Burke, as the VA is developing this model, which sounds to be in line with many legislative efforts before the Committee, do you expect it will need new legal authorities to replace the expired portions of old laws?

Mr. BURKE. Senator, thank you. I think it is too early for me to weigh in on that. Again, I think with a holistic approach it is going to be literally the Secretary driving us to turn over every stone possible in assessing this entire process. I think it is premature for me to weigh in whether it is a yes or not. But those are the things that will be uncovered during this end-to-end review and the full approach driven by the Secretary.

Chairman TESTER. Okay. Does the VA see where any of the legislation currently before the Committee can help achieve those goals, or is it too early in the process for that?

Mr. BURKE. So with respect to the bills on toxic exposure, our position is it is premature to legislate. That being said, there is goodness in each of these bills. Our lack of a position, yea or nay, should not be taken, sir, with all due respect, as us not seeing value in the proposals.

Chairman TESTER. Okay. Thank you.

If there are no more questions I think we will close this out. The record will remain open until next Wednesday. I would ask if questions are asked to any of the witnesses that they respond as quickly as you possibly can.

We have a lot of hearings in this Committee. I do not know that there is going to be any more important than this one, so I very much appreciate everybody who testified.

I also want to give a special thank-you to the VA for allowing us to have one panel here. It is very, very important, and I think it allows for a better exchange, quite frankly. So I want to thank you for that.

With that, this hearing is adjourned.

[Whereupon, at 4:43 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

WITNESSES PREPARED STATEMENTS

**STATEMENT OF
RONALD BURKE
DEPUTY UNDER SECRETARY FOR POLICY AND OVERSIGHT
VETERANS BENEFITS ADMINISTRATION (VBA)
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS**

April 28, 2021

Good Morning, Mr. Chairman, Ranking Member Moran and Members of the Committee. I appreciate the opportunity to appear before you today to discuss pending legislation, including bills pertaining to disability compensation, health care, education, transition assistance and other benefits. Accompanying me today are Beth Murphy, Executive Director for Compensation Service; Dr. Patricia R. Hastings, Chief Consultant for Post Deployment Health Services; and Paul Brubaker, Deputy Chief Information Officer for Account Management, Office of Information Technology

In the opening statement of his confirmation hearing, Secretary McDonough made it clear that VA will provide Veterans with timely world-class health care and ensure Veterans and their families have timely access to their benefits. It is clear by the number of toxic exposure bills before us today that military toxic and environmental exposure is a critical congressional interest item.

Twenty Veterans Service Organizations (VSO) testified last month on their priorities. It is not surprising that most of these organizations list addressing toxic exposure a top priority. Their message was clear, it is time to act now. It is a credit to the Members of this Committee who worked with VSOs to understand their concerns and develop bipartisan solutions. We acknowledge that VA must continuously evaluate how we approach researching and granting claims for disabilities related to toxic and environmental exposures.

From the tens of thousands of Vietnam and Vietnam-era Veterans, Veterans who cleaned up radioactive hazards from our own nuclear test sites and the more than 200,000 Veterans who have signed their names to the Burn Pit Registry and fear their poor health conditions are a direct result of just breathing the air in places like Iraq and Afghanistan to the nearly 15,000 Veterans who served at Karshi-Khanabad (K2) Air Base, VA is committed to action.

Rather than provide remarks on the specific bills pertaining to toxic exposures today, we will lay out the changes we are making within VA to better serve Veterans and their family members, who were exposed to airborne and environmental hazards. For the bills not specific to toxic exposures, we provide our positions and/or comments below.

An End-to-End Review

This is an end-to-end review as it involves reviewing all the major touch points within the agency for a Veteran who has experienced toxic exposure, as well as internal agency functions in this area. The review is a review of both claims data/functions and VHA data/information.

For decades, Veterans and their families have sought answers to questions about health issues and potential connections to service-related toxic exposures. Working with partners from the scientific and medical communities, and with the support of Congress, VA has identified linkages and extended benefits to tens of thousands of Veterans. Despite this progress, we have more work to do. Secretary McDonough is committed to taking immediate and deliberate steps to ensure the Department leans forward in its approach to getting answers to key environmental exposure questions. We recognize that to succeed, the new approach will require the collective efforts of VA, our academic partners, other Federal agencies, and Congress. Secretary McDonough outlined a list of priorities that form the foundation for work he has directed the Department to undertake. To ensure in-depth analyses of high priority issues, the Secretary re-established the VA Executive Board (VAEB), consisting of subject matter experts and senior leaders. The VAEB met on March 23, 2021 and received clear guidance to focus on issues related to toxic exposures and providing input to inform solutions.

While the VAEB led review is designed to be holistic, it is not necessary to conduct a review to know that there are some things we can and must do differently today. Historically, VA's presumptive decision-making process has been guided by statutory requirements; however, certain provisions of the Agent Orange Act and Persian Gulf War Veterans Act, notably those governing the use of National Academies of Sciences, Engineering and Medicine (NASEM) reports and requiring the Secretary to respond to such reports within 60 days, have expired. With that expiration, we see an opportunity. VA is creating a new, comprehensive, modernized decision-making model for determining presumptions based on environmental exposures. Our model includes leveraging improved science and surveillance, better use of VA benefit claims data and consideration of other factors. We are moving with a sense of urgency and hope to share the proposed model with Congress, VSOs and other key partners for feedback within the next 180 days.

In order to do a better job researching exposure to toxic substances and military environmental hazards, we need more insight into the health issues that Veterans are experiencing. Our research indicates that an overly cumbersome process and an assumption of denial discourages Veterans from filing toxic and environmental -exposure related claims. At the Secretary's direction, we are undertaking efforts to encourage Veterans, who believe their symptoms are related to toxic exposure, to participate submit a claim. Part of that effort will include encouraging Veterans to get a C&P (compensation and pension) exam and submit a claim to VA if there is a concern about exposure. A new DoD and VA effort that will help in the future is the ILER (Individual Longitudinal Exposure Record) that just went active for clinical care and will be available for claims and research.

With one in three Veterans reporting a possible exposure to military environmental hazards and one in four Veterans reporting health concerns due to deployment exposures, VA must take decisive action. While Secretary McDonough's end-to-end review is being completed, VA will take the following additional steps:

1. Expand Training for Health Care Providers;
2. Improve Science, Surveillance, Epidemiology, and Research;
3. Make Better Use of Benefits Data and Consider Other Factors; and
4. Encourage Veterans to File a Claim.

Expand Training for Health Care Providers

VA is one of the largest providers of medical training for most American physicians, nurses and physician assistants.¹ We have first-rate training available for these practitioners in training and will share this information with all VA providers as well as those in community practice.² This will be accomplished through the VA Talent Management System platform for VA personnel training and the VA TrainingFinder Real-Time Affiliate-Integrated Network (TRAIN) platform for non-VA providers with free, accredited, continuing education credits. VA will also promote VA's "Exposure Ed App," available at <https://mobile.va.gov/app/exposure-ed>, which provides quick overviews of exposures for VA and community health care providers, who may not see toxic exposures routinely.

Improve Science and Surveillance

While scientific rationale will remain critical for decision-making regarding key policy decisions related to treatment and provision of benefits for Veterans who experienced toxic exposures VA expects to find some of this rationale through increased ongoing surveillance and well-designed epidemiologic studies for specific cohorts, such as the surveillance designed for the cohort of Veterans who served at K2 Air Base. When the surveillance signal is strong, VA will seek to quickly address the clinical and benefit changes that may be required. While science is the best way to ensure Veterans are cared for properly, VA will not wait for perfect science before deciding. Part of VA's deliberations will include the concepts of the Sir Bradford-Hill criteria, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4589117/> and described as follows:

- a. Strength: A small association does not mean that there is not a causal effect, although the larger the association, the more likely that it is causal.
- b. Consistency (reproducibility): Consistent findings observed by different persons in different places with different samples strengthens the likelihood of an effect.
- c. Specificity: Causation is likely if there is a very specific population at a specific site and disease with no other likely explanation.
- d. Temporality: The effect must occur after the cause.
- e. Biological gradient (dose-response relationships): Greater exposure generally leads to greater incidence of the effect. However, in some cases, the mere presence of the factor can trigger the effect. In other cases, an inverse proportion is observed, and greater exposure leads to lower incidence.
- f. Plausibility: A plausible mechanism between cause and effect is helpful (but Hill noted that knowledge of the mechanism is limited by current knowledge)

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6366564/>

² <https://www.militarytimes.com/news/2018/12/13/va-hospitals-often-the-best-option-for-medical-care-study-finds/>

- g. Coherence: Coherence between epidemiological and laboratory findings increases the likelihood of an effect.
- h. Experiment: Occasionally it is possible to appeal to experimental evidence.
- i. Analogy: The use of analogies or similarities between the observed association and any other associations.

VA will not only consider NASEM findings through their consensus reports and reviews, but Secretary McDonough has also directed the Department's subject matter experts to review the wider body of literature for a more rapid response to emerging science and to consider evidence covering human, animal, toxicological and mechanistic studies. VA will work more closely with our many partners, some with whom we have longstanding relationships, such as the Department of Defense (DoD), and some with whom we have coincident interests, such as the National Institute for Occupational Safety and Health (NIOSH). Additionally, VA and its partners, established and developing, have decades of experience for many exposures, and we must use this large body of knowledge to help in adjudicating claims and providing health care.

The Veterans Health Administration's Post-Deployment Health Services and Office of Research and Development, recognizing the need for better, faster and more transparent research, began the Military Exposure Research Program (MERP) in October Fiscal Year 2021 to coordinate and accelerate research efforts across VA while ensuring Veteran research protections. A major challenge for military exposures research is the lack of objective, contemporaneous measurement of the exposure profile that Veterans were exposed to during their military service. The MERP will focus on and support research on military exposures that emphasize exposure(s) assessments.

With regard to original research, VA will continue to conduct important research to inform our approach to provide answers now and in the future for Veterans through VA's Office of Research and Development, through the Airborne Hazards and Burn Pits Center of Excellence, and our Post-Deployment Health Services Epidemiology program.

In the future, VA needs more data from DoD field environmental surveys placed into the Individual Longitudinal Exposure Record (ILER). These data will be used to provide better answers for Veterans, Congress and VA. As the technology of individual monitoring improves, ILER will have better information useful to Veterans, providers and claims adjudicators. DoD is a leader in this area, and we will work closely with them.

Better Use of Benefits to Data and Consideration of Other Factors

While VA decision making and treatment approaches are driven by science, we will also seek out and assess other information that may be relevant to more rapidly providing Veterans with health care and benefits, including VBA and Board of Veterans' Appeals (BVA) claims data. The claims process is inherently administrative, but mining VA's disability claims data has the potential to amplify the science and help inform policy more rapidly.

VA's initiation of a more modern and comprehensive decision-making model for making decisions on presumptions associated with environmental exposures seeks to generate additional evidence to accompany the scientific and medical data. The

retrospective review of disability claims data and analyses of deployed Veteran cohorts will allow us to compare health results with other non-deployed or similar Veteran cohorts based on Veterans who claim disabilities. To gather longitudinal data, VA will review Veteran claims cohort data over periods of time, comparing claims immediately following service and those within the first several years after discharge from military service. Preliminary reviews show that there may be valuable trends and patterns from these claims and appeals, which VA could include in the body of evidence used to decide future policy matters relating to exposures.

In addition to epidemiological studies and claims based analyses, VA will consider other important factors such as public interest and consistency with agency mission and values. We believe that this kind of information is pertinent to present a holistic approach to accelerate certain policy decisions regarding the impacts of exposure events.

Encourage Veterans to File a Claim

VA acknowledges that a clearer policy is needed on the concession or presumption of exposure, and efforts are underway to address this issue. While a presumption is not required to grant disability compensation benefits for Veterans whose duties may have exposed them to an environmental hazard, VA recognizes that some Veterans may forego submission of a claim because there may not be a decision on establishing a service-related presumption. VA is aware that open air burn pits were utilized throughout the Southwest Asia theater of operations, and VA will concede exposure to burn pits if a Veteran served in Southwest Asia. In addition, VA does not generally require Veterans to specify the exact cause of their disability when submitting a claim for compensation. VA also recognizes that environmental exposures during deployment may be associated with both immediate and delayed adverse health consequences; therefore, there is no time limit for submitting claims. VA will work to more proactively communicate with Veterans and other stakeholders.

Legislation on Veterans Benefits

S. 89 – Ensuring Survivor Benefits During COVID-19 Act of 2021

This bill would require VA to secure a medical opinion to determine if a service-connected disability was the principal or contributory cause of death in any case in which a Veteran with one or more service-connected disabilities dies; the death certificate identifies Coronavirus Disease 2019 (COVID-19) as the principal or contributory cause of death; the death certificate does not clearly identify any of the service-connected disabilities as the principal or contributory cause of death; and a claim for benefits is filed with respect to the Veteran under chapter 13 of title 38, United States Code.

VA does not support this bill. VA does not believe requiring VA to secure medical opinions in any case where the Veteran with one or more service-connected disabilities dies from COVID-19, and the death certificate does not identify the Veteran's service-connected disabilities as the principal or contributory cause of death is necessary or advisable. VA's duty to assist claimants under current law provides that the Secretary is not required to provide assistance to a claimant if no reasonable possibility exists that such assistance

would aid in substantiating the claim. See 38 U.S.C. § 5103A(a). In some situations where COVID-19 is listed as the sole cause of death, a medical opinion would not aid in substantiating a claim for benefits under chapter 13 of title 38, United States Code. For example, VA would not view a medical opinion as necessary or required if a surviving spouse filed for service-connected death benefits based on a COVID-19-related death and the Veteran, at the time of death, had a single service-connected condition of right ankle sprain at 0% disabling with no indication of a service-connected disability contributing to death. Requiring medical opinions in all cases would unduly delay claims processing and would not represent a fiscally responsible policy.

Moreover, VA is committed to providing timely service without unnecessary burden for survivors. VA's existing guidance in 38 C.F.R § 3.312 provides instructions on processing claims for service-connected death by considering the primary and contributory cause(s) of death along with the Veteran's service-connected condition(s), including scenarios where the Veteran's service-connected condition(s) are not listed on the death certificate. Existing guidance also addresses VA's duty to assist in obtaining evidence in support of a claim for benefits under chapter 13 of title 38, United States Code, including when to request a medical opinion. If the claim cannot be otherwise granted, and there is an indication that at least one of the Veteran's service-connected disabilities may be related to the principal or contributory cause of death, a medical opinion would be requested.

In response to the COVID-19 pandemic, VA issued a specific reminder to claims processors on April 23, 2020, regarding the processing of service-connected death claims. The guidance reinforced that claims processors must review all facts and circumstances surrounding the death of the Veteran to determine if there is a reasonable probability of service-connected death. The guidance explained that the complete clinical picture of COVID-19 is not fully known, and people with serious underlying medical conditions seem to be at higher risk for developing severe COVID-19 illness. The guidance also reinforced VA's duty to assist when service connection for the cause of the Veteran's death cannot be granted based on the evidence of record.

S. 189 – Veterans' Disability Compensation Automatic COLA Act of 2021

The Veterans' Disability Compensation Automatic Cost of Living Adjustment (COLA) Act of 2021 would amend 38 U.S.C. § 5312 to automatically provide for adjustments each year, tied to COLAs for Social Security benefits, in the rates payable for Veterans' disability compensation, additional compensation for dependents, the clothing allowance for certain disabled Veterans and dependency and indemnity compensation (DIC) for surviving spouses and children. The bill would also require VA to publish the resulting increased rates in the Federal Register. This bill, if enacted, would take effect on the first day of the first calendar year that begins after the date of the enactment of the Act. Consequently, the earliest date the bill can have effect is January 1, 2022.

VA supports this bill. Annual COLAs to compensation rates tangibly express the Nation's gratitude and respect for the sacrifices made by service-disabled Veterans and their surviving spouses and children. Those adjustments also ensure that the value of VA benefits keeps pace with increases in consumer prices.

This bill would alleviate the requirement of annual Congressional action authorizing and directing VA to make COLAs. This bill would effectively authorize VA to make COLAs in accordance with past legislatively-authorized practice but without the need for recurring specific annual Congressional action and approval. Consequently, VA's ability to provide timely and necessary service to beneficiaries and the ability to plan and process workloads would be enhanced.

There are no mandatory or discretionary costs associated with this bill.

S. 219 – Aid and Attendance Support Act of 2021

The Aid and Attendance Support Act of 2021 would increase the amounts of certain payments to 125% of the current rate, including for aid and attendance benefits, during the emergency period resulting from the COVID-19 pandemic plus an additional 60 days after the end of the emergency period.

Assuming sufficient appropriations, VA generally supports expanding benefits to Veterans and their dependents; however, VA requests several amendments to strengthen and clarify the bill.

First, VA notes the bill does not include eligibility for survivors' pension under 38 U.S.C. § 1541. These beneficiaries are one of VA's most vulnerable populations, as most of them are dealing with the loss of a spouse, and in most cases, the highest (if not only) income earner. Therefore, VA recommends Congress consider adding the following provision to paragraph (a) in section 2 to assist Survivors Pension recipients: (7) Paragraphs (1) and (2) of subsection (d) of section 1541.

Second, pension rates in 38 U.S.C. § 1521(d) and (f), along with those in 38 U.S.C. § 1541(d), are annualized. As is, the bill would provide the 125% increase for the whole year if the emergency remains in effect the whole year, but if the emergency ends part way through this or next year, there would be a strong textual basis for concluding the original statutory rate applies, and all the increase did for the portion of the year it was in effect was "accelerate" the benefits. VA believes the intent is the monthly payment amount to be a pro-rated portion of the increased annualized rate. Therefore, VA recommends additional language to make this result clear.

Third, there is potential that the period for the aid and attendance temporary increase may overlap with the period for which the COLA may apply. Therefore, we recommend that Congress clarify whether the COLA percentage would apply to the original or temporary rates.

Mandatory costs are associated with S. 219 and are estimated to be \$376.3 million in 2021, \$572.5 million over 5 years and \$572.5 million over 10 years. For purposes of this cost estimate, VA assumes that the emergency period for COVID-19 would end on September 30, 2021. If the emergency period for COVID-19 continues beyond this date, estimated costs for 2022 and beyond would increase accordingly.

S. 444 – Advancing Uniform Transportation Opportunities for Veterans Act

S. 444, the Advancing Uniform Transportation Opportunities for Veterans Act or "AUTO Act," would amend 38 U.S.C. § 3903 to allow VA to provide or assist in providing an additional vehicle adapted for operation by a disabled individual if it has been at least 10 years since the individual received previous assistance or a vehicle.

VA supports this bill in principle since it expands eligibility for the automobile allowance but recommends some amendments to the bill text for clarity. In addition, VA would require additional resources to fully implement this bill since we would expect more automobile allowance applications to be received for processing should the bill be enacted. Mandatory costs are estimated to be \$0 in 2021, \$375.6 million over five years, and \$566.9 million over ten years.

Currently, the law only allows Veterans to receive an additional (referred to in section 3903(a)(2) as "second") automobile or conveyance if a vehicle is destroyed as a result of a natural disaster or other disaster, as determined by the Secretary, and the eligible person does not otherwise receive from a property insurer compensation for the loss. Under the draft bill, *all* eligible Veterans, as of October 1, 2021, would be allowed to receive *an additional* automobile or other conveyance if 10 years have elapsed since the date on which the eligible person received the immediately previous such automobile, other conveyance or assistance under chapter 39.

VA notes that the bill's apparent intent is to permit only a second automobile benefit (or possibly a third in the disaster scenario contemplated under 38 U.S.C. § 3903(a)(2)), and not an every-10-year benefit. This reading is supported by the singular language ("an additional") proposed by the bill and also by the general provisions of 38 U.S.C. § 3903(a)(1), which the bill would remove if this was intended to be a periodic but otherwise uncapped entitlement. Nonetheless, there is some room for the contrary interpretation, as the bill's reference to the "immediately previous such automobile" could be interpreted as implying a recurring entitlement. To the extent that the Committee may want to eliminate ambiguity regarding this issue, it could revise the bill's proposed language in 38 U.S.C. § 3903(a)(3) to state: "if 10 years have elapsed since the date on which the eligible person received the initial automobile, other conveyance, or assistance under this chapter, or any replacement thereof under 38 U.S.C. § 3903(a)(2)."

S. 458 – Veterans Claim Transparency Act of 2021

S. 458 would amend title 38, United States Code, chapter 59, to require the Secretary of Veterans Affairs to provide the representative of record of a claimant for "compensation or benefits" administered by the Secretary an opportunity to review a proposed determination regarding the claim.

Section 2 of the bill would amend title 38, United States Code, by adding a new section 5906 requiring VA, in each claim for "compensation or benefits" under title 38 in which the claimant has designated a representative of record, to provide that representative an opportunity to review a proposed determination before it becomes final. "Representative of record" would include representatives recognized under 38 U.S.C. § 5902 (VSOs) and 38 U.S.C. § 5904 (claims agents and attorneys).

The bill would require VA to submit notification in writing to a representative of record that a proposed determination is ready for review and would provide that the review period begin at the moment the representative receives notification from VA and end on the earlier of (i) the moment that the claimant or the representative of record indicates to VA that the claimant does not dispute the proposed determination or (ii) the moment that is 48 hours after the moment the representative receives such notification from VA.

VA expressed strong opposition to the same bill in a July 16, 2020, legislative hearing before the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs. VA continues to oppose this bill. VBA discontinued this practice because it is no longer appropriate and legally suspect. Moreover, the bill would not codify VBA's prior practice but greatly expand it. What was a quick, informal review by a local VSO down the hall from a VBA regional office would now be codified as an enforceable legal right to a formal review available to every representative across the country.

By providing a 48-hour review period in chapter 59, rather than chapter 11 of title 38, for "each claim for compensation or benefits," the bill is most reasonably read as applying to all VA benefits. This means that time-sensitive determinations regarding burial and health care, for example, would be delayed while VA (i) searches to determine whether there is a representative of record it is required to notify; (ii) waits 48 hours for a review that may not even occur; and (iii) then takes the time to consider any comments received. Thus, the delay would be beyond 48 hours and exceedingly problematic for claimants in time-sensitive contexts. VA has a responsibility to decide claims efficiently and without delay.

As written, the bill implies that the 48-hour review period applies whether or not the representative has access to VBA systems. It should be stressed that practically, the bill cannot serve its purpose without being limited "to representatives with electronic access to VBA systems." Due to the realities of the mail system, it would not be feasible for VA to mail a pre-decisional determination and then receive a representative's response within a 48-hour period.

In addition, on April 19th, 2021, VA launched a pilot called a Claim Accuracy Request (CAR) which allows representatives opportunities to request an expeditious review and determination of a Compensation claim in accordance with the Appeals Modernization Act lanes of decision review. VA reviews decisions in which the representative alleges an obvious error in fact or law and requests reconsideration within 30 calendar days of VA's notification letter. VA expeditiously reviews and resolve these errors. VA recognizes and acknowledges VSOs' desire to return to the 48-hour review process. In response, VBA is piloting this program that will allow for expedited review of decisions specific to obvious errors in fact or law, without reinstating the 48-hour review. VA is meeting with VSOs monthly to discuss results throughout the 120-day pilot and will analyze the complete pilot at the end of FY21. If successful, this option will be available to all claimants and their representatives, ensuring that non-represented claimants will also have access to CAR. Consequently, VA asks Congress to delay consideration of this legislation to allow the agency to execute this pilot and evaluate the results.

Legal Concerns

While the Committee's intent may be to simply codify and reinstate VBA's discontinued legacy practice, that will not be the effect. Adding a practice to the United States Code has independent consequences. The allegation that VBA did not provide the required review period would become grounds for appeal. This bill would create new appellate workload over procedural issues rather than substantive issues, at a time VBA is making progress toward its goal of implementing AMA and delivering a more efficient experience for all Veterans who desire appellate review.

The bill would also codify disparate treatment between represented and unrepresented claimants, as the latter would not receive this opportunity to review a VBA decision and provide comment before it becomes final. A pivotal reason for VBA discontinuing its 48-hour review practice was the strong indication from the U.S. Court of Appeals for Veterans Claims (CAVC) that a 48-hour review policy involving disparate treatment could not withstand legal scrutiny. Specifically, in *Rosinski v. Shulkin*, a majority of judges on the panel expressed a view that the limited scope of the 48-hour review policy was arbitrary and capricious, and the Chief Judge encouraged VBA to "reflect on its policy, consider whether the justifications behind it and enforcement of it are consistent with the current realities of attorney and VSO practice, and make the review process available to all or to none." 29 Vet. App. 183, 194 (2018) (Davis, C.J., concurring); see also *id.* (Greenberg, J., dissenting). The bill would run afoul of the same concerns identified by CAVC. In addition, an extension of the 48-hour review practice to unrepresented claimants would only create further problems, as unrepresented claimants may not have access to an electronic system enabling review within the 48-hour timeframe.

Impact on Claims Processing

VBA has transformed and transitioned its processes into a modern and paperless environment, moving from a paper-based claims environment to an electronic environment that routes claims efficiently through the National Work Queue and assigns them to the Regional Offices with sufficient capacity and expertise. Moreover, VBA now has a robust quality review program that reviews claims throughout the process, greatly obviating the prior need for VSO assistance in that regard. Under the AMA system, claimants can receive reconsideration of VBA benefits decisions within shorter timeframes through the higher-level review and supplemental-claim lanes. See 38 U.S.C. § 5104C.

Since VBA already has a policy in place for reviewing claims through the supplemental claims process under AMA, this bill would seem to duplicate this effort. It must be emphasized that AMA revolutionized and streamlined the process for appealing and correcting initial decisions and imposing an additional layer of review and delay to this new, streamlined system would negatively affect the progress currently being made on timeliness.

Currently, when adjudicators make decisions on claims, these decisions are uploaded in the electronic record and may be subject to a quality review check through VBA's Individual Quality Review (IQR) program that affects an employee's individual performance. A representative's review of a decision before becoming final is similar to VBA's IQR process. Since there would be a degree of duplication, VBA would have to consider changing its quality review program to have claims reviewed for quality assurance

after the 48-hour review was completed, and the decision had been finalized. Updating the quality review process would pose a significant administrative burden on VA.

VBA Program Needs

VBA would require a significant amount of resources and personnel to effectively implement this bill, which would include a new program office to manage and oversee the activities related to accredited representatives.

Information Technology (IT) concerns

It is very important to note that, if enacted, this bill would delay most, if not all, VBA projects aimed at modernizing the delivery of benefits, such as pension automation and the Digital G.I. Bill. Since the bill applies to all proposed determinations for "benefits," decisions on various types of benefits would be impacted, such as education, vocational rehabilitation, insurance and home loan benefits. As such, systems across all VBA business lines would need to be changed to develop functionalities to allow representatives to review all proposed decisions and develop data collection reporting.

It must be noted that, even without this bill, representatives may still review the claimant's entire electronic record at any time and specifically, may use filters within the Veterans Benefits Management System to see when a particular claim advances to the "Rating Decision Complete" status. This allows representatives to raise any quality concerns during the claims process. There is no need to codify a hold of all benefits decisions for 48 hours when representatives can be heard at multiple points in the decision-making process.

S. 976 – Caring for Survivors Act of 2021

The Caring for Survivors Act of 2021 would amend 38 U.S.C. § 1311 to increase the amount of monthly DIC paid and expand the eligibility for DIC paid to certain survivors of certain Veterans rated totally disabled at the time of death. Specifically, section 2(a) of the bill would authorize VA to increase the DIC rate within 38 U.S.C. § 1311(a) from \$1,154 to a monthly amount equal to 55% of the rate of monthly compensation in effect under section 1114(j) of title 38, United States Code. VA assumes this language would allow for the use of the current rate of \$3,146.42 and that the rate will increase proportionally with cost of living adjustments to this rate. Section 2(b)(1) would assign an effective date for the amendments made under subsection (a) for months beginning after the date that is six months after the date of the enactment of this act. Section 2(b)(2) would authorize VA, for months beginning after the date that is six months after the date of the enactment of the Act, to pay a dependents and survivors income security benefit under section 38 U.S.C. § 1311 to an individual eligible predicated on the death of a Veteran before January 1, 1993 in a monthly amount that is the greater of the following:

1. The amount determined under subsection (a)(3) of section 1311, as in effect on the day before the date of the enactment of this Act.
2. The amount determined under subsection (a)(1) of section 1311, as amended by subsection (a).

Section 3 of the bill would add an exception to section 1318 paragraph (1) regarding new paragraph (a)(2). New paragraph (a)(2) would state: "In any case in which the Secretary makes a payment under paragraph (1) of this subsection by reason of subsection (b)(1) and the period of continuous rating immediately preceding death is less than 10 years, the amount payable under paragraph (1) of this subsection shall be an amount that bears the same relationship to the amount otherwise payable under such paragraph as the duration of such period bears to 10 years." Section 3 would further amend 38 U.S.C. § 1318(b)(1) by striking "10 or more years" and inserting "5 or more years."

Under the current statutory authorities, DIC is paid to a surviving spouse at the monthly rate of \$1,154. Please note, per P.L. 116-178, the current rate effective December 1, 2020, is \$1,357.56. See 38 U.S.C. § 1311(a)(1). Further, DIC is paid to a surviving spouse and to the children of a deceased Veteran in the same manner as if the Veteran's death were service connected if his or her death was not as the result of his or her own willful misconduct, and he or she was in receipt of or entitled to receive compensation at the time of death for a service-connected disability rated totally disabling if the disability was continuously rated totally disabling for a period of 10 or more years immediately preceding death. See 38 U.S.C. § 1318(a), (b).

Assuming sufficient appropriations, VA supports the intent of section 2 of the bill because 2(a) increases the amount of monthly DIC payable to eligible survivors for a death of a Veteran; however, due to the extensive information system updates required to implement, VA advises that section 2(b)(1) should be amended with an effective date of 1 year after the date of the enactment of the Act. VA also notes it would require additional mandatory funding to administer the increased benefit amounts.

Assuming sufficient appropriations, VA supports section 3, if amended to add an effective date "for months beginning after the date that is 1 year after the date of the enactment of this Act." As written, VA would likely interpret any new benefit eligibility created by this section to be effective based on the date of enactment of the bill, but not authorize retroactive payments. However, it is currently unclear whether the revised requirements for DIC for survivors of certain Veterans rated totally disabled at time of death would apply retroactively or would be effective based on the date of enactment of the bill.

VA notes this section would expand the population of eligible beneficiaries for the DIC benefit under 38 U.S.C. § 1318(b)(1) due to shortening the amount of time the disability was continuously rated totally disabling immediately preceding death by half, from 10 years to 5 years. Therefore, VA would require additional mandatory funding to administer benefits to the expanded beneficiary population.

VA understands the intent of the newly-added paragraph (a)(2) within section 3 stating, "In any case in which the Secretary makes a payment under paragraph (1) of this subsection by reason of subsection (b)(1) and the period of continuous rating immediately preceding death is less than 10 years, the amount payable under paragraph (1) of this subsection shall be an amount that bears the same relationship to the amount otherwise payable under such paragraph as the duration of such period bears to 10 years." However, VA notes that for the additional allowance under 38 U.S.C. § 1311(a)(2) to be payable, the surviving spouse must have been married to the Veteran for 8 continuous years prior to the

Veteran's death and the Veteran must have been rated totally disabled during the entire period. The 8-year marriage period conflicts with the intent of subsection (b)(1).

Mandatory costs associated with S. 976 are estimated to be \$0 in 2021, \$8.8 billion over 5 years and \$25.1 billion over 10 years.

S. 1039 – A Bill to Amend Title 38, United States Code, to Improve Compensation for Disabilities Occurring in Persian Gulf War Veterans, and for Other Purposes

S. 1039 would amend 38 U.S.C. § 1117 to permanently extend eligibility for compensation for certain qualifying disabilities for Gulf War Veterans by eliminating the manifestation period and 10% degree of disability requirements as well as the Secretary's authority to prescribe the time period following service in the Southwest Asia theater of operations that is appropriate for the presumption of service connection. The bill would require VA to develop a single disability benefits questionnaire (DBQ) to use when a Gulf War Veteran presents with any one symptom associated with Gulf War Illness. The bill would also expand the definition of a "Persian Gulf Veteran" to include not only those who served in the Southwest Asia theater of operations but also Afghanistan, Israel, Egypt, Turkey, Syria or Jordan. The bill would also require training of health care personnel and a report to Congress once a year regarding such training.

VA appreciates the efforts of Congress to streamline disability compensation benefits for Veterans who were deployed to contingency operations in Southwest Asia. However, VA does not support the bill, unless amended, because it would prematurely extend permanent eligibility to certain qualifying Gulf War disabilities listed in 38 U.S.C. § 1117 without any apparent scientific justification. VA is actively studying and establishing a clinical definition for "Gulf War Illness," which will allow VA to evaluate and better monitor disability patterns that may be present in the Gulf War Veteran population. It should also be noted that VA has repeatedly extended the eligibility period for qualifying disabilities in regulation (See 38 C.F.R. § 3.317) and is currently considering rulemaking to effectively extend eligibility for 5 more years while VA continues to evaluate the health of Gulf War Veterans.

VA is also concerned about the expansion of the definition of Persian Gulf War Veterans to include service in Afghanistan, Israel, Egypt, Turkey, Syria or Jordan as these six countries are not considered part of the Southwest Asia theater of operations. While the intent is clear, the justification for adding these locations of service is unclear when the original legislation (Persian Gulf War Veterans' Benefits Act of 1994) was based on disability patterns observed in Veterans who served in the Southwest Asia theater of operations.

Regarding the bill's requirement to develop a single Gulf War DBQ, VA views this provision as somewhat duplicative and unnecessary. When a claim is received for a Gulf War-related condition, the current examination protocol calls for a Gulf War General Medical Examination and if needed, any additional specialty or specialist exams. The Gulf War General Medical Examination acts as a single, all-inclusive DBQ that provides an overall general assessment of the Gulf War Veteran. However, specialty/specialist exams may also be needed to conduct more in-depth assessments and any appropriate tests such as treadmill tests for heart condition, pulmonary function tests for respiratory conditions and

auditory tests from a hearing specialist. These separate clinical assessments are critical in identifying the full extent of the Veteran's disability and the cause of the Veteran's symptoms. In addition, VA is in the process of updating the current Gulf War DBQ to ensure it meets the needs of this group of Veterans.

VA anticipate costs would be associated with this bill; however, VA is unable to provide an estimate at this time.

S. 1096 – A bill to amend Title 38, United States Code, to Expand Eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to Include Spouses and Children of Individuals Who Die From a Service-Connected Disability Within 120 Days of Serving in the Armed Forces, and for Other Purposes

This bill would amend 38 U.S.C. § 3311(b)(8) to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to a child or spouse of an individual who dies "in line of duty" or from a service-connected disability during the 120-day period beginning on the first day of his or her discharge or release from active duty as a member of the Armed Forces or as a member of the Armed Forces on duty other than active duty. Additionally, the individual must have an honorable discharge or service characterized by the Secretary concerned as honorable. This proposed legislation would apply to deaths that occur before, on or after the date of enactment and would apply to a quarter, semester or term beginning on or after August 1, 2023.

While VA supports the intent of the proposed legislation to expand the eligibility of the Marine Gunnery Sergeant John David Fry Scholarship, the Department has several concerns with the draft bill's language. First, currently under 38 U.S.C. § 3311(b)(8), the Fry Scholarship is limited to individuals who have died on or after September 11, 2001. For clarity, VA recommends revising the applicability date provision in section 1(b)(i) of this bill to refer to deaths "on or after September 11, 2001, that occur before, on or after the date of enactment of this Act."

Second, the bill would remove the limitations that the line of duty death must occur "while serving on active duty as a member of the Armed Forces." Without such limitation, the proposed section 3311(b)(8)(B) would not be limited to only deaths occurring while on active duty but would apply to anyone serving in any duty status. If the intent of Congress is to greatly expand the Fry Scholarship to no longer only be limited to deaths related to active duty in the Armed Forces, then VA would greatly appreciate the opportunity to work with Congress to draft language with the appropriate scope to capture the intended population.

VA anticipate costs would be associated with this bill; however, VA is unable to provide an estimate at this time.

S. 1071 – Veterans Application Assistance Inefficiency Decrease Act of 2021

The Veterans Application Assistance Inefficiency Decrease Act of 2021, or the “VA AID Act of 2021,” would require VA to conduct a pilot program that addresses providing claim-enhancement assistance to individuals applying for pension benefits.

VA does not support this bill because VA believes it is duplicative in nature compared to current statutory authority. VA strives to ensure that “claimants for [VA] benefits have responsible, qualified representation in the preparation, presentation and prosecution of claims for Veterans’ benefits.” See 38 C.F.R. § 14.626. Therefore, an individual must be accredited by VA as an agent, attorney or representative of a VA-recognized VSO to assist in the preparation, presentation and prosecution of a claim for VA benefits. See 38 U.S.C. §§ 5901-5902, 5904. Additionally, statutory authority provides a one-time only exception to this general rule, which authorizes an individual to provide assistance on a particular claim for benefits. See 38 U.S.C. § 5903. Moreover, VA has already created and implemented a fully-developed application ready to be submitted to the Pension Management Centers to utilize in expediting pension claims ([VA Form 21P-527EZ](#) and [VA Form 21P-534EZ](#)). Therefore, VA does not support this bill because current statutory authority already allows and provides for such claim-enhancement assistance.

Furthermore, it is unclear how an entity under the pilot program contemplated in this proposed bill would improve the efficiency of the claim submission process in comparison to similar functions currently being performed by claimant representatives. Pension eligibility is dependent on numerous requirements, and information is utilized from several different sources; many of which the staff of an entity within the pilot program would not be permitted to view when proactively engaging claimants with claim-enhancement services prior to submission of their claims (e.g. income, asset and service information received via computer and/or matching agreements with other Federal agencies). *Compare* 26 U.S.C. § 6103(l)(19)-(20) (authorizing disclosure of tax return information to contractors of certain agencies) *with* 26 U.S.C. § 6103(l)(7)(D)(viii) (containing no similar authority for tax return information disclosed to VA). Any submission VA receives from the pilot program would go through the same adjudication procedures and processes as other claims; therefore, a submission under this pilot program would not ensure a faster processing time by VA.

S. 1095 – A bill to Amend Title 38, United States Code, to Provide for the Disapproval by the Secretary of Veterans Affairs of Courses of Education Offered by Public Institutions of Higher Learning that Do Not Charge Veterans the In-State Tuition Rate for Purposes of the Survivors’ and Dependents’ Educational Assistance Program, and for Other Purposes

This bill would amend section 3679(c) of title 38, United States Code, to add chapter 35 beneficiaries to the definition of a “covered individual” by which VA must disapprove a course of education offered by a public institution of higher learning if the institution does not charge the in-state tuition and fees for covered individuals. Currently, covered individuals include those beneficiaries under chapters 30, 31 and 33 of title 38, United States Code. The amendments would take effect on the date of the enactment and would apply with respect to an academic period that begins on or after August 1, 2022.

VA supports the proposed legislation as it would allow chapter 35 beneficiaries to receive the same protections under the law as beneficiaries who are in receipt of benefits under other VA educational programs. No costs or savings are associated with this bill.

S. 1093 – A bill to Amend Title 38, United States Code, to Establish in the Department the Veterans Economic Opportunity and Transition Administration, and for Other Purposes

This unnumbered bill would amend title 38, United States Code, to establish the VA Veterans Economic Opportunity and Transition Administration (VEOTA). Section 1 of the bill would establish the organization of VEOTA; outline its functions and the programs it would administer; set annual reporting requirements to Congress, provide appropriations for VEOTA; and maintain the labor rights of employees transferred to VEOTA. Section 2 would establish the position of Under Secretary for VEOTA (appointed by the President and directly responsible to the Secretary); outline the Under Secretary's responsibilities; and establish the procedures under which the position would be filled. Section 3 would require the Secretary of Veterans Affairs to submit a report to the Committees on Veterans' Affairs of the House of Representatives and Senate on the progress toward establishing VEOTA within 180 days of enactment and prevent the transfer of functions to VEOTA until the Committees on Veterans' Affairs of the House of Representatives and Senate receive certification that the transition of services to VEOTA will not negatively affect the services provided and that services are ready to be transferred. Further, section 3 would create additional reporting requirements for the Secretary in the event the Committees on Veterans' Affairs of the House of Representatives and Senate do not receive the Secretary's certification by September 1, 2022.

While VA appreciates the Committee's focus on improving services and resources offered by these programs, we do not support this bill. The current VBA structure appropriately reflects the Under Secretary for Benefits' overall responsibility for Veterans benefits programs that include programs related to economic opportunity and transition, as well as compensation, pension, survivors' benefits and insurance.

The Office of Small and Disadvantaged Business Utilization (OSDBU) currently reports directly to the Secretary or Deputy Secretary. OSDBU's mission is to advocate for the maximum practicable participation of small, small-disadvantaged, Veteran-owned, women-owned and empowerment-zone businesses in contracts awarded by VA and in subcontracts awarded by VA's prime contractors. This bill would move only OSDBU's Center for Verification and Evaluation (CVE) program to the new Administration. CVE administers the verification program required for Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses and maintains the vendor information page database. Moving this major program from OSDBU to a new administration might result in a redundancy of efforts. Additionally, the verification program currently administered by OSDBU for Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses is to be transferred to the Small Business Administration by January 1, 2023, under the Fiscal Year (FY) 2021 National Defense Authorization Act.

The VBA portfolio of benefits is thriving. The Education, Loan Guaranty, Veteran Readiness and Employment (VR&E) and Transition and Economic Development programs are part of an integrated suite of interdependent services and benefits that also includes compensation, pension and insurance programs. Together, they form a suite of benefit-related resources on which Veterans can rely.

In FY 2020, education claims timeliness improved from 24.7 days to 15.4 days for original claims, and supplemental claims timeliness improved from 8.6 days to 6.9 days. During this time, over 3.5 million education claims were processed, paying nearly \$12 billion in education benefits for 875,000 Veterans and their beneficiaries.

Loan Guaranty set new records during FY 2020, guaranteeing an all-time program high of 1.246 million loans worth \$375 billion and assisting a record 119,000 Veterans to avoid foreclosure through various loss mitigation strategies. VR&E helps Service members and Veterans with service-connected disabilities and a barrier to employment prepare for, find and maintain suitable jobs through counseling and case management. There were over 123,000 VR&E participants in FY 2020, with more than 33,000 new plans developed to assist Veterans, and over 16,000 Veterans achieving positive outcomes. Further, VR&E's 20-year longitudinal study indicates nearly 90% of Veterans who achieved rehabilitation from an employment plan were employed in the past year.

For those Service members transitioning out of the military, VBA's Office of Transition and Economic Development offered additional focus on helping them move more effectively into civilian life, both socially and economically. VA's commitment to support Veterans transition from the military was bolstered by the establishment of the VA Solid Start (VASS) program in December 2019, which provides early and consistent contact with newly-separated Veterans. The goal of the VASS program is to provide seamless access to information about mental health care and suicide prevention resources, including care for substance use disorders. VASS representatives proactively call newly-separated Veterans over their critical first year (three key stages from 0–90, 90–180 and 180–365 days post transition) to discuss their transition experiences, available benefits and any challenges they may be facing. VASS recently made successful contact with the 100,000th newly-separated Veteran.

VA continues to partner with DoD and the Department of Labor to ensure separating Service members are focused on their transition as early as possible to begin civilian life on the right foot. VA recently launched a pilot program to conduct virtual transition briefings and implemented a new Women's Health Transition Training program focused on providing women Service members with actionable information on their unique health needs transitioning into Veteran status.

In order to support the adjudication and delivery of Veteran and Service member earned benefits, VBA also has many enabling staff offices, such as finance, human resources (HR), facilities, production optimization, outreach and engagement, field operations, business process integration, strategic program management, performance analyses, communications and executive review. These enabling organizations would have to be recreated within the new Administration in order to effectively operate, requiring additional executive leadership and replicated structures. The addition of another Administration would increase leadership oversight for programs that are currently in place, contrary to the modernization efforts that are underway.

General Operating Expense (GOE) costs would result from enactment of this bill with an additional 812 full-time employees (FTE) needed for management direction and support for enabling staff offices (i.e., aforementioned finance, HR, facilities, outreach and engagement, field operations, business process integration, strategic program

management, performance analyses, communications and executive review). VA estimates GOE costs of approximately \$241 million in FY 2023 and \$2.4 billion over 10 years, which includes payroll and non-pay costs (travel, contract support, centralized payments, etc.) for the additional 812 FTEs.

No mandatory costs would be associated with the proposed legislation. While there is no benefit cost associated with the bill, the appropriation language for the Readjustment Benefits account and the Credit Reform account would have to change to reflect the title of the new Administration.

S. 731 – Department of Veterans Affairs Information Technology Reform Act of 2021

The Department of Veterans Affairs Information Technology Reform Act of 2021 would add a new subchapter to chapter 81 of title 38, United States Code, that would govern information technology (IT) projects and activities.

VA does not support this bill in its current form. VA has several concerns with the language of the bill, most notably within proposed section 8175, "Information technology matters to be included in budget justification materials for the Department" and the definition of a major information technology project. VA suggests a simpler method for reporting on major programs would be to mandate their inclusion in the Federal IT Dashboard and the Federal IT Acquisition Reform Act dashboard in order to leverage pre-existing resources and already established reporting requirements. VA also suggests ensuring that the terminology is in alignment with Office of Management and Budget Circular A-11 "Preparation, Submission and Execution of the Budget." Further, VA believes that planning for IT spending 10 years out would be speculation at best, given the rate of change of technology and recommends a 3-year planning cycle instead to produce more reliable information.

In section 8171, the definitions of what constitutes an IT project in section 8171(3) and a major IT project in section 8171(5) are vague, in that there is no standardization around the word "system." Also, they do not reflect the reality of IT investment. Furthermore, the bill is unclear on what constitutes "project costs" and "project acquisition and implementation costs." VA recommends that additional definitions be added to define the scope of costs (e.g. contract cost, direct or indirect costs, fiscal year or life cycle).

Furthermore, the cost thresholds defined in section 8171(5)(B)(ii) and (iii) are too low given modern-day IT costs, the scale of VA systems, and the supported user base. VA recommends increasing the thresholds to \$500 million for the duration of the project/program under section 8171(5)(B)(ii) and \$1.5 billion for total lifecycle costs under section 8171(5)(B)(iii). This would ensure the definition focuses on 'Major IT Projects' and is not too broad, potentially covering 90% of VA IT investments.

In section 8172(d)(1)(A), regarding the proposed mandate to have a certified project manager assigned to each IT project, VA notes that Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) Level III certification is not in section 1701a, which is cited by the bill for project manager certification. VA recommends an adjustment to the language to include FAC-P/PM as a valid project manager certification.

Section 8173 does not specify if the mandated Chief Information Officer (CIO) approval of IT projects at the Financial Services Center (FSC) will be applied retroactively to projects already in progress. This could become an issue if VA is to keep track of life cycle costs retroactively for IT systems, as discussed elsewhere in the bill.

In section 8175, VA recommends adding the following language to solidify the CIO's role in the establishment of the VA Office of Information and Technology (OIT) budget requirements and approval through a transparent governance framework:

"VA Chief Information Officer Role on IT Governance Boards. The Secretary shall ensure that the CIO shall be a member of any investment or related board of the agency with purview over IT, or any board responsible for setting agency-wide IT standards. The Secretary shall also direct the CIO to chair any such board."

Subsections (b) and (c) of section 8175 ask for information that either does not exist or would not be useful. In section 8175(b), the proposed requirement for a prioritized list of unfunded projects is not possible because OIT accounts for all known projects in its budget requests. VA is working on an enterprise solution to prioritize all IT projects. Unfunded requirements arise when new priorities are sent to VA that were not known at the time of the budget request. VA recommends budget impact assessments be made before new requirements are sent to VA without supporting funding.

In section 8175(c), the proposed requirement to provide projected funding needs for 10 years would not produce useful data. With the rate of change of technology, a 10-year cycle would result in speculation, at best, given the unpredictable pace of change regarding technology. This would force VA to do little more than guess what would occur at a 10-year boundary. A 3-year planning cycle would produce the least amount of speculation and the most reliable planning estimates. In section 8175(d)(B)(v), the bill does not specify if there would be independent validation that a legacy system has been decommissioned and the data removed or sanitized.

S. 894 – Hire Veteran Health Heroes Act of 2021

This bill would require the identification and referral of active duty Service members with a health occupation to VA for potential employment, if interested, within 1 year of transitioning out of the military.

VA does not support this bill. It is redundant to section 207 of P.L. 115-46, *the VA Choice and Quality Employment Act of 2017*, which states that VA "shall establish a program to encourage an individual who serves in the Armed Forces with a military occupational specialty relating to the provision of health care to seek employment with the Veterans Health Administration when the individual has been discharged or released from service in the Armed Forces or is contemplating separating from such service." In compliance with P.L. 115-46, VA has already established an initiative to target transitioning Service members for mission critical and difficult-to-fill positions by utilizing data contained in the VA/DoD Identity Repository (VADIR) database. VADIR data contain a listing of active duty Service members who have entered the process to transition out of the military. VA

uses the data to send targeted recruitment marketing by military occupation specialty (MOS) to transitioning Service members. This targeted recruitment marketing directs transitioning Service members to the VA Careers website with open job announcements and provides an option to connect directly to a recruiter for their specialty of interest. In addition to the requirements in this bill, which targets those appointed under 38 U.S.C. § 7401, VA also targets transitioning Service members with a military occupational specialty (MOS) that aligns to non-clinical mission critical occupations such as logisticians, police and security specialists and HR professionals.

S. 1031 – A Bill to Require the Comptroller General of the United States to Conduct a Study on Disparities Associated with Race and Ethnicity with Respect to Certain Benefits Administered by the Secretary of Veterans Affairs, and for Other Purposes

S. 1031 would require the Comptroller General of the United States to conduct a study to assess whether there are disparities associated with race and ethnicity with respect to compensation benefits, disability ratings and the rejection of fully developed claims. The Comptroller General would additionally be required to provide a report to Congress on the results of the study. VA defers to the Government Accountability Office regarding S. 1031.

Conclusion

Mr. Chairman, this concludes my testimony. My colleagues and I are prepared to respond to any questions you or other Members of the Committee may have. And, we look forward to continued work with the Committee to address the needs of veterans exposed to toxic and environmental hazards.



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**STATEMENT OF
 SHANE L. LIERMANN
 DEPUTY NATIONAL LEGISLATIVE DIRECTOR
 COMMITTEE ON VETERANS' AFFAIRS
 UNITED STATES SENATE
 APRIL 28, 2021**

Chairman Tester, Ranking Member Moran and members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Senate Veterans' Affairs Committee. As you know, DAV is a non-profit veterans service organization (VSO) comprised of more than one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

We are pleased to offer our views on the bills impacting service-disabled veterans, their families and the programs administered by the Department of Veterans Affairs (VA) that are under consideration by the Committee.

S. 89, the Ensuring Survivor Benefits During COVID-19 Act of 2021

The VA reports that there have been 211,779 coronavirus cases afflicting veterans using VA health care services, and more than 11,686 veteran deaths as of April 26, 2021. DAV is concerned that survivors of some service-disabled veterans will be denied benefits because their death certificate lists the cause of death as COVID-19, but does not mention the service-connected conditions which may have been contributing factors.

The Ensuring Survivors Benefits During COVID-19 Act would address this issue by requiring the VA to seek a medical opinion in the case of any veteran who has a service-connected condition and who passes away due to the coronavirus. This medical opinion could be crucial in obtaining survivors' benefits.

DAV supported this legislation in the 116th Congress and continues to support legislation that would ensure adequate compensation to the survivors of veterans whose deaths are held to be service connected.

S. 189 would provide an automatic annual cost-of-living allowance (COLA) increase for veterans' disability compensation, additional compensation for dependents,

clothing allowance for certain disabled veterans, and dependency and indemnity compensation for surviving spouses and children. It will link all future COLA rates directly to Social Security COLA increases.

COLA calculations within the Social Security Administration use a formula that has been directly linked to the Consumer Price Index since 1975. The formula that derives the level of increase is tied to the United States economy on a very broad basis. In several instances of a stagnant economy, COLAs for Social Security and VA did not increase. It is important to note that stagnant economic activity does not mean disabled veterans' cost of living is flat, in fact, as they age, their costs increase.

If the Social Security Administration changes the formulas for COLAs to a less favorable calculation, veterans and their families will be tied to that formula based on this legislation. While this bill would provide consistency each year for veterans and their families, it will also remove any independence in establishing and negotiating increased rates for veterans and their families in the future. DAV does not support S. 189.

S. 219, the Aid and Attendance Support Act of 2021

VA Aid and Attendance or Housebound benefits provide additional payments added to the amount of monthly compensation for veterans and survivors who need help with daily activities. This bill would increase by 25% the amount paid in Aid and Attendance to caregivers of seriously disabled veterans in order to help with COVID-19 related increases in personal protective equipment and other medical necessities.

DAV supports this legislation, as it would seek to address the added financial burden brought on by the ongoing pandemic to our nation's seriously disabled veterans.

S. 437, the Veterans Burn Pits Exposure Recognition Act of 2021

In 2007, DAV leaders and members were the first to raise the issue of burn pits through the media, and DAV has continued with legislative efforts ever since. DAV initiated a pilot for the Burn Pit Registry, which was passed into law in 2014.

S. 437, the Veteran Burn Pits Exposure Recognition Act, would help overcome the current barriers to establishing direct service connection for diseases related to burn pits and airborne hazards. The legislation would provide a concession of exposure for veterans who served in specific countries during periods with active burn pits, which have been confirmed by the DOD. The legislation identifies and lists the toxins, chemicals, and airborne hazards to which each veteran would be conceded to have been exposed and mirrors the VA's adjudication manual acknowledged list.

Veterans have two paths for establishing service connection for diseases related to toxic exposures, presumptive and direct. As the VA has not established presumptive diseases based on these exposures, veterans must seek claims on a direct basis.

If a veteran submits a claim for a disease related to these exposures and has insufficient medical evidence for VA to grant, the legislation requires VA to provide an examination with a request for an opinion to a link between the disability and the exposures. When providing the medical opinion, the examiner must consider the synergistic effect of all combined toxins through inhalation, dermal exposure, and ingestion.

An estimated 3.5 million veterans have been exposed to burn pits and toxic exposures and it can take decades for the scientific evidence required for presumptive diseases to be established. We cannot stand by and let veterans continue to suffer without access to VA health care and VA benefits.

In the 116th Congress, this Committee unanimously passed this legislation. We thank Senators Sullivan and Manchin for their dedication to veterans exposed to burn pits. DAV strongly supports S. 437 and looks forward to its favorable passage by this Committee.

S. 444, the AUTO for Veterans Act

This bill would expand the existing automobile grant program through the VA to allow veterans to receive an additional grant, 10 years after they received their first grant. Currently, a severely disabled veteran can be authorized \$21,795.57 once in their life. This one-time grant is used toward the purchase of a new or used automobile to accommodate a veteran or service member with certain disabilities that resulted from a condition incurred or aggravated during active military service.

However, on average, the cost to replace modified vehicles ranges from \$40,000 to \$65,000 when the vehicle is new and \$21,000 to \$35,000 when the vehicle is used. These substantial costs, coupled with inflation, present a financial hardship for many disabled veterans who need to replace their primary mode of transportation once it reaches its life of service. The cost of replacing modified vehicles purchased through the VA automobile grant program presents a financial hardship for veterans who must bear the full replacement cost once the adapted vehicle has exceeded its useful life, and the divergence of a vehicle's depreciating value and the increasing cost of living only compounds this hardship.

DAV strongly supports this legislation in accordance with Resolution No. 121, which advocates for legislation to establish multiple automobile grants, for veterans to use once every 10 years that would replace the once-a-lifetime grants.

S. 454, the K2 Veterans Care Act of 2021

S. 454, the K2 Veterans Care Act, would create a requirement to establish presumptive service connection for veterans who served at Karshi-Khanabad (K2) Air Base in Uzbekistan, and require the VA to provide health care and benefits.

As many as 15,000 U.S. service members deployed to K2 Air Base in Uzbekistan between 2001 and 2005 to support military operations into northern Afghanistan following the terrorist attacks of September 11, 2001. DOD has known for years that U.S. service members were exposed to toxic chemicals and radiological hazards while serving at K2. Among the harmful substances acknowledged were radioactive processed uranium, jet fuel, tetrachloroethylene, total petroleum hydrocarbons (TPH), and the residuals of chemical weapons, including cyanide, in the showers. K2 veterans now have a 500% increased likelihood of developing cancer.

However, the VA does not associate service at K2 with high probability of exposure to any toxic substances, and K2 veterans are denied VA disability compensation and medical treatment for illness associated with toxic exposure. This legislation aims to change that.

DAV strongly supports the K2 Veterans Care Act, in accordance with DAV Resolution Number 049, as it will establish presumption of service connection for K2-related diseases. However, we do have recommendations to help strengthen this legislation:

Agreement with National Academies. DAV recommends a provision directing the Secretary of Veterans Affairs to enter into an agreement with the National Academies of Sciences, Engineering and Medicine to study the associations between illnesses and exposure to the toxic and radiological material identified at K2 Air Base between 2001 and 2005.

Future studies. We recommend a provision directing future studies of the associations between illnesses and exposures every two to four years to ensure that additional diseases are consistently reviewed and reported.

S. 458, the Veterans Claim Transparency Act of 2021

For over seven decades, the Veterans Benefits Administration (VBA) maintained a policy, as previously included in their M21-1 Adjudication Procedures Manual, which allowed accredited VSOs a pre-decisional review period of all VA decisions on those veterans and claimants they represented.

The pre-decisional review period assisted VSOs in identifying errors before the decisions were formally promulgated. The types of mistakes identified included incorrect effective dates of grants, incorrect combined evaluations, incorrect evaluations and incorrect denials of benefits. If VA took actions on our recommendations, a new decision would be rendered. This process helped thousands of veterans and claimants and in many instances avoided the time-consuming and often costly appeals process.

Although DAV, along with seven other VSOs representing millions of veterans and 42 State Attorneys General representing millions of citizens, opposed the removal

of this policy, on April 24, 2020, VBA officially eliminated the pre-decisional review period. DAV believes VBA's decision was wrong, ill-timed and responsible for additional negative impacts on veterans and their representatives. At the beginning of the COVID-19 pandemic, VA ceased delivering paper copies of written notices to VSOs that are co-located at VA facilities. Due to the elimination of the review period, VA was not advising VSOs electronically of decisions being rendered.

We agree with the intent of S. 458, the Veterans Claim Transparency Act of 2021; however, since February of this year, VBA has reengaged and collaborated with the VSO community to address the notification concerns and errors in decisions. On April 19, 2021, VBA launched the pilot, Claims Accuracy Request (CAR). The program will allow representatives opportunities to request an expeditious review and determination in accordance with the Higher Level Review. If successful, VBA may make this pilot program permanent and expand its scope to include all claimants.

DAV is encouraged by the collaboration with VBA and optimistic that changes to the notification process and the CAR pilot will address our concerns and if successful, we will request this be codified into law. However, we remain vigilant and if these collaborations with VBA fail, we will need legislation such as S. 458.

S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act of 2021

S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act would amend Title 38, United States Code (USC), Section 1112 by adding the cleanup of Enewetak Atoll period of January 1, 1977 to December 31, 1980, as a radiation-risk activity.

Forty-three nuclear tests were conducted for 10 years beginning in 1948 at Enewetak Atoll in the Marshall Islands, leaving behind contaminated debris and soil. The area was so contaminated that the local population was forced to steer clear of the area for 30 years. Between 1977 and 1980, approximately 4,000 U.S. service members were assigned to clean up the area.

Due to the high temperatures and humid climate of the area, service members did not wear contamination suits, nor did they decontaminate after working in the affected areas. Radiation monitors frequently broke, rendering them ineffective. VA's position has been "veterans who participated in the cleanup at Enewetak Atoll encountered low levels of radiological contamination and have a low risk of health problems."

Veterans that participated in the Enewetak Atoll cleanup are currently not eligible for VA health care under Title 38, USC, Section 1710, toxic exposures, as VA defines a radiation-exposed veteran as one who participated in a radiation-risk activity. S. 565 would designate the Enewetak Atoll cleanup as a radiation-risk activity thus providing these veterans VA health care eligibility for diseases related thereto. Additionally, this legislation would provide that veterans who participated in the cleanup would be eligible for presumptive service connection benefits.

In alignment with DAV Resolution No. 049, we strongly support S. 565. This legislation will finally allow veterans exposed to radiation during the Enewetak Atoll cleanup to obtain health care and benefits for illnesses they would not have if it were not for their military service.

S. 657, a bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era

S. 657 would codify conceded herbicide exposure to all veterans who served at any military installation in Thailand from January 9, 1962 to June 30, 1976.

Per the 1971 Contemporary Historical Examination of Current Operation (CHECO) Project Southeast Asia Report, more than 40,000 gallons of herbicide were used in Thailand; however, current statutes and regulations do not automatically recognize veteran exposure to herbicides while serving there. VA's adjudication manual does acknowledge herbicide exposure for specific military occupational specialties on the perimeter of eight specific Thai bases; however, this provides an additional burden of proof and development upon the VA and veterans to prove their exposure.

S. 657 would automatically concede herbicide exposure for all veterans who served at military installations in Thailand, regardless of the base, duty on the perimeter or military occupational specialty. The presumptive diseases currently associated with herbicide exposure would be applicable to all veterans who served at Thailand military installations.

Consistent with DAV Resolution No. 362, DAV supports the inclusion of herbicide exposure to veterans who served at military installations in Thailand, as this will provide greater equity and establish parity with those veterans who served in Vietnam.

S. 731, the Department of Veterans Affairs Information Technology Reform Act of 2021

S. 731 would establish a number of new reporting and budgeting requirements to improve management and control of VA's information technology (IT) programs. The bill would provide new reporting requirements for "major" IT projects, defined as those that are designated by VA or OMB, or those that have total project costs over \$50 million in a single year, \$200 million for the duration of the project, or \$500 million for total lifecycle costs of the project. Each major IT project would be managed by a VA interdisciplinary team, which must include a project manager from VA's Office of Information Technology and a functional lead from the part of VA requesting the project. The VA would be required to report to Congress each major IT project's cost, schedule and performance information before expending any funds; update these baseline estimates annually; and report any changes or variances from the baselines to Congress.

The bill would require VA to include in each annual budget submission a list of every current IT project, along with current and planned expenditures, as well as projected schedules for completion. In addition, VA would be required to include a ranked list of all unfunded IT projects for each part of VA, together with cost and benefit estimates. Finally, VA would be required to include a list of IT systems the Department is planning to phase out, with accompanying cost-benefit analyses, as well as a one-, five- and ten-year estimate of VA's overall IT budgetary needs.

Too often in the past, VA has failed to develop and implement critical IT systems on time and on budget. With an annual IT budget of approximately \$5 billion—which does not include the ongoing 10-year, \$16 billion electronic health record modernization (EHRM) project—it is important that VA have stronger internal controls and greater transparency into the planning, budgeting and implementation of major IT projects. S. 731 would provide Congress, VSO stakeholders and the public tools to help hold VA more accountable without creating burdensome operational management obstacles.

In accordance with DAV Resolution No. 359, which calls for "...reforming and improving the budgeting and funding of VA IT system..." DAV supports S. 731.

S. 810, Fair Care for Vietnam Veterans

Approximately 21 million gallons of Agent Orange were sprayed in Vietnam between 1962 and 1971. Fifty years later, Vietnam veterans are still seeking health care and benefits for diseases associated with their exposure. Even with positive scientific evidence of an association, VA is failing to include these additional diseases.

The National Academies of Science, Engineering and Medicine (NASEM) update, "Veterans and Agent Orange," published in 2016, stated bladder cancer, hypothyroidism, and Parkinsonism had a positive scientific association with Agent Orange. After four years of delays and inaction by VA, it took an act of Congress to add these three diseases earlier this year. We thank Senator Tester, Senator Moran, and this Committee for making this happen.

However, Vietnam veterans are in a similar position in reference to hypertension and monoclonal gammopathy of undetermined significance (MGUS), which have significant evidence of an association. S. 810, the Fair Care for Vietnam Veterans Act, would include these two diseases as presumptive to Agent Orange exposure.

The 2016 VA study, "Herbicide Exposure, Vietnam Service, and Hypertension Risk in Army Chemical Corps Veterans," found that exposure to herbicides is "significantly associated" with the risk of hypertension, or high blood pressure, in members of the Army Chemical Corps.

The December 2018 NASEM updated report reviewed the VA study and stated there is sufficient evidence of a positive scientific relationship between hypertension and Agent Orange exposure. Further, the NASEM report revealed that MGUS holds that

same level of association with Agent Orange. For over two years, VA has not taken action on these two additional diseases and instead, determined they needed additional scientific evidence before making a decision.

At the Senate Veterans' Affairs Committee hearing on March 10, 2021, Dr. Karl Kelsey, Professor of Epidemiology, Professor of Pathology and Laboratory Medicine at Brown University and member of the NASEM Committee for the Veterans and Agent Orange Update of 2018, provided written and oral testimony. In his written statement, he provided, "the Update 11 committee reviewed six new studies of exposure to the chemicals of interest and hypertension that had been published since the previous update. The decision to change the classification from limited or suggestive evidence of an association to sufficient evidence of an association by the Update 11 committee was motivated in large part by a 2016 paper by VA researchers Yasmin Cypel and colleagues. These investigators conducted a study of U.S. Vietnam veterans (specifically, the Army Chemical Corps [ACC]), that was characterized by a large sample size, appropriate controls, and validated health endpoints. The statistical analyses conducted were robust, included several levels of exposure (herbicide sprayers and non-sprayers and Vietnam-deployed and non-Vietnam-deployed) used state-of-the-art methods, and adjusted for relevant confounders."

The scientific community has determined the highest level of association for hypertension and MGUS, yet VA has not taken action. Based on DAV Resolution No. 109, we strongly support S. 810. Congress must intervene and provide justice to the Vietnam veterans, their families and survivors that have been suffering for over five decades.

S. 894, the Hire Veteran Health Heroes Act of 2021

This legislation would require VA and DOD to identify service members that are health care professionals transitioning from active military service. If VA is notified of interest, the service member would be referred to a recruiter for open positions for their particular specialty. The recruiting process can begin once the service member has one year remaining on active duty and is advised that recruitment is not a guaranty of employment. The bill requires a report to Congress on the success of the program.

DAV supports S. 894, in accordance with DAV Resolution No. 077. DAV agrees that VA should carry out a program to increase efficiency in the recruitment and hiring by VA of health care professionals that are undergoing separation from the armed forces.

S. 927, the Toxic Exposure in the American Military (TEAM) Act

S. 927, the Toxic Exposure in the American Military Act, would extend health care eligibility to all veterans exposed to toxic substances by expanding VA Priority Group 6 to cover veterans eligible for the Airborne Hazards and Open Burn Pit Registry

or who received certain medals since the first Persian Gulf War. It further requires DOD to identify veterans who may have been exposed and makes them eligible as well.

Veterans exposed to toxins struggle with access to VA health care if they have no other avenue for eligibility. DAV agrees with the expansion of eligibility for veterans exposed to toxins and the amendment to Title 38, USC, Section 1710.

Additionally, this bill would provide a new framework for the presumptive decision making process including requiring VA to enter into a contract with NASEM to conduct studies regarding associations between diseases and exposure to toxic substances.

For years, DAV has been advocating for a codified, consistent, and rapidly responding framework to address all currently known and unknown exposures. If a framework is established, it will reduce time for acknowledgement of exposures and the addition of presumptive diseases. Most notably, this could have eliminated the amount of time it has taken for adding diseases related to Agent Orange as well as establishing presumptives for burn pits and other exposures. We applaud this inclusion.

In the 116th Congress, this Committee unanimously passed this legislation and we look forward to favorable consideration again this year. In accordance with DAV Resolution Number 049, which calls for legislation to ensure veterans exposed to toxic and environmental hazards receive all earned benefits and health care, DAV strongly supports S. 927.

S. 952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021

S. 952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act would establish presumptive diseases related to toxic exposures for veterans who received certain medals since the first Persian Gulf War.

It is VA's duty and responsibility to study and investigate known toxic exposures as well as weigh the addition of presumptive diseases. For nearly two decades, VA has failed to establish presumptive service connection, related diseases, and health care for the men and women exposed to burn pits, airborne hazards and toxins. Therefore, it is time for Congress to take action and provide appropriate access to health care and benefits. Veterans and their families cannot afford to wait.

The bill would also provide an avenue for interested parties to petition the addition of diseases to NASEM for review. We recommend this process be streamlined and regularized to allow for their timely and thorough review.

When addressing health care and benefits for the men and women exposed to toxins and environmental hazards, our nation must have a heightened sense of duty and take appropriate and expeditious actions. We look to Congress to take action now.

S. 976, the Caring for Survivors Act of 2021

This legislation would improve Dependency and Indemnity Compensation (DIC) by increasing the amount paid to survivors of disabled veterans and expanding the eligibility criteria.

Since Dependency and Indemnity Compensation (DIC) was created in 1993, major improvements have been legislated only once, in 2003. While minor enhancements have been implemented, there is still much that can be done to improve benefits for the survivors of America's veterans. DIC rates have failed to keep up with the cost of living and fallen short of what federal employees' survivors receive. In addition, many disabled veterans pass away from nonservice-connected conditions prior to the eligibility period; thus, leaving their families with no DIC eligibility. Improvements are needed for those left behind to assist with their education and provide benefits to help survivors rebuild their lives. Now that we see the combined effects of a pandemic, plus a war that has spanned almost two decades, the urgency for these improvements is dire.

Increase DIC Rates

DIC is a benefit paid to surviving spouses of service members who die in the line of duty or veterans who die from service-related injuries or diseases to provide surviving families with the means to maintain some semblance of economic stability after the loss of their loved ones. When a service-disabled veteran passes away, not only does the surviving spouse have to deal with the heartache of losing their loved one, but they also have to contend with the loss of their veterans' compensation. This loss to a survivor's budget is devastating, especially if the spouse was also the veteran's caregiver and dependent on that compensation as their sole income source.

The rate of compensation paid to survivors of service members who die in the line of duty or veterans who die from service-related injuries or diseases was established in 1993 and has been minimally adjusted since then. Currently, the rate of compensation paid to a veteran's survivors is significantly lower than the monthly benefits for survivors of federal civil service retirees. This creates inequity for survivors of our nation's heroes compared to survivors of federal employees.

The Caring for Survivors Act would increase the rate of compensation for DIC to 55% of a totally disabled veteran's compensation to correspond with what federal employee survivors receive.

Reduce the 10-Year Rule for DIC

Many veterans who are rated 100% disabled or have individual unemployability due to their service-connected disabilities are unable to work in full-time occupations, if

at all. In recognition of the severity of many disabilities and the impact on veterans and their families, if a veteran is 100% disabled, to include individual unemployability, for 10 consecutive years before the veteran's death, surviving spouses and minor children are eligible for DIC benefits.

However, if a veteran dies due to a nonservice-connected condition before they reached 10 consecutive years of being totally disabled, their dependents are not eligible to receive the DIC benefit. This happens even though many of these survivors put their careers on hold to act as primary caregivers for the veteran, and now with the loss of their veteran, could potentially be left destitute.

The Caring for Survivors Act would modify the DIC program and institute a partial DIC benefit starting at five years after a veteran is rated totally disabled and reaching full entitlement at 10 years. This would mean if a veteran is rated as totally disabled for five years and dies, a survivor would be eligible for 50% of the total DIC benefit increasing until the 10-year threshold and the maximum DIC amount is awarded.

Consistent with DAV Resolution Nos. 011 and 360, DAV supports S. 976, the Caring for Survivors Act.

S. 1031, a bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs

This bill would require the Government Accountability Office (GAO) to conduct a study to determine if there are disparities associated with race and ethnicity when it comes to compensation benefits, disability ratings associated with pain and denials of fully developed claims. It would include recommendations on how to collect the data on these disparities and require a final report due to Congress outlining the results of the study.

VA needs to continue identifying and addressing social and behavioral determinants that may affect outcomes in addition to barriers for all service-connected veterans by minority and ethnic groups.

In accordance with DAV Resolution No. 373, we support S. 1031, and call for VBA to routinely report data on the number of applications, utilization and completion of programs for veterans by racial and ethnic background.

S. 1039, a bill to amend Title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans

Currently, Title 38, USC, Chapter 1117, requires compensation for disabilities occurring in Persian Gulf veterans become manifest to a degree of 10% or more during the presumptive period described. Additionally, in section 3.317(i), Title 38, Code of

Federal Regulations, stipulates the presumptive period as not later than December 31, 2021.

S. 1039 would amend the statute by reducing the threshold for eligibility by requiring the disability "became manifest to any degree at any time." Additionally, the legislation would remove subsection (b) of the statute, which would require the Secretary to prescribe by regulation the period of time following service in the Southwest Asia theater of operations during the Persian Gulf War that the Secretary determines is appropriate for presumption of service connection for purposes of this section.

The provisions of the statute apply to Gulf War veterans and to veterans who served in Southwest Asia since September 11, 2001, including Afghanistan. A time limit on the development of diseases and a restriction of a presumptive period for service members still serving in Southwest Asia is materially unfair and dispassionate to the hundreds of thousands still suffering from chronic and unexplained physical symptoms.

The legislation would require the Secretary to develop a disability benefits questionnaire (DBQ) for health care personnel for the identification of Gulf War illnesses. We recommend the Secretary coordinate and collaborate with the War Related Illness and Injury Study Center (WRIISC) to develop the appropriate DBQ to ensure that all aspects of symptoms and illnesses related to the Persian Gulf War are appropriately addressed. Additionally, this bill would amend the statute to expand the definition of Southwest Asia by including more countries.

In accordance with DAV Resolution Number 168, we support S. 1039 as filing periods for injuries and illnesses related to service in any theater of military operations must remain open ended to assure that benefits and services are available when those conditions ultimately manifest and not limited by a predetermined time period.

S. 1071, a bill to authorize a claims enhancement services pilot program wherein the Department of Veterans Affairs would provide a service to veterans and spouses to create a claim for pension benefit with Aid and Attendance

This legislation would create a three-year pilot program during which the VA would contract a third-party entity to help veterans file their claims for wartime, nonservice-connected pension. The intent is to help ease the backlog and processing time of the pension claim process.

DAV has concerns this pilot, which would add a third party contractor, would take additional resources from VBA while not reducing the backlog of approximately 700 nonservice-connected pension claims. Considering the number of nonprofit organizations available to veterans in the form of state veteran service organizations, county service organizations and congressionally chartered VSOs, this program seems superfluous. DAV opposes this legislation in accordance with DAV Resolution No. 358.

S. 1095, a bill to amend Title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-State tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program

This bill would require eligible schools to extend in-state tuition benefits to beneficiaries of the Dependents Educational Assistance (DEA) program bringing the rules for this program in line with the Post 9/11 GI Bill. The DEA program, also known as Chapter 35, currently provides tax-free benefits to spouses and children of seriously disabled veterans and survivors of those who died on active duty or due to their service-connected conditions.

DAV supports this legislation in accordance with Resolution No. 398, which supports legislation that would improve educational benefits to service-disabled veterans and their survivors.

S. 1096, a bill to amend Title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces

This legislation would extend eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to the spouses and children of individuals who die from a service-connected disability within the first 120 days after leaving the Armed Forces. Currently, only surviving children or spouses of those who died during active duty, on or after September 11, 2001 are eligible for this scholarship.

DAV supports this legislation in accordance with Resolution No. 398, which supports legislation that would improve educational benefits to service-disabled veterans and their survivors.

S. 1093, a bill to realign the Department of Veterans Affairs education, housing and vocational training programs under a fourth administration

This legislation would separate from the VBA programs under the purview of the Office of Economic Opportunity and elevate them by creating a new fourth administration within VA, with a new Under Secretary for Economic Opportunity and Transition. The new Veterans Economic Opportunity and Transition Administration (VEOTA) would include critical programs such as Veteran Readiness and Employment (VR&E), the Forever GI Bill, and the Transition Assistance Program for transitioning service members.

At present, VA is comprised of three administrations: VBA, the Veterans Health Administration (VHA), and the National Cemetery Administration (NCA). VBA includes

not only compensation and pension programs for veterans, but also education, VR&E, housing, and veteran-owned business programs, and the broadly-defined transition assistance program, which is shared with the Departments of Defense (DOD), Labor (DOL) and Homeland Security (DHS). All of these programs are currently overseen by the Office of Transition and Economic Development (OTED).

Currently, the OTED programs inside VBA must compete with the Compensation, Pension and Insurance programs, of which Compensation is by far the largest program and historically tends to dominate the attention of VBA leadership and personnel. Because of the scale and scope of the claims and appeals processing reforms, VA's economic opportunity programs have too often been challenged to secure funding and resources.

VA should have as much focus on the economic opportunities for veterans as it has for their health care and benefits. When service members are newly discharged, not all will seek VA health care or disability compensation, nor will they be seeking NCA services. However, the vast majority of new veterans will be looking for gainful employment, educational or entrepreneurial opportunities. Congress should recognize the value of these programs by separating and elevating them into their own administration within VA, whose main goal would be the economic empowerment of transitioning service members and veterans.

In accordance with DAV's Resolution No. 390, DAV supports the VET OPP Act to create a fourth Administration.

S. 3885, SFC Heath Robinson Burn Pit Transparency Act

The SFC Heath Robinson Burn Pit Transparency Act would require VA to regularly report to Congress on each reported case of burn pit exposure. This includes the enrollment status of covered veterans, summary of health care visits, diagnosed conditions, enrollment in the Burn Pit and Airborne Hazards Registry, as well as the outcomes of VA decisions on claims for benefits for conditions related to burn pits.

VA does not currently track or report on individual exposures, treatment, diagnoses or claims regarding burn pit exposure. DAV supports this legislation, as it will provide a clearer picture of burn pit exposures, health care relative to the exposure, diagnoses and claims for benefits. This information could reveal previously unknown exposures to burn pits, health care struggles, successful claims and any gaps in benefits and health care.

TIME FOR ACTION ON TOXIC EXPOSURE LEGISLATION

Mr. Chairman, hope for veterans exposed to toxic exposures is on the horizon. Multiple legislative solutions have been introduced and to some, it may appear that these bills are competing or duplicative; instead, we believe they are complementary. Each addresses a different piece of the larger toxic exposure puzzle.

The Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act would extend presumptive service connection for more than 20 serious respiratory conditions and cancers that may be linked to exposure to burn pits and other chemicals. While VA has yet to affirm that existing data is sufficient to prove associations for these conditions, they must acknowledge that due to the nature of military deployments, requisite data might never have been collected in the first place. After two decades, it is unreasonable to ask critically ill veterans to continue to wait for more data that might never come, when we can help them today.

The Veterans Burn Pits Exposure Recognition Act would concede exposure to dozens of chemicals for all veterans who served in areas where burn pits are known to have been widely used, meaning those seeking health care and benefits for illnesses not yet considered presumptive would no longer have to provide specific evidence of such exposures.

The TEAM Act would provide permanent health care enrollment eligibility for all veterans who were exposed, regardless of their disability claim status. Under this legislation, veterans who become ill will not have to wait for their VA disability claims to be decided before they receive care. Those who were exposed but may not yet be ill would be able to receive preventive care to catch potential illnesses before they become life-threatening. It would also create a framework with an independent commission charged with establishing additional presumptive conditions that stem from all toxic exposures, foreign and domestic, now and in the future.

No single bill will address all the challenges veterans exposed to toxic hazards must overcome. But together, these and other complementary bills form the pieces of a larger puzzle that would provide care and benefits for all veterans, past, present, and future. Veterans should never again have to wait decades, like our Vietnam veteran brothers- and sisters-in-arms, to receive earned health care and benefits at VA. Congress needs to act quickly, setting aside partisanship and political differences, and send the president a comprehensive bill this year to help our veterans by addressing exposures to toxic hazards while in service.

Mr. Chairman, this concludes my testimony. I will be pleased to answer any questions you or members of the Committee may have.

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WOUNDED WARRIOR PROJECT
STATEMENT OF
ALEKSANDR MOROSKY
GOVERNMENT AFFAIRS SPECIALIST

LEGISLATIVE HEARING

ON

S. 89, Ensuring Survivor Benefits During COVID-19 Act of 2021; S. 219, Aid and Attendance Support Act of 2021; S. 437, Veterans Burn Pits Exposure Recognition Act of 2021; S. 444, AUTO for Veterans Act; S. 454, K2 Veterans Care Act of 2021; S. 458, Veterans Claim Transparency Act of 2021; S. 565, Mark Takai Atomic Veterans Healthcare Parity Act of 2021; S. 657, A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes; S. 731, Department of Veterans Affairs Information Technology Reform Act of 2021; S. 810, Fair Care for Vietnam Veterans; S. 927 Toxic Exposure in the American Military (TEAM) Act; S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; S. 976, Caring for Survivors Act of 2021; S. 1031, A bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes; S. 1039, A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes; and Draft Legislation.

April 28, 2021

Chairman Tester, Ranking Member Moran, and distinguished members of the Senate Committee on Veterans' Affairs – thank you for inviting Wounded Warrior Project (WWP) to submit this written statement. We appreciate the opportunity to highlight WWP's positions on key issues and legislation before the Committee.

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 185,000 registered post-9/11 warriors and their families, continually engaging with those we serve, and capturing an informed assessment of the challenges this community faces. We are pleased to share that perspective for this hearing on pending legislation. Although we support most of the proposed legislation, our comments will be focused on those bills where we can offer further thoughts for Committee members to consider. While we do not oppose any one piece of legislation, we abstained from offering our support or comments on proposed legislation that was

DUTY ★ HONOR ★ COURAGE ★ COMMITMENT ★ INTEGRITY ★ COUNTRY ★ SERVICE

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out of our scope of expertise or where we were still working with the sponsors and stakeholders to better inform our position. Over the next several months, we are hopeful that we can assist your work to improve the lives of veterans and their families during the 117th Congress.

S. 89, *Ensuring Survivor Benefits During COVID-19 Act of 2021*

The *Ensuring Survivor Benefits During COVID-19 Act of 2021* would require the Department of Veterans Affairs (VA) to secure a medical opinion to determine whether a service-connected disability was the principal or contributory cause of death for any disabled veteran who dies from the Coronavirus Disease 2019 (COVID-19). This bill would ensure that those with service-connected disabilities that may have exacerbated their COVID-19 illness, leading to death, have all the benefits afforded to them as a veteran who died directly from their service-connected disability.

Surviving spouses, children, or parents of a Service member who died in the line of duty, or the survivor of a veteran who died from a service-related injury or illness, may be eligible for a tax-free monetary benefit called VA Dependency and Indemnity Compensation (VA DIC). The base rate for DIC for a surviving spouse is \$1,357.56 and the amount fluctuates for children and parents depending on their circumstances. The *Ensuring Survivor Benefits During COVID-19 Act of 2021* would help guarantee that DIC benefits are extended to survivors of veterans whose original death certificate did not indicate that a service-connected disability was a principal or contributory cause of death related to COVID-19, but for which a subsequent medical opinion indicates such a relationship.

There are many cases where a veteran's disability can affect the outcome of his or her chances of survival to a COVID-19 infection. To illustrate a likely example, consider a veteran with severely decreased lung capabilities due to a service-connected disability. In that case, it is possible that the decrease in lung capacity led to an additional complication when infected by the COVID-19 virus. This is just one possible case where a service-connected disability could affect the likelihood of someone's COVID-19 recovery. Those who have passed away deserve our full support, and the surviving family members should not be left with no means of financial support. Thus, WWP supports S. 89, the *Ensuring Survivor Benefits During COVID-19 Act of 2021*, and we thank Senator Sinema and Senator Tillis for introducing this legislation.

S. 219, *Aid and Attendance Support Act*

The Aid and Attendance program is designed to provide extra financial support from VA to veterans in need of in-home assistance with everyday tasks like bathing, dressing, or eating. Approximately one-third (32 percent) of respondents to WWP's 2020 *Annual Warrior Survey* reported the need for support services like these due to their service-incurred injuries or illnesses. Perhaps more than any period in recent history, the COVID-19 pandemic has illuminated the importance of this benefit. Though many Aid and Attendance beneficiaries represent those most vulnerable to the COVID-19 virus, some were forced to forgo the support services they rely on

due to increasing costs by providers who incurred the extra expense of supplies like masks, gloves, gowns, and other protective equipment.

Today, VA has vaccinated over two million veterans and over 279,000 employees. WWP is optimistic about the progress that has been made, and we see a path to pre-pandemic operations quickly emerging. However, the risk of the virus has not been fully eradicated, nor has the fear that some veterans and health care workers face when receiving or performing in-home health care. Protective measures are still in place, and the costs of personalized health care are still high. In fact, a recent study found that the cost of in-home care has increased over the last year in large part due to the COVID-19 pandemic and resulting increases in the costs of training on new safety procedures, testing, cleaning supplies, and personal protective equipment.¹ More than half of long-term care providers (62 percent) predicted that they will be forced to raise rates in the next six months, thus passing on the burden of the COVID-19 pandemic to high-risk patients.

The *Aid and Attendance Support Act* will temporarily increase the amount of Aid and Attendance funding distributed to veterans by 25 percent, allowing beneficiaries to maintain the standard of care that they need throughout the public health emergency and the days following. For this reason, WWP supports S. 219, the *Aid and Attendance Support Act* and thanks Senator Cortez-Masto for her leadership on this issue.

S. 444, Advancing Uniform Transportation Opportunities (AUTO) for Veterans Act

The *Advancing Uniform Transportation Opportunities for Veterans Act* or *AUTO Act* will authorize VA to provide any eligible veteran or Service member with an additional automobile under VA's automobile allowance grant program once every ten years. Currently, a veteran or Service member with a specified service-connected disability or impairment may not receive more than one automobile under the program. This bill would expand a currently one-time benefit to a lifetime benefit for severely disabled veterans and Service members.

The VA automobile allowance grant program is reserved for a veteran or Service member who has lost the use of one or both feet, one or both hands, or who has incurred a severe burn injury, permanent decreased vision in both eyes, amyotrophic lateral sclerosis, or ankylosis in one or both knees or the hip. If qualified, the veteran or Service member will receive a one-time payment of \$21,488.29 to help buy a specially equipped vehicle. Many of these vehicles have features like modified steering, specialized braking capabilities, and wheelchair lifts or ramps.

Maintaining independence is critical in the reintegration process into civilian society and the workforce. Few things help more with independence than a vehicle. However, purchasing or modifying a vehicle with adaptations for injured and disabled veterans is costly. These are lifetime injuries and illnesses, and as such, the benefits available to those who have incurred them should reflect a lifetime of need and support. WWP supports the *Advancing Uniform*

¹ Genworth 17th Annual Cost of Care Survey: COVID-19 Exacerbates Already Rising Long Term Care Costs; Care Providers Foresee Additional Rate Hikes in 2021, available at <https://newsroom.genworth.com/2020-12-02-Genworth-17th-Annual-Cost-of-Care-Survey-COVID-19-Exacerbates-Already-Rising-Long-Term-Care-Costs-Care-Providers-Foresee-Additional-Rate-Hikes-in-2021>

Transportation Opportunities for Veterans Act or AUTO Act. We thank Senator Collins and Senator Manchin for introducing this legislation.

S. 437, the Veterans Burn Pits Exposure Recognition Act of 2021; S. 454, the K2 Veterans Care Act of 2021; S. 458, the Veterans Claim Transparency Act of 2021; S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act of 2021; S. 657, A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes; S. 810, the Fair Care for Vietnam Veterans; S. 927 the Toxic Exposure in the American Military (TEAM) Act; S. 952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; S. 976, the Caring for Survivors Act of 2021; and S. 1039, A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes

Wounded Warrior Project applauds the Committee's focus on addressing the needs of those who suffer from illnesses associated with exposure to toxic substances, both on the battlefield and in peacetime. For nearly 20 years, a significant number of post-9/11 veterans have been exposed to contaminants such as burn pits, toxic fragments, radiation, and other hazardous materials found on deployments to countries like Iraq, Afghanistan, Uzbekistan, and elsewhere. Now, far too many of them are experiencing severe, rare, and early-onset conditions, which we suspect are closely correlated to their exposures. WWP is committed to addressing their toxic wounds with the same urgency which we address the physical and invisible wounds of war.

Although WWP primarily serves post-9/11 wounded, ill, or injured warriors through direct programs and advocacy, we frequently advocate for all generation of veterans. We recognize that challenges associated with toxic exposures has affected generations of veterans long before the attacks on September 11, 2001 and therefore supports S. 565, *Mark Takai Atomic Veterans Healthcare Parity Act of 2021*, S. 657, *a bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes*, S. 810, *Fair Care for Vietnam Veterans*, and S. 1039, *to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes*.

In Focus: S. 437, the Veterans Burn Pits Exposure Recognition Act of 2021

Traditionally, VA disability claims are granted by establishing direct service connection through a medical nexus that links a veteran's current diagnosis to an in-service event. In the case of toxic exposure-related claims, however, the in-service event, such as burn pit exposure, can be nearly impossible to prove since these events were often never documented. According to VA data, from June 2007 to July 2020, only 2,828 of the 12,582 (22 percent) veterans who claimed conditions related to burn pit exposure were granted service connection.² A common

² *Toxic Exposures: Examining Airborne Hazards in the Southwest Asia Theater of Military Operations: Hearing Before the Subcomm. on Disability Assistance and Memorial Affairs of the H. Comm. on Vet. Affairs*, 116th Cong., (2020) (testimony of Laurine Carson), available at <https://docs.house.gov/meetings/VR/VR09/20200923/111024/HHRG-116-VR09-Wstate-CarsonL-20200923.pdf>.

reason that these claims are denied is that the veteran lacks evidence of exposure. Since the veteran often has no documentation of burn pit exposure (e.g., time and location), no in-service event is established, and VA often rejects the claim without providing additional consideration of whether the claimed illness is connected to the veteran's service.

The *Veterans Burn Pits Exposure Recognition Act of 2021* would solve this problem by conceding exposure to burn pits and other toxic substances currently accepted by the VA adjudication manual for any veteran who served in locations recognized by the VA Airborne Hazards and Open Burn Pit Registry. It would also require VA to request a medical opinion on the link between illness and exposure when the underlying facts do not provide *prima facie* evidence to grant the claim.

While VA's current grant rate of 22 percent for burn pit-related claims is discouragingly low, we believe that claims will be more likely to succeed if burn pit exposure is conceded for veterans who served in areas where burn pits are known to have been used. Current law grants a concession of exposure to herbicide agents for Vietnam veterans (38 U.S.C. § 1116 (f)), many of whom lack documentation of where and when they were exposed to Agent Orange. Current era veterans deserve concession of exposure for the same reason. We note that even if a list of presumptive disabilities was established in connection with burn pit exposure, a concession of exposure would still be necessary for veterans who wish to claim direct service connection for any illness that is not presumed to be related to exposure. For these reasons, WWP supports the *Veterans Burn Pits Exposure Recognition Act of 2021* and sees it as a critical component that must be included in any comprehensive plan to address toxic exposure issues for the current generation of veterans. We thank Senator Sullivan and Senator Manchin for introducing this legislation.

In Focus: S. 454, the *K2 Veterans Care Act of 2021*

Shortly after the attacks of September 11, 2001, the U.S. established Camp Stronghold Freedom at Karshi-Khanabad Air Base, Uzbekistan, known as K2. From 2001 to 2005, as many as 15,000 Service members were deployed to K2 in support of combat missions in Afghanistan. Veterans who were stationed at K2, which had formerly been a Soviet base, have reported extreme toxic conditions, including ponds that glowed green and black liquid oozing from the ground.

Recently declassified U.S. Army documents illustrated the extent of toxic conditions at K2, including elevated levels of tetrachloroethylene and particulate matter, the presence of depleted uranium, and the potential for daily contact with radiation existed for up to 100 percent of the assigned units³. Many K2 veterans are now suffering from an array of rare and serious health conditions. A 2015 report by the Army Public Health Center provided initial insight on the rate of their illnesses, finding statistically significant elevated rates of certain cancers in K2 veterans, including malignant melanoma and malignant neoplasms of lymphatic and hematopoietic tissue⁴. Still, K2 veterans struggle to establish service connection for their illnesses, and no VA policies currently exist to ease the evidentiary burden for their claims.

³ https://oversight.house.gov/sites/democrats.oversight.house.gov/files/4.1_Environmental%20Site%20Surve%202002.pdf#page=27

⁴ Army Public Health Center, *Health Status of Personnel Formerly Deployed to Karshi-Khanabad (K2): A*

The *K2 Veterans Care Act of 2021* would address this disparity by creating a framework to establish presumptive disabilities for veterans who served at K2. A presumption of service connection would be established whenever the National Academies of Sciences, Engineering, and Medicine (NASEM) finds a positive association between illnesses experienced by K2 veterans and exposure to jet fuel, volatile organic compounds, high levels of particulate matter, depleted uranium, asbestos, or lead-based paint. This would entitle the veterans to disability compensation and VA medical care.

Wounded Warrior Project supports this legislation and its intent to extend health care and benefits to K2 veterans who are suffering from toxic exposure-related illnesses; however, we would like to suggest two technical changes that we believe would improve the bill. First, this legislation, as written, would establish presumptive disabilities by reason of a positive association as determined by NASEM, without requiring the approval of the VA Secretary. While we understand that this would speed up the process in theory by removing one layer of decision-making, we believe that recommendations made by NASEM as an independent, non-profit organization would require approval by either the Secretary or Congress before becoming final. Second, we recommend that language be added to require the Secretary to enter into an agreement with NASEM to evaluate the available scientific evidence regarding associations between diseases in K2 veterans and the covered toxic substances. Once again, WWP supports the *K2 Veterans Care Act of 2021* and hopes the Committee will consider these technical changes to the text. We thank Senator Blumenthal and Senator Baldwin for introducing this legislation.

In Focus: S. 927, the *Toxic Exposure in the American Military (TEAM) Act*

Historically, Congress has addressed the military toxic exposures of each generation with era-specific legislation. Vietnam veterans' exposures were addressed with the *Agent Orange Act of 1991* (P.L. 102-4), and Desert Storm/Desert Shield veterans' exposures were addressed by the Persian Gulf War Veterans Act of 1998 (P.L. 105-368 §§ 101-107). However, no comprehensive legislation has been enacted specifically addressing the toxic exposure concerns of the current and future generations of veterans. In recognition of this fact, WWP spearheaded formation of the Toxic Exposure in the American Military (TEAM) Coalition. Currently comprised of over 30 military and veteran service organizations and experts, the TEAM Coalition is collectively dedicated to raising awareness, promoting research, and advocating for legislation to address the impact of toxic exposures on all those who have been made ill as the result of their military service, now and in the future.

After nearly two years of collaboration and consensus-building, the TEAM Coalition successfully advocated for the introduction of the *TEAM Act*. This critical legislation would provide VA health care eligibility for all veterans exposed to toxic substances, create a framework for establishing presumptive disabilities for all toxic exposures to include the post-9/11 generation and beyond, and improve the provision of care for toxic exposure-related conditions. Each of these components is discussed in greater detail below.

Health Care Eligibility for All Exposed Veterans:

In general, eligibility for VA health care is established when a veteran is granted one or more service-connected disabilities. For reasons already discussed, this is often an exceedingly difficult task when dealing with toxic-exposure related conditions. One critical consequence of a denied disability claim is delayed access to VA care. WWP strongly believes that VA health care enrollment eligibility should be granted to any veteran who suffered toxic exposures while in service, regardless of their service-connected disability claim status.

Our call for expedited health care access is not unprecedented. Legislation enacted over the course of several decades has provided health care eligibility to previous generations of veterans with toxic exposure concerns. Veterans who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, and the Persian Gulf War between August 2, 1990, and November 11, 1998, are eligible for priority group 6 VA health care enrollment without the need to establish a service-connected disability.⁵ Currently, veterans who served in combat and were discharged after January 28, 2003, are eligible for enrollment on a similar basis, but only for a period of five years after separation.

To illustrate the impact of the five-year policy, we point to VA data showing that as of June 30, 2015, there were 1,965,534 separated veterans of Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn,⁶ all of whom are now outside the 5-year enrollment eligibility period. Taken together with the fact that only 62 percent of deployed post-9/11 veterans have established a service-connected disability as of March 2021,⁷ it can be reasonably estimated that nearly 750 thousand current-era veterans who served in areas of known exposure are presently ineligible for VA health care. Should any of them become ill with a condition they suspect is related to their exposure and seek care at a VA facility, they would be turned away and told to return only after they are service connected.

We can achieve parity for all veterans who served in areas of known exposure by granting them permanent Priority Group 6 enrollment eligibility. We believe this is critically important, as it would prevent veterans those who are seriously ill from having to wait until their claims are decided to access the care they need – a process that can take months or even years if the claim goes to appeal. Furthermore, we believe that veterans who were exposed to toxic substances but may not be ill should have access to regular preventative care so that any illnesses that may arise can be diagnosed and treated early before they become serious or even life-threatening.

To address this, the *TEAM Act* would expand priority group 6 health care enrollment eligibility to any veteran who earned certain medals associated with current era deployments or is eligible for inclusion in the Airborne Hazards and Open Burn Pit Registry. It would also grant eligibility to any veteran who the Department of Defense identifies as having been possibly exposed to a toxic substance inside or outside the United States as reflected by the Individual Longitudinal Exposure Record (ILER) or other means and establish a mechanism that would

⁵ Department of Veterans Affairs, *VA Priority Groups*, available at <https://www.va.gov/health-care/eligibility/priority-groups/>

⁶ Department of Veterans Affairs, *Analysis of VA Health Care Utilization among Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), and Operation New Dawn (OND) Veterans*, January 2017.

⁷ Department of Veterans Affairs, *FACT SHEET: VBA Claims Data -- Comparison by Cohorts (as of March 2021)*, 2021.

allow veterans to self-identify as having been exposed. WWP strongly supports these provisions and believes their enactment would provide lifesaving treatment and preventative care to all those who were exposed to toxic substances, now and in the future.

A Permanent Framework to Establish Presumptive Disabilities for All Toxic Exposures:

In recognition of the challenges associated with establishing direct service connection for toxic exposure-related conditions, Congress has historically created mechanisms that require VA to make determinations on 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 currently exists to require VA determinations on illnesses associated with all toxic exposures, regardless of location or period of service.

The *TEAM Act* would require a framework for establishing presumptive conditions for veterans exposed to toxic substances now and in the future. This would include the establishment of an independent Toxic Exposure Review Commission comprised of scientists, health care professionals, and veteran service organizations (VSOs). This commission would collect information and hold public meetings to identify all possible military toxic exposures and make recommendations to VA on whether scientific reviews are warranted. VA would concurrently enter into an agreement with the National Academies of Science, Engineering, and Medicine (NASEM) to conduct scientific reviews regarding associations between diseases and military toxic exposures based on the recommendations of the commission. Upon receiving a report from NASEM, VA would be required to respond within an established timeframe and the Secretary would be authorized to grant presumptive service connection for diseases by reason of having a positive association with exposure to a toxic substance. If VA declines to do so, they must publish their scientific reasoning in the Federal Register for public comment.

Recognizing that scientific research takes time and far too many veterans are already suffering from toxic exposure-related illnesses, we urge the establishment of this framework without delay. While WWP will continue to support legislation that creates presumptive conditions by statute, we believe that all veterans who have been exposed to toxic substances deserve a system that requires VA to respond to scientific data in a timely, transparent manner.

Establishing a Way Forward for Military Toxic Exposures:

Perhaps the most remarkable feature of the *TEAM Act* is its forward-thinking approach to the recurring challenges caused by military toxic exposures, generation after generation. While it does not address all toxic exposure concerns for any one era, it would extend on a permanent basis two important components of any comprehensive toxic exposure legislation; health care eligibility and a scientific framework; to apply to all toxic exposures, regardless of era or location, foreign or domestic, now and in the future. This would finally ensure that the next generation of veterans who are exposed to toxic substances are not once again starting from square one like each generation before them. With this in mind, WWP strongly supports the *TEAM Act* and believes its provisions must be included in any comprehensive toxic exposure

solution. We are thankful to Senator Tillis and Senator Hassan for their dedication of the wounded, ill, and injured veterans and Service members of the past, present, and future.

In Focus: S. 952, the *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021*

September 11, 2021 will mark the 20th anniversary of the beginning of the Global War on Terrorism. Since then, young Americans have steadily continued to volunteer for service in the U.S. Military, understanding the high probability that they would be deployed to combat in places like Iraq, Afghanistan, and elsewhere. They did so with some understanding of the risks to life and limb posed by enemy fire and roadside bombs. What they likely did not understand was the very real possibility that they would experience prolonged and pervasive exposure to toxic fumes from burn pits and other dangerous chemicals that they would not be able to avoid, resulting in serious illnesses that would follow them long after they returned home.

VA estimates that as many as 3.5 million veterans served in areas where they may have been exposed to burn pits and other toxic substances. Now, many of them have developed rare and early onset diseases like cancers, respiratory conditions, and other serious illnesses. Due to the unique challenges associated with toxic exposure claims that have already been discussed, most of them have been unsuccessful in their attempts to have their illnesses accepted by VA as connected to their service.

Recognizing the apparent correlation between in-service exposure and illnesses, the U.S. has invested resources in scientific studies to determine if there is an association. Still, after two decades of war, the science is disappointingly inconclusive. In its most recent report on the topic, released on September 11, 2020, the National Academies of Science, Engineering, and Medicine (NASEM) stated that its analysis of the previous epidemiologic studies found them inadequate to determine an association, largely due to a lack of good exposure characterization. However, they stated, “this should not be interpreted as meaning that there is no association between respiratory health outcomes and deployment to Southwest Asia, but rather that the available data are, on the whole, of insufficient quality to make a scientific determination.” Consequently, NASEM recommends that new epidemiologic studies should be conducted.⁸ Unfortunately, new studies could take years without the promise of more conclusive outcomes, leaving seriously ill veterans with little hope that relief is on the horizon.

The *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021* would bypass this scientific gridlock by establishing a presumption of service connection for any veteran who earned certain medals associated with current era deployments and is now suffering from any of at least 20 different cancers and serious respiratory conditions. These include asthma that was diagnosed after service, head cancer of any type, neck cancer of any type, respiratory cancer of any type, gastrointestinal cancer of any type, reproductive cancer of any type, lymphoma cancer of any type, lymphomatic cancer of any type, kidney cancer, brain cancer, melanoma, chronic bronchitis, chronic obstructive pulmonary disease, constrictive bronchiolitis or obliterative bronchiolitis, emphysema, granulomatous disease, interstitial lung

⁸ National Academies of Sciences, Engineering, and Medicine, *Respiratory health effects of airborne hazards exposures in the Southwest Asia Theater of Military Operations*, 2020.

disease, pleuritis, pulmonary fibrosis, and sarcoidosis. It would also create a presumption of service connection for any disease listed in 38 U.S.C. § 1116 (a)(2), as burn pits have been found to emit dioxins.⁹

We note that the majority of conditions on this list are devastating to a veteran's health and can severely impact their ability to earn a living. For these veterans, disability compensation would be a lifeline, giving them a chance to support themselves and their families while continuing to battle their illnesses. Many of the conditions on this list are also life-threatening and often terminal, and service connection would afford those veterans a sense of peace knowing that their families would have the support of Dependency and Indemnity Compensation after their passing. Veterans who volunteered to serve our country in a combat zone where they were exposed to toxic substances and are now severely ill or dying surely deserve those basic dignities.

This legislation would also create a mechanism that would allow interested parties to petition the VA Secretary to add new presumptive diseases to the list. This would trigger a scientific evaluation and recommendation by NASEM as to whether there is a positive association between the disease and a covered toxic substance, followed by a determination by the Secretary. While WWP prefers the framework of the *TEAM Act* that creates an independent, standing commission to gather data and recommend studies relating to all toxic exposures, we appreciate the intent of this provision and agree that a scientific framework will be necessary in any event going forward.

Lastly, this legislation would make the listed diseases compensable under the *Federal Employees' Compensation Act* for civilian employees of the Department of Defense, Department of State or an element of the intelligence community who served overseas in support of contingency operations. WWP has no position on this section as the covered individuals fall outside the populations we represent.

Veterans who were exposed to burn pits and other toxic substances and are now suffering from serious illnesses have patiently waited for years, and in some cases decades, for the scientific community to come to a consensus on whether their conditions were caused by their service. In the meantime, too many have lost their health, their jobs, and even their lives. With no end in sight, it is unreasonable to continue to ask them to wait for science that may never come when we clearly have the opportunity and the ability to help them now. For this reason, WWP supports the *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021*, and we thank Senator Gillibrand and Senator Rubio for its introduction. Furthermore, we believe that when taken together with the *Veterans Burn Pits Exposure Recognition Act of 2021* and the *TEAM Act*, these three complimentary bills fit together like pieces of a puzzle to fully address toxic exposure concerns, not only for the current generation of veterans, but for future generations as well. Accordingly, we ask Congress to pass all three pieces of legislation without delay, finally creating a lasting solution for all veterans who have been made ill as a result of military toxic exposures.

⁹ Institute of Medicine, *Long-term health consequences of exposure to burn pits in Iraq and Afghanistan*, 2011.

S. 731, *Department of Veterans Affairs Information Technology Reform Act*

Under the *Department of Veterans Affairs Information Technology Reform Act*, VA would be required to submit detailed reports to the Senate and House Committees on Veterans Affairs and the Appropriations Subcommittee on Military Construction, Veterans Affairs and Related Agencies in both chambers before committing funds to major information technology (IT) projects. Additionally, VA would be required to provide updates on these projects in its annual budget request and whenever there are notable variances to the projected costs, schedules, or deliverables. The bill would also generate new reports related to cloud migration and Office of Management and Budget-directed capital planning and investment controls.

As stated in the FY 2021 Department of Veterans Affairs Budget in Brief, “the technology and resources required to support VA strategic priorities underpin every aspect of the care and services delivered to Veterans.” To properly support its oversight of the country’s largest integrated health system and its associated benefits administration, Congress should have additional insight on the vision and progress of VA’s most critical IT projects. While VA should be commended for being one of only three federal agencies that improved its Federal Information Technology Acquisition Reform Act (FITARA) scorecard grade in 2020, that momentum can and should continue with additional reforms.

Wounded Warrior Project supports the *Department of Veterans Affairs Information Technology Reform Act* out of recognition that agency functioning and budgeting will improve with efficient and modernized IT systems in place. VA reported that it was in the process of completing many of the requirements included in the previous version of this bill from the 116th Congress and subsequently improved its FITARA scorecard grade from a C+ in 2019 to a B+ in 2020. We are hopeful that similar improvements can be achieved in the near future with the reforms proposed by the *Department of Veterans Affairs Information Technology Reform Act* and we thank Chairman Tester for continuing to advocate for progress in VA’s IT management capabilities.

S. 976, *Caring for Survivors Act*

Dependency and Indemnity Compensation (DIC) is not only a benefit to support economic stability among veteran families, but also an important way to honor those who have died in the line of duty or from service-related injuries and illnesses. After the loss of their loved one, many survivors rely on this benefit to meet their basic needs.

However, the DIC program has been historically resistant to modernization. Under current law, DIC is restricted to those whose veteran counterpart was rated as totally disabled for at least ten years preceding his or her death. This effectively bars payment to the survivors of veterans who developed severe illnesses or injuries late in life, or a totally disabling disability which onset rapidly.

The *Caring for Survivors Act* would reduce this limitation from ten years to five, allowing more survivors eligibility for DIC. In addition, the legislation would reform the DIC

payment structure, better aligning it with the Civil Service Retirement System (CSRS) and other federal survivor benefits which allow survivors to capture payments of up to 55 percent of their late loved one's prior compensation. WWP supports the *Caring for Survivors Act* in its effort to improve benefits for the families of fallen veterans. We want to extend our thanks to Chairman Tester and Senator Boozman for their bipartisan cooperation and leadership on this important issue.

S. 1031, to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes

Over the next few decades, our nation's Armed Forces will become significantly more diverse. The proportion of White veterans is projected to decrease from 74 percent to 61 percent while the numbers of Black, Hispanic, Asian, American Indian or Alaska Native, and multi-racial veterans are all projected to rise.¹⁰ WWP has witnessed similar trends as the number of racial and ethnic minorities in our Alumni population has steadily increased from 24 percent in 2010¹¹ to 36 percent in 2020¹². Attention and commitment are needed to ensure that this increasingly diverse veteran population is able to access the benefits they have earned without racial inequality, discrimination, or prejudice.

Senator Raphael Warnock's legislation would require the Government Accountability Office (GAO) to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by VA. This study would assess whether there are racial and ethnic disparities regarding: compensation benefits; disability ratings, particularly ratings based on pain; and denials of claims for benefits and would develop accompanying recommendations to augment data collection of any disparities identified.

While WWP fully supports this legislation's intent to better identify potential disparities in VA's benefits system, we want to highlight potential areas where the current data may not provide a true picture. VA's process for tracking race and ethnicity is often inconsistent or incomplete. Some programs rely on the judgment of a VA employee to determine a veteran's race and ethnicity; others do not track this demographic at all, deeming it irrelevant to the program's delivery. As the December 2019 GAO Report "Opportunities Exist for VA to Better Identify and Address Racial and Ethnic Disparities" noted, "weaknesses in race and ethnicity data due to problem with the completeness and accuracy continue to limit VA's ability to identify and address disparities in health care outcomes."¹³ We encourage VA to review its racial and ethnic data collection methods, implement standard procedures across both VBA and VHA, and fully integrate these standards into the benefits process to ensure that any studies, such as the one proposed by S. 1031, are reliable and complete.

¹⁰ DEP'T OF VET. AFFAIRS, OFFICE OF HEALTH EQUITY, Racial and Ethnic Minority Veterans, available at https://www.va.gov/HEALTH/EQUITY/Race_Ethnicity.asp.

¹¹ The 2010 *Annual Warrior Survey* is available for download and review at <https://www.woundedwarriorproject.org/media/bzzdswif2010-wwp-alumni-survey.pdf>.

¹² The 2020 *Annual Warrior Survey* is available for download and review at <https://www.woundedwarriorproject.org/mission/annual-warrior-survey>.

¹³ GAO, "Opportunities Exist for VA to Better Identify and Address Racial and Ethnic Disparities," (December 2019). Available at <https://www.gao.gov/assets/gao-20-83.pdf>.

Additionally, it is important to note that the objectives of S. 1031 may already be met through current initiatives. Section 5401 of the *Johmy Isakson and David P. Roe, M.D. Veterans Health Care Benefits Improvement Act* (P.L. 116-315) requires VA to analyze the data of every benefit and service offered to a veteran, disaggregated by gender, race, and ethnicity. The results of this ongoing study may bring answers to the questions posed by this legislation, or more importantly, identify new disparities that deserve further exploration. In addition, we appreciate that Section 5401 includes language to protect the anonymity of veterans. This consideration should also be applied to the study proposed in S. 1031.

WWP thanks Senator Warnock for his dedication to serving our nation's minority veterans, and we look forward to working with the Senator and this Committee to ensure equitable and comprehensive benefits for all who have served.

S. 458, *Veterans Claim Transparency Act of 2021*

The *Veterans Claim Transparency Act of 2021* would require VA to provide a veteran's disability claim representative with the opportunity to review a VBA proposed compensation and pension (C&P) claim determination before the decision becomes final. Under this bill, VA would be required to notify the representative in writing that a proposed determination is ready for review and may not make a final determination until the review period has ended. The review period is set at 48-hours. This was previously known as the 48-hour review period and was, until recently, a standard VBA policy.

Historically, veteran service officers would use the 48-hour review period to correct minor (but impactful) mistakes made by VA when adjudicating a VA benefits claim. Mistakes generally include mismatching Social Security numbers, clear misinterpretations of VA benefit policy, or misspelled names. Recently, VA removed the 48-hour review period and is in the process of implementing a new policy known as the Claim Accuracy Request (CAR) pilot program. The CAR pilot program review period will act as the new process for informing VA that a mistake in a claim was due to general misprocessing of information. The new process requires a veteran service officer to submit a Higher-Level Review (HLR) VA Form 20-0996, annotated on the top of the margin on the third page of the HLR paperwork with "Claim Accuracy Request," and submit the form to VBA. VBA will review HLR forms with the annotation and move quickly to inform the service officer why the decision will or will not be altered.

Wounded Warrior Project has found that some service officers would like to go back to the old 48-hour review period. We also found that some are looking forward to the new CAR HLR review process. For those service officers that have contacts at VA to assist in a 48-hour review request, they feel that the new HLR process will take longer than previously. For those service officers that do not have a contact at VA, they feel that the new HLR process will be more effective than submitting a 48-hour review request and not hearing anything back before the 48-hour review timeline is over. For these reasons, WWP supports the *Veterans Claim Transparency Act of 2021* but we would also like to see how the new CAR HLR process works

out and which might be best for veterans and service officers long term. Service officers having a review period is important to hold VBA accountable for minor mistakes, but if the former 48-hour review period only works for those with VA contacts, then there needs to be an option for those who do not have “an in” at VA. Therefore, while WWP supports this legislation, we would like to also see how the new CAR HLR process works and determine whether it could replace the old 48-hour rule. We thank Chairman Tester and Senator Boozman for introducing this legislation.

S. _____, to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.

This bill would expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) to spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces. Currently, eligibility for the Fry Scholarship is limited to surviving spouses and children of an active-duty Service member who dies in the line of duty on or after September 11, 2001.¹⁴ Once the Service member transitions out of the military, the family is no longer eligible for the Fry Scholarship, regardless of when the veteran passes away.

The Fry Scholarship pays a benefit equal to the current Post-9/11 GI Bill for individuals attending an institution of higher education. Beneficiaries attending school may receive up to their full tuition and fees, to include a monthly living stipend and book allowance, to obtain a degree in higher education and advance their career opportunities. Unfortunately, for Service members who transition out of the military due to severe disabilities, such as cancers from toxic exposure, and die from a service-connected disability soon after they are discharged, the family is ineligible for the Fry Scholarship because the Service member did not die “in the line of duty.” WWP supports this legislation and will continue to advocate for the families of the fallen anyway we can.

S. _____, to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals.

Undoubtedly, the COVID-19 pandemic has placed a strain on the already time-consuming VA benefits process; the Veterans Benefits Administration (VBA) is currently experiencing a backlog of more than 200,000 outstanding claims.¹⁵ As a result, VBA has taken steps to increase the capacity of its contractors to perform examinations, exercised the use of telehealth platforms, and in some cases, reintegrated in-person examinations. Nonetheless, claims decisions for veterans have slowed, a result which may critically impact the economic wellbeing of many who we serve.

¹⁴ VA Fry Scholarships, (2021), available at <https://www.va.gov/education/survivor-dependent-benefits/fry-scholarship/>

¹⁵ Veterans Benefits Administration Reports, (2021), Available at https://www.benefits.va.gov/reports/detailed_claims_data.asp

For WWP, the backlog caused by COVID-19 has only resolidified our commitment to assisting veterans to create well-researched, consequential claims. Our process is heavily reliant on upfront evidence-gathering, ensuring that the claims we submit are clear, complete, and detailed. WWP's Benefits team boasts a 90 percent claim approval rate.

The *VA AID Act* has a similar ethos: by connecting veterans with claim enhancement assistance, more veterans can get their claim right the first time, reducing VBA's burden and granting veterans their earned pensions faster. The bill would establish a three-year pilot program to connect veterans with third-party support services to ensure pension claims are fully developed and accurate. While WWP is supportive of Senator Cruz's intent to streamline the benefits process, we believe many organizations and resources already exist to meet this need, free of charge to the veteran and their families. WWP and many other likeminded organizations employ expert National Service Officers who can confidently guide veterans through the pension claims process, and in many cases, increase the likelihood of a positive result for the veteran. Additionally, the current backlog for the Aid and Attendance program is around 700 claims, so we do not see a large enough need of Aid and Attendance requests that would require funding outside groups of what current VSO's offer for free. We look forward to working with Senator Cruz and this Committee to improve the timeliness, accuracy, and accessibility of the benefits claims process but at this time, WWP does not support this legislation.

Closing

Wounded Warrior Project thanks the Senate Committee on Veterans' Affairs, its distinguished members, and all who have contributed to the discussions surrounding today's hearing. We share a sacred obligation to serve our nation's veterans, and WWP appreciates the Committee's effort to identify and address the issues that challenge our ability to carry out that obligation as effectively as possible. We are grateful for the invitation to submit this statement for the record and stand ready to assist when needed on these issues and any others that may arise.

STATEMENT OF
PATRICK MURRAY, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

WITH RESPECT TO

Pending Legislation

Washington, D.C.

April 28, 2021

Chairman Tester, Ranking Member Moran, and members of the committee, 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 remarks on legislation pending before this committee.

The VFW calls upon Congress to work in a bipartisan manner and with stakeholder Veterans Service Organizations (VSOs) to develop a comprehensive solution for toxic exposure. We need a solution that will take care of all veterans from past generations, provide current service men and women the reassurance they will be provided for, and have a system in place to ensure that all future generations of service members receive care and benefits if they face exposures as well. The brave men and women who wear our nation's uniform are asked to serve in the most dangerous and austere environments on earth. They faithfully serve our country with an implicit understanding that any health conditions arising in service or resulting therefrom will be treated by the Department of Veterans Affairs (VA). This understanding is one of the many components of a social contract, the terms to which our nation mutually assents whenever an individual answers the call to service in the armed forces. The obligations of this agreement are no less binding when a veteran has a health condition related to an airborne hazard, a toxic exposure, or the environment in which that individual served.

During the last century, veterans returned home from war with an array of unexplained health conditions and illnesses associated with the toxic exposures and environmental hazards they encountered in service. Today is no different, and toxic exposure has become synonymous with military service. For this reason, it is time for Congress to change the framework through which VA benefits are granted for individuals with conditions associated with toxic exposures and environmental hazards.

First, the VFW recommends that a commission, independent from the Department of Defense (DOD) and VA, be established to identify toxic and environmental exposures incident to military service. Once sufficient information exists regarding the presence of a toxic or environmental

exposure, the commission would be charged with conducting a study on the adverse health effects associated with the exposure.

This proposal is consistent with a recommendation from the September 2020 National Academies of Sciences, Engineering, and Medicine (NASEM) report entitled *Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations*. In that report, the committee recommended, inter alia, that VA establish an independent panel of experts to evaluate diagnoses assumed to be associated with exposure to burn pits, including pulmonary pathologists, toxicologists, and epidemiologists to evaluate these diagnoses. The report states that “such a committee is critical to ensuring that VA has a consistent approach in establishing or denying a diagnosis and evaluating its possible service connection . . . [and that veterans] are receiving a fair review that uses the best science.” This recommendation is consistent with the VFW’s belief that conditions related to toxic exposures should be referred to an independent commission as part of the greater framework.

Second, the VFW recommends that NASEM review and evaluate the available scientific evidence regarding certain diseases and exposure to toxic substances. In light of institutional experience gained through the implementation of the *Agent Orange Act of 1991*, the VFW believes that NASEM is well-suited to conduct such analysis. Furthermore, NASEM should conduct its evaluations on toxic exposures and environmental hazards based on the recommendations of the independent commission.

Finally, the VFW believes Congress should require VA to grant a presumption of service connection for the conditions deemed to be associated with toxic exposures and environmental hazards. To effectuate this requirement, VA would consider the conclusions reached by NASEM, resolving any doubt regarding associations in favor of veterans. In other words, VA should grant a presumption if the scientific evidence suggests that a disease is at least as likely as not to be associated with a toxic exposure or environmental hazard. Any other standard would be a stark departure from Congress’ historical approach to toxic exposure law and would pose an unreasonably high bar to the establishment of presumptive benefits.

Former VFW Washington Office Executive Director Larry Rivers provided testimony on this very issue in May 1990 before the House Veterans’ Affairs Subcommittee on Compensation, Pension, and Insurance in connection with H.R. 3004, a precursor to Public Law 102-4, the *Agent Orange Act of 1991*. During that hearing, Mr. Rivers observed that the pursuit of a “perfect understanding predicated upon scientific certainty” had stalled efforts to provide comprehensive benefits to veterans who were exposed to Agent Orange. To overcome this paradox, the Agent Orange Act implemented a process for establishing a presumption of service connection based on a “significant correlation” between exposure and the onset of disease. Then, as now, we believe this represents a fair and compassionate solution to a complex problem, and that the pursuit of scientific certainty of causation is both elusive and futile.

The framework we suggest is very similar to that of the Agent Orange Act. Until the expiration of the VA Secretary’s authority to promulgate regulations under that act, the Agent Orange model proved to be an efficacious method of granting presumptive benefits to veterans. For this reason, the VFW believes Congress should enact legislation that would establish an independent

commission to identify toxic exposures and environmental hazards and trigger additional studies, require NASEM to evaluate the scientific evidence regarding the association of health conditions and toxic exposures and environmental hazards, and require VA to grant presumptive service-connected benefits for conditions associated with toxic exposures and environmental hazards based on NASEM's findings.

All the toxic exposure-related bills listed in this testimony have portions that, if combined, would form a complete package that would cover as many veterans as possible. The VFW believes all of these proposals are complementary and in combination would accomplish the goal of true toxic exposure reform for all generations of veterans.

S. 89, Ensuring Survivor Benefits During COVID-19 Act of 2021

The VFW supports this proposal to ensure veterans who die due to service-connected conditions are properly taken care of. COVID-19 has wreaked havoc on our country for over a year, and veterans have been affected just like all other Americans. Some veterans who passed away after contracting COVID-19 may not have had all the contributory causes of death listed on their death certificates, making their families ineligible for certain benefits. This proposal would require VA to secure a medical opinion to determine if a service-connected disability was the principal or contributory cause of death, hopefully providing benefits for survivors.

S. 189, Veterans' Disability Compensation Automatic COLA Act of 2021

Every year Congress introduces legislation to make cost-of-living adjustments to the rates of disability compensation for veterans with service-connected disabilities, and the rates for dependency and indemnity compensation for survivors. These increases are the same percentage as that for Social Security benefits. The VFW supports this legislation which 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 will always be aligned to counteract inflation.

S. 219, Aid and Attendance Support Act of 2021

The COVID-19 pandemic has created unanticipated barriers and challenges for all of us, including those veterans who receive Special Monthly Compensation (SMC)/Aid and Attendance (A&A) benefits. These veterans who rely on home care services were impacted by the lack of medical supplies, personal protective equipment, and health care professionals who aid them in activities of daily living. Some veterans covered the additional costs out of their own pockets, while others have foregone the needed home care because of the unexpected expense.

Even though the VFW has not heard this specific concern from our members, we do know the problem exists. The VFW supports these veterans facing unprecedented circumstances and endorses this legislation to provide a temporary increase of Special Monthly Compensation (SMC)/Aid and Attendance (A&A) benefits to ensure veterans can afford the care and equipment they need.

S. 437, Veterans Burn Pits Exposure Recognition Act of 2021

When a veteran files a VA disability claim for a condition related to burn pit exposure, the claim has an 80% chance of being denied. Providing sufficient evidence of the exposure is nearly impossible as most veterans do not have any record of exposure in their military personnel records or other proof of the in-service event. The VFW supports this legislation which would concede exposure to toxic chemicals associated with burn pits for veterans deployed to locations where burn pits are known to have been used. This would remove the heavy burden of proof from exposed veterans for conditions not yet determined as presumptive. We see this bill as key to resolving one of the most pressing issues for toxic exposures today.

S. 444, AUTO for Veterans Act

The VFW supports this legislation as it would expand the current program to align with more realistic expectations of vehicle ownership. Service-connected injuries last a lifetime, but cars do not. Veterans should not have to pay additional costs associated with modified vehicles to accommodate their special needs due to service-connected injuries.

The current adaptive automobile grant for disabled veterans is an incredible benefit for those who need this program. VA is currently authorized to provide a one-time grant to veterans who are unable to drive due to a service-connected disability. This grant may be used for the purchase of a specially equipped automobile. However, the one-time use of this grant does not take into account modern vehicular needs for veterans and vehicles in the 21st century.

A single-use grant for vehicle adaptations is not enough considering the average American owns multiple vehicles in their lifetime. Veterans who have previously received a grant must pay any expenses associated with the purchase of a new vehicle themselves. These substantial costs, coupled with inflation, present a financial hardship for many disabled veterans who need to replace their primary mode of transportation once it reaches its life of service.

S. 454, K2 Veterans Care Act of 2021

From 2001 to 2005, thousands of U.S. service members were stationed at the Karshi-Khanabad Air Base in Uzbekistan, known as K2. Declassified DOD documents indicate that the former Soviet base was heavily contaminated with remnants from chemical weapons, radioactive uranium, jet fuel, and other toxic hazards. It was also found that open burn pits were used. Service members report that they saw signs warning them of the contaminants, witnessed glowing pond water, and smelled chemicals burning. Veterans who served at K2 have reported high rates of cancers, neurological disorders, and other serious conditions that, for some, have led to permanent disability or death. Unfortunately, the evidence of their exposure to these toxins has not been sufficient to receive VA benefits for their conditions.

The VFW supports this legislation which would provide K2 veterans with care and benefits for conditions associated with these exposures. We would also like to provide a recommendation that since the scientific body mentioned in the bill has been designated as NASEM, a formal agreement between VA and NASEM should be included.

S. 458, Veterans Claim Transparency Act of 2021

In April 2020, without prior notice to veterans or VSOs, VA eliminated the 48-hour review period which had been in place for decades. This VA policy was an essential feature of the VA claims process, functioning as an independent quality review check on claims decisions before final ratings were sent to veterans. The VFW is grateful to Chairman Tester and Senator Boozman for introducing this legislation and for bringing much needed attention to this issue. As a result of your efforts and continued pressure to preserve VSO notification, representatives from VA came together with the VFW and other VSOs to work on a potential solution. The Claims Action Review (CAR) pilot program was launched last week and will run throughout the summer with monthly updates to VSOs. While we support the intent of the legislation, we must first evaluate the CAR pilot program and then determine the best way forward to codify VSO notification and review.

S. 565, Mark Takai Atomic Veterans Healthcare Parity Act of 2021

From 1948 to 1958, the United States conducted 43 nuclear tests at Enewetak Atoll on the Marshall Islands. Approximately 6,000 veterans participated in the massive cleanup project of the test sites, which ran from May 1977 through May 1980. The VFW supports this legislation which would provide health care benefits to these radiation-exposed "atomic veterans" who participated in the cleanup of Enewetak Atoll, ensuring they receive the same benefits given to other service members involved in active nuclear tests.

S. 657, A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes.

Declassified DOD records show that herbicides were used to control vegetation on military bases in Thailand where U.S. service members served during the Vietnam War. Currently, VA grants benefits only for specific veterans who prove they participated in "regular perimeter duty on the fenced-in perimeters" of those bases. The idea that a person could have been exposed to these harmful agents only if they were on a portion of a base ignores both science and common sense. The fact is that veterans were exposed on all parts of these bases and now suffer from the effects of Agent Orange. The VFW supports this legislation to include veterans who served in Thailand during the Vietnam era for a presumption of service connection for exposure to herbicides and to provide long overdue recognition and care that these veterans deserve.

S. 731, Department of Veterans Affairs Information Technology Reform Act of 2021

The VFW supports this proposal to increase oversight of VA Information Technology (IT) projects. The legacy technology platforms within VA are a common problem to providing care and benefits. This proposal would require proper accounting and planning for any major IT projects moving forward. This would also require VA to provide a priority list for all currently unfunded IT proposals. Identifying the lack in proper IT resources will help mitigate future pitfalls caused by gaps in IT programs.

S. 810, Fair Care for Vietnam Veterans

In 2018, NASEM found that “sufficient evidence of an association” exists between Agent Orange exposure and hypertension and monoclonal gammopathy of undetermined significance (MGUS). VA has not added these to the list of presumptive conditions, even though the science shows they meet a stronger evidentiary standard than some of the previously approved conditions. The VFW supports this legislation to add hypertension and MGUS to VA’s list of presumptive conditions associated with herbicide exposure.

S. 894, Hire Veteran Health Heroes Act of 2021

The VFW supports this provision to create alternative pathways for veterans to attain gainful employment after leaving active duty. Thousands of qualified troops with medical training transition into civilian life every year, and this proposal would help streamline employment opportunities within VA for anyone seeking to continue practicing health care in their civilian lives.

S. 927, A bill to improve the provision of health care and other benefits from the Department of Veterans Affairs for veterans who were exposed to toxic substances, and for other purposes (TEAM).

The VFW strongly supports this legislation which would provide critical reforms and guidance necessary for VA to effectively grant care and benefits to veterans suffering from conditions due to toxic exposures. This legislation includes two major components which are key to comprehensive toxic exposure reform—a permanent framework and expansion of health care.

In alignment with the VFW’s top priority, this legislation would: establish an independent commission to review toxic and environmental exposures incident to military service and recommend independent studies; require VA to enter into an agreement with NASEM to conduct studies on possible associations between diseases and toxic exposures; and require VA to respond to those scientific findings when a positive association is found with exposure to a toxic substance and grant presumptive service connection when warranted. The VFW believes that the comprehensive approach provided in this legislation would address past, present, and future toxic exposures at locations both domestic and abroad.

In addition, this legislation expands VA health care enrollment eligibility for all veterans exposed to toxic substances during their service. This is especially important for veterans who urgently need health care for conditions associated with their exposure but have not fully completed the VA disability claims process.

S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021

The VFW supports this proposal as it aligns with our organization’s resolutions and priorities to provide care and benefits for all who have been exposed in service. A key provision in this proposal is the petition mechanism for addressing new toxic exposures. Grassroots advocacy is

the lifeblood of veteran organizations and the petition component of this bill would allow for veterans' voices to be heard directly within VA.

S. 976, Caring for Survivors Act of 2021

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. The VFW supports this legislation to increase DIC payments to survivors, reaching parity with payments made to surviving spouses of other federal employees.

This legislation also addresses the need to protect survivors, who may also be caregivers, in cases where the veteran is totally disabled for less than the arbitrary period of ten years and dies from a non-service-connected condition. Currently, in those cases, the survivors would not receive DIC. The VFW supports this legislation to provide benefits in these situations, gradually starting at five years and increasing to the full amount at ten years. This would extend DIC eligibility to more survivors and ease some of the financial burdens with which they suddenly may be faced.

We do, however, have requests for clarification regarding the bill as it is currently written. As it is not explicitly stated, we want to ensure that the increase to DIC is the same for the base pay for all recipients of the benefit, even those receiving added amounts such as the eight-year provision for Aid and Attendance. We would also like clarification on the date of January 1, 1993, included in the Individuals Described section. We request clarification that the date would not exclude any current group of eligible DIC recipients from the increase.

Additionally, the VFW recommends making an exception to the ten-year time frame for payments to the surviving spouses of veterans who die from ALS. This is because the average life expectancy for someone diagnosed with ALS is two to five years.

S. 1031, A bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.

The VFW supports this legislation requiring a study to be conducted on race and ethnic disparities for compensation benefits, disability ratings, and the rejection of developed benefit claims from VA.

As the population of minority veterans continues to grow, VA needs to adapt to meet the need for access to both benefits and health care services. Women, LGBT, and racial and ethnic minority veterans face barriers and challenges across different life domains. In 2014, less than one quarter of the total veteran population were minorities. This number is expected to increase to 35.7% in 2040.

While the number of minority veterans increases, so does their use of the Veterans Benefits Administration (VBA). In the 2018 annual report, the VA Adversity Committee on Minority

Veterans recommended that VBA publish a report identifying and addressing potential racial and ethnic disparities. VA concurred with the recommendation in principle and said it would assess the available data, but indicated that a statistically valid report would not be achievable because of significant voids in the VBA data.

This legislation would provide valuable information to recognize and address potential disparities, identify improvement areas within VBA, and assist facilities with better data collection practices. Lack of inclusivity and consistency hinders the collection of accurate data, which could benefit all veterans and their families.

S. 1039, A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes.

Although U.S. military operations in the Persian Gulf are currently ongoing, authorization to provide benefits will expire on December 31, 2021. The VFW supports this legislation to permanently extend VA's authority to grant benefits for Gulf War Illness (GWI). It would also broaden the definition of Persian Gulf veteran to include those who served in Afghanistan, Israel, Egypt, Turkey, Syria, and Jordan.

Gulf War Illness, known also as chronic multi-symptom illness and undiagnosed illnesses, is often misdiagnosed as it presents itself as a conglomeration of symptoms. Currently, VA uses separate Disability Benefits Questionnaires (DBQs) to evaluate GWI symptoms individually.

This legislation would create a single DBQ for Gulf War Illness to be used when a veteran presents with one or more GWI symptoms. It would also provide training to VA medical examiners for Gulf War disability claims.

S. 1071, A bill to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes.

The VFW strongly opposes this legislation as this bill would open the door for consultants to prey on the most vulnerable in the veterans' population. Additionally, nothing in this proposal would accomplish the stated purpose of this bill. The intent as stated in the bill text, "in order to reduce the backlog of the Department of Veterans Affairs for claims for pension," would not be achieved by this legislation. In fact, it could do just the opposite.

VA already has standards through which it accredits VSO representatives, claims agents, and attorneys, ensuring that these entities have the requisite training and abide by federal regulations in assisting veterans. The VFW vehemently maintains that veterans should never have to pay to access their benefits. In fact, this proposal flies in the face of why VA recognizes VSOs for the purposes of preparation, presentation, and prosecution of claims before the agency.

The VFW in no uncertain terms believes that the prospect of even a pilot program for veterans to utilize these consulting services—especially one that further enriches these companies through a federal contract—would harm our veterans. We must instead improve consumer protection for

veterans and encourage veterans seeking benefits to work with highly skilled, professional, and VA-accredited advocates who will provide superior representation and advocacy without taking veterans' earned benefits.

S. 1093, A bill to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes.

The VFW supports this proposal to establish the Veterans Economic Opportunity and Transition Administration in the Department of Veterans Affairs. VA is comprised of three administrations—the National Cemetery Administration (NCA), the Veterans Benefits Administration (VBA), and the Veterans Health Administration (VHA). VBA is in charge of not only compensation and pension, but also the GI Bill, vocational rehabilitation, housing and business loans, and the broadly defined transition assistance program, which is shared with the Departments of Labor, Defense, and Homeland Security.

The VFW believes our nation's focus on the economic opportunities of our veterans must be permanent. In reality, not all veterans seek VA health care when they are discharged, they do not need assistance from the NCA, and they do not all seek disability compensation. However, the vast majority are looking for gainful employment and/or education. Congress should recognize the value of these programs by separating them into their own administration focused solely on their utilization and growth.

The VFW has long proposed that Congress creates a fourth administration under VA with its own undersecretary whose sole responsibility is the economic opportunity programs. This legislation would permit the new Secretary of Veterans Economic Opportunity and Transition Administration to refocus resources, provide a champion for these programs, and create that central point of contact for VSOs and Congress. This would ensure that the GI Bill, Veteran Readiness and Employment, home loan, and other economic opportunity centered benefits receive the attention they deserve.

S. 1095, A bill to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-state tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes.

The VFW supports this proposal, which would require VA to disapprove programs of education for payment of benefits under chapter 35 at public institutions of higher learning if the school charges tuition and fees in excess of the rate for resident students. This bill would expand the requirements of the *Veterans Access, Choice, and Accountability Act of 2014* (Pub. L. 113-146) for individuals receiving benefits under chapter 35. This commonsense protection should exist for all recipients of VA education benefits at public institutions, regardless of whether they are a veteran, dependent, or survivor.

S. 1096, A bill to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.

The VFW supports this proposal to expand the Fry Scholarship. This legislation would enable surviving families of certain veterans, who were previously not eligible for this benefit, to utilize the incredible Fry Scholarship. Parity of benefits is an important issue for the VFW, and we are glad this is being made a priority.

Draft Bill, A bill to direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans, and for other purposes (SFC Heath Robinson Burn Pit Transparency Act)

The VFW supports this proposal to establish regular reports regarding toxic exposure claims. Toxic exposure claims from veterans are rejected at a rate of almost 80%. Many of these veterans are left confused, hurt, and angry after denial. There is not enough information provided as to why these rejections occur and what similarities VA is tracking regarding these claims. Regular reporting about the types of claims, the demographics of the claimants, and VA responses are critical in ensuring these problems are identified and rectified quickly.

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

Testimony

Of



Presented by

John Rowan, VVA National President

Before the

Senate Veterans' Affairs Committee

Regarding

Pending Legislation

April 28, 2021

Good afternoon Chairman Tester, Ranking Member Moran, and other members of this distinguished and important committee, Vietnam Veterans of America (VVA) very much appreciates the opportunity to offer our comments concerning several bills affecting veterans that are up for your consideration. Please know that VVA appreciates the efforts of this committee for the fine work you are doing on behalf of our nation's veterans and their families.

I ask that you enter our full statement in the record, and I will briefly summarize the most important points of our statement.

Toxic Exposure and Congress

Last month, I reported that during our annual testimony VVA was not the only veteran's organization to highlight their concerns about the effects of exposure to toxic substances on America's military from Vietnam to the present day. You will recall that I was pleasantly surprised to learn that both the House and Senate Veterans Affairs Committees had identified toxic exposure as one of their highest priorities. Now I am glad to report that both the House and Senate Committees are moving at breakneck speed to introduce legislation to deal with these long-standing issues. I must congratulate these Committees, as well as various Senators and Representatives for their swift action on these bills. I am also pleased to note that these are bipartisan efforts. Every bill has both a Republican and Democratic sponsor.

Today's hearing is on over 20 bills half of whom are about toxic exposure. The proposed legislation covers items that have been languishing in Congress for a number of years. For example, S.437 focuses on burn pits. S.454 would care for veterans who served in K2, the old Karshi-Khanabad Russian airbase in Uzbekistan, which was horribly polluted. S.565 the Mark Takai Atomic Veterans Healthcare Parity Act for veterans who cleaned up the Enewetak Atoll used for atomic testing. S.657 would add Thailand to the Agent Orange effected areas during the Vietnam War. S.810 would add hypertension as a presumptive disease for Vietnam vets. Two bills, S.927 and S.952, attempt to deal with those exposed to burn pits. VVA tends to favor S.952 because it has more definitive time frames on the VA's actions. There are several other bills and more seem to be coming out every day. It is unclear which of these bills will be finally approved and some of them may eventually get merged into an omnibus bill.

VVA is concerned that, while these are great legislative proposals, only a few affect Vietnam veterans and our issues and none of them focus on our efforts to get the VA to deal with the health impacts on the multi-generational progeny of the affected veterans of all wars from Vietnam to the present day.

Other Legislative Issues

Other bills not related to toxic exposure also caught our eye. Especially one particularly important bill, S.89. This legislation requires the VA Secretary to secure medical opinions for veterans with service-connected disabilities who die from COVID-19 to determine whether those disabilities were the principal or contributory cause of death. Our Veterans Service Officers in the field had noticed several incidents of spouses and/or dependents getting denied for Dependency Indemnity Compensation (DIC) because the VA was ascribing the veteran's death strictly to the virus. I have been in contact with the National Association of Medical Examiners and the International Association of Coroners and Medical Examiners for assistance in dealing with this issue. They informed me that death certificates have space for noting other contributory causes of death. When this bill is passed it must include efforts to inform the public, as well as the professionals in the medical examiner/coroners' offices, about the necessity to fully complete a death certificate.

VVA's Legislative Analysis

Following below is VVA's view on each of the proposed bills on today's agenda. If there are any additional bills, we will provide separate comments.

S.89 - Ensuring Survivor Benefits During COVID-19 Act of 2021, introduced by Senator Sinema (D-AZ) This bill requires the Department of Veterans Affairs to get a medical opinion to determine if a service-connected disability was the principal or contributory cause of death in situations where a veteran's death certificate identifies COVID-19 (i.e., coronavirus disease 2019) as the principal or contributory cause of death, the certificate does not clearly identify any of the veteran's service-connected disabilities as the principal or contributory cause of death, and a claim for dependency and indemnity compensation is filed with respect to the veteran.

VVA heartily endorses this bill.

S.189 -Veterans' Disability Compensation Automatic COLA Act of 2021, introduced by Senator Thune (R-SD).

VVA heartily endorses this bill.

S.219 - Aid and Attendance Support Act of 2021, introduced by Senator Cortez Masto (D-NV). This bill increases the amount of specified Department of Veterans Affairs benefit payments for veterans (or their survivors) that require aid at home or are in nursing homes. Specifically, the bill increases such benefits by 25% until 60 days after the end of the declared emergency period resulting from COVID-19 (i.e., coronavirus disease 2019).

VVA heartily endorses this bill.

S.437 - Veterans Burn Pits Exposure Recognition Act of 2021, introduced by Senator Sullivan (R-AK). This bill would amend title 38, United States Code, to concede exposure to airborne hazards and toxins from burn pits under certain circumstances, and for other purposes.

VVA heartily endorses this bill.

S.444 - AUTO for Veterans Act, this bill introduced by Senator Collins (R-ME). This bill authorizes the Department of Veterans Affairs (VA) to provide (or assist in providing) an eligible veteran or service member with an additional automobile or other conveyance under the VA automobile allowance and adaptive equipment program. Currently, a veteran or service member with a specified service-connected disability or impairment may not receive more than one automobile or other conveyance under the program. The bill authorizes the additional benefit for such veterans and service members if 10 years have passed since the person last received such benefit.

VVA heartily endorses this bill.

S.454 - K2 Veterans Care Act of 2021, introduced by Senator Blumenthal (D-CT). This bill establishes a presumption of service-connection for certain diseases becoming manifest in a veteran who served on active duty at Karshi-Khanabad (K2) Air Base in Uzbekistan between January 1, 2001, and December 31, 2005. Specifically, there must be a presumption of service-connection for veterans who manifest illnesses that have a positive association with exposure to jet fuel, volatile organic compounds, high levels of particulate matter, depleted uranium, asbestos,

or lead-based paint, as determined by the National Academies of Sciences, Engineering, and Medicine (NASEM). Under a presumption of service-connection, specific conditions diagnosed in certain veterans are presumed to have been caused by the circumstances of their military service. Health care benefits and disability compensation may then be awarded.

Veterans who served at K2 Air Base during the specified period are eligible for Department of Veterans Affairs hospital care, medical services, and nursing home care for an illness that has been determined by NASEM to have a positive association with exposure to jet fuel, volatile organic compounds, high levels of particulate matter, depleted uranium, asbestos, or lead-based paint.

VVA heartily endorses this bill.

S.458 - Veterans Claim Transparency Act of 2021, introduced by Senator Tester (D-MT). This bill requires the Department of Veterans Affairs (VA) to provide the representative of a veteran with an opportunity to review a proposed determination regarding a claim for compensation or benefits before such determination becomes final. The VA must notify the representative in writing that a proposed determination is ready for review and may not make a final determination until the review period has ended. Under the bill, a representative has up to 48 hours to review the proposed determination.

VVA heartily endorses this bill.

S.565 - A bill to amend title 38, United States Code, to provide for the treatment of veterans who participated in the cleanup of Enewetak Atoll as radiation-exposed veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs, and for other purposes, introduced by Senator Tina Smith (D-MN).

VVA heartily endorses this bill.

S.657 - A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes, introduced by Senator Boozman (R-AR).

VVA heartily endorses this bill.

S.731 - A bill to amend title 38, United States Code, to improve the management of information technology projects and investments of the Department of Veterans Affairs, and for other purposes, introduced by Senator Tester (D-MT).

VVA heartily endorses this bill.

S.810 - A bill to amend title 38, United States Code, to expand the list of diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in the Republic of Vietnam to include hypertension, and for other purposes, introduced by Senator Tester (D-MT).

VVA heartily endorses this bill.

S.894 – Hire Veterans Health Heroes Act of 2021; introduced by Senator Mike Braum (R-IN). This bill would identify and refer members of the Armed Forces with a health care occupation who are separating from the Armed Forces for potential employment with the Department of Veterans Affairs.

VVA heartily endorses this bill.

S.927 – TEAM, a bill to improve the provision of health care and other benefits from the Department of Veterans Affairs for veterans who were exposed to toxic substances, and for other purposes, introduced by Senator Thom Tillis (R-NC).

VVA support the concepts behind this bill but believe it must be viewed in comparison to S.952. It may lend itself to being combined with S.952. We are also interested in similar coverage or inclusion of veterans from Vietnam and the Gulf War, as well as exposures on U.S. bases at home and abroad. Also, we are not very fond of commissions, which tend to drag out the obvious conclusions.

S.952 - The Presumptive Benefits for War Fighters Exposed to Burn Pits and other Toxins Act "Warfighters Act, a bill to amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, and for other purposes, introduced by Senators Gillibrand (D-NY) and Mark Rubio (R-FL).

VVA heartily supports this bill. As noted above we favorably compare it to S.927 because of its strict timetables for action. We also would like to see either a similar bill or an expansion of this bill for veterans of Vietnam and the Gulf War, as well as those exposed at U.S. bases at home and abroad.

S.976 - A bill to amend title 38, United States Code, to improve and to expand eligibility for dependency and indemnity compensation paid to certain survivors of certain veterans, and for other purposes, introduced by Senator Tester (D-MT).

VVA heartily endorses this bill. We are especially appreciative of the section lowering the requirement from ten years to five.

S.1031 – A bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes, introduced by Senator Warnock (D-GA).

VVA heartily endorse this bill.

S.1039 - A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes, introduced by Senator Menendez (D-NJ).

VVA heartily endorses this bill.

S.1093 – A bill to amend Title 38 U.S. Code to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes, introduced by Senator Mark Rubio (R-FL). The VA must embrace a corporate culture that measures its vocational rehabilitation programs and educational initiatives by results and measure how they assist veterans in obtaining and sustaining gainful employment at a living wage. To achieve this worthy goal, the VA should institute “one-stop shopping” by creating a fourth entity, the Veterans Economic Opportunities Administration, to be headed by an Under Secretary, nominated by the President and confirmed by the Senate.

This is logical and will be cost-effective. It will eliminate duplicative programs and it will increase cooperation among and between its various divisions. The

VEOA would house, less than one roof, the Vocational Rehabilitation Service and the Veterans Education Service. It would grant functional control, if not the outright transfer, of VETS--the Veterans Employment and Training Service--from the Department of Labor, as well as newly federalized DVOP (Disabled Veterans Outreach Program) and LVER (Local Veterans Employment Representative) positions, which currently reside in state departments of labor. It will promote Veterans' Preference; and it will facilitate veterans' entrepreneurship.

VVA heartily endorses this bill.

S.1095 - A bill to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-State tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes, introduced by Senator Jerry Moran (R-KS).

VVA heartily endorses this bill.

S.1096 - A bill to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes, introduced by Senator James Lankford (R-OK).

VVA heartily endorses this bill.

Mr. Chairman, again thank you and your colleagues for the opportunity to provide our testimony today, and I look forward to answering questions from the committee.

VIETNAM VETERANS OF AMERICA

Funding Statement

April 28, 2021

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact:
Executive Director of Policy and Government Affairs
Vietnam Veterans of America
(301) 585-4000, extension 127

John Rowan

John Rowan was re-elected to a seventh term as National President of Vietnam Veterans of America (VVA) at the organization's 19th National Convention in 2019.

Rowan enlisted in the U.S. Air Force in July, 1965 and attended language school, learning Indonesian and Vietnamese. He served as a linguist in the Air Force's 6988 Security Squadron in Vietnam and with the 6990 Security Squadron at Kadena Air Base in Okinawa, Japan, providing Strategic Air Command (SAC) with intelligence on North Vietnam's surface-to-air missile sites to protect U.S. bombing missions.

Rowan has been active with VVA since the organization's inception in 1978. A founding member and the first president of VVA Chapter 32 in Queens, N.Y. in September 1981, he has served three terms on VVA's board, as Chairman of VVA's Conference of State Council Presidents, and as president of VVA's New York State Council from 1995-2005. Rowan served as a VVA veterans' service representative in New York City before being elected to VVA's highest office in 2005.

Following his honorable discharge from the Air Force, as a Sergeant (E-4), Rowan received a B.A. in Political Science from Queens College and a Master of Science in Urban Affairs from Hunter College both part of City University of N.Y. Rowan retired from the City of New York as a Chief Investigator with the Comptroller's Contractor Procurement Review Unit. He resides in Middle Village, N.Y., with his wife, Mariann.



**STATEMENT OF
TRAGEDY ASSISTANCE PROGRAM FOR SURVIVORS (TAPS)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE**

HEARING ON PENDING LEGISLATION

**PRESENTED BY
CANDACE WHEELER
TAPS DIRECTOR FOR POLICY**

APRIL 28, 2021

The Tragedy Assistance Program for Survivors (TAPS) is the national provider of comfort, care, and resources to all those grieving the death of a military loved one. TAPS was founded in 1994 as the 501(c)(3) non-profit organization to provide 24/7 care to all military survivors regardless of the duty status of the service member at the time of death, the survivors' relationship to the deceased, or the circumstances of the service member's death.

TAPS provides comprehensive support through services and programs that include peer-based emotional support, casework assistance, educational assistance, and community-based grief and trauma resources all at no cost to military survivors. TAPS provides additional programs including but not limited to a 24/7 National Military Survivor Helpline; national, regional, and community programs including military survivor seminars, retreats, and Good Grief Camps for children to facilitate a healthy grief journey; and information and resources provided through the TAPS Institute for Hope and Healing. TAPS provides a significant service to military survivors by facilitating meaningful connections to other survivors with shared loss experiences.

TAPS was founded in 1994 by Bonnie Carroll following the 1992 death of her husband, Brigadier General Tom Carroll, who was killed along with seven other soldiers when their Army National Guard plane crashed in the mountains of Alaska. Since its founding, TAPS has provided care and support to more than 100,000 bereaved military survivors. In 2020 alone, TAPS connected with 7,583 newly bereaved loved ones - an average of 21 new survivors every day.

As the national non-profit organization providing grief support and casework assistance to all those impacted by a death in the military, many TAPS volunteers and staff members have grown with their grief by engaging with TAPS programs and services and now support the mission by caring for other newly bereaved survivors.

Chairman Tester, Ranking Member Moran, and distinguished members of the Senate Committee on Veterans' Affairs, the Tragedy Assistance Program for Survivors (TAPS) is grateful for the opportunity to testify on issues and concerns of importance to the families we serve, all those who have served and died.

The mission of TAPS is to offer comfort and support for surviving families of military loss regardless of the location or manner of their death. Part of that commitment includes advocating for improvements in programs and services provided by the Federal government through the Department of Defense (DoD), the Department of Veterans Affairs (VA), Department of Education (DoED), Department of Labor (DOL), Department of Health and Human Services (HHS), as well as State and local governments.

TAPS and the VA have mutually benefited from a long-standing collaborative working relationship. In 2019, TAPS and the VA entered into a new and expanded Memorandum of Agreement that formalized their partnership with the intent to provide extraordinary services through closer collaboration.

Under this agreement, TAPS continues to work with military survivors to identify resources available within the VA and private sector. TAPS also collaborates with the VA in the areas of education, burial, benefits and entitlements, grief counseling, survivor assistance, and other areas of relevance to all military survivors.

TAPS appreciates the opportunities provided by the quarterly Department of Veterans Affairs (VA) and Department of Defense (DoD) Survivors Forum, which work as a clearinghouse for information on government and private sector programs and policies affecting surviving families. TAPS partners with the VA/DoD Survivors Forum to share information with our colleagues on TAPS programs and services that support all military loved ones following the death of a service member and specific resources available for the COVID-19 global crisis.

TAPS President and Founder, Bonnie Carroll, serves on the Department of Veterans Affairs Federal Advisory Committee on *Veterans' Families, Caregivers, and Survivors* where she chairs the Subcommittee on Survivors. The Committee advises the Secretary of the VA, through the Chief Veterans Experience Officer, on matters related to Veterans' families, caregivers, and survivors across all generations, relationships, and Veteran status. Ms. Carroll also serves as a PREVENTS Ambassador for the VA's initiative on preventing suicide.

MILITARY SURVIVOR-RELATED LEGISLATION

TAPS applauds Chairman Tester and Ranking Member Moran for their steadfast leadership on military survivor-related issues. We thank you and members of this committee for introducing key pieces of legislation during the 117th Congress that address important issues to our survivor community. TAPS has worked closely with Members and their staff on many of these important bills. We look forward to getting them passed and signed into law this year.

Ensuring Survivor Benefits During Covid-19 Act Of 2021 (S.89)

(TAPS supports with comment)

TAPS thanks Senators Kyrsten Sinema (D-AZ) and Thom Tillis (R-NC), Jeanne Shaheen (D-NH), John Boozman (R-AR), Richard Blumenthal (D-CT), Elizabeth Warren (D-MA) and Christopher Coons (D-DE) for reintroducing the *Ensuring Survivors Benefits During COVID-19 Act of 2021 (S.89)*.

Veterans who die after being ill with coronavirus may have their cause of death labeled as "COVID-19" without accounting for service-related disabilities that further complicate their diagnosis or contributed to their death. This important legislation ensures service-connected disabilities are taken into account by the Department of Veterans Affairs (VA), to ensure family members have access to the survivor benefits they are eligible to receive.

The VA has stated that they can and are implementing this as policy, which we greatly appreciate, but we have heard from impacted surviving spouses who are having a difficult time gaining benefits due to processing errors or processors who do not know about the policy change. We ask Congress to codify the regulation to ensure it continues into the future. We do not know how long the COVID-19 pandemic will last but we want to ensure that surviving families are taken care of in perpetuity.

Aid and Attendance Support Act of 2021 (S.219)

(TAPS supports)

TAPS appreciates Senator Catherine Cortez Masto (D-NV) for introducing the *Aid and Attendance Support Act of 2021 (S.219)*. This legislation increases the amount of specified Department of Veterans Affairs (VA) benefit payments for veterans or their survivors who require aid at home or are in nursing homes. This bill increases these benefits by 25 percent until 60 days after the end of the declared emergency period resulting from COVID-19.

Caring For Survivors Act Of 2021 (S.976)*(TAPS supports with comment)*

TAPS is extremely grateful to Chairman Jon Tester (D-MT) and Senator John Boozman (R-AR) for reintroducing the *Caring for Survivors Act of 2021* (S.976), which strengthens Dependency and Indemnity Compensation (DIC) for more than 450,000 eligible survivors. DIC is a tax-free monetary benefit paid to eligible surviving spouses, children or parents of service members who died in the line of duty or eligible survivors of veterans whose death resulted from a service-related injury or illness.

This important bill will bring DIC up to 55 percent of the rate of compensation paid to a 100 percent disabled veteran. The current monthly DIC rate is \$1,357.56 and has only increased due to Cost-of-Living-Adjustments (COLA). We want to ensure that the indemnity rate is increased the same for all DIC recipients pre-and-post 1993, and that added monthly amounts like the 8-year provision and Aid and Attendance are protected. TAPS and the survivor community have supported increasing DIC for many years, especially for those survivors whose only recompense is the DIC payment. It is the top priority for The Military Coalition Survivor Committee, which TAPS co-chairs.

Katie Hubbard, Surviving Spouse of CSM James Hubbard Jr.

"An increase in DIC would mean a little less stress and worry each month. That increase would ensure money for groceries and basic necessities would be covered each month and I wouldn't have to struggle as much to ensure the rest of the ends would be met. It would mean I could travel the three hours to see our grandson without wondering how to fit that expense in the budget. It would mean that I would have a few extra hours each month to spend with my son on extra learning opportunities, family time without constraints, and play. It would mean a less stressed mom for him that could enjoy playing with legos or cars without thinking about whether I worked enough that day for the bills and food."

The *Caring for Survivors Act of 2021* also reduces the timeframe a veteran needs to be rated totally disabled from 10 to 5 years, allowing more survivors to become eligible for DIC benefits.

TAPS thanks Chairman Tester for including a provision in the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* to enable eligible surviving spouses to retain DIC upon remarriage at age 55 instead of the current age of 57.

Colonel John M. McHugh Tuition Fairness for Survivors Act (S.1095)

(TAPS supports with comment)

TAPS is grateful to Ranking Member Jerry Moran (R-KS) and Chairman Jon Tester (D-MT) for introducing the *Colonel John M. McHugh Tuition Fairness for Survivors Act of 2021* and we look forward to its passage.

Currently, there are 151,825 Chapter 35 recipients, most of which are the dependents of 100% disabled veterans. The set rate for Chapter 35 is \$1,265 per month averaging out to just over \$11,000 per year to pay for all college related expenses. In most cases, this will not cover the cost of attendance at an in-state institution of higher learning (IHL) let alone an out-of-state IHL.

Chapter 35 is by far the most outdated education benefit that the VA provides. Even with the \$200 a month increase included in the Forever GI Bill, it is still half of what the Montgomery GI Bill pays, and minimal compared to the Post 9/11 GI Bill and the Fry Scholarship. Long term, TAPS would like to sunset Chapter 35 and move everyone into Chapter 33. In the meantime, guaranteeing in-state tuition for those receiving Chapter 35 is a low cost lift that will drastically improve education options for surviving families and reduce their need for student loans.

Survivors using the Fry Scholarship, dependents using transferred entitlement, and veterans using the Post 9/11 GI Bill are all eligible for in-state tuition at any state school in the country. Survivors using Dependents Education Assistance (DEA) under Chapter 35 are excluded. Eligible DEA recipients are dependents of 100% disabled veterans or service-connected deaths. Guaranteeing in-state tuition for these dependents and survivors, who receive less tuition assistance, would ensure these benefits go further and would not limit school choice.

Renee Monczynski, Surviving Spouse of AT2 Matthew Monczynski

"In order to build a life for my daughter and myself, I knew I had to go to school and choose a career that would allow me to raise her in a single-parent household. Because I am a pre-9/11 veteran and Matt died prior to 9/11, my daughter and I have Chapter 35 benefits that we are grateful to receive. Since Chapter 35 benefits have not been updated to include the ability for a veteran or surviving spouse/child to use them at any state school - in any state - and receive in-state pricing, I now have student loans for my BS in Psychology and I'm paying completely through loans for my MA in Industrial & Organizational Leadership. I paid the difference between in-state and out-of-state tuition. I was penalized because I did not move to PA, my home state of record, where I entered the service. I was not the same person who left at 18 for the Marines."

Kannan Mackey Fugler, Surviving Spouse of SSG Matthew Mackey

"My daughter, Chloe Mackey, is the surviving child of SSG Matthew Mackey. She has a 4.3 GPA and is at the top of her graduating class this year. She is eligible for both the Fry Scholarship and Chapter 35. She has been accepted to Syracuse, the University of Alabama, and Louisiana State University. She has chosen to leave Louisiana and go to the University of Alabama. With it comes a heart-wrenching choice of having to waste months' worth of her Fry Scholarship purely for the in-state tuition rate.

If Chapter 35 would allow for students to be granted in-state tuition, Chloe has enough academic scholarship money to pay for her tuition and fees and will be wasting thousands of dollars in her benefits just for the in-state tuition rate. Those benefits could be used to further her education in graduate school; instead, they are being used just for a lower tuition rate on tuition that won't even be paid by the Fry Scholarship, but her academic scholarships. She's lucky to have the option of choice even though she feels penalized for being at the top of her class and being awarded scholarships. Without the scholarships, she could justify using her months of Fry Scholarship. Instead, she has to justify losing thousands of dollars over in-state/out-of-state rates based on which benefit she uses.

Please consider academic students, like Chloe, that feel penalized for being a good student and choosing a school that is willing to give her an amazing academic scholarship and wasting her benefits, or going to school somewhere she doesn't want to be."

Monica Jaikaran, Surviving Spouse of MA1 Dameshvar Jaikaran

"Allowing for In-State Tuition for Chapter 35 benefits would positively impact my family. My 15-year-old daughter would be able to attend her college of choice, Arizona State University. I have steered her away from that dream because we live in California and she can only attend college in her own state to maximize the current VA benefits."

Fry Scholarship Enhancement Act (S.1096)

(TAPS supports with comment)

TAPS thanks Senators James Lankford (R-OK) and Tom Carper (D-DE) for introducing the *Fry Scholarship Enhancement Act* (S.1096), which expands eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to the families of those who die in the 120 Day Release from Active Duty (REFRAD) period. This bill will provide long overdue parity to these surviving families.

If a veteran dies from a service-connected injury or illness within the 120 Day REFRAD period they are considered to have died on Active Duty for all benefits, except for the Fry Scholarship. These benefits include Survivors Group Life Insurance (SGLI), Dependency and Indemnity Compensation (DIC), Survivors Benefits Plan (SBP), Death Gratuity, TRICARE for Life, MWR privileges, and burial benefits. The only difference is in education benefits where these families are eligible for Chapter 35 instead of the Fry Scholarship.

A long-term goal for TAPS is to sunset Chapter 35 and move all survivors into Chapter 33. Granting access to these families is the logical next step. In some cases, the service member had only been released for a matter of hours or days from active duty at the time of their death.

Astrid Rushford, Surviving Spouse of TSGT Richard Rushford

"My husband attempted suicide in December 2001 while on Active Duty in the Air Force, he did not die immediately, and the Air Force chose to retire him when he was on life support. A few hours later he died 'in the line of duty' but was no longer considered active duty by less than 8 hours. My family received every other active duty benefit, except for the Fry Scholarship because of this. I cannot afford to go to college and wish the benefits would be extended to my children and myself. I would like to be a nurse."

TOXIC EXPOSURE LEGISLATION

Exposures to deadly toxins as a result of military service is not a new phenomenon. Unfortunately, generations of service members have been exposed to toxic substances and many have died as a result. Our country must do more to prevent exposures, properly treat illnesses, and provide benefits for veterans who have been exposed and their families, caregivers, and survivors.

There are more than 2.7 million veterans affected by Agent Orange and over 425,000 veterans affected by Gulf War Syndrome. There are currently more than 3.5 million service members and veterans that may have been exposed to toxins while serving after 9/11, including but not limited to service during Operation Enduring Freedom and Operation Iraqi Freedom. There are more than 7,000 veterans who were exposed to toxic substances while serving in the Armed Forces at Karshi-Khanabad (K-2) Air Base, Uzbekistan.

According to the Veterans Health Administration (VHA), fewer than 300,000 veterans have enrolled in the VA Airborne Hazards and Open Burn Pit Registry, which includes those who deployed to the Southwest Asia theater of operations

after August 1990 or served on or after 9/11 and were deployed to a base or station where open burn pits were used.

While the federal government has created a self-report registry, they admit it is a flawed and limited system that covers only exposures to burn pits. There has not been enough attention placed on ensuring that ALL those exposed to burn pits have been included and it is widely and justifiably criticized as focusing too narrowly on one type of many exposures. Sadly most young veterans who have died as a result of their exposures to toxins never knew to register.

According to the Department of Veterans Affairs, a significant number of veterans who served after 9/11 were exposed to more than a dozen different wide-ranging environmental and chemical hazards, most of which cause serious health risks. Whether from open burn pits, depleted uranium, toxic fragments, or particulate matter, service members and veterans are getting sick and prematurely dying from uncommon illnesses and diseases that are tied to exposures to toxins.

TAPS applauds Congress and members of this committee for introducing significant legislation during the first few months of the 117th Congress, which collectively address the devastating effects of toxic exposure on our veterans, their families, caregivers and survivors.

TAPS proudly supports each of these critical bills.

A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era (S.657)

TAPS thanks Senator John Boozman (R-AR) and Chairman Jon Tester (D-MT) for introducing S. 657, and Senators Ron Wyden (D-OR), Kirsten Gillibrand (D-NY), Elizabeth Warren (D-MA), Rob Portman (R-OH), Maggie Hassan (D-NH), and Mike Braun (R-IN) for being original co-sponsors of the bill.

This important legislation will create a presumption of service connection between exposure to Agent Orange for veterans who served in Thailand during the Vietnam era. Current VA policy only grants service-connected healthcare and benefits for toxic exposure to Vietnam era veterans whose service in Thailand placed them on or near the perimeters of Thai military bases.

We join with the Veterans of Foreign Wars (VFW) in urging the passage of this bill to ensure Vietnam era veterans who served in Thailand receive the care and benefits they have earned.

Fair Care for Vietnam Veterans Act of 2021 (S.810)

TAPS greatly appreciates Chairman Jon Tester (D-MT) introducing the *Fair Care for Vietnam Veterans Act of 2021* (S.810) along with 16 original co-sponsors. We strongly support this important legislation, which adds hypertension and MGUS (Monoclonal Gammopathy of Undetermined Significance) to the list of Agent Orange presumptive conditions at the Department of Veterans Affairs (VA).

The National Academies of Science, Engineering, and Medicine have linked both hypertension and MGUS to Agent Orange exposure, but they are the only two illnesses not included in the VA's list of presumptive conditions. As many as 490,000 Vietnam veterans and their families could benefit from this change.

TAPS applauds the Senate for overwhelmingly passing last year's *Fair Care for Vietnam Veterans Act of 2020* and for Senator Tester leading the charge to include it in the final *Fiscal Year 2021 National Defense Authorization Act* (NDAA). The FY21 NDAA added three additional diseases - bladder cancer, hypothyroidism, and Parkinsonism - to VA's list of Agent Orange presumptive service-connected illnesses.

We strongly urge Congress to pass the *Fair Care for Vietnam Veterans Act of 2021*, which further honors our nation's commitment to our Vietnam veterans, their families, caregivers, and survivors.

Veterans Burn Pits Exposure Recognition Act of 2021 (S.437)

TAPS thanks Senators Dan Sullivan (R-AK) and Joe Manchin (D-WV) for reintroducing the *Veterans Burn Pits Exposure Recognition Act of 2021* (S.437), which addresses the barrier preventing veterans from accessing the Department of Veterans Affairs (VA) health care and benefits for illnesses related to exposure to burn pits. Currently, veterans have to provide their own personal evidence of burn pit exposure for each VA claim.

This important legislation would recognize and concede exposure to airborne hazards and toxins from burn pits under certain circumstances. If a service member falls into one of the specified deployment areas and time periods, they are presumed to have been exposed to a burn pit. It would also require the VA to provide a medical exam to a veteran to determine any links between their medical condition and exposure to burn pits.

TAPS strongly supports the passage of this bill, which removes the burden of proof for burn pit exposure from veterans, their families, caregivers and survivors, and provides much needed health care and benefits to our nation's veterans.

K2 Veterans Care Act of 2021 (S.454)

TAPS is grateful to Senators Richard Blumenthal (D-CT), Tammy Baldwin (D-WI), Sherrod Brown (D-OH), Robert Menendez (D-NJ), and Dianne Feinstein (D-CA) for introducing the *K2 Veterans Care Act of 2021 (S.454)*.

This critical legislation establishes a presumption of service-connection for certain illnesses of veterans who served on active duty at Camp Stronghold Freedom, Karshi-Khanabad (K2) Air Base in Uzbekistan between January 1, 2001, and December 31, 2005.

More than 15,000 Army, Air Force and Marine Corps personnel were deployed to K2, a former Soviet base, between 2001-2005 in support of Operation Enduring Freedom. According to declassified Department of Defense (DoD) documents, K2 service members were exposed to multiple cancer-causing toxic substances and radiological hazards to include petrochemicals, volatile organic compounds (VOCs), depleted uranium, burn pits, and elevated levels of tetrachloroethylene.

Many K2 veterans have become ill and are dying as a result of their exposure to toxins. TAPS calls on Congress to pass this legislation to provide care and benefits for our K2 veterans, their families, caregivers, and survivors. We stand with the Veterans of Foreign Wars (VFW), Disabled American Veterans (DAV), Wounded Warrior Project (WWP), and the Stronghold Freedom Foundation to support this critical legislation.

Mark Takai Atomic Veterans Healthcare Parity Act of 2021 (S.565)

TAPS thanks Senators Tina Smith (D-MN), Thom Tillis (R-NC), and 14 other original co-sponsors for introducing the *Mark Takai Atomic Veterans Healthcare Parity Act of 2021 (S.565)*.

This important bill provides for the treatment of veterans who participated in the cleanup of Enewetak Atoll from January 1, 1977 through December 31, 1980, as radiation-exposed veterans for purposes of service-connected presumption of certain disabilities by the Department of Veterans Affairs.

Named in honor of former Representative Mark Takai, the bill's original 114th Congress sponsor, who died of pancreatic cancer in 2016. Mark served for 17 years with the Hawaii Army National Guard, and was a friend to many of us in the military and veteran community. TAPS supports the swift passage of this bill.

Toxic Exposure in the American Military (TEAM) Act (S.927)

TAPS greatly appreciates Senators Thom Tillis (R-NC) and Maggie Hassan (D-NH) reintroducing the *Toxic Exposure in the American Military (TEAM) Act* (S.927). This landmark bipartisan, bicameral legislation fundamentally reforms and improves how veterans exposed to toxic substances receive health care and benefits from the Department of Veterans Affairs (VA).

The *TEAM Act* expands VA health care and treatment for veterans exposed to toxic substances. It requires the VA to enter into agreements with the National Academies of Science, Engineering, and Medicine to review scientific studies regarding associations between diseases and exposure to toxic substances, and to establish new presumptions of service connection when supported by the science. The bill also expands training on toxic exposure issues for VA health care personnel, and requires VA to develop a questionnaire for primary care appointments to determine whether a veteran may have been exposed to toxic substances during service.

TAPS is a founding member of the Toxic Exposure in the American Military (TEAM) Coalition, comprised of military, veterans, uniformed services, and survivor organizations and stakeholders. The TEAM Coalition was instrumental in helping to draft this critical legislation and we urge Congress to pass it this year.

Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021 (S.952)

TAPS is grateful to Senators Kirsten Gillibrand (D-NY) and Marco Rubio (R-FL) for reintroducing the *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021* (S.952). This comprehensive bill would streamline the process for veterans to obtain benefits from the Department of Veterans Affairs (VA) for illness due to exposure to burn pits and other toxic exposures.

TAPS strongly supports this bipartisan, bicameral legislation and all efforts to prevent exposures, properly treat those who become ill, and provide benefits for the families of those who die as a result of their service-connected illnesses.

There are millions of service members and veterans who were exposed to burn pits and other toxins while serving, and tragically many will become ill and die from exposure-related illnesses. Their loved ones will make up a large portion of the next generation of TAPS survivors. We call on Congress to pass this toxic exposure legislation this year.

SFC Heath Robinson Burn Pit Transparency Act (S.1188)

TAPS thanks Senators Sherrod Brown (D-OH) and Rob Portman (R-OH) for introducing the *SFC Heath Robinson Burn Pit Transparency Act* (S.1188), which would direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans.

This bill also enables surviving family members to add a veteran to the Burn Pit Registry after his or her death. This is an important change for surviving families in recognition of their veterans' exposure to burn pits and other toxins. It will also help establish patterns of exposure and deaths, which could help save lives.

The bill is named in honor of an Ohio Army National Guard soldier, SFC Heath Robinson, who was exposed to burn pits during deployment and died last year at the age of 39 after waging a three-year battle with lung cancer.

Understanding Illnesses from Exposures to Toxins

TAPS' interest in understanding illnesses that may result from exposures to toxins stems from our desire to ensure surviving families have access to all available survivor benefits earned through the service of their loved one. The information that can be gathered from our survivor histories is also invaluable in establishing patterns and baselines that can be applied to the veteran and military community, save lives, and prevent this now and in the future.

Over the past five years, the number of survivors of a military death due to illness seeking TAPS services increased by 95 percent. As of April 1, 2021, thirty-one percent of all military survivors connecting with TAPS have experienced a loss due to illness. Military deaths due to illnesses (31%) and suicide (29%) are the leading causes of death among new military survivors connecting with TAPS and far surpasses all other circumstances of death, including hostile action.

TAPS re-launched a national Military Survivor Illness Loss Survey, to learn more about the issues faced by military members who have passed away post-deployment. Among the 722 respondents who accessed the survey, the survey found that 66% of survivors reported their service members served post 9/11. The rates of cancer among pre- and post-9/11 service members are similar at 58% and 57% respectively. Survivors reported that their loved one was misdiagnosed in over 40% of post-9/11 cases. Among age groups, those ages 31-40 reported the highest misdiagnosis rate. A majority of post-9/11 service members reported requiring a caregiver. While 67% of all survivor respondents reported their service member required a caregiver, 60% of post-9/11 service

members reported that they required a caregiver. Results included only demonstrate initial findings. To strengthen the validity of these findings, TAPS plans to collect and analyze additional survey data to provide further insight into the experiences of service members and veterans, and illustrate any trends that may warrant continued research.

Together with other partners in the military and veteran community, TAPS is working to advocate for veterans exposed to toxins, their families, caregivers, and survivors. Through these partnerships, we have made great strides over the past three years to create a growing awareness of the issue of toxic exposure by enlisting support from other organizations, such as members of The Military Coalition (TMC), comprised of 35 organizations representing more than 5.5 million members of the uniformed services - active, reserve, retired, survivors, veterans - and their families.

Illness Loss Survivor Testimonials

Death by illness is one of the leading causes of death among military survivors. Since 2008, TAPS has been supporting 14,207 survivors whose military loved ones died due to an illness. In 2020 alone, 2,317 new survivors of a death by illness reached out to TAPS for support and services. Sadly, we project this number to increase by more than 2,300 each year based on current trends.

While we know there's a significant number of veterans who die of common illnesses, we have become deeply concerned that like the Vietnam era, post 9/11 veterans have been exposed to toxins that are known to cause terminal illnesses. TAPS is working to gather survivor stories and aggregate data to better understand the scope and types of illness loss. Here are a few of the many stories we have collected from our surviving families:

Coleen Bowman, Widow of SGM Robert Bowman

"Rob was the picture of health before he deployed, he was an Airborne Ranger. When he returned from his second deployment from Iraq, he was sick. In June 2011, Rob was diagnosed with an extremely rare cancer Cholangiocarcinoma (bile duct cancer). During deployments, Rob was in close proximity to an open-air burn pit that burned around the clock. His vehicle was struck at least ten times by IEDs, stirring up particulate matter.

Had we known he had been exposed and to what toxins, we could've shared the information with doctors, and it wouldn't have taken six months of misdiagnoses before we learned he had stage 4 inoperable cancer. Had we known earlier he might still be alive today.

For 19 months my daughters and I cared for him, and on January 13, 2013 Rob passed away at the age of 44. Several of the men that Rob served with have many different illnesses, to include cancer, and several have passed away since at very young ages."

Tim Merkh, Father of Corpsman Richard Merkh

"My son Richard Merkh was a Corpsman in the Navy. He had served over 15 years and died from cancer on October 3, 2018. Richard served several tours with the Marines during the war. His lodging facilities were on only trash or dump sites. It is my belief that Richard contracted stage 4 cancer from his exposure during the war. Cancer does NOT run in my DNA, nor my wife's. So where did he contract the cancer... his exposure. Unfortunately, he was diagnosed after his entire liver and colon was infected with cancer.

I am a retired USAF veteran. I know what we put our troops through. Some things must change. Richard was survived by his wife of twelve years and a beautiful 4-year-old daughter, my precious granddaughter. We can't change Richard's outcome, but we must ensure we treat and support our troops better."

Nicoele, Drew, and Maggie Arseneau, Widow and Children of Specialist Andrew Arseneau- US Army

"My children Drew and Maggie lost their father, and I lost my husband, Andy, six years ago on September 12, 2014 to lung and heart failures due to toxic exposures during his service in Iraq, Saudi Arabia, and Kuwait during Desert Storm. He was only 46.

We first filed his health claims with the VA in 2010. They were denied and we were in the very lengthy appeals process when he passed away in 2014. He was approved 100%, permanent and total for his PTSD, but his toxic exposure claim was denied. He could no longer work due to his illness and I was his full-time caregiver for four years.

I filed for DIC benefits for the children and myself immediately after his death. I'm still fighting today for approval after paperwork was lost by the VA forcing me to lose possible back pay and start the process from the beginning after ten years. He has been gone for six years and this process has taken a toll on our family."

June Heston, Widow of BG Michael Heston

"Mike was active duty in the Vermont National Guard. He deployed to Afghanistan three times. First in 2003 for 7 months, then 2006-2008 for 15 months, and last 2011-2012 for one year.

In April of 2016, Mike had gone into the doctor not feeling well. For 10 months doctors couldn't figure out what was wrong with him. Finally, in January of 2017, Mike was diagnosed with a very rare form of pancreatic cancer, stage 4. Mike passed away shortly after that on November 14, 2018."

Laura Forshey, Widow of Sgt Curtis Forshey

"Three months into his deployment, he began to experience bloody noses that would go on for hours at a time. He went to the doctor there on the FOB where they ran bloodwork. The results showed his white blood count was way off. They flew him to Landstuhl, Germany.

His wife, Laura, and 3-month-old son, Ben, along with Curt's parents flew to be with him in Germany. While they were in flight, Curt passed away. His cause of death was a brain aneurysm, caused from the cancer they discovered, Acute Promyelocytic Leukemia. Curt was 22 years old. He died on March 27, 2007. With proper diagnosis and treatment it is curable in 80-90% of patients."

Rev. Jennifer Moser, Widow of LTC Gregory Moser

"My husband LTC Greg Moser was an IL National Guard Chaplain, deployed to camp Phoenix. He left healthy in 2008. He returned in 2009 with a wracking cough that never fully went away. He died on December 24, 2016 from complications of the stage IV lung cancer he'd been diagnosed with six months earlier.

Being a Chaplain and parish Pastor, he had no history of Toxic Exposures from any other source (he didn't work in heavy industry or some such in his civilian life). And there was no history of cancer in his family whatsoever. Heart disease and diabetes, yes. Cancer, no!

As a result of his death being ruled active duty, honorable but not in the line of duty, I do not qualify to receive his pension, and Greg's four children do not qualify for tuition help, such as the Fry Scholarship. Moreover, the "not in the line of duty" ruling is an emotional slap in the face to our National Guard soldiers who fought a ten-year war with multiple deployments. Often taking pay cuts to serve and dealing with trauma to families of multiple and sudden deployments, only to have DoD tell us those deaths aren't service-connected."

Kris Marbutt, Widow of Sgt John Marbutt

"He worked very closely to the burn pits. In 2010 he was diagnosed with a brain tumor and told it was benign. He was initially denied a CT scan. He was diagnosed with a second 'huge tumor' glioblastoma. He died on October 21, 2016. He was 34 years old."

Amber Bunch, Widow of LCPL Mark Bunch

"After returning from his second deployment he was different mentally and physically. From the outside looking in one could see the effects of war followed him home, facing PTSD and Survivors Guilt. On the other hand, the more noticeable conditions began to appear including insomnia paired with night terrors, breathing issues, constant coughing, stomach issues that could not be resolved, migraines that lasted for days, sudden mood changes, lower back pain, sleep apnea, memory loss, and the list could go on. I fought and fought for us, for our family. On February 26, 2014, my battle for my husband Mark Bunch Jr's legacy began upon his passing. I never imagined six years later I would still be fighting for benefits."

Louise Carroll, Widow of Vietnam Veteran Larry Carroll

"My husband Larry was in the Army and Navy for 27 years. He was in Vietnam where he contracted Agent Orange. From 2004 to 2017, I watched my husband die slowly with new comorbidities that were from cancer to COPD plus all kinds of lipomas and heart problems. His percentage of disability was 265 percent. He was on morphine for pain.

I touched every part of his body not knowing the terrible problems to me. For three years now, I have had places come up on my face and body that end up like burns. I have been treated for everything but cannot be given a diagnosis. I believe, because I was exposed to all of his secretions, that through his blood I contracted Agent Orange. I called the VA for help in testing and they refused, very hurriedly telling me this was impossible. At the time, I had surgery on my knee and hip from lifting him and dressing my own wounds. No way it was sterile. I am retired from the medical field and know I am sick."

Tanja Smith, Military Spouse

"While I haven't lost someone due to this, my husband was deployed several times and spent time at the burn pits, which makes me worry about the future and how the burn pits may cause issues with his health."

Exposure-Related Illnesses

In 2021, TAPS believes that deaths due to illness will be the leading cause of death among military survivors. It's time to take action and learn more about which toxins are causing rare cancers and other illnesses in our young people. Research must be done in and outside of government. We don't have time on our side, we already know a number of toxins our troops were exposed to are carcinogens.

The Department of Defense has the ability to determine who was exposed to what toxins, when they were exposed and can work together with the VA to notify every affected service member and veteran. We must get this information into the hands of veterans and their medical providers so they can plan for early screening, make connections for accurate diagnosis and effective early treatments and ensure that they are receiving the benefits and services they have earned through their service to our nation.

The Departments of Defense and Veterans Affairs are working to mine data to match exposures to veterans, but they must work harder and faster. The information that should be mined from the Individual Longitudinal Exposure Record (ILER) could be groundbreaking. TAPS is proud to have strenuously advocated that the final version of the *National Defense Authorization Act (NDAA) for Fiscal Year 2021* requires the ILER be expanded to allow veterans to access their personal records. We continue to call on Congress to require DoD and VA to make this critical information available to veterans' families and survivors.

We know pre- and post-9/11 generation service members were exposed to toxins while serving overseas. The sobering consequence has been thousands of unexplained illnesses, many of them terminal. The loss of a service member or veteran to illness can be especially difficult when the survivor is unable to "prove" a service connection. This results in an absence of death benefits for survivors or acknowledgement of responsibility by the government that the illness and/or death of the loved one was caused by exposure to toxins.

What TAPS Is Doing

We must provide answers to our survivors of military loss. So many are left wondering how their loved one survived multiple deployments and returned home safely, only to succumb to illnesses or rare cancers. Like we did when we saw increasing trends and deaths by suicide, TAPS is developing a program to specifically address the needs of our survivors who grieve the death of their loved one to an illness.

Through our research, TAPS has learned that many illness loss survivors have been caregivers first. Of the 722 respondents who accessed the Illness Loss Survivor Survey, 60% of post-9/11 service members required a caregiver before their death to perform their activities of daily living, to administer medications and be at the bedside - sometimes for lengthy periods of time.

TAPS recognizes the urgent need to support families who have lost a military loved one after having been caregivers. As a result, TAPS launched our “Caregiver to Survivor” program with the Elizabeth Dole Foundation and the American Red Cross Military and Veterans Caregiver Network (MVCN) to warmly transition caregiver families to surviving families. Our program will provide hope and healing to thousands of veteran and military families who are experiencing the devastating loss of loved ones to illnesses and/or injuries related to their overseas service.

TAPS applauds Congress and this committee for conducting oversight of the devastating effects of toxic exposure on our veterans, caregivers, and survivors. We urge Congress to expand healthcare and benefits for veterans, caregivers and survivors; legislate critical funding for toxic exposure research and education; and build a public awareness campaign so we can save lives.

Those who volunteer to serve in defense of freedom and the families who stand beside them must know that America will support them should they make the ultimate sacrifice as a result of their service.

CONCLUSION

The Tragedy Assistance Program for Survivors thanks the leadership of the Senate Committee on Veterans’ Affairs and its distinguished members for holding this hearing to discuss the myriad of important pieces of legislation that have been recently introduced. TAPS appreciates the opportunity to testify and provide a statement for the record in support of important survivor-related and toxic exposure-related legislation.

Department of Veterans Affairs (VA)
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Pending Legislation Hearing

April 28, 2021

Questions for the Record from Senator Joe Manchin:

Question 1: Burn pits exposure is something we cannot continue to wait to act on or place the burden of proving exposure on our veterans. We're all familiar with the prevalence of burn pit usage. One aspect of my bill, S. 437 the Veterans Burn Pits Exposure Recognition Act of 2021 is that it concedes burn pit exposure for Veterans who served in areas with active burn pits, as is already defined in the Burn Pit Registry. It would include exposure to toxins/chemicals already recognized by the VA as hazardous.

Question 1a: Do you agree that concession of exposure should be our top priority to ensure that our veterans get the care they need as soon as possible?

VA Response: VA acknowledges the importance of developing a clearer policy on the concession of exposure for Veterans deployed to the Southwest Asia theater of operations and other locations. VA may exercise the Secretary's authority to establish regulatory presumptions of service connection where no statute expressly provides for such presumptions. Generally, this has been done in situations where the scientific evidence is strong in the aggregate, but not dispositive for individual cases. VA utilizes an evidence-based approach in determining a presumption of service connection and is committed to establishing presumptions when scientific research provides a sound and rational connection.

VA must research how to best mitigate, diagnose and treat Veterans exposed to airborne hazards. VA believes the concession of exposure contained in S. 437 would be broadly interpreted as a list of chemicals, that may or may not have been present. However, a concession of exposure would be better defined, at this time, as a geographic location in which an exposure may have taken place. As monitoring of deployment exposures improves in the Department of Defense, it may be possible to utilize concession of exposure in the future, but for now concession of location is more accurate for care, claims, consistency and research.

Question 1b: How quickly can the VA respond to the concession and begin offering medical treatment to the veterans who are covered by our bill?

VA Response: There are an estimated 2.9 million Veterans who deployed to the current conflicts. Approximately, 70% of these Veterans have already accessed VA care and 1.5 million have submitted claims of which 94% have been service connected for at least one condition. Assuming that 30% of these deployed Veterans have not yet enrolled in VA healthcare that means an additional 900K Veterans may opt into the system. This is unlikely since we imagine that many of these Veterans have alternate systems of care that they are utilizing.

VA would need time to hire providers and support staff, funding for salaries and facilities modification and equipment.

Estimates suggest that a primary care physician would have to spend 21.7 hours per day to provide all recommended acute, chronic and preventive care for a panel of 2,500 patients. The average US panel size is about 2,300. Please see: <https://www.annfam.org/content/10/5/396#:~:text=Estimates%20suggest%20that%20a%20primary,a%20panel%20of%20%2C500%20patients.&text=The%20average%20US%20panel%20size%20is%20about%20%2C300>

VA panel size is smaller, averaging 1,200-1500, due to an aging population with more significant health issues. Please see: <https://www.hsrd.research.va.gov/publications/esp/panel-size-primary-care.pdf>.

If we assume that due to COVID and employment, housing and economic concerns that the number is between 50 and 200K that will add to the VA population, then to provide adequate care would require an additional 25-100 physician/providers for panels of 2,000 with 75-300 additional support staff.

Estimates for full operations are a timeline of at least 2 years, but for a more complete answer this will need to go to the actuarial staff for a more precise estimate.

Question 2: Last year members of Congress were informed by the VA that from June 2007 through July 2020, 12,582 Veterans have claimed conditions related to burn pit exposure, and of that total, 2,828 Veterans have been granted service connection for a condition specifically related to burn pit exposure. From 2014 to 2020 approximately 500 veterans enrolled in the VA's open burn pit registry a week. That seems like a very high denial rate given the prevalence of burn pit usage during modern day deployments.

Question 2a: Why has VA put the burden of proof on our veterans to supply information that DoD and the VA could easily account for with information sharing systems like the Electronic Health Record system, which has its own issues?

VA Response: It is important to note that the burn pit data being referred to ONLY pertains to the claims of the approximately 14,000 Veterans who explicitly claimed a medical condition “due to burn pit exposure.” To this point, VA does not require Veterans to specify the exact cause of their disability when submitting a claim for compensation. Also, because VA is aware that open air burn pits were utilized throughout the Southwest Asia theater of operations and other locations, VA takes this into consideration when adjudicating all claims from Veterans deployed to this region.

To gather a more holistic picture of claims involving Gulf War and Global War on Terror-deployed Veterans who were potentially exposed to a wide range of toxic exposures including burn pits, VA has examined and compared Veteran groups by cohort (e.g. Gulf War-deployed and non-deployed Veterans). Based on this review, for example, recent claims data for Post-9/11 Global War on Terror Veterans show that VA is granting service connection for respiratory diseases for Gulf War-deployed Veterans at 63 percent compared to 57 percent for their non-deployed counterparts. The data comparing these populations are a more accurate reflection of the VA benefits provided to the approximately 2.9 million Post-9/11 deployed Veterans as opposed to the 14,000 Veterans who explicitly related their claims to burn pit exposure. See attached Fact Sheet for more claims data on various Veteran cohorts.

VA concedes exposure based on location and generally assumes exposure to burn pits for any location(s) in Southwest Asia as specified by Congress for entry into the Airborne Hazards and Open Burn Pit Registry.

Question 2b: What does the appeals process look like for a veteran who has been denied a burn pits exposure?

VA Response: Veterans receive the same decision review rights and appeal rights for burn pit exposure claims as they do for all other compensation claims. Effective February 19, 2019, VA implemented the Appeals Modernization Act, which provides Veterans options within the Veterans Benefits Administration (VBA) jurisdiction to disagree with a decision and seek resolution by submitting new and relevant evidence, called a supplemental claim, or by requesting a higher-level review of the closed record by an experienced claims adjudicator. Veterans may also appeal directly to the Board of Veterans’ Appeals (Board) for resolution by submitting a Notice of Disagreement. The Board appellate process allows Veterans to choose one of three options; whether the Veteran wants a

decision based on the closed record, if the Veteran has additional evidence to submit to the Board or whether the Veteran requests a hearing with a Veterans Law Judge.

VA continues to process and finalize legacy appeals for decisions rendered prior to February 19, 2019. Under the legacy appeals process, a Veteran has 1 year after the contested decision to file a notice of disagreement. The Veteran can elect a review by a Decision Review Officer or elect the traditional appellate process. VBA assists the Veteran in gathering the evidence needed to resolve the disagreement. If VBA cannot fully resolve the disagreement, VBA will issue a Statement of the Case, which explains the decision, applicable laws and the next steps available to the Veteran. If the Veteran remains unsatisfied, the appeal can continue to be pursued at the Board. The Board reviews the appeal and will grant or deny the appeal or return it to VBA for additional action items. A Veteran may also opt the legacy appeal into the modernized appeal process as described above.

Question 3: In the Veterans and Agent Orange Update 11, it was outlined that the Veterans and Agent Orange Committees classify the strength of the evidence regarding the association between exposure to the chemicals of interest and health outcomes into four categories: sufficient, limited or suggestive, inadequate or insufficient, and no association. When veterans are trying to obtain VA benefits, they often run into issues with overcoming barriers on connection of health issues with toxic exposure to access VA health care. A phrase I was made aware of that is often used is: "A strong association is not proof of causation." These barriers can take years for Veterans to overcome, all while their health and livelihood is at risk.

Question 3a: In your opinion is there room to expand or broaden classification of evidence of association between exposure and health outcomes? I ask because for many Veterans time is of the essence and they cannot wait for more studies or research to satisfy proof of their connection.

VA Response: VA is working to improve the classification of evidence between exposure and health outcomes.

VA is moving toward a process in which the Secretary will use his authority under 38 U.S.C. § 501 to create regulations for disabilities that can be granted service connection on a presumptive basis. Using this process, the weight of causation to describe the scientific evidentiary basis could be a justifiable, sustainable and flexible, including a broad examination of National Academy of Sciences, Engineering and Medicine reports, other studies in humans, toxicological studies and animal and mechanistic studies. Application of a new framework will propose

that criteria are part of a multi-step process including a systematic scientific assessment of relevant data “to decide the strength of evidence for causation” which proposed the following categories:

1. Sufficient: The evidence is sufficient to suggest that a causal relationship exists.
2. Equipoise and Above: The evidence is sufficient to suggest that a relationship is at least as likely as not, but not sufficient to suggest that a causal relationship exists. “Tie goes to the Veteran.”
3. Below Equipoise: The evidence is not sufficient to suggest that a relationship exists or is insufficient to make a scientifically informed judgment.
4. Against: The evidence suggests the lack of a relationship.

The second step of the process would “consider the extent of exposure among Veterans and subgroups of Veterans as well as dose-response relationships.” This aspect of the decision-making process seeks to determine the “impact of exposure as the whole purpose for decision-making and planning, but not to serve inappropriately as an estimate of the probability of causation for individuals.”

This process would gauge the strength of the evidence and where the determination is “Equipoise and Above” seek to determine burden of disease and the necessity of presumption of service connection for the exposed population. Below this level, research or surveillance activities that seek evidence base for further decision making may be considered.

Questions for the Record from Senator Marsha Blackburn:

Question 4: In your written testimony, you mentioned that you did not support the VA Information Technology (IT) Reform Act as written. You laid out several concerns with the language of the bill, but most notably within proposed section 8175, “Information technology matters to be included in budget justification materials for the Department.”

The Department of Defense has similar reporting requirements to Congress which provides the chief information officer increased visibility and thereby input into the projects, most importantly at their very beginning.

Question 4a: Does the VA believe it's unnecessary for Congress to have a report on resources spent on the project to date, planning expenditures for the upcoming fiscal year, scheduled completion date, any known deviations from schedule to date, and what the IT project will deliver for veterans?

VA Response: VA is fully committed to transparency and complying with Congress's requests is imperative to the Department. VA suggests the reporting requirements proposed by this legislation be synchronized with current Office of Management and Budget (OMB) reporting requirements in circulars A-11 and A-130, and leverage pre-existing platforms such as the Federal Information Technology Acquisition Reform Act and Federal Chief Information Officer dashboards to better provide the requested information that is currently provided in documents such as Exhibits 53s and 300 A/B through the OMB MAX portal.

Question 4b: Using the Federal IT Dashboard or Federal IT Acquisition Reform Act dashboard, what is the recourse when high-cost IT projects miss critical deadlines and milestones?

VA Response: When important cost or schedule milestones are missed, the hierarchical chain above a product reviews, discusses and identifies corrective actions that address the root problem including the actual product, product line and portfolio management. Cost and schedule variances are reviewed during product line internal budget reviews, while significant investment variances are reviewed formally through TechStat, a face-to-face, evidence-based accountability review of an IT program with agency leadership. TechStat sessions are a tool for getting ahead of critical problems in an investment, turning around underperforming investments, or terminating investments if appropriate.

Question 4c: Do you believe that the VA shouldn't be required to provide a report as part of the yearly budget disclosing the Department's one, five, and 10 year IT spending needs, projections, and rationale?

VA Response: VA believes Congress should have adequate oversight of information technology (IT) spending. However, given the rapid pace of technology advancements, VA recommends changing the requirement from "one, five, and 10 years" to "one and three years" to ensure the Department provides accurate data and lowers the probability of conjecture. A 3-year planning cycle would produce the least amount of speculation and the most reliable planning estimates.

Question 4d: Will you ensure that the VA will be transparent with Congress and the public of all proposed and all current IT spending on critical programs?

VA Response: Yes, VA's Office of Information and Technology (OIT) currently reports on all critical program spending in accordance with FITARA and OMB requirements. Additionally, OIT provides a Congressional Monthly Expenditure Report, which contains monthly obligations for all OIT obligations.

Questions for the Record from Senator Dan Sullivan:

Question 5: The VA's written testimony states the need for a clearer Department policy on concession of exposure to toxic exposure and that there is a willingness to concede exposure to burn pits if a veteran served in Southwest Asia.

Question 5a: Can you go into further detail on what the VA means by its "need to clarify concession of exposure?"

VA Response: VA generally concedes exposure to burn pits if the Veteran served in the Southwest Asia theater of operations and other locations and states he or she was exposed to burn pits. However, it is critical to review all data and information regarding exposures in order to address potential health concerns. For example, VA recently received information from the Department of Defense (DoD) regarding locations of burn pits, as required by section 334 of the National Defense Authorization Act of 2020, and anticipates completing a review by January 2022 to determine if any additional locations on the list meet the criteria for concession of burn pit exposure.

Question 5b: Would VA's conceding exposure require an examination with a medical opinion as is outlined in S.437?

VA Response: VA schedules examinations and/or medical opinions based on the provisions of 38 U.S.C. § 5103A, which provides a framework for determining if an examination/opinion is required. The provisions of S. 437 would extend VA's statutory duty to assist to request medical opinions as to any causal link between a disability and toxic exposure for virtually any claimed medical condition, regardless of the nature of the medical condition. For example, under S. 437, VA would be required to order a medical opinion regarding a nexus to toxic exposure if a Veteran claimed "muscle strain of lower back."

Question 5c: Southwest Asia is not the only place where burn pits have been used. Will the VA consider additional countries that are not in Southwest Asia, such as Egypt and Djibouti, where we know burn pits have been used by the military?

VA Response: VA generally concedes exposure to burn pits if the Veteran served in other locations in addition to the Southwest Asia theater of operations and states he or she was exposed to burn pits. However, it is critical to review all data and information regarding exposures in order to address potential health concerns. VA recently received information from DoD regarding locations of burn pits, as required by section 334 of the National Defense Authorization Act of 2020. VA is also currently reviewing its concession of exposure policy.

VA is able to grant benefits based on direct service connection. Almost two-thirds of Veterans in the current conflicts have submitted claims and of the over 1.5 million who have applied 94% have been approved for at least one service-connected condition.

FACT SHEET
VBA Claims Data -- Comparison by Cohorts (as of March 2021)

VA is providing key disability claims data for the following Veteran cohorts:

- Gulf War I Deployed (Pre-9/11)
- Gulf War Era Non-Deployed (Pre-9/11)
- Global War on Terror (GWOT)-Deployed (Post 9/11)
- GWOT-Era Non-Deployed
- Karshi-Khanabad (K2)

Respiratory Conditions - Veteran-Level Analysis*

(highest in red)

	GW 1 Deployed	GW 1-Era Non- Deployed	GWOT Deployed	GWOT-Era Non- Deployed	K2 Cohort
Population Size	750,205	2.6 Million	2.5 Million	2.6 Million	15,670
# of Veterans who claimed SC for Resp**	108,318	154,441	781,384	263,669	4,534
Claims Rate (% of Entire Cohort who Claimed SC for Resp)	14%	6%	32%	10%	29%
# of Veterans with SC Resp	35,842	58,637	488,636	151,541	3,037
% Affected (% of Entire Cohort with SC Resp)	5%	2%	20%	6%	19%
SC Grant Rate for Resp***	33%	38%	63%	57%	67%
# of Veterans Denied SC for All Resp	72,476	95,804	292,748	112,128	1,497

*Corporate Data, as of March 2021, based on data mining of all respiratory conditions

**"SC" is *service connection*

***SC grant rates (% of claimants who were granted SC for respiratory condition(s)) are representative of both explicit and implicit claims based on airborne and other environmental hazards.

Key “Respiratory” Findings:

- GWOT-Deployed cohort is 3 times more likely than the similar Non-Deployed cohort to file claims for respiratory conditions.
- Although the GWOT-Deployed and GWOT Non-Deployed population sizes are relatively the same, the GWOT-Deployed cohort has more than 3 times the number of service-connected respiratory disabilities.
- The K2 cohort has the highest grant rate for respiratory conditions at 67%.

Cancers - Veteran-Level Analysis**(highest in red)*

	<i>GW 1 Deployed</i>	<i>GW 1-Era Non-Deployed</i>	<i>GWOT Deployed</i>	<i>GWOT-Era Non-Deployed</i>	<i>K2 Cohort</i>
Population Size	750,205	2.6 Million	2.5 Million	2.6 Million	15,670
# of Veterans who claimed SC for Cancers	16,870	32,462	42,686	19,049	282
Claims Rate (% of Entire Cohort who Claimed SC for Cancer)	2.25%	1.24%	1.74%	.73%	1.80%
# Veteran with SC Cancer	4,460	12,111	15,819	7,019	112
% Affected (% of Entire Cohort with SC Cancers)	.59%	.46%	.65%	.27%	.71%
SC Grant Rate**	26%	37%	37%	37%	40%
# of Veterans Denied SC for All Cancers	12,410	20,351	26,867	12,030	170

*Corporate Data, as of March 2021, based on data mining of cancers (any body system)

**Service connection grant rates (% of claimants who were granted SC for cancer(s)) are representative of both explicit and implicit claims based on airborne and other environmental hazards.

Key “Cancer” Findings:

- GW I-Deployed cohort has the highest percentage (of the cohorts reviewed) that have filed claims for service connection for cancer.
- Deployed cohorts (GW 1 and GWOT) are roughly 2 times more likely than non-deployed cohorts to file claims for cancers.
- Although the GWOT-Deployed and GWOT Non-Deployed population sizes are relatively the same, the GWOT-Deployed cohort has more than 2 times the number of service-connected cancers.
- Based on the percentage of each cohort who have been impacted by cancer, the K2 cohort has the highest percentage (.71%) of the cohorts to experience a service-connected cancer.
- K2 Veterans have the highest grant rate for cancer at 40%.

Any Service-Connected Condition - Veteran-Level Analysis**(highest in red)*

	<i>GW 1 Deployed</i>	<i>GW 1-Era Non-Deployed</i>	<i>GWOT Deployed</i>	<i>GWOT-Era Non-Deployed</i>	<i>K2 Cohort</i>
Population Size	750,205	2.6 Million	2.5 Million	2.6 Million	15,670
# of Veterans who claimed SC for any conditions	282,777	566,302	1,605,502	719,627	9,647
Claims Rate (% of Entire Cohort who Claimed SC for Any Condition)	38%	22%	66%	28%	62%
# Veterans with One or More SC Conditions	242,110	470,452	1,511,985	628,988	9,008
% Affected (% of Entire Cohort with SC Condition(s))	32%	18%	62%	24%	57%
SC Grant Rate**	85%	83%	94%	87%	93%

Average # of SC Conditions Granted	8	7	12	8	8
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*Corporate Data, as of March 2021, based on data mining of all Cohort Veterans who claimed service connection for one or more medical conditions (all body systems)

**Service connection grant rates (% of claimants who were granted SC for one or more conditions) for all conditions across all body systems.

Key Findings for All Service-Connected Conditions:

- GWOT-Deployed cohort is roughly 2 ½ times more likely than non-deployed cohorts to file claims for service connection for any condition.
- GWOT-Deployed cohort has more than double the number of Veterans who have been granted service connection for one or more conditions (compared to the relatively same size Non-Deployed cohort).
- The average number of service-connected disabilities experienced by GWOT-Deployed is 12 compared to 8 for other cohorts.

**Disabled American Veterans
Questions for the Record
Committee on Veterans' Affairs
United States Senate
Pending Legislation Hearing**

April 28, 2021

Questions for the Record from Joe Manchin

Questions addressed to Mr. Liebermann

Question 1. Can you outline about how this legislation would impact the day to day lives of veterans around the country?

RESPONSE: The VA automobile grant program has a significant impact on eligible disabled veterans. For many, this is their only option to navigate and interact within their community and access VA health care. Rural veterans have a greater need as this can impact their ability to receive needed health care. Although, the program provides a one-time grant of \$21,058.69, the program does not address the needs for the lifetime of the veteran. The Department of Transportation (DOT) reports the average useful life of a vehicle is 11.5 years. Vehicles that have been modified structurally, including modifications to accommodate the weight of a veteran and their wheelchair, can have an accelerated depreciation of usefulness. Unfortunately, the cost of replacing modified vehicles can create a financial hardship for veterans who must bear the full replacement cost once the adapted vehicle has exceeded its useful life.

Question 2. For veterans who also need to use the Special Adaptive Equipment Grants, which allow veterans to make necessary modifications to their vehicle like adding lift equipment to accommodate their disability and which can be accessed multiple times, how important is it to have parity between the Special Adaptive Equipment Grants and the automobile grant?

RESPONSE: There is an absolute need for parity between multiple uses of the Special Adaptive Equipment Program and the one-time grant for automobiles. The average cost to replace modified vehicles ranges from \$40,000 to \$65,000 when the vehicle is new and \$21,000 to \$35,000 when the vehicle is used. Veterans should have the ability use the automobile grant more than once during their lifetime as they can the Special Adaptive Equipment Program.

STATEMENTS FOR THE RECORD**Senator Portman Statement for the Record**

Chairman Tester, Ranking Member Moran: I would like to thank you for considering S. 1188, the SFC Heath Robinson Burn Pit Transparency Act, during today's hearing. I am proud to co-sponsor this bill with my colleague from Ohio, Senator Sherrod Brown. This bill honors the memory of SFC Heath Robinson, an Ohio Army National Guard veteran who tragically died at age 39 in May of 2020 of lung cancer, which he attributed to burn pits exposure during his Middle East deployment.

We owe our brave men and women in uniform a debt of gratitude for fighting our Nation's wars, and that obligation does not end when they return home. The reporting requirements in this bill will bring us an important step closer towards understanding how exposure to airborne toxins from burn pits during deployments abroad has impacted our veterans' long-term health outcomes. This data will enable us to provide our veterans with the resources they need if they later develop medical conditions that may be related to such environmental hazards during service.



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

Statement for the Record

Bart Stichman
Co-Founder and Executive Director
National Veterans Legal Services Program

Submitted to
Senate Committee on Veterans' Affairs

Hearing on
"Pending Legislation"

April 28, 2021

The National Veterans Legal Services Program (NVLSP) would like to thank Chairman Tester, Ranking Member Moran and distinguished members of the Senate Committee on Veterans' Affairs for the opportunity to provide our statement for the record regarding the pending legislation before the committee.

Since 1981, NVLSP, an independent, nonprofit veterans service organization, has been dedicated to ensuring that our government lives up to its obligations to provide our 22 million veterans and active service members the VA and military department benefits they have earned due to disabilities resulting from their military service to our country. At NVLSP, we have a uniform code: to serve those who have served us.

NVLSP strongly supports the need for legislation of the type pending before the Committee that addresses entitlement to disability and death compensation due to exposure during military service to toxic substances. The need for such legislation is particularly acute for exposure to (a) the toxic fumes spewed by the 250 open air burn pits used by the U.S. military departments in Southwest Asia to dispose of solid waste, instead of building safer mechanisms such as incinerators, and (b) toxic herbicides used by the U.S. military departments in Southeast Asia.

NVLSP urges the Committee, in considering the bills before it today, to add legislative language that focuses on two issues of great importance: (1) the need for the government to begin forthwith to conduct a scientifically valid epidemiologic study of the adverse health effects of military personnel exposed to open air burn pits in Southwest Asia; and (2) entitlement to retroactive disability and death compensation for veterans and surviving family members exposed to Agent Orange in Vietnam due to diseases that are newly accorded presumptive service connected status due to such exposure. We separately discuss these two issues below.

Requiring an Epidemiologic Study of Veterans Exposed to Burn Pit Fumes

The need for legislation governing the adjudication of claims based on exposure to toxins from burn pits cannot be overstated. Although the VA currently presumes that more than a dozen different cancers and other diseases are associated with exposure to Agent

Orange, the VA does not currently presume that *any* disease has a positive association with exposure to burn pit smoke. It decides disability claims based on exposure to burn pit smoke on a case-by-case basis. Because of the general skepticism the VA has to disability claims based on toxic exposures, these are difficult claims to win. Veterans exposed to toxins from burn pits need, and rarely have, access to attorney representation and medical experts who can provide medical opinions linking exposure to the specific toxins involved and the veteran's specific disease. As a result, VA statistics show that it has denied more than 80% of the claims that have been filed for diseases allegedly due to exposure to toxins from burn pits.

NVLSP strongly supports several bills that are before the Committee today that address the need for presumptive service connection for diseases due to exposure to burn pit fumes: specifically, S. 454, S. 927 and S. 952. These bills incorporate a very important VA benefits principle that has been consistently recognized by Congress and the VA over many decades whenever Congress or the VA has accorded presumptive service connected status to a disease due to exposure to a toxic substance. That principle is that presumptive service connected status is warranted when the available scientific evidence shows that there exists an epidemiologic, statistical association between exposure and disease. Both Congress and the VA have made clear that this epidemiologic, statistical association is a lower standard than a strict, tort-like cause and effect association, and this lower standard is warranted due to our nation's gratitude and solicitude to those who defended our country in military service,

NVLSP is aware, however, that some members of Congress are likely to oppose bills that grant presumptive service connection status to particular diseases on the ground that there is an alleged lack of sufficient scientific evidence of an association between exposure to the toxins and that disease. There exist today scientific studies of the association between specific chemicals that the Department of Defense has confirmed were present in the fumes and smoke spewed by the open-air burn pits and many different chronic diseases. But this may not satisfy those members of Congress who are opposed to granting presumptive service connection status on the ground that no epidemiologic studies currently exist that examine the incidence of disease in two cohorts – one of veterans exposed to open air burn pit fumes and the other of similarly situated veterans who were not so exposed.

The mission of the VA is to care for those who have borne the battle and their orphans. Given the longstanding principle that presumptive service connected status is warranted when scientific evidence shows that there exists an epidemiologic, statistical association between exposure and disease, it is obvious that an agency with VA's mission should have begun years ago to conduct an epidemiologic study of the incidence of disease in a cohort of veterans exposed to open air burn pit fumes compared to a cohort of similarly situated non-exposed veterans. But the VA has studiously eschewed the conduct of this obviously needed study, despite calls from members of Congress and veterans service organizations for it to do so. Some VA skeptics have speculated that VA's reluctance is based on the fear that if such a study were conducted, it could potentially show a statistically higher incidence of certain diseases in the exposed cohort and lead in turn to VA payment of disability and death compensation that would have a major impact on the VA's budget.

NVLSF believes that this unjust state of affairs cries out for a statutory mandate that VA conduct, or contract with an independent group to conduct, a scientifically valid epidemiologic study of the adverse health effects experienced by military personnel exposed to open air burn pits in Southwest Asia. There are legislative precedents directly on point. The systemic, large-scale exposure of U.S. troops in Southwest Asia to toxins from open air burn pits created by the U.S. military departments eerily echoes the exposure of U.S. troops five decades ago to the millions of gallons of toxic herbicides sprayed by the U.S. military departments in Southeast Asia. Eight years after the U.S. military stopped spraying these toxic herbicides, Congress took appropriate action. It enacted Public Law 96-151, 93 Stat. 1092 (Dec. 20, 1979), section 307(a)(1) of which required that the Administrator of the VA:

shall design a protocol for and conduct an epidemiologic study of persons who, while serving in the Armed Forces of the United States during the period of the Vietnam conflict, were exposed to any of the class of chemicals known as "the dioxins" produced during the manufacture ofherbicides (including the herbicide known as "Agent Orange") to determine if there may be long-term adverse health effects in such persons from such exposure.

This type of legislation is exactly what is needed now. NVLSF urges Congress to add this requirement when it is considering the bills that NVLSF supports – S. 454, S. 927 and S. 952.

Entitlement to Retroactive VA Compensation for Claims Based on Diseases Recently Accorded Presumptive Service Connection Status Due to Agent Orange Exposure

In last year's National Defense Authorization Act (NDAA), Congress granted three new diseases presumptive service-connected status due to their association with exposure to Agent Orange: Parkinsonism, bladder cancer, and hypothyroidism. See 38 U.S.C. § 1116(a)(2)(I), (J), (K). One of the bills now being considered by this Committee, S. 810 -- which NVLSP supports -- would grant two additional diseases presumptive service-connected status due to its association with exposure to Agent Orange, including hypertension.

While both of these legislative efforts are praiseworthy, they both leave disabled veterans and their survivors with half a loaf, or even less. Specifically, they require VA to pay them disability and death compensation benefits if they suffer or died from one of these diseases *on a prospective basis only* – that is, with an effective compensation date of no earlier than the date of enactment. But they do not by themselves require VA to pay benefits retroactive to the date of the first claim the veteran or survivor filed for that disease, which could well be decades before the date of enactment.

This stands in sharp contrast to the way veterans and their survivors are treated by VA if they suffer or died from one of the other diseases recognized by VA as associated with Agent Orange exposure prior to last year's NDAA. As we discuss below, VA itself agreed that all of these veterans and survivors are entitled to disability and death compensation benefits retroactive to the date of their first claim.

As background, in 1987, a U.S. district court certified a case known as *Nehmer v. U.S. Veterans Administration* as a nationwide class action on behalf of more than 2 million Vietnam veterans and their survivors, including those who had been denied VA benefits for a condition allegedly associated with herbicide exposure and those who would be eligible to file a claim for such benefits in the future. *Nehmer v. U.S. Veterans Administration*, 118 F.R.D. 113 (N.D. Cal. 1987). The court also certified NVLSP's lawyers as the counsel for all these class members.

As noted in the November 2014 report by the Congressional Research Service, ["Veterans Exposed to Agent Orange: Legislative History, Litigation, and Current Issues"](#), as a

result of the *Nehmer* decision, Congress enacted the Agent Orange Act of 1991, 38 U.S.C. § 1116. The Agent Orange Act (AOA) required the VA to contract with an independent agency, the National Academy of Sciences (NAS), to review the emerging scientific studies on the adverse health effects of exposure to this herbicide and to prepare a report for the VA every two years with its conclusions. The AOA also required the Secretary of Veterans Affairs to decide within a specified period of time after receiving an NAS report whether to amend VA regulations by according presumptive service connected status to additional diseases.

In 1991, NVLSP's attorneys negotiated a favorable consent decree with the VA in *Nehmer*. The *Nehmer* consent decree requires VA, whenever it recognizes pursuant to the AOA that the emerging scientific evidence and NAS reports shows that a positive statistical association exists between Agent Orange exposure and a new disease, to (a) *automatically identify* all disability and death compensation claims based on the newly recognized disease that were previously denied and (b) *automatically readjudicate* these prior claims under the amended VA regulations recognizing the new disease, and (c) pay disability and death benefits to those claimants who prevail, *retroactive to the initial date of claim*. See *Nehmer*, 494 F.3d 846 (9th Cir. 2007). Most of the binding *Nehmer* Consent Decree rules are currently codified in 38 C.F.R. § 3.816.

Since the AOA was enacted, the numerous periodic NAS reports that have been issued have persuaded the Secretary of Veterans Affairs to amend VA regulations under the process set forth in the AOA to provide that many serious disabling diseases should be accorded presumptive service-connected status because they have a positive association with exposure to the toxic herbicides used in Vietnam, including Agent Orange. These diseases include:

- AL Amyloidosis
- All Chronic B-Cell Leukemias
- Chloracne
- Diabetes- Type 2
- Hodgkin's Disease
- Ischemic Heart Disease
- Multiple Myeloma
- Non-Hodgkin's Lymphoma
- Parkinson's Disease
- Peripheral Neuropathy - Early-Onset

Porphyria Cutanea Tarda
Prostate Cancer
Respiratory Cancers including Lung Cancer, Trachea Cancer and Larynx Cancer

As a result of the *Nehmer* consent decree, over the last two decades, VA *automatically readjudicated*—without the necessity of filing a new claim—the prior VA denial of the claims of well more than 100,000 Vietnam veterans and their survivors that were based on the Agent Orange-related disease enumerated above. As a result of these *Nehmer* readjudications, VA has paid an aggregate of more than \$4.6 billion in retroactive disability and death benefits to these Vietnam veterans and their surviving family members.

But VA has not paid retroactive compensation to Vietnam veterans suffering from or surviving family members of Vietnam veterans who died from one of the three disease added by last year's NDAA. This means that these veterans and survivors are being disadvantaged to a dramatic degree compared to the hundreds of thousands of Vietnam veterans and survivors to whom VA has paid an aggregate of billions of dollars in retroactive disability and death benefits based on claims for the numerous other diseases associated with exposure to Agent Orange that are listed above.

This disparate treatment is unjust. NVLSP urges Congress to enact legislation requiring VA to take all of the steps it has taken in the past pursuant to the *Nehmer* consent decree for the three new disease covered by last year's NDAA. In addition, Congress should pass S. 810, which would grant hypertension and one other disease presumptive service-connected status due to its association with exposure to Agent Orange, and similarly require VA to take all of the steps it has taken in the past pursuant to the *Nehmer* consent decree for the two additional S. 810 diseases.

Closing

NVLSP appreciates the work being done by the Senate Committee on Veterans' Affairs and its distinguished members. We are grateful for the opportunity to provide our statement for the record on these significant pieces of legislation regarding toxic exposure. NVLSP is committed to working with the members Congress and all relevant federal agencies to ensure

that servicemembers, veterans and their survivors receive the benefits to which they are entitled due to disabilities they incurred as a result of their military service to our nation. We stand ready to assist on these or other matters as they may arise in the future.

Statement for the Record

of



Veterans for Common Sense

by

Anthony Hardie
National Chair and Director

Before the

**Senate Committee on Veterans’
Affairs**

Regarding a

Hearing on Pending Legislation

April 28, 2021

Thank you, Chairman Tester and Ranking Member Moran for this hearing regarding pending legislation. We are grateful for this opportunity to provide written testimony for the record.

Veterans for Common Sense is national veterans' organization focused on education and advocacy on behalf of veterans, military service members, and historically has helped to elevate veterans' voices in national policy discussions. Our national board of directors includes most of the leaders of the national Gulf War veterans organization formed in 1995. Our efforts resulted in the creation of critical Gulf War legislation and related measures, including the seminal Persian Gulf War Veterans Act of 1998 and the Gulf War provisions of the Veterans Programs Enhancement Act of that same year.

We appreciate the opportunity to share our views, today in particular, from the perspectives of Gulf War veteran advocates and veterans affected by Gulf War toxic exposures and the resultant Gulf War Illness. We hope that our testimony today can help illuminate lessons learned from the experiences of this often-overlooked cohort. We include eight (8) such "lesson learned"

In 1996, we developed a five-point plan at our first national conference of our coalescent national coalition of grassroots groups of ill Gulf War veterans and their loved ones. Our step-by-step plan included the following:

- 1) INVESTIGATION: an investigation into what happened to us Gulf War troops including to what we may have been exposed;
- 2) RESEARCH: medical research to determine the health outcomes associated with each exposure;
- 3) TREATMENT: effective treatment for the health outcomes associated with each exposure (later to be described as "evidence-based" treatment);
- 4) CLAIMS: an appropriate VA claims process to ensure that VA provided compensation for Gulf War-incurred disabilities that were long-term or permanent;
- 5) NEVER AGAIN: a pledge based on that of the Vietnam Veteran veterans who came before us – that never again should what happened to us be allowed to happen again.

In short, our plan was fairly simple to articulate: Investigation, Research, Treatment, Compensation, and Never Again. That plan was to serve as an early framework for our 1998 legislation. The 1998 legislation is described below, drawn from testimony we provided in 2016:¹

1998 PERSIAN GULF WAR VETERANS LEGISLATION

As I noted in my testimony of February 23 [2016], it took almost eight years after the war before Gulf War veteran' major legislative victory, with the enactment of the *Persian Gulf War Veterans Act of 1998* (Title XVI, PL 105-277) and the *Veterans Programs Enhancement Act of 1998* (PL 105-368, Title I—"Provisions Relating to Veterans of

¹ House Veterans' Affairs Committee, Subcommittee on Oversight and Investigations and Subcommittee on Disability Assistance and Memorial Affairs, March 15, 2016, "Twenty-Five Years After The Persian Gulf War: An Assessment Of VA's Disability Claims Process With Respect To Gulf War Illness": <https://archives-veterans.house.gov/submission-record/aanthony-hardie-gulf-war-veteran-and-director-veterans-common-sense>

Persian Gulf War and Future Conflicts”) – two landmark bills that set the framework for Gulf War veterans’ healthcare, research, and disability benefits.

For those of us involved in fighting for the creation and enactment of these laws, they seemed clear and straightforward, with a comprehensive, statutorily-mandated plan that would guarantee research, treatments, appropriate benefits, and help ensure that lessons learned from our experiences would result in never again allowing what happened to us to happen to future generations of warriors.

The legislation included a long list of known Gulf War exposures. VA was to presume our exposure to all of these, and then, with the assistance of the National Academy of Sciences (NAS), evaluate each exposure for associated adverse health outcomes in humans and animals. In turn, the VA Secretary would consider the reports by the NAS’s Institute of Medicine (IOM), “and all other sound medical and scientific information and analyses available,” and make determinations granting presumptive conditions. There was a new guarantee of VA health care. There would also be a new national center for the study of war-related illnesses and post-deployment health issues, which would conduct and promote research regarding their etiologies, diagnosis, treatment, and prevention and promote the development of appropriate health policies, including monitoring, medical recordkeeping, risk communication, and use of new technologies. There was to be an effective methodology for treatment development and evaluation, a medical education curriculum, and outreach to Gulf War veterans. Research findings were to be thoroughly publicized. To ensure the federal government’s proposed research studies, plans, and strategies stayed focused and on track, VA was to appoint a research advisory committee that included Gulf War veterans – presumably those who were ill and affected – and their representatives.

Instead, we learned that enactment of those laws was just another battle in our long war.

From the beginning, VA officials fought against implementing these laws, dragging their feet and upending their implementation.

In addition to the failures I noted in my February 23 [2016] testimony, the process for determining presumptions has failed to yield new presumptions without Congressional intervention. And, the laws aimed at providing a clear path for Gulf War veterans’ compensation by VA while awaiting the development of effective treatments has been not just problematic, but with extraordinarily high denial rates, as VA’s own data shows and as will be discussed below.

For Gulf War veterans, getting VA to approve a disability claim for a presumptive condition has been nearly impossible for most. And, as with all denied VA claims, the backlog of appealed claims is daunting and adds years to the process.

That leads now to a discussion of components drawn from Gulf War veterans’ experience and the lessons that can be learned for advancing new legislation related to toxic exposures:

A. Access to care. Prior to our 1998 legislation, the ability of veterans was very limited for accessing VA healthcare unless they had an already-approved claim for VA compensation or pension. Of course, medical evidence was required to win a compensation claim, but without access to healthcare, it was difficult to impossible to receive needed healthcare.

The 1998 legislation provided for two years of VA healthcare for combat veterans. Later legislation expanded that period to five years. Of great importance, the TEAM Act would significantly expand that care for veterans with toxic exposures.

LESSON LEARNED: 1) Granting VA healthcare access to veterans with toxic exposures is critical.

Treatment-focused Research. However, related to accessing healthcare and as I testified before a House Veterans' Affairs Subcommittee on Health hearing in 2007, while it was certainly possible "for Gulf War veterans to be seen at VA medical facilities, however, *being seen is not the same as being treated.*"² [emphasis added]

For many Gulf War veterans suffering the adverse health effects of Gulf War toxic exposures, science and medicine did not yet have answers for why they were sick or how to treat their illness. This remains the case not only for far too many Gulf War veterans, but also for many veterans with burn pits and other toxic exposures.

Even worse, health risk communications publicized by the Department of Defense (DoD) and VA consistently minimized the association between Gulf War service and the adverse health outcomes so many of us were experiencing. Similar minimization continues even through to the present: alleging no clear links have been found associating deployment or exposures or deployment with adverse health outcomes, "more research is needed," legislation seeking to resolve these issues is "premature". This persistent denial messaging only serves to anger the already injured veteran population.

While the story is too long to tell in this statement, eventually Gulf War veterans benefitted from the creation of the Gulf War Illness Research Program (GWIRP), one of the Congressionally Directed Medical Research Programs (CDMRP) created and funded by Congress through annual Department of Defense Health Agency appropriations. For reasons that have been provided in detail in past House Veterans' Affairs Committee hearings, it was and remains of critical importance that this program remains outside of VA. A Burn Pits Exposure topic area within the Peer Reviewed Medical Research CDMRP (PRMRP) and other disease- and exposure-specific research programs and approved topic areas remain of equally critical importance. We are deeply grateful to Congress for continuing to support these critically important medical research programs.

Also of critical importance is streamlining the process to speed successful research treatments and diagnostic findings to clinicians treating the patients who are affected. As effective

² HHRNG 37-476, House Committee on Veterans' Affairs, Subcommittee on Health, "Gulf War Exposures", July 26, 2007: <https://www.govinfo.gov/content/pkg/CHRG-110hrg37476/html/CHRG-110hrg37476.htm>

treatments for Gulf War Illness and other toxic exposures and conditions are found, processes to add evidence-based treatments to VA's formulary and clinical practice must be enhanced.

LESSON LEARNED: 2) Funding treatment-focused medical research aimed at improving health and lives – and bench-to-bedside translational efforts to speed research successes to clinical care – is critically important to ensure veterans being “seen” by VA clinicians are provided with evidence-based healthcare that in fact improves their health and lives.

B. Framework for determining new presumptive conditions.

The 1998 Gulf War legislation provided a framework for determining presumptive conditions for VA compensation claims. That framework should have provided a clear path for additional deployment- or exposure-associated conditions to be determined by the VA Secretary, based on reports from the NAS, as “presumptive”.

Through this framework, the National Academy of Sciences, Engineering, and Medicine (NASEM) has released numerous literature reviews of Gulf War research. Most of these reports include conclusions regarding the strength of association between deployment to the Gulf War or Gulf War exposures and particular health outcomes.

The five categories are:

- **Sufficient evidence of a causal relationship**, that is, the evidence is sufficient to conclude that between being deployed to the Gulf War causes a health outcome.
- **Sufficient evidence of an association**; that is, a positive association has been observed between deployment to the Gulf War and a health outcome in humans.
- **Limited/suggestive evidence of an association**; that is, some evidence of an association between deployment to the Gulf War and a health outcome in humans exists.
- **Inadequate/insufficient evidence to determine whether an association exists**; that is, available studies are of insufficient quality, validity, consistency or statistical power to permit a conclusion regarding the presence or absence of an association.
- **Limited/suggestive evidence of no association**; that is, several adequate studies are consistent in not showing an association between deployment and a health outcome.

For Gulf War veterans, the bar for determining these conditions as “presumptive” has been too high and few conditions have met this bar.

Veterans for Common Sense has compiled a complete list³ of all conditions considered by NAS in the Gulf War and Health series, comprising over 400 exposures, along with their NAS categories of association. Nearly all fall in the lower three tiers of NAS strength of association determinations.

LESSON LEARNED: 3) A presumptive condition determination framework should set the bar at the “Limited/suggestive evidence of an association” level.

³ <http://veteransforcommonsense.org/wp-content/uploads/2020/02/Conditions-Associated-with-Gulf-War-exposures-consolidated-NAS-IOM-listing.pdf>

C. List of exposures. The Persian Gulf War Veterans Act of 1998 provided a list of 32 potential exposures for Gulf War veterans.

(A) The following organophosphorous pesticides: (i) Chlorpyrifos. (ii) Diazinon. (iii) Dichlorvos. (iv) Malathion. (B) The following carbamate pesticides: (i) Proxpur. (ii) Carbaryl. (iii) Methomyl. (C) The carbamate pyridostigmine bromide used as nerve agent prophylaxis. (D) The following chlorinated hydrocarbons and other pesticides and repellents: (i) Lindane. (ii) Pyrethrins. (iii) Permethrins. (iv) Rodenticides (bait). (v) Repellent (DEET). (E) The following low-level nerve agents and precursor compounds at exposure levels below those which produce immediately apparent incapacitating symptoms: (i) Sarin. (ii) Tabun. (F) The following synthetic chemical compounds: (i) Mustard agents at levels below those which cause immediate blistering. (ii) Volatile organic compounds. (iii) Hydrazine. (iv) Red fuming nitric acid. (v) Solvents. (vi) Uranium. (G) The following ionizing radiation: (i) Depleted uranium. (ii) Microwave radiation. (iii) Radio frequency radiation. (H) The following environmental particulates and pollutants: (i) Hydrogen sulfide. (ii) Oil fire byproducts. (iii) Diesel heater fumes. (iv) Sand micro-particles. (I) Diseases endemic to the region (including the following): (i) Leishmaniasis. (ii) Sandfly fever. (iii) Pathogenic escherichia coli. (iv) Shigellosis.⁴

D. Concession of exposures. As directed by the law, VA contracted with the NAS for reviews of these exposures (and not limited to these exposures) and whether Gulf War veterans “may have been exposed.” In report after report in the NAS’s “Gulf War and Health” series, the NAS was unable to determine actual levels of exposure for Gulf War troops, including dose-response relationships, due in large part to flawed, inadequate, and incomplete troop location data, lost troop medical and other records, inadequate environmental sampling data, and so on.

Unfortunately for Gulf War veterans, the list of 32 exposures in the enacted legislation and resulting law⁵ did not rise to the level of an actual concession of exposures. Instead, the enacted legislation used indeterminate language: “may have been exposed”; “may have been exposed for purposes of any report under subsection...”.

The end result of the Gulf War framework has been deeply disappointing to Gulf War veterans: **no concessions of exposure** to any of the toxic and hazardous exposures identified by Congress in law (with the exception of nine rare endemic infectious diseases, which have been of little consequence for most veterans deployed to the theatre of operations) and essentially **no new presumptive conditions resulting from that framework**.

Thus, Gulf War veterans have never received the same benefit of a concession of exposures granted to Agent Orange veterans, and as would be granted -- to a more limited extent -- by pending toxic exposures legislation. That task probably falls to Congress to determine. To date, Gulf War veteran reliance on DoD and VA to concede exposures has not succeeded despite a

⁴ Persian Gulf War Veterans Act of 1998 [Title XVI, P.L. 105-277, “Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999”], Sec. 1603(d) [“Initial Consideration of Specific Agents”].

⁵ Persian Gulf War Veterans Act of 1998 [Title XVI, P.L. 105-277, “Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999”], Sec. 1603(d) [“Initial Consideration of Specific Agents”].

carefully articulated and well-intentioned framework enacted in the 1998 legislation.

LESSONS LEARNED: 4) Conceding exposures is critical, and that task probably falls to Congress to legislate.

E. Plausibility of etiology. An important method for determining the plausibility of adverse health outcomes has been the use of experimental models of exposures. These models have primarily involved the use of experimental rats and mice, though others have used cockroaches, cell lines, and machine learning.

We have provided extensive prior testimony on this critical aspect of any NAS or similar studies to determine the association between exposures (or deployment) and health outcomes.

See: “Statement for the Record of James Binns, Roberta White, Anthony Hardie, & Paul Sullivan for a September 23, 2020 Hearing of the Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, Entitled: “Toxic Exposures: Examining Airborne Hazards In The Southwest Asia Theater Of Military Operations”.

LESSON LEARNED: 5) Animal studies of toxic exposure are critical to understanding plausible health outcomes associated with toxic exposures.

F. List of Presumptive Conditions.

Gulf War legislation enacted in 1994 provided for presumptive “undiagnosed illness” (UDX) claims. However, VA’s high rates of denial of these claims led to Congress’ 1998 Gulf War legislation to develop an elegant, science-based, framework for specifying new presumptive conditions for Gulf War veterans. Unfortunately, VA’s persistent high rates of denial of these presumptive UDX claims led to legislation enacted in 2001 making “medically unexplained chronic multisymptom illnesses” (MUCMIs) presumptive.

Tragically for Gulf War veterans, VA’s high rates of denial of Gulf War veterans’ presumptive claims for “undiagnosed illness” (UDX) and “medically unexplained chronic multisymptom illnesses” (MUCMIs) persist to the present time – along with similarly high rates of denial of Burn Pits Exposure-related claims.

By contrast, Vietnam veterans with presumed exposure to Agent Orange have fared better, with a long list of presumptive conditions now approved. It is noteworthy that many of these named presumptive conditions required legislation. Indeed, one of the bills now before the Committee would name additional Agent Orange presumptive conditions that VA has failed to make presumptive despite strong evidence and favorable NAS review.

While a framework for Vietnam veterans that presumes exposure to Agent Orange has led to some favorable determinations for new presumptive conditions, Congress has been required to legislate other named presumptive conditions.

LESSON LEARNED: 6) Named presumptive conditions are critical for toxic exposure veterans. 7) A science-based presumptive determination framework is of significant value. 8) Congress is likely still going to be called upon to act when the science is clear regarding associations of health outcomes with exposures when VA fails to take appropriate action on its own.

S. 437 – *Veterans Burn Pits Exposure Recognition Act of 2021:*

Veterans for Common Sense supports this legislation conceding exposure to four types of airborne hazards and toxic exposures for covered veterans.

We encourage the Committee, in considering this legislation, to expand the covered veterans in this legislation to be as complete as in other current toxic exposure legislation (including airspace and contiguous waters veterans, so as not to create a new class of Blue Water Navy/Air veterans), such as the *Presumptive Benefits For War Fighters Exposed To Burn Pits And Other Toxins Act*.

We express concern regarding the inclusion of the “causal” terminology in the bill as currently drafted: “... the Secretary shall request a medical opinion as to any *causal* link between the disability and a toxic substance, chemical, or hazard set listed in subsection (c)....” [emphasis added]. We are concerned this may be interpreted by VA as parallel to the NAS causation standard of association, an impossibly high bar to meet.

Veterans for Common Sense is grateful to Senator Sullivan and Senator Manchin for their introduction of this legislation, and to the many Senators who have cosponsored it.

Veterans for Common Sense is also deeply grateful to the Disabled American Veterans (DAV) for their leadership efforts in seeking to improve disability claims outcomes for veterans with toxic exposures.

S. 444 – *AUTO for Veterans Act:*

Currently, veterans and service members eligible for the VA automobile allowance and adaptive equipment program as the result of specified service-connected disability or impairment may not receive more than one automobile or other conveyance under the program. Motor vehicles do not last forever.

S. 444 would allow for eligible veterans and service members to be provided with an additional automobile or other conveyance under this chapter every 10 years.

Accordingly, **Veterans for Common Sense strongly supports S. 444, the *AUTO for Veterans Act*.**

Veterans for Common Sense is sincerely grateful to Senator Collins, Senator Manchin, Senator Boozman, Senator Blunt, and Senator Hassan for their introduction of the commonsense *AUTO for Veterans Act*, which is of critical importance to the affected veterans.

Veterans for Common Sense also commends Paralyzed Veterans of America (PVA) for their instrumental advocacy in supporting this legislation.

S. 454 — *K2 Veterans Care Act of 2021:*

Veterans for Common Sense supports this legislation conceding exposure to certain hazards and toxic exposures for covered veterans. However, we express concern that some of these, like Depleted Uranium, have previously been the subject of NAS reviews without favorable consideration and “more study is needed”-type recommendations.

Veterans for Common Sense is grateful to Senator Blumenthal, Senator Baldwin, Senator Brown, Senator Menendez, and Senator Feinstein for their introduction of this legislation.

S. 565 — *Mark Takai Atomic Veterans Healthcare Parity Act of 2021:*

Veterans for Common Sense supports efforts to provide full eligibility for VA healthcare eligibility and service-connected disability compensation benefits to all Atomic Veterans.

Veterans for Common Sense also supports efforts, including by the National Association of Atomic Veterans (NAAV), to authorize, create, and award, including posthumously, an Atomic Veteran Service Medal to all Atomic Veterans.

According to the NAAV, Atomic Veterans include all of the following:

“Atomic Veterans were members of the United States Armed Forces who participated in atmospheric and underwater nuclear weapons tests from 16 July 1945 to 30 October 1962. They also include veterans who were assigned to post test duties, such as “ground zero” nuclear warfare maneuvers & exercises, removing radiation cloud samples from aircraft wing pods, working in close proximity to radiated test animals, de-contamination of aircraft and field test equipment, retrieval and transport of test instruments & devices, and a host of other duty assignments that provided an opportunity for a radiation exposure & contamination event. Also included are military personnel who were a part of the Occupation Forces assigned to Hiroshima and Nagasaki, Japan soon after the detonation of Atomic-Bombs over those respective cities, and those American prisoners of war (POW’s) who were housed in close proximity to those cities.”

“There is a second group of veterans who may have been involved in radiation exposure events. These include post test events related to nuclear weapon devices detonated underground or in shafts (after 1962) that may have provided a radiation exposure event, or those [whose] duties involved regular use of radiation producing equipment or

processes, such as power plant technicians aboard nuclear powered Aircraft Carriers and Submarines, X-ray technicians, and those veterans assigned to the Enewetak Atoll radiation clean-up projects.”⁶

According to a 2019 *Stars and Stripes* article:

“We were experimental subjects who did not give our advised consent to be experimental subjects,” said [Atomic Veteran Linclon] Grahlf, 96, a retired sociology professor and author of the book “Voices From Ground Zero: Recollections and Feelings of Nuclear Test Veterans.”

At least 200,000 U.S. troops participated in the tests and cleanup operations during World War II and later in the Pacific Ocean, the Nevada desert, New Mexico and the Atlantic Ocean. They took the human brunt of deadly ionizing radiation that contaminated nearby lands, water and communities. Even today, the wide-ranging implications of hundreds of tests conducted from the 1940s until the 1960s and cleanup operations that followed in the late 1970s has yet to be fully understood. In all, the U.S. has conducted more than 900 such tests.

Until 1996, the atomic vets were sworn to silence, forced to keep their burdens from their families, their friends and doctors. They had limited records and medical help for their illnesses, and faced a threat of prison if they revealed the secret too soon.⁷

It is unclear whether all Atomic Veterans who are still living know that the *Nuclear Radiation and Secrecy Agreements Act*, which bound these veterans to secrecy regarding the operations that exposed them to radiation, was repealed. S. 565 would expand Atomic Veteran-related benefits to veterans who participated in the “Cleanup of Enewetak Atoll during the period beginning on January 1, 1977, and ending on December 31, 1980”.

In keeping with the goals stated above, **Veterans for Common Sense strongly supports S. 565, the *Mark Takai Atomic Veterans Healthcare Parity Act of 2021*.**

Veterans for Common Sense is grateful to Senator Smith, Senator Tillis, Senator Leahy, Senator Hirono, Senator Klobuchar, Senator King, Senator Warren, Senator Wyden, Senator Van Hollen, Senator Coons, Senator Merkley, Senator Markey, Senator Sinema, Senator Blumenthal, Senator Collins, and Senator Baldwin for their introduction of this legislation.

Veterans for Common Sense commends the tireless and unwavering efforts of the National Association of Atomic Veterans, on behalf of the entire cohort of Atomic Veterans they represent, to achieve justice, healthcare, benefits, and recognition for these long-overlooked veterans. As our national works to achieve justice for veterans with toxic exposures, it is of great importance that these Atomic Veterans veterans are finally awarded all the measures of justice that they have long sought.

⁶ NAAV website: <https://www.naav.com>

⁷ *Stars and Stripes*, “Conspiracy of silence: Veterans exposed to atomic tests wage final fight,” by Claudia Grisales, June 16, 2019: <https://www.stripes.com/news/special-reports/conspiracy-of-silence-veterans-exposed-to-atomic-tests-wage-final-fight-1.585789>

S. 657 – A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes:

Veterans for Common Sense supports this legislation, which would make reduce the burden of proof necessary for certain veterans exposed to Agent Orange.

Veterans for Common Sense thanks Senator Boozman, Senator Tester, Senator Wyden, Senator Gillibrand, Senator Warren, Senator Portman, Senator Hassan, and Senator Braun for their leadership in introducing this legislation.

S. 810 – *Fair Care for Vietnam Veterans Act of 2021*:

The *Fair Care for Vietnam Veterans Act* would beneficially add two additional conditions to the list of named conditions already approved as “presumptive” for Vietnam War and other veterans presumed to be exposed to Agent Orange.

A 2015 study of the Ranch Hand cohort of Vietnam veterans published in a peer-reviewed Journal of the American Medical Association found a 2.4-fold increased risk for Monoclonal Gammopathy of Undetermined Significance (MGUS) in Ranch Hand veterans versus comparison veterans after adjusting for age, race, and other relevant factors. The study authors concluded: “Operation Ranch Hand veterans have a significantly increased risk of MGUS, supporting an association between Agent Orange exposure and multiple myeloma.”⁸ According to a press release by the National Academy of Sciences, Engineering, and Medicine (NASEM) for the release of its, “Agent Orange: Update 11 (2018)” report, “MGUS is a clinically silent condition that is a precursor to the cancer multiple myeloma, but only an estimated 1 percent of MGUS cases progress to multiple myeloma each year.”⁹

NASEM’s *Update 11 (2018)* also upgraded its conclusions regarding the strength of association between exposure to the chemicals of interest and hypertension. Previously, NASEM had rated hypertension as, “*limited/suggestive evidence of an association*”, the middle tier of its five-tier rating system for strength of association. In *Update 11 (2018)*, NASEM upgraded its rating regarding hypertension in Vietnam War veterans to, “sufficient evidence of an association,” the second-highest rating, based on the available published scientific evidence.

This MGUS study was published than half a decade ago and the NASEM report more than two years ago, but VA has yet to take action to make these conditions presumptive for veterans exposed to Agent Orange. It is notable that Congressional action is once again required to add these presumptive conditions via legislation, conditions which have already been found by science to be of greater prevalence in Vietnam veterans than comparison veterans.

⁸ Ola Landgren, Youn K. Shim, Joel Michalek, Rene Costello, Debra Burton, Norma Ketchum, Katherine R. Calvo, Neil Caporaso, Elizabeth Raveche, Dan Middleton, Gerald Marti, Robert F. Vogt Jr., *JAMA Oncol*, “Agent Orange Exposure and Monoclonal Gammopathy of Undetermined Significance: An Operation Ranch Hand Veteran Cohort Study,” 2015 Nov;18(10):1061-8. <https://doi.org/10.1001/jamaoncol.2015.2938>

⁹ <https://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=25137>. See: National Academies of Sciences, Engineering, and Medicine. 2018. Veterans and Agent Orange: Update 11 (2018). Washington, DC: The National Academies Press. <https://doi.org/10.17226/25137>.

In light of VA's failure to act on the published scientific evidence regarding the excess prevalence of these conditions among Vietnam War veterans, **Veterans for Common Sense strongly supports S. 810, the *Fair Care for Vietnam Veterans Act of 2021*, to add hypertension and Monoclonal Gammopathy of Undetermined Significance (MGUS) as Agent Orange presumptive conditions.**

Veterans for Common Sense is sincerely grateful to Senator Tester, Senator Wyden, Senator Brown, Senator Durbin, Senator Cortez Masto, Senator Menendez, Senator Schumer, Senator Casey, Senator Leahy, Senator Manchin, Senator Blumenthal, Senator Coons, Senator Murray, Senator Klobuchar, Senator Hirono, Senator Smith, and Senator Booker for introducing the *Fair Care for Vietnam Veterans Act* to add named "presumptive" conditions for VA disability compensation for Vietnam War veterans.

Veterans for Common Sense also commends Vietnam Veterans of America for its enduring leadership in ensuring that health conditions identified as greater in prevalence among Vietnam Veterans continue to be added as named presumptive conditions by whatever means necessary for the Vietnam War veterans VVA so powerfully represents.

S. 927 – *Toxic Exposure in the American Military Act (TEAM) Act:*

Veterans for Common Sense strongly supports the expansion of access to VA healthcare that would be granted under this legislation.

Veterans for Common Sense strongly supports the provision of this legislation that would set the bar for NAS strength of association determinations at the "Limited/suggestive evidence of an association" level.

Veterans for Common Sense cautiously supports this bill's creation of a framework for determining presumptive conditions but given the experience of Gulf War veterans with a similar enacted framework, we are understandably concerned about whether such a process will in actuality result in new, fair, and timely presumptive conditions consistently being added for veterans with those conditions.

Veterans for Common Sense strongly supports the creation of the advisory and oversight body described in this legislation. While the Research Advisory Committee for Gulf War Illnesses (RAC) created in Gulf War legislation enacted in 1998 did an excellent job in its mission, ultimately, its scope and membership were slashed by VA. Legislation to properly restore the RAC, which passed the House with unanimous consent, had a new structure and process for naming members that is somewhat similar to that contained in the TEAM Act.

We express concern that language in the current draft of the legislation would not allow for the appropriate and necessary consideration by the NAS of animal studies modeling toxic exposures and health outcomes in those animals. That language is as follows: "...that a positive association exists between the exposure of humans to a toxic substance and the occurrence of a disease in humans..." Such animal studies can be critical for understanding plausible health

outcomes in humans, particularly in cases of toxic or hazardous exposures where there is a paucity of human health outcomes data and it would be unethical to conduct experiments exposing humans to such toxins or hazards for scientific evaluation purposes.

Veterans for Common Sense thanks Senator Tillis, Senator Hassan, Senator Moran, Senator Klobuchar, Senator Blackburn, Senator Baldwin, and Senator Capito for their leadership in introducing this legislation. Veterans for Common Sense commends the TEAM Coalition, led by the Wounded Warrior Project, for its collaborative efforts in developing these legislative proposals.

S. 952 – Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act:

In the strongest possible terms, Veterans for Common Sense supports the list of named presumptive conditions in this legislation, including respiratory conditions, cancers, and the conditions already presumptive for Agent Orange veterans.

Veterans for Common Sense also very strongly supports the comprehensiveness of covered veterans in this legislation, which includes veterans awarded various service medals for their Global War on Terrorism (GWOT) service, and extends back to August 1990 and veterans awarded the Southwest Asia Service Medal (SWASM), Armed Forces Expeditionary Medal (AFEM), and other service medals.

As we previously stated publicly, For many veterans with toxic exposures, there has been -- for them -- a clear timeline connecting their toxic exposures during their military deployments to the debilitating health outcomes that followed them home. Far too many veterans who were exposed to open burn pits and a veritable toxic soup have developed terrible respiratory conditions, Parkinson's and other diseases, and cancers, including the brain cancer that has taken so many of their lives. This critically important legislation will provide the missing link to help these veterans. Indeed, this is the only current, major toxic exposure legislation to actually name presumptive conditions for VA disability claims rather than lay out a bureaucratic process that relies on trusting VA to do the right thing -- the same VA that currently denies Gulf War and Burn Pits-related claims at 80 percent denial rates. In this year of the 30th anniversary of the beginning of the Gulf War (Operation Desert Storm), we are deeply grateful to Senator Gillibrand and the many powerful cosponsors for ensuring this legislation will help so many veterans who served, including Gulf War, other pre-9/11, and post-9/11 veterans alike."

Veterans for Common Sense profoundly thanks Senators Gillibrand and Rubio for their leadership in introducing this legislation in the Senate, and for Representatives Ruiz and Fitzpatrick for introducing a companion bill in the House. Veterans for Common Sense wholeheartedly commends Burn Pits 360, Jon Stewart, John Feal, and the many supportive organizations involved for their efforts on this crucial legislation.

S. 1039 – *Improving Benefits for Gulf War Veterans Act:*

Veterans for Common Sense strongly supports this bill's provision to make permanent the period for filing Gulf War related claims. VA has provided multiple five-year extensions to date, and we understand is currently working on another. However, medical research has consistently shown that the health of veterans with Gulf War Illness is not improving and is likely worsening. After 30 years, there is little justification that any more study is needed as to whether Gulf War veterans are ill.

Veterans for Common Sense strongly supports the provision in this legislation that would extend eligibility to VA benefits and healthcare currently available to most Gulf War veterans to also include veterans with qualifying service in Afghanistan, Egypt, Israel, Jordan, Syria, and Turkey. Veterans for Common Sense published an analytical issue paper in 2017 which may be of interest to the Committee regarding Gulf War veterans issued the Southwest Asia Service Medal (SWASM) but not included as Gulf War veterans by VA for healthcare and benefits purposes.¹⁰ It remains unclear to us why these Gulf War veterans awarded the SWASM for their Gulf War service were not initially included by VA in 1994 as Gulf War veterans. We have long sought a remedy for these veterans and are grateful for its critically important inclusion here.

We note that as currently drafted, this legislation would not also grant coverage to veterans with service in the airspace above or the contiguous waters of these added six countries. This is the result of the technical interplay between the wording added to 38 USC 1117 by this legislation and 38 CFR 3.317, which includes the current geographic definition for covered veterans. We would be happy to work with the Committee on this issue.

Veterans for Common Sense strongly supports the reduction in threshold for eligibility provided by this bill.

Veterans for Common Sense strongly supports the bill's requirement for a single Disability Benefits Questionnaire (DBQ) for Gulf War Illness symptoms and issues. Since the 1994 enactment of legislation making "undiagnosed illnesses" (UDX) presumptive for VA compensation claims, VA's high denial rates of these claims have persisted. VA's denials of presumptive "medically unexplained chronic multisymptom illness" (MUCMI) claims remain a serious issue for the denied veterans. A 2017 GAO report and related House Veterans' Affairs Committee hearing at which we testified showed a roughly 90 percent denial rate of UDX claims and a denial rate nearly as high for MUCMI claims.¹¹ VA is no longer publicizing benefits utilization data, including claims grant and denial rates, so there is no reason to believe there have been substantial improvements.

Given the persistent high rates of denial of GWI claims, Veterans for Common Sense has recommended the creation of a symptom-based schedule of ratings for symptom-based disabilities like Gulf War Illness. We have suggested that it be modeled at least loosely upon the current schedule of ratings for traumatic brain injury (TBI), with "buckets" of types of symptoms

¹⁰ <http://veteransforcommonsense.org/wp-content/uploads/2019/05/ISSUE-Resolving-Differences-in-Definitions-of-Persian-Gulf-War-Veteran-.pdf>

¹¹ <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=106223>

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and a points-based system for rating disability. Such a schema could also be applied to veterans with toxic exposure-related symptoms that do not current (or do not yet) meet diagnostic criteria for existing diseases. Again, we would be happy to work with the Committee in this regard.

Veterans for Common Sense strongly supports the bill's provisions regarding training for VA personnel. We recommend that the bill's language be expanded to cover VBA benefits personnel in addition to the VA health care personnel currently specified in the bill.

In keeping with the goals and recommendations stated above, **Veterans for Common Sense strongly supports S. 103, the *Improving Benefits for Gulf War Veterans Act***. Veterans for Common Sense is deeply grateful to Senator Menendez for the introduction of this legislation. Veterans for Common Sense is also deeply grateful to the Veterans of Foreign Wars (VFW) for the strong support of this legislation.

STATEMENT FOR THE RECORD

**Air Force Sergeants Association
FOR THE
United States Senate Committee on Veterans' Affairs
APRIL 28, 2021**

Chairman Tester, Ranking Member Moran, and distinguished members of the Senate Committee on Veterans' Affairs, on behalf of the Air Force Sergeants Association (AFSA) and our 75,000+ members, **thank you** for the opportunity to submit the following testimony on legislation pending before the Committee.

The AFSA is a federally chartered Veterans' Service Organization (VSO) representing the personal and professional interests of our members, Total Forces, and their families. The content of this statement is an accurate reflection of the views held by our members on the issues encompassed within the scope of the AFSA's legislative platform and quality of life mission.

The AFSA commends the Committee for its thoughtful consideration of the legislation being deliberated today and is looking forward to collaboratively engaging with its members on areas of mutual interest.

S.89, the Ensuring Survivor Benefits During COVID-19 Act of 2021

According to 38 CFR § 3.10, if a veteran's death is the result of a service-connected injury or disease, either the veteran's spouse or a qualified dependent child is entitled to Dependent Indemnity Compensation (DIC).

Many veterans receiving VA disability benefits are at a higher risk for severe illness due to COVID-19. To date, over 570,000 Americans are recorded as having died from COVID-19; this includes over 11,000 veterans.

However, the reality is that assigning a cause of death is not always straightforward – this fact has only been exacerbated in recent times. By extension, the ambiguities surrounding Survivor Benefit delivery and entitlement to DIC have only become more convoluted.

While there are certain instances where a spouse or qualified dependent child could receive DIC benefits if the veteran dies of a non-service-connected injury or disease, it is not always clear if being service-connected with a risk factor would trigger an automatic qualification for benefits.

For example, if an autopsy of a veteran states the cause of death is COVID-19, it is unlikely the veteran would be service-connected for COVID-19 itself. As a result, spouses and/or qualified dependent children risk losing a benefit which they are entitled to receive under the law.

S.89, the *Ensuring Survivor Benefits During COVID-19 Act of 2021*, would create additional safeguards for spouses and/or qualified dependent children for the purposes of eliminating some ambiguities surrounding the delivery of DIC.

This legislation compels the VA Secretary to secure medical opinions for veterans with service-connected disabilities who die from COVID-19 to determine whether their service-connected disabilities were the principal or contributory causes of death.

In its simplest form, the *Ensuring Survivor Benefits During COVID-19 Act of 2021* requires the VA to account for service-related disabilities that might have intensified the health effects of the virus and contributed to the death of a veteran.

The AFSA would like to thank Senators Kyrsten Sinema and Thom Tillis for introducing the *Ensuring Survivor Benefits During COVID-19 Act of 2021* and respectfully requests the members of this Committee support the bill in its current form.

S.189, the *Veterans' Disability Compensation Automatic COLA Act of 2021*

By the current conduct of legislative business, the rates of compensation for veterans with service-connected disabilities and the rates of DIC for the survivors of certain disabled veterans are adjusted in alignment with the percentage increase, if any, between the average third-quarter Consumer Price Index (CPI) of the current year over the average third-quarter CPI of the prior year.

Referred to as a cost-of-living adjustment (COLA), its purpose is to ensure that the purchasing power of benefits such as VA disability compensation and DIC are not eroded by inflation.

Under federal law, the cost-of-living adjustments to VA's compensation and pension rates are the same rate as benefits payable under title II of the Social Security Act (SSA), which sets the requirements for disability insurance benefits. However, unlike Social Security beneficiaries, recipients of veterans' benefits depend on intervention by Congress each year to approve their COLA.

As a result, veterans and their families, who depend on these benefits to make ends meet, are left in a state of uncertainty each year over whether lawmakers will pass this critically important measure.

S.189, the *Veterans' Disability Compensation Automatic COLA Act of 2021*, would alleviate this state of uncertainty by providing for annual COLA adjustments to be made automatically by law each year.

The AFSA would like to thank Senators John Thune and Brian Schatz for introducing the *Veterans' Disability Compensation Automatic COLA Act of 2021* and respectfully requests the members of this Committee support the bill in its current form.

S.219, *Aid and Attendance Support Act of 2021*

Under current law, certain catastrophically disabled veterans are eligible to receive VA Special Monthly Compensation (SMC)/Aid and Attendance (A&A) benefits. VA provides funds through SMC/A&A for veterans who require the regular aid of a “caretaker” to complete activities of daily living (ADL) such as getting dressed, bathing and maintaining personal hygiene, preparing meals and eating, using the restroom, and adjusting prosthetic or orthopedical appliances.

These benefits help to provide an offset to the costs that would normally be incurred following pursuant to the acquisition of care that requires the assistance or supervision of another person to perform a said ADL’s.

Shortly after the beginning of the pandemic, veterans who receive home care services were informed they would need to pay more because providers were experiencing higher costs. In part, this was due to the necessity for providers to purchase additional personal protective equipment (PPE) such as masks, gowns, and gloves for the purpose of protecting home health employees and their veteran clients alike.

In other cases, costs increased due to provider shortages or those who have succumbed to the virus; thereby forcing the veteran to obtain costly replacement care on short notice.

As a result, some veterans are forgoing the home care they need simply because they are unable to meet the higher cost of care. The impact? An already vulnerable veteran population, whose care ought to be VA’s primary concern, could be forced to seek residential placements – which endangers the veteran’s long-term health and increases VA costs.

S.219, the *Aid and Attendance Support Act of 2021*, temporarily increases the amount paid to eligible disabled veterans and surviving spouses by twenty-five percent. Such an increase in A&A would help to ensure veterans are able to afford the care they require and are entitled to by law.

As such, the AFSA would like to thank Senator Catherine Cortez Masto for introducing the *Aid and Attendance Support Act of 2021* and respectfully requests the members of this Committee support the bill in its current form.

S.437, *Veterans Burn Pits Exposure Recognition Act of 2021*

As has proven to be the case, when veterans are exposed to toxic substances - and current medical evidence fails to provide for a presumption of service connection - they, along with their families, are prevented from receiving VA health care and benefits.

S.437, the *Veterans Burn Pits Exposure Recognition Act of 2021*, outlines a framework that strives to address concerns in reference to inconsistencies and delays in benefit delivery to veterans who have been exposed to airborne hazards and toxins from burn pits during their time of service.

Of note, the AFSA supports much of the sense of Congress as outlined in section 2. More precisely:

1. *The health of some members of the Armed Forces and veterans who served in certain locations, often multiple times, may have been affected by their service near burn pits and other sources of air-borne hazards*
2. *Determining the location of burn pits, and the scope of health effects associated to exposure, remains the subject of much investigation, research, and good faith efforts by the Department of Veterans Affairs, the Department of Defense, other government agencies, and the National Academies of Sciences, Engineering, and Medicine*
3. *In the interim, though, some veterans have already been adversely affected by their exposure to burn pits, and their claims to certain benefits furnished by the Department of Veterans Affairs can be reviewed on a case-by-case basis*
4. *When filing a claim for certain benefits furnished by the Department of Veterans Affairs, the application requires that each veteran show evidence of their exposure to burn pits, however if the evidence of exposure to burn pits is not provided, the claim is often denied*
5. *A concession of exposure as described in paragraph (1) should not alone be sufficient to entitle one to health care or disability compensation under laws administered by the Secretary of Veterans Affairs*

From this, the AFSA would like to begin my commending Senators Dan Sullivan and Joe Manchin for introducing a policy proposal that reforms the current presumptive process in a manner not previously conceptualized and scribed in legislative form.

At the over-arching level of analysis, due to the concession standard established in section 3 (a)(1)(b), the AFSA believes the *Veterans Burn Pits Exposure Act of 2021* would certainly reduce barriers that currently prevent thousands of veterans from receiving health care and benefits for illnesses and diseases related to exposure to burn pits.

The AFSA supports the evidentiary standard as currently explicated in section 3 (a)(1)(c) - which would ensure the delivery of health care and benefits “unless there is affirmative evidence to establish that the veteran was not exposed to any such substances, chemicals, or hazards during that service.”

The AFSA also supports the covered locations and corresponding periods as stated in section 3 (b) and covered toxic substances, chemicals, and airborne hazards as stated in section 3 (c)(1).

However, the AFSA is concerned with section 3 (c)(2) which provides the Secretary of Veterans Affairs the capacity to unilaterally remove a covered toxic substance, chemical, and/or airborne hazard from the list as stated in section 3 (c)(1).

With respect to a legal avenue by which the Secretary can remove a covered toxic substance, chemical, and/or airborne hazard from the list as stated in section 3 (c)(1), the AFSA prefers the schematic described in S.952, the *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act*, SEC. 2. PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN DISEASES ASSOCIATED WITH EXPOSURE TO BURN PITS AND OTHER TOXINS. § 119. Presumption of service connection for certain diseases associated with exposure to burn pits and other toxins (a)(3)(b).

As such, the AFSA is looking forward to continuing to work with the members of this Committee to meet out legislative platform objective to “ensure the delivery of full and timely benefits for Veterans exposed to toxic substances and toxicants.”

S.444, *AUTO for Veterans Act*

Established in 1946, the VA’s Automobile Allowance program (hereafter referred to as the program) sought to ensure severely disabled World War II veterans would be financially able to purchase an automobile or other conveyance.

Under current law, veterans and service members with certain service-connected disabilities are eligible to receive a one-time payment of not more than \$21,795.57 to be used towards the purchase of a specially equipped vehicle.

While the program does provide for a subsidy towards the purchase of one specially equipped vehicle in a severely disabled veteran’s lifetime, it provides little to no support thereafter.

Access to an adapted vehicle is essential to the mobility and health of catastrophically disabled veterans who require a reliable means of transportation to get to and from work and medical appointments. Not to mention its necessity in ensuring a regular maintenance and service schedule to increase the longevity of the vehicle’s lifespan.

According to the Bureau of Transportation, even when accounting for advancements in technology and modern-day vehicle management systems, the average lifespan of a vehicle is just over eleven years. However, vehicles that have been modified structurally, which may include modifications to accommodate the weight of veterans and their wheelchairs, can have a decreased lifespan.

With the unlikelihood a vehicle will outlast a person’s lifetime, especially for younger veterans, it is pivotal to ensure benefactors of the VA’s AAE grant are permitted access to this tax-free benefit throughout the course of their life.

In addition to the disparity that exists between the durability of the program and the lifespan of the veteran who may be eligible to participate, it is also important to note that making modifications or adding adaptive equipment to vehicles is costly and varies greatly depending on an individual’s needs. On average, a newly modified vehicle with adaptive equipment is estimated to be more than double the value of the current auto grant.

S.444, the *Advancing Uniform Transportation Opportunities for Veterans “AUTO” Act*, would reduce the financial burden incurred by virtue of military service by ensuring severely disabled veterans receive a grant from the VA’s Automobile Assistance Grant program to purchase a specially equipped vehicle once every ten years – as opposed to only once.

The AFSA would like to thank Senators Susan Collins, Joe Manchin, Roy Blunt, John Boozman, and Maggie Hassan for introducing the *AUTO for Veterans Act* and respectfully request the members of this Committee support the bill in its current form.

S.454, *K2 Veterans Care Act of 2021*

Following the devastating terrorist attacks against our great nation on September 11, 2001, the United States established Camp Stronghold Freedom at Karshi-Khanabad (K-2) airbase in southeastern Uzbekistan. From 2001-2005, it is estimated as many as 15,000 service members deployed to K-2 to support combat missions in the fight against terror.

On July 9, 2020, the House Oversight and Reform Committee's Subcommittee on National Security released troubling, declassified documents provided by the Department of Defense (DoD) that detailed multiple hazards and toxins that servicemembers were exposed to while deployed to K-2.

According to the documents, service members were likely exposed to a variety of hazardous petrochemicals and volatile organic compounds (VOCs), including jet fuel, kerosene, lead-based paint, asbestos, depleted uranium, particulate matter, and dust, burn pits and elevated levels of tetrachloroethylene.

To make matters worse, DoD conducted an initial study to look at cancer outcomes among service members deployed to K-2 and found a higher risk of malignant melanoma and neoplasms of the lymphatic and hematopoietic tissues.

Despite these findings, VA believes the results "should not be viewed as definitive evidence of an association with service at K-2." While the VA is currently working with DoD to further assess illnesses among K-2 veterans, the results from this study are not expected for at least eighteen months.

As a result, nearly two decades later, K-2 veterans and their families continue to experience rejected claims for their service-connected disability benefits.

S.454, the *K2 Veterans Care Act of 2021*, remedies this wrong by establishing a presumption of service connection for certain diseases becoming manifest in a veteran who served at K-2 and has since been diagnosed with toxic exposure-related illnesses and diseases.

The AFSA would like to thank Senators Richard Blumenthal and Tammy Baldwin for introducing the *K2 Veterans Care Act of 2021* and urges the members of this Committee to support the bill.

S.458, *Veterans Claim Transparency Act of 2021*

As of April 24, 2021, the VA has recorded a total number of 467,551 pending claims and 198,329 rating-related claims backlogged. While the AFSA commiserates with the difficulties COVID-19 has brought to everyday processes and procedures, it cannot go unnoticed that the adaptations made by the VA have not manifested in positive results as it pertains to processing claims – and processing them accurately.

For example, in April 2020, the VA implanted a rule that limits representative access to veterans' electronic files in the Veterans Benefits Management System (VMBS).

Under the decades-old pre-decisional review policy, accredited service officers were granted the opportunity to review and course-correct benefits determinations. This process allowed for errors to be discovered and resolved at the very lowest level without requiring veterans to seek redress in the time-consuming and often costly claims appeal process.

While the AFSA endorsed Veterans Appeals Improvement and Modernization Act of 2017 has undeniably played a significant role in reducing claims backlog and increasing VBA's claim-level accuracy rate, a recent report from the VA Office of Inspector General (OIG) spotlights the necessity for the codification of S.458, the *Veterans Claim Transparency Act of 2021*, which, from the AFSA's point of view, can colloquially be described as an additional liability shield for the VA.

In short, the OIG found VBA staff did not properly apply date of receipt documentation for approximately 98 percent of 3,200 claims that were established from April 7 through April 20, 2020. The significance of these errors manifests when considering they can cause a veteran to receive an improper effective date for a claim or a denial for untimeliness.

While it is impossible to say if a review period from accredited service officers would have prevented these errors, there is evidence to suggest the 48-hour review period consistently corrects errors made by the VA in claims reviewed.

From the AFSA's perspective, the imperative of accuracy in claims processing is non-negotiable.

As such, the AFSA would like to thank Chairman Jon Tester for introducing S.458, the *Veterans Claim Transparency Act of 2021*, and respectfully requests the members of this Committee support the bill in its current form.

S.810, the Fair Care for Vietnam Veterans Act of 2021

As it currently stands, the VA has established several toxic exposures as presumptive with conceded exposures and diseases scientifically linked to exposure.

However, despite findings published in the "Vietnam Veterans and Agent Orange Exposure" report by the National Academies of Science, Engineering, and Medicine (NASEM), hypertension and monoclonal gammopathy of undetermined significance (MGUS) remains uncovered by the VA.

S.810, the *Fair Care for Vietnam Veterans Act of 2021*, would expand the list of diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who serviced in the Republic of Vietnam to include hypertension and MGUS.

The AFSA would like to thank Chairman Tester for introducing the *Fair Care for Vietnam Veterans Act of 2021* and urges the members of this Committee to support the bill in its current form.

S.927, A bill to improve the provision of health care and other benefits from the Department of Veterans Affairs for veterans who were exposed to toxic substances, and for other purposes (TEAM)

More than six million veterans of all eras have been exposed to toxic substances in the course of their military service. These include exposures to herbicides, burn pits, radiation, engine fumes, chemically laced improvised explosive devices, and more. These exposures can lead to serious illnesses including, but not limited to cancer, respiratory diseases, autoimmune disorders, and skin conditions.

Unfortunately, many veterans suffering from these illnesses still lack access to the lifesaving care they need, and no comprehensive framework exists to establish presumptive service connection for all conditions associated with toxic exposures, irrespective of era or location of service.

If enacted, S.927, the *TEAM Act* would reform how the VA evaluates and provides care for veterans suffering from conditions that may be associated with toxic exposures. Namely, the *TEAM Act*:

- Expands VA healthcare for veterans exposed to toxic substances.
- Requires the VA to respond to new scientific evidence regarding diseases associated with toxic exposure and establish new presumptions of service connection when supported by the science.
- Ensures VA enters into agreements with the National Academies of Sciences, Engineering, and Medicine to review scientific studies regarding associations between diseases and exposure to toxic substances during military service.
- Expands training on toxic exposure issues for VA health care personnel.
- Requires VA to develop a questionnaire for primary care appointments to determine whether a veteran may have been exposed to toxic substances during service.

Nearly one year ago, the AFSA joined the Toxic Exposure in the American Military (TEAM) Coalition, a non-partisan consortium of more than 30 veterans and military service organizations collectively gathering data, raising awareness, promoting research, and working with Congress to pursue legislation easing the impact of toxic exposures on those who have been made ill as the result of their military service.

From the AFSA's perspective, the *TEAM Act* represents the culmination of nearly two years of collaboration and consensus building with aim of reducing incidents of toxic exposures among servicemembers and increasing access and quality of care for those exposed.

The AFSA would like to thank Senators Thom Tillis and Maggie Hassan for introducing the *TEAM Act* and respectfully requests the members of this Committee support the bill.

Conclusion

Chairman Tester, Ranking Member Moran, and distinguished members of the Committee, thank you again for the opportunity to express the views of our members on these important matters. The exceptional work of this Committee is a sterling example of how non-political cooperation can yield swift and effective congressional action. As always, we are prepared to present more details and discuss these issues with you and your staff if deemed necessary.

Questions concerning this testimony can be directed to Mr. Matthew Schwartzman, Policy Advisor, Legislative Affairs, at mschwartzman@hqafsa.org or (301) 899-3500 ext. 246.

(end)

Curriculum Vitae

Keith A. Reed is the Executive Director of the Air Force Sergeants Association. He oversees the daily operations, advocacy efforts, outreach, and support on behalf of the Association's 75,000 dues-paying members worldwide. Mr. Reed is a 20-year Air Force Veteran and retired Master Sergeant. He joined the Air Force as an Administrator/Information Manager and spent most of his career in staff support and military protocol and eventually served this Nation as a United States Air Force First Sergeant, culminating his career at Maxwell Air Force Base as the 42nd Mission Support Squadron First Sergeant responsible for overseeing the health and welfare of more than 400 enlisted members. Mr. Reed brings over 20 years of AFSA-experience that positively connects leadership at all levels along with the veteran and military audience to ensure AFSA continues to advocate on behalf of the Total Forces, their families, and survivors.

Disclosure of Federal Grants or Contracts

The Air Force Sergeants Association (AFSA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All Association activities and services are accomplished completely independent of any federal funding.



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Eric Bunn Sr.
National Secretary-Treasurer

Dr. Everett B. Kelley
National President

Jeremy A. Lannan
NVP for Women & Fair Practices

April 28, 2021

Honorable Jon Tester
Chairman
Senate Veterans Affairs Committee
United States Senate
Washington DC 20510

Honorable Jerry Moran
Ranking Member
Senate Veterans Affairs Committee
United States Senate
Washington DC 20510

Dear Chairman Tester and Ranking Member Moran:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE) which represents approximately 700,000 federal and District of Columbia government employees in 70 agencies, including 270,000 employees of the Department of Veterans Affairs (VA), I write to express our positions on the following bills being considered by the Committee today:

S. 437, “Veterans Burn Pits Exposure Recognition Act”; S. 565, the “Mark Takai Atomic Veterans Healthcare Parity Act of 2021”; S. 657, To modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes; S. 810, the “Fair Care for Vietnam Veterans Act of 2021”; S. 927, the “TEAM Act”; S. 952, the “Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021”; S. 1039, To amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes; S. 1188, the “SFC Heath Robinson Burn Pit Transparency Act”.

The committee is considering nine bills at this hearing that would either study the impact of certain chemicals and burn pits on veterans, or automatically grant a presumption of service connection for veterans who served in specific places and times and that have developed particular conditions. This includes bills related to herbicides in Thailand, Agent Orange in Vietnam, and the “toxins, chemicals, and hazards” found in burn pits. These bills will offer long overdue benefits to multiple generations of service members for a variety of conditions.

AFGE supports legislation that will simplify the process for the VA to collect data about various toxins and chemicals veterans were exposed to and for veterans to apply for and receive benefits for exposure during their service. Additionally, by conceding that veterans were exposed, the VA can streamline the claims process and allow employees to process claims more accurately and efficiently. AFGE is proud to represent the employees who process these claims, many of whom are veterans themselves. AFGE urges the VA, after the enactment of each of



these bills, to consult with AFGE in a working group to make sure that employees receive adequate training on the new processes related to these claims and ensure that new trainings and procedures are followed universally at each Veterans Benefits Administration (VBA) Regional Office.

AFGE is also proud to represent Veterans Health Administration (VHA) clinicians, including the Compensation and Pension (C&P) and Integrated Disability Examination System (IDES) examiners. These clinicians provide examinations that determine the severity and eligibility of veterans and discharging active-duty military who are seeking a disability benefit. As Senator Sullivan's "Veterans Burn Pits Exposure Recognition Act of 2021" requires that that all VA medical providers who administer these exams related to burn pits "shall consider the total potential exposure through all applicable military deployments, and the synergistic effect of all combined toxic substances through inhalation, dermal exposure, and ingestion," AFGE wants to take this opportunity to remind the committee of how specialized and nuanced these examinations are, and that the VA should prioritize keeping these exams within the VA, instead of continuing to contract them out at an alarming rate.

AFGE also would like to highlight Section 303 of Senator Tillis's "TEAM Act" and applaud his inclusion of a requirement that "health care personnel of the Department of Veterans Affairs are appropriately trained to identify, treat, and assess the impact of illnesses related to exposure to toxic substances." AFGE strongly believes all toxic exposure legislation should require training for healthcare personnel that mandates labor representatives have input to the VA while the training is being designed. This training will help the mission of serving veterans.

S. 458, the "Veterans Claim Transparency Act of 2021".

AFGE supports the "Veterans Claim Transparency Act of 2021" that would codify a veteran's right to have his or her representative have up to 48 hours to review a claim prior to the VA finalizing its decision. AFGE is proud to serve as the representatives of the majority of claims processors at the VBA. AFGE members have found that having representatives exercise their 48-hour pre-decisional review has helped identify errors and remedy problems in a claim prior to the claim becoming finalized and requiring an appeal. This helps the veteran get their benefits quicker, reduces the appeals backlog, and helps employees meet their production goals without negatively impacting their performance metrics. AFGE opposed the decision by the prior administration to eliminate the rights of representatives to review claims and supports a legislative remedy.

S. 1031, To require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.

AFGE supports the intention of the General Accountability Office (GAO) report required in this bill. Neither racism nor the disparate treatment of veterans based on race has a place in the VA, particularly when it comes to the treatment of veterans or VA employees, many of whom are veterans themselves.

Because of this, we also recommend that the GAO examine several other factors when conducting research to achieve a more thorough accounting of the issues at hand and to help develop constructive solutions to the problems identified. Specifically, the GAO should investigate whether there are disparities when determining a disability rating for exams conducted by VA personnel versus those conducted by outside contractors. Additionally, we ask that the GAO examine the training VA employees receive related to addressing racism in the workplace and when processing claims, as well as how this varies by facility. The GAO should also study the differences in training and procedures each VBA Regional Office uses related to claims processing. The scope of the study should include the comparative results between these facilities and any impact that the National Work Queue has on any disparities.

S. 1071, the “VA AID Act of 2021”.

AFGE strongly opposes the “VA AID Act of 2021.” While seemingly innocuous with a title that suggests noble intent, this legislation is merely a cover to transfer funds from the VA to a single private for-profit entity in a manner that is neither the best way to help the veteran nor use the expertise of entities more capable of helping veterans.

If enacted, the “VA AID Act of 2021” would create a pilot program for a private entity to help veterans, surviving spouses, and children prepare their claim. The stated intent would be to help claims be processed more easily, and thereby alleviate the claims backlog. The bill specifies criteria for the entity receiving the only contract, including that the entity is “not part of the Department of Veterans Affairs.” While the VA would certainly not award a contract to itself, it would be wiser to use its resources to further leverage the expertise of its own employees who process and evaluate these claims to help veterans, spouses, and children prepare their claims. These employees are already experts in this process and can help veterans navigate the claims process every day. Lastly, many Veteran Service Organizations (VSO) who regularly provide claims assistance to veterans and survivors are already in a position to help with claims

preparation and would be better suited for this work. It is wasteful and unnecessary to award a private company a lucrative contract to do what the VA and VSOs are better equipped to do.

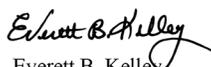
S. 1093, To amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes.

AFGE understands the sponsors' intent of the bill to establish the Veterans Economic Opportunity and Transition Administration (VEOTA) and separate it from VBA. AFGE is proud to serve as the representatives of employees who work throughout VBA, including the majority of those bargaining unit employees who would be transferred from VBA to VEOTA if this legislation is enacted.

AFGE remains neutral on the need for the creation of VEOTA but would like to take this opportunity to thank the sponsors in both the Senate and House for working in a bipartisan manner and in good faith with AFGE to protect labor rights in the legislation. Specifically, AFGE applauds the inclusion of Section 1(d) of the legislation that guarantees the continuation of labor and collective bargaining rights for new VEOTA employees who are transferred from VBA.

Thank you for considering AFGE's views on these important pieces of legislation. For additional information or questions please contact Elliot Friedman at Elliot.Friedman@afge.org or Matt Sowards at Matt.Sowards@afge.org.

Sincerely,



Everett B. Kelley
AFGE National President



May 4, 2021

Honorable Jon Tester, Chairman
U.S. Senate Committee on Veterans' Affairs
825-A Hart Senate Office Building
Washington, D.C. 20510-6050

Honorable Jerry Moran, Ranking Member
U.S. Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, D.C. 20510-6050

Dear Chairman Tester and Ranking Member Moran,

On behalf of the American Seniors Housing Association (ASHA), I am writing in support of S. 1071 "VA Aid Act of 2021." ASHA's members own and operate the full range of professionally managed senior living communities including independent living, assisted living, memory care, and continuing care retirement communities (CCRCs). ASHA represents over 500 companies who collectively own and operate more than 700,000 units across the country.

Senior living across the United States is home to nearly 2 million older adults, of which almost half have served their country in the U.S. military or are spouses of Veterans. The average senior living resident is 85 years old and needs assistance with activities of daily living (ADLs), including eating, bathing, dressing, walking, and toileting. U.S. Veterans are eligible for the Veteran's Aid and Attendance benefit to access housing with services, such as assisted living and senior living, to aid with ADLs.

The VA Aid Act of 2021 would authorize the Secretary of Veterans Affairs (VA) to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes. Veterans applying for benefits are currently rejected at a rate of 80% due to backlogs at the Department of Veterans Affairs. This legislation would allow for the VA to contract with a third-party entity to improve efficiency in addressing applications for pension claims. The bill would also prevent predatory companies from taking advantage of Veterans trying to access benefits.

Our nation's Veterans have sacrificed much for their country and deserve fair and efficient access to the benefits to which they are entitled.

If you have any questions, please do not hesitate to contact me at david@ashaliving.org, or Jeanne McGlynn Delgado, VP of Government Affairs at jeanne@ashaliving.org.

Sincerely,

A handwritten signature in blue ink that reads "David Schless".

David Schless
President



Know your environment.
Protect your health.

Environmental Working Group

Testimony for the Record

Senate Committee on Veterans' Affairs

on

Pending Legislation Related to Military Toxics

April 28, 2021

The Environmental Working Group is a national environmental health organization that advocates for safer chemicals policy. For two decades, EWG has sought to address the risks posed by per- and polyfluoroalkyl substances, a class of chemicals known as PFAS,¹ which contaminate hundreds of military bases across the country.² EWG has also advocated on behalf of veterans exposed to toxic chemicals like TCE, benzene, and vinyl chloride at Camp LeJeune in North Carolina.³

We appreciate the opportunity to submit this testimony to the record.

PFAS

Since the 1970s, the Department of Defense has known about the risks⁴ from PFAS chemicals used in military firefighting foam and firefighter turnout gear. Despite knowing the risks, the DOD allowed uncontrolled releases of military firefighting foam, called aqueous film-forming foam, or AFFF, into the environment for decades. The PFAS chemicals released into the

¹ Bill Walker, *EWG and Toxic Fluorinated Chemicals: 20 Years in the Fight Against PFAS*, Environmental Working Group (July 24, 2019), <https://www.ewg.org/news-and-analysis/2019/07/ewg-and-toxic-fluorinated-chemicals-20-years-fight-against-pfas>

² Press Release, UPDATE: Toxic 'Forever Chemicals' Likely Contaminate More Than 700 Military Sites, Environmental Working Group (Sept. 16, 2020), <https://www.ewg.org/release/update-toxic-forever-chemicals-likely-contaminate-more-700-military-sites>

³ Press Release, Congress Approves Health Care for Camp Lejeune Vets, Families (July 31, 2012),

<https://www.ewg.org/news-insights/news-release/congress-approves-health-care-camp-lejeune-vets-families>

⁴ Environmental Working Group, For Decades, the Department of Defense Knew Firefighting Foams with PFAS Chemicals Were Dangerous But Continued Their Use, <https://www.ewg.org/dodpfastimeline/> (last visited Feb. 19, 2021).

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environment contaminated the drinking water consumed by service members, their families, civilian firefighters serving on base, and members of neighboring communities. For decades, no one was warned about the toxins in their drinking water and building up in their blood. Even today, DOD has failed to provide a full accounting of the scope of contamination from AFFF. DOD has reported to Congress that there are 685 sites “known or suspected” to be contaminated with PFAS chemicals.⁵ EWG has confirmed 328 of these sites through public records requests and also identified some sites not included on the lists DOD provided to Congress, bringing the total of “known or suspected” sites to 704.⁶

PFAS contaminate the blood and organs of nearly every living being, and experts estimate that 25 percent of Americans have troubling levels of PFAS in their blood serum.⁷ PFAS are associated with serious health effects, even at very low amounts.⁸ In particular, PFAS exposure

⁵ In March 2020, the DOD reported to Congress that there was “known or suspected PFAS” at 651 sites. In September 2020, DOD identified an additional 34 sites. Dept. of Defense, Per- and Polyfluoroalkyl Substances (PFAS) Task Force Progress Report (March 2020), https://media.defense.gov/2020/Mar/13/2002264440/-1/-1/1/PFAS_Task_Force_Progress_Report_March_2020.pdf. The additional sites can be found here: https://cdn3.ewg.org/sites/default/files/u352/Installations_Under_Investigation_for_Potential_PFAS_Release_%28September_2020%29%20%281%29.pdf?_ga=2.259231884.725902967.1613669791-975890449.1592862015.

⁶ Press Release, UPDATE: Toxic ‘Forever Chemicals’ Likely Contaminate More Than 700 Military Sites, Environmental Working Group (Sept. 16, 2020), <https://www.ewg.org/release/update-toxic-forever-chemicals-likely-contaminate-more-700-military-sites>.

⁷ Centers for Disease Control and Prevention, National Biomonitoring Program, Per- and Polyfluorinated Substances (PFAS) Factsheet, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last updated April 7, 2017). See also David Andrews, *Insight: The Case for Regulating All PFAS Chemicals as a Class*, Bloomberg Environment (May 20, 2019), <https://news.bloombergenvironment.com/environment-and-energy/insight-the-case-for-regulating-all-pfas-chemicals-as-a-class/>.

⁸ Impacts to mammary gland development have been associated with low level doses of PFOA. See, e.g., Madisa B. Macon et al., *Prenatal perfluorooctanoic acid exposure in CD-1 mice: low dose developmental effects and internal dosimetry*, 122 *Toxicological Sciences* 131 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3143465/>; Sally S. White et al., *Gestational and chronic low-dose PFOA exposures and mammary gland growth and differentiation in three generations of CD-1 mice*, 119 *Envt'l Health Perspectives* 1070 (2011), <https://www.ncbi.nlm.nih.gov/pubmed/21501981>; Dierdre K. Tucker et al., *The mammary gland is a sensitive pubertal target in CD-1 and C57Bl/6 mice following perinatal perfluorooctanoic acid (PFOA) exposure*, 54 *Reproductive Toxicology* 26 (2015), <https://www.ncbi.nlm.nih.gov/pubmed/25499722>. PFOA, PFOS, PFHxS and PFDeA are also associated with reduced effectiveness of vaccines, even at low doses. See Anna Reade, Tracy Quinn, & Judith S. Schreiber, *Scientific & Policy Assessment for Per- and Polyfluoroalkyl Substances in Drinking Water*, Natural Resources Defense Council (April 12, 2019), https://www.nrdc.org/sites/default/files/media-uploads/nrdc_pfas_report.pdf.

has been linked to kidney and testicular cancer, preeclampsia, ulcerative colitis, thyroid disease, high cholesterol,⁹ reproductive and developmental harm,¹⁰ and damage to the immune system.¹¹

Americans are exposed to dozens of PFAS every day – through our food, water, air, dust, carpets, clothing and cosmetics. Once released into the environment, PFAS are highly mobile and do not break down – thus leading to the designation of PFAS as “forever chemicals.”¹² Because some PFAS have a long half-life in our bodies, they build up in our blood serum and organs.

Military service members, their families, and members of nearby communities are disproportionately affected by PFAS pollution. A recent study by the Centers for Disease Control found that people living near current or former military sites had, on average, significantly higher levels of PFAS in their blood than the average American.¹³ The primary source of PFAS at military installations is aqueous film-forming foam, or AFFF, a firefighting foam developed by the Department of Defense in the 1960s¹⁴ and first required by the Navy and the Marine Corps in 1967.¹⁵ Perfluorooctane sulfonate, or PFOS, was a component of “lightwater” AFFF, which was widely used until phased out of production in 2002.¹⁶ Other older formulations of AFFF can also

⁹ C8 Science Panel, C8 Probable Link Reports, http://www.c8sciencepanel.org/prob_link.html (last visited Feb. 19, 2021).

¹⁰ Alexis Temkin, *PFAS & Developmental & Reproductive Toxicity: An EWG Fact Sheet*, Environmental Working Group (Sept. 19, 2019), <https://www.ewg.org/news-and-analysis/2019/09/pfas-and-developmental-and-reproductive-toxicity-ewg-fact-sheet>.

¹¹ Tasha Stoiber, *PFAS Chemicals Harm the Immune System, Decrease Response to Vaccines*, *New EWG Review Finds*, Environmental Working Group (June 21, 2019), <https://www.ewg.org/news-and-analysis/2019/06/pfas-chemicals-harm-immune-system-decrease-response-vaccines-new-ewg>.

¹² Joseph Allen, *These Toxic Chemicals are Everywhere—Even in your Body. And They Won't Ever Go Away*, *Washington Post* (Jan. 2, 2018), https://www.washingtonpost.com/opinions/these-toxic-chemicals-are-everywhere-and-they-wont-ever-go-away/2018/01/02/82e7e48a-e4ee-11e7-a65d-1ac0fd7f097e_story.html.

¹³ Agency for Toxic Substances and Disease Registry, *Per- and Polyfluoroalkyl Substances (PFAS) and Your Health, CDC/ATSDR PFAS Exposure Assessment Community Level Results*, <https://www.atsdr.cdc.gov/pfas/communities/factsheet/Spokane-County-Community-Level-Results-Factsheet.html> (page last reviewed June 11, 2020).

¹⁴ U.S. Patent Office, *Method of Extinguishing Liquid Hydrocarbon Fires* (1966) https://static.ewg.org/reports/2019/pfas-dod-timeline/1963_Navy-Patent.pdf?_ga=2.186369001.1349300272.1583249998-10610461.1581526153

¹⁵ Dept. of the Navy, *Mil. Spec. Fire Extinguishing Agent, Aqueous Film Forming Foam (AFFF) Liquid Concentration, six Percent, For Fresh and Sea Water* (1967), https://static.ewg.org/reports/2019/pfas-dod-timeline/1967_AFFF-Required.pdf?_ga=2.76197845.1349300272.1583249998-10610461.1581526153

¹⁶ Interstate Technology Regulatory Council, *Firefighting Foams, Foam Formulations* (2020), <https://pfas-1.itrcweb.org/3-firefighting-foams/#3>.

break down into PFOA.¹⁷ Although these older formulations are no longer used by the military, PFOA and PFOS contamination from historic use remains rampant. Newer formulations of AFFF contain or break down into other harmful PFAS like PFBS, PFHxA, and PFPeA.¹⁸

Many service members, their families, and residents of neighboring defense communities have been drinking water contaminated with PFAS for decades. In 2016, DOD reported PFOA and PFOS at levels greater than 70 parts per trillion, or ppt,¹⁹ at 36 military installations, including 24 installations where DOD provides drinking water and 12 installations served by local water utilities.²⁰ DOD has since claimed that “No one—on or off base—is drinking water above EPA’s level of 70 parts per trillion where DoD is the known source of PFOS and PFOA.”²¹ However, EWG has identified 28 military installations with levels of an individual or total PFAS in drinking water below 70 ppt, the advisory level set by the EPA, but above the much lower legal limits set by states.²² Moreover, PFAS bioaccumulates in the blood and other organs and can stay there for decades.²³ As such, scores of service members and their families likely carry significant

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ DOD used EPA’s Lifetime Health Advisory, which ignores many of the health impacts of PFOA and PFOS. See Anna Reade, *EPA Yet Again Fails to Set Health-Protective Levels for PFAS*, Natural Resources Defense Council (April 26, 2019), <https://www.nrdc.org/experts/anna-reade/epa-yet-again-fails-set-health-protective-levels-pfas>.

²⁰ Dept. of Defense, *Addressing Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA)* (2018), https://www.epa.gov/sites/production/files/2018-05/documents/dod_presentation_epa_summit_pfos_pfoa_may2018_final.pptx.pdf. DOD concluded in 2015 that at least 36 installations were providing drinking water with PFOA or PFOS levels greater than 70 ppt. Those installations include: 81st RSC; E. Earle Rives AFRC; 99th RSC Martinsburg Memorial USARC; Barnes ANGB (104th); Belmont Armory; Camp Grayling Joint Maneuver Training Center; Dover AFB; Eielson AFB; El Campo; Ellsworth AFB; Fairchild AFB; Former KI Sawyer AFB; Former March AFB; Former Mather AFB; Former Pease AFB; Former Plattsburgh AFB; Former Wurtsmith AFB; Fort Hunter Liggett; Ft. Leavenworth; Gabreski ANGB (106th); Harrisburg IAP (ANG) (193rd); Horsham AGS (AGS); JB Lewis-McChord; Fort Lewis Cantonment; Joint Base Cape Cod; Joint Base McGuire Dix-Lakehurst; MCB Camp Pendleton (South); MCLB Barstow; Mountain Home AFB; NAS Oceana – NALF Fentress; NAS Whidbey Island – Ault Field; NAS Whidbey Island – OLF Coupeville; NAS Whiting Field (Main Base); Naval Base Kitsap – NARL Barrow; New Boston AFS; New Castle ANGB; NMC Earle; NSA Monterey – Naval Radio Transmitter Facility Dixon; Pease ANGB (157th); Peterson AFB; Warmminster; Willow Grove. EWG has through FOIA requests since identified three additional installations with PFOA or PFOS levels greater than 70 ppt – Joint Force Training Base Los Alamitos; Cherry Point Marine Corps Air Station; and Sierra Army Depot.

²¹ DOD PFAS Task Force Progress Report, *supra* note 5, at 6.

²² Press Release, FOIA Data: Tap Water at 28 Military Bases Tainted with ‘Forever Chemicals’ Above States’ Safety Standards, Environmental Working Group (March 23, 2020), <https://www.ewg.org/release/foia-data-tap-water-28-military-bases-tainted-forever-chemicals-above-states-safety>.

²³ Half-life estimates range from over 2 years from PFOA and PFNA to 5.4 years for PFOS to 8.5 years for PFHxS. See Anna Reade, Tracy Quinn, & Judith S. Schreiber, *Scientific and Policy Assessment for Addressing PFAS in Drinking Water* (2019) at 12, <https://www.nrdc.org/sites/default/files/assessment-for-addressing-pfas-chemicals-in-michigan-drinking-water.pdf>.

amounts of PFAS in their bodies from decades of drinking untreated water. PFAS in groundwater and surface water can also infiltrate the food supply by contaminating crops,²⁴ animal feed, meat and dairy products,²⁵ and wildlife. For example, Michigan has imposed “do not eat” orders on fish²⁶ and venison²⁷ due to contamination stemming from the former Oscoda Air Base. Contaminated food, especially food produced near the contaminated military bases, adds to the members’ body burden.

Many of the highest PFAS detections in the nation have so far been found at DOD installations, including 14 detections above 1 million ppt in groundwater and a single detection of PFHxS greater than 20 million ppt, in groundwater at England Air Force Base, in Louisiana.²⁸ Other bases with high PFAS detections in groundwater include Air Force Plant 4, in Fort Worth, Naval Air Station Jacksonville, Maxwell-Gunter Air Force Base, and Randolph Air Force Base.²⁹ Of the 100 highest DOD detections so far reported, 69 were greater than 100,000 ppt, as of 2019.³⁰

²⁴ See, e.g., Rosella Ghisi et al., *Accumulation of Perfluorinated Alkyl Substances (PFAS) in Agricultural Plants: A Review*, 160 *Env’tl Research* 326 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/30502744>. In 2018, FDA sampling of produce taken from a farmers’ market 10 miles downstream from a Chemours facility in North Carolina found most of the PFAS tested for, including one sample with 1,200 ppt of GenX. A copy of the FDA poster can be found here: <http://blogs.edf.org/health/files/2019/06/FDA-PFAS-in-food-poster-presentation-2-5-30-19.pdf>.

²⁵ For example, a dairy farmer in New Mexico was forced to euthanize his entire herd as a result of PFAS-contaminated water from nearby Canon Air Force Base. Amy Linn, *‘This Has Poisoned Everything’ – Pollution Casts Shadow Over New Mexico’s Dairy Industry*, *The Guardian* (Feb. 20, 2019), <https://www.theguardian.com/us-news/2019/feb/20/new-mexico-contamination-dairy-industry-pollution>.

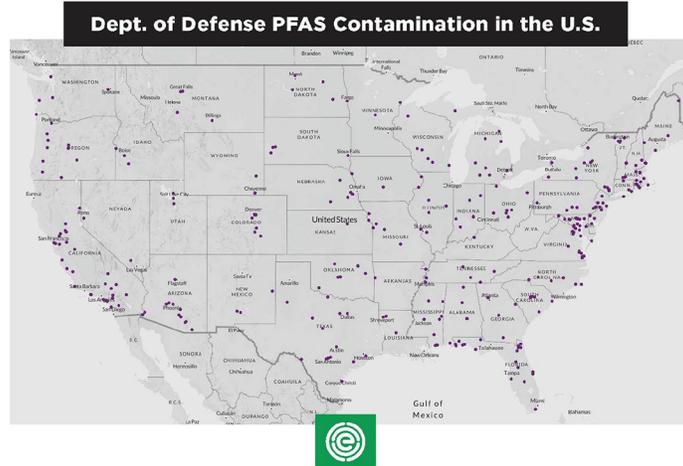
²⁶ See Lester Graham, *PFAS Causes ‘Do Not Eat the Fish Advisories’*, *Michigan Radio* (Oct. 09, 2018), <https://www.michiganradio.org/post/pfas-causes-do-not-eat-fish-advisories>.

²⁷ Michigan Department of Natural Resources, *‘Do Not Eat’ Advisory Issued for Deer Taken Within Five Miles of Clark’s Marsh, Oscoda Township*, <https://www.michigan.gov/dnr/0,4570,7-350-86469-481144--,00.html>.

²⁸ See Environmental Working Group, *Highest Levels of PFAS Contamination in Groundwater at U.S. Military Installations* (last updated Feb. 9, 2020), https://cdn3.ewg.org/sites/default/files/n352/Top%20100%20PFAS.pdf?_ga=2.82030550.1349300272.1583249998-10610461.1581526153.

²⁹ See Environmental Working Group, *PFAS Contamination in the U.S.*, https://www.ewg.org/interactivemaps/2019_pfas_contamination/map/ (last updated Jan. 06, 2021).

³⁰ See Jared Hayes, *The 100 Military Sites with the Worst PFAS Contamination*, Environmental Working Group (Oct. 03, 2019), <https://www.ewg.org/news-and-analysis/2019/10/100-us-military-sites-worst-pfas-contamination>



Due to the widespread use of PFAS in firefighting foam by the DOD over decades, service members, veterans, and their families are among the most at-risk populations for health effects from PFAS exposure. Despite the well-documented risks, DOD has been slow to alert service members to the risks of PFAS and slow to clean up legacy PFAS contamination.³¹

Access to care

Veterans may struggle to access health care and benefits from health harms associated with exposure to PFAS like cancer, high cholesterol, ulcerative colitis, or reproductive and immune system impacts. The Veterans' Administration typically provides health care and medical services to veterans with diseases and disabilities when there is a "service connection." Establishing service connections to diseases from toxic exposures to chemicals like PFAS can be

³¹ EPA has also been slow to respond to the PFAS contamination crisis. See Environmental Working Group, For 20-Plus Years, EPA has Failed to Regulate 'Forever Chemicals', <https://www.cwg.org/cpa-pfas-timeline/>.

difficult because of hard to document exposures and the long latency periods of associated diseases. Failure to establish a service connection may mean that veterans lose access to care and benefits, even in the face of life-threatening diseases like cancer.

Since 1921, the VA has made presumptions about service connections for certain exposures and diseases, easing access to care and benefits for veterans asserting applicable claims.³² The current system for determining presumptions stems largely from the Agent Orange Act of 1991.³³ Congress passed that law to ensure care for Vietnam veterans exposed to the herbicide Agent Orange, which was contaminated at the time by the most toxic form of dioxin, TCDD.³⁴ The law requires the National Academy of Sciences to review the scientific evidence related to associations between wartime exposure to Agent Orange and adverse health outcomes and report its findings to the VA. The VA then decides whether certain health outcomes are presumed connected to exposure during service. Since then, Congress has required the VA to honor service connections to toxic chemical exposures from the Persian Gulf War³⁵ and stemming from the contamination of TCE, PCE, benzene and other toxic solvents used at Camp Lejeune in North Carolina.³⁶

Presumptions of service connection are critical for providing veterans with covered health conditions access to care but leave many injured and at-risk veterans behind. The experience of many veterans recounted by Aleks Morosky³⁷ and the Shane Liermann³⁸ during this committee's March 10 hearing, "Military Toxic Exposures: The Human Consequences of War" demonstrates

³² Testimony of David A. Butler before the Senate Committee on Veterans' Affairs on the National Academies Research on VA's Presumptive Disability Decision-Making Process (Sept. 25, 2019), <https://www.nationalacademies.org/ocga/testimonies/116-session-1/the-national-academies-research-on-vas-presumptive-disability-decision-making-process>.

³³ *Id.*

³⁴ Testimony of Dr. Karl Kelsey before the Senate Committee on Veterans' Affairs, The National Academies Report: Veterans and Agent Orange: Update 11 (March 10, 2021), <https://www.veterans.senate.gov/imo/media/doc/Karl%20Kelsey%20testimony%2003.10.21.pdf>.

³⁵ 38 U.S.C. § 1118 et seq.

³⁶ H.R. 1627, The Caring for Camp Lejeune Families Act of 2012, 2d Sess., 112th Cong., <https://www.congress.gov/bill/112th-congress/house-bill/1627>.

³⁷ Testimony of Aleks Morosky before the Senate Committee on Veterans' Affairs with Respect to "Military Toxic Exposures: The Human Consequences of War" (March 10, 2021), [veterans.senate.gov/download/aleks-morosky-testimony](https://www.veterans.senate.gov/download/aleks-morosky-testimony).

³⁸ Testimony of Shane Liermann before the Senate Committee on Veterans' Affairs with Respect to "Military Toxic Exposures: The Human Consequences of War" (March 10, 2021), <https://www.veterans.senate.gov/imo/media/doc/Shane%20Liermann%20testimony%2003.10.21.pdf>

that there is a tremendous need to expand these connections to cover more veterans and more health outcomes. Even though exposure to PFAS is associated with some cancers, reproductive harms, kidney and thyroid issues, and harms to the immune system, there is currently no presumption of service connection for veterans with exposure to PFAS. Nor are there established presumptions for burn pit exposures, even though such exposures affected thousands of veterans who served in Iraq and Afghanistan and have been connected to devastating health consequences.³⁹ Soldiers who served at the Karshi-Khanabad Air Base, or K2, in Uzbekistan were exposed to uranium, tetrachloroethylene, and residuals of chemical weapons including cyanide, but still do not have presumed service connection despite facing a 500% increased likelihood of developing cancer.⁴⁰ While veterans who conducted nuclear testing on the Enewetak Atoll in the Marshall Islands are recognized by the VA for radiation risk activities, the VA does not recognize those who participated in decontamination cleanup, limiting their access to care.⁴¹

The lack of a presumed service connection has serious consequences for scores of sick veterans. In some cases, it can take the VA decades to review the scientific evidence and recognize exposures. In the meantime, sick veterans may have to take additional steps like getting private medical opinions and appealing denied claims to the Board of Veteran's Appeals to get care, if they are able to access care at all. Veterans who are already sick from toxic exposures, sometimes with life-threatening diseases, simply do not have time to jump through these hoops or wait for the VA to complete decades-long scientific reviews.

Congress should make it easier for veterans to get access to health care for diseases related to toxic exposures. Specifically, Congress should:

³⁹ Testimony of William Thompson before the Senate Committee on Veterans' Affairs with Respect to "Military Toxic Exposures: The Human Consequences of War" (March 10, 2021).

<https://www.veterans.senate.gov/imo/media/doc/William%20Thompson%20testimony%2003.10.21.pdf>

⁴⁰ Testimony of Shane Liermann before the Senate Committee on Veterans' Affairs with Respect to "Military Toxic Exposures: The Human Consequences of War" (March 10, 2021).

<https://www.veterans.senate.gov/imo/media/doc/Shane%20Liermann%20testimony%2003.10.21.pdf>

⁴¹ *Id.*

- Create a process for conceding exposures. In the absence of presumptions of service connection, the VA should recognize and concede exposures to various toxins and toxic substances currently left out of existing presumptions of service connections. S. 437, the Burn Pit Exposure Recognition Act, outlines a process for conceding exposure. If the VA cannot grant a claim based on evidence in the record, S. 437 allows the VA to use a medical opinion finding the conceded exposure is “at least as likely as not” behind the disease to grant the claim. Congress should pass S. 437, but also establish a process to concede exposure for other types of toxic exposures such as PFAS, toxic solvents, and radiation risk activities.
- Expand presumptions of service connections to cover new diseases and exposures and improve the process for establishing such presumptions as proposed by S. 454, the K2 Veterans Care Act; S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act; S. 810 Fair Care for Vietnam Veteran’s Act; and S. 927 the Toxic Exposure in the American Military (TEAM) Act; S. 952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and other Toxins Act of 2021.
- Require the VA to regularly update presumptions to reflect the latest science on connections between diseases and toxic exposures so that veterans who have those diseases can quickly get care.
- Mandate that reports on presumptive service connections be conducted by independent scientists through objective institutions like the National Academies of Sciences. Section 202(h) of S. 927, the TEAM Act and section 3(h) of S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021, would allow the VA to contract with non-governmental, non-profit organizations with “expertise and objectivity” comparable to the NAS. EWG believes that NAS is the most appropriate body to make scientific determinations concerning diseases. Many contract scientific non-profits work regularly with chemical manufacturers and downstream users to produce studies and reports minimizing the risks of exposure to toxic substances.⁴² If

⁴² Rosalind Adams & Lisa Song, *One-Stop Science Shop Has Become a Favorite of Industry-And Texas*, The Center for Public Integrity (Dec. 19, 2014), <https://publicintegrity.org/environment/one-stop-science-shop-has-become-a-favorite-of-industry-and-texas/>.

regulators choose to allow VA to contract with entities other than the NAS it should be required that such entities be free from conflicts of interest.

- Clearly allow the VA to make presumptions of service connection based on associations and not require establishment of a causal relationship. Section 202(d) of S. 927, the TEAM Act requires the NAS to make scientific determinations about (1) whether an association exists; (2) increased risk of disease among those exposed during military service; and (3) *“whether there exists a plausible biological mechanism or other evidence of a causal relationship between the exposure and the occurrence of the disease.”* Section 103 (adding §1119 to title 38 of the U.S. Code), of S. 927, however requires the VA to establish a presumption whenever it determines there is a “positive association” between the exposure to the toxic substance and the occurrence of a disease. It is EWG’s interpretation that this does not require the VA to make a causal determination, but Congress should be explicit.
- Congress should ensure racial equity in medical care provided to veterans and support further study of the issue, as proposed by S. 1031.

EWG greatly appreciates the opportunity to weigh in on this legislation and appreciates the Senate Committee on Veterans Affairs for its leadership addressing toxic exposures in the military.



Statement of the
Fleet Reserve Association
on
Toxic Exposure Legislation
Presented to the:
United States Senate
Veterans' Affairs Committee

By
Theo Lawson
Assistant Director of Legislative Programs
Fleet Reserve Association

April 28, 2021

The Fleet Reserve Association (FRA) was started in 1924 and is a congressionally chartered, non-profit organization that represents the interests of the Sea Service community before the U.S. Congress. Although the association was originally named for the Navy's Fleet Reserve program, membership in FRA is open to all current and former Sailors, Marines, and Coast Guard enlisted personnel. The association strongly believes that we must take care of those warriors who risk their lives to protect our way of life. These brave men and women put their lives on the line with the expectation of our country holding their part of the contract of taking care of them if they fall in harm's way.

The history of toxic exposure in the US military is a costly lesson that must not be forgotten. During the early and mid-1970s, a growing number of veterans began to question the possible correlation between their conditions or diseases and their exposure to herbicides, specifically Agent Orange, in Vietnam. The Agent Orange Act passed after almost two decades of the tragic loss of lives due to cancer and other terminal illnesses. Decades later veterans of the Vietnam war era are still fighting claims associated with the exposure to Agent Orange.

FRA is thankful for the passage of the Agent Orange Blue Water Act (2019) and the subsequent passage of the new presumptive conditions in the FY 2021 National Defense Authorization Act. However, the nation is closing in on five decades since the end of the Vietnam war and veterans are still dealing with claim issues arising from the exposure to Agent Orange even with a list of presumptive conditions. This is the reason FRA is a member of the Toxic Exposures in the American Military (TEAM) Coalition because we believe the issue of toxic exposure deserves a framework that would help past, present, and future veterans. Additionally, it will help avoid the debacle the Vietnam war veterans went through with their claims of exposure to Agent Orange. The association wants to ensure that no veteran who had exposure to burn pits or other environmental toxins goes without access to the Department of Veterans Affairs (VA) health care benefits.

In 1982, the Marine Corps discovered specific volatile organic compounds in the drinking water provided by two of the eight water treatment plants on Camp Lejeune, NC. The significant source of water contamination was a nearby dry-cleaning business that for years dumped into drains wastewater with chemicals used in dry cleaning. Chemicals found in the wastewater included tetrachloroethylene (PCE), which has multiple industrial uses, and another solvent and suspected carcinogen were also used widely by Marines on base to clean machinery. Over the years servicemember and their families started developing all sorts of terminal illnesses to which they couldn't attribute a source. Master Sergeant, Jerry Ensminger, USMC (Ret.) lost his six-year-old daughter Janey to leukemia in 1985. Janey was their only child conceived and born in Camp Lejeune. Jerry Ensminger did not learn of the contamination until more than a decade later, when he heard reports of a new federal study that found contamination in the Camp Lejeune water had been, by today's standards, quite toxic. After almost three decades the Janey Act was signed into law in 2012 by then-President Barack Obama. The bill provided presumption for service connection for any illness associated with contaminants in the water supply at Camp Lejeune and provided family members who resided at such location during such period or were in utero during such period while the mother resided at such location, eligible for

hospital care, medical services, and nursing home care through the VA for any condition or disability associated with exposure to such contaminants.

Currently, VA's decision on toxic exposure is conflict to conflict basis. The history of exposure has been documented both domestic and abroad, toxic exposure is toxic exposure and should not be treated differently based on the conflict nor location.

In 1970, Congress passed the Clean Air Act (CAA) to protect the population from environmental airborne hazards in open-air waste combustion; over the years the Environmental Protection Agency (EPA) tightened the rules and regulations under CAA based on studies on effects of some of the hazardous air pollutants. Most US cities and even some states have banned the practice of open waste combustion due to the growing body of research about the dangers of burn barrels, namely the dioxins and other pollutants emitted. The research of the adverse consequences of open waste combustion was available at the commencement of the operations in Southeast Asia. However, the Department of Defense (DoD) established several burn pits with an onsite working party on most bases as they were the easiest way to get rid of waste, some of these burn pits proximity was as close to the living quarters of service members. Deployment to the region exposed service members to airborne hazards including oil-well fire smoke, emissions from open burn pits, dust suspended in the air, exhaust from military vehicles, and local industrial emissions. Extreme temperatures, stress, and noise encountered by service members may have increased their vulnerability to these exposures. Toxins in burn pit smoke may affect the skin, eyes, respiratory and cardiovascular systems, gastrointestinal tract, and internal organs. The VA has received 12,582 claims related to burn pit exposure but only 2,828 have been granted.

As noted above many claims have been rejected because of the lack of evidence of burn pit exposure. Each VA claim related to burn pit exposure must include:

1. Medical evidence of a current disability;
2. Evidence of burn pit exposure;
3. Evidence of a link between the claimed disease/injury and exposure to burn pits.

The lack of consistency in claim decisions among the regional offices has cast doubts on the claims adjudication process and often leads to delayed and prolonged actions which are detrimental to veterans seeking their entitled benefits. Establishing presumptive conditions for illness related to burn pits and other toxins will ensure fairness and consistency in the claims adjudication process; unfortunately, history shows this is a lengthy and difficult path often achieved through litigation and legislation. For example, the VA denied a pancreatic cancer claim filed by FRA relating to Agent Orange exposure; this comes as a surprise since this claim meets all evidentiary standards of previously granted claims under the same condition.

There are six health registries in existence for veterans who have had exposure to certain environmental hazards, the registry allows the VA to track and under health problems among veterans and issue alerts. However, veterans will still have to go through the VA claims process to verify exposures according to military records.

FRA believes that an established framework for toxic exposure is essential to providing a fair and consistent process of establishing presumptions and claims adjudication process. The

association supports a list of proposed legislation that would create a robust claims adjudication process.

The FRA supports the following legislation:

"The Toxic Exposure in the American Military Act" (TEAM Act - S.927-Sen. Thom Tillis/H.R.2127-Rep. Mike Bost), which would expand access to preventative and diagnostic services for veterans exposed to toxins and establishes an independent scientific commission tasked with researching the health effects of such toxic exposure and reporting its findings to the VA and Congress.

"The Veterans Burn Pits Exposure Recognition Act" (S.437-Sen. Dan Sullivan/H.R.2436-Rep. Elissa Slotkin) which would address the barrier currently preventing many veterans from getting U.S. Department of Veterans Affairs (VA) health care and benefits for illnesses and diseases related to exposure to burn pits. The bill would recognize and concede their exposure during deployed service.

"The Conceding Our Veterans' Exposure Now and Necessitating Training (COVENANT) Act" (H.R.2368-Rep. Elaine Luria) which would establish a presumption of service connection for illnesses associated with exposure to certain airborne hazards. It is the first bill addressing toxic exposure to include both a comprehensive list of overseas locations that would qualify a veteran for earned benefits, as well as a comprehensive list of presumptive illnesses contracted as a result of airborne exposure.

"The Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act" (S.952-Sen. Kirsten Gillibrand/HR.2372-Rep Raul Ruiz). The bill would streamline the process for obtaining VA benefits for burn pit and other toxic exposures. Approximately 3.5 million veterans have been exposed to burn pits that spewed toxic fumes and carcinogens into the air.

The association believes passing these key bills among others will secure a pathway that would help past, present, and future veterans. These bills will allow the VA to process their claims effectively and accurately while offering fair and consistent outcomes. Above all, it will provide immediate treatment of illness that would save several lives.

FRA wants to ensure adequate funding for the DoD and the VA health care resource sharing in delivering seamless, cost-effective, quality services to personnel wounded in combat and other veterans and their families. Some members of Congress have expressed concern about the cost and length of time to fully implement. The cost and the long time for implementation notwithstanding, FRA believes there is a tremendous opportunity with the two departments using the same EHR. Congress must provide proper oversight and demand timely completion of the VA's Electronic Health Record Modernization project which will be essential to the claims adjudication process. FRA is looking forward to working with the committee and bill sponsors to pass a comprehensive bill on toxic exposure this year.



The Honorable Jon Tester
311 Hart Senate Office Building
Washington, D.C. 20510-2604

The Honorable Jerry Moran
521 Dirksen Senate Office Building
Washington, D.C. 20510

Senator(s) Tester and Moran,

Re: *Statement for the Record – Toxic Exposures*

On behalf of the HunterSeven Foundation, the only military veteran and medical professional-founded nonprofit organization to focus on toxic exposures and healthcare of veterans, we are submitting a statement for the record as it relates to the Senate Veterans Affairs Committee hearing taking place on April 28, 2021.

As a combat veteran-founded organization we understand the importance of clearly identifying military persons at-risk for long term health effects, potential exposures, areas of operations and the routes of which exposure occurs. Secondly, as most of our organization's members are now medical providers, we request that education and preventative medicine is considered while creating legislation, i.e. formatting an established standard of medical training necessary for all medical providers conducting toxic exposure-based examinations and evaluations to offer a standardized, proactive approach to veteran wellness and early identification.

In support of our request, we highlight a study conducted in 2020 by Dr. Tamara Bonzanto, the Assistant Secretary of Veterans Affairs for the Office of Accountability and Whistleblower Protection noted in a generalized study of New York State Registered Nurses, that **only 4%** were deemed competent to provide holistic, veteran-specific care in the civilian medical sector. Additionally, utilization of Department of Veterans Affairs services noted that between **23-27% of Post-9/11 Veterans utilize VHA services**, meaning over three-quarters of our fellow veterans seek outside, external care. As a registered nurse, a profession ranked "**most trusted**" for the past thirty-years, I am concerned for the health and welfare of those who we have served alongside. Education and preventative medical practice are essential for both healthcare providers who care for military veterans but also extremely important for those potentially exposed to toxins while deployed and who now suffer a health condition as a result.

Majority of the veterans we have worked alongside have died very young due to cancers not commonly seen in their age group. For example, Medal of Honor Recipient Ronald J. Shurer II passing from lung cancer on May 14, 2020 at age 41 after being misdiagnosed with '*chronic pain*' for three years, or Marine Corporal Patrick Duva, passing from brain cancer on November 5, 2020 at age 29 after being misdiagnosed with a brain injury and post-traumatic stress, or Air Force Special Operator Luke Page, who accumulated over 15-deployments, passed away from mantle cell lymphoma on October 27, 2020 at age 35 after being misdiagnosed for irritable bowel syndrome for over a year. We can assure you this lack-of and misdiagnoses are not uncommon, as healthcare providers we are unfamiliar with the risks associated with military service. With proper diagnoses their children would have their fathers, their wives would have their husbands, these men would still be alive.

Senator(s) Tester and Moran, as combat veterans and medical providers, we are grateful for your fearless approach and dedication to our fellow veterans in making them a legislative priority, but we are asking you to help us provide these veterans with the most effective, proper and accurate care possible through mandated education and training. You have our full support, and we look forward to working with you on this, supporting your office however possible to improve veteran healthcare.

Very Respectfully,

Chelsey Poisson, BSN-RN, FP-C, MSN/MPH
Executive Director, Clinical Nurse Researcher
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Statement of Travis Horr
Before the Senate Veterans' Affairs Committees
April 28th, 2021

Statement of Travis Horr
Director, Government Affairs
of
Iraq and Afghanistan Veterans of America
before a hearing of the
Senate Veterans' Affairs Committees

April 28, 2021

Chairman Tester, Ranking Member Moran and distinguished members of the Committee, on behalf of Iraq and Afghanistan Veterans of America (IAVA) and our more than 425,000 members, I would like to thank you for the opportunity to submit our statement for today's hearing on one of IAVA's top priorities for the 117th Congress, addressing injuries from burn pits and other toxic exposures.

Year after year, the concern grows surrounding the health impacts of burn pits and toxic exposures in recent conflicts. Burn pits were a common way to get rid of waste at military sites in Iraq and Afghanistan, particularly between 2001 and 2010. The effect of burn pits is not just the chemicals in the smoke, but the particulate matter these men and women breathed in from the ashes and dust from the fires themselves.

According to IAVA's most recent member survey, 86% of IAVA members were exposed to burn pits during their deployments and over 88% of those exposed believe they already have or may have symptoms.

Like many of our members, I was exposed to a burn pit on a daily basis during my seven month deployment to Afghanistan. The burn pit was an all too common feature in our small, squad sized patrol base in Southern Helmand Province. I had the responsibility of keeping the burn pit burning. At the end of almost everyday I would take roughly half a gallon of jet fuel and spread it around the burn pit. I would then take a piece of cardboard, also covered in jet fuel, light it on fire, and throw it in to light the burn pit. It was an all too normal and mundane part of my deployment.

There are other hazards beyond burn pits that occurred in Iraq and Afghanistan that may pose danger for respiratory illnesses including human waste, irritant gases, high levels of fine dust, heavy metals in urban environments, explosives and depleted uranium used in munitions. Without due attention, this issue may become the Agent Orange of the post-9/11 era of veterans, with veterans waiting decades for closure and care. It is past time that comprehensive action is



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taken to address the growing concern that these exposures have had severe impacts on veterans' long term health.

For many that feel they are suffering from their exposure to burn pits or other toxic exposures, accessing quality care can be a challenge. At VA, barriers to care are even more apparent, as the VA does not fully recognize claims connecting injury or illness to burn pit exposure. According to the VA 72% of disability claims for toxic exposures are still being denied.

Like those who fought for recognition of the effects of Agent Orange, the hope for those exposed to burn pits and other toxic exposures is that they will one day be able to claim certain illnesses and injuries as presumptive service-connected illnesses or injuries due to their exposure. Until the VA recognizes the damage burn pits had on the health of those who served around them, access to VA benefits and health care will be challenging.

For these reasons, IAVA is extremely supportive of two bills on the agenda today. We believe that both the *Toxic Exposures in the American Military (TEAM) Act* (S. 927) and the *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act - "War Fighters Act"* - (S. 952) must be passed into law this year. IAVA believes that both of these bills are crucial for veterans that have been exposed to burn pits and other toxic exposures and have made them a centerpiece of our campaign to support servicemembers that have been exposed.

The *War Fighters Act* is incredibly important landmark legislation which will create a presumption of service-connection for illnesses of veterans that have deployed since 1990, such as respiratory diseases or cancers. This legislation is needed for those veterans that are sick and dying and unable to prove that their health problems are service related. As of September 2020, VA was still denying 72% of burn pits and toxic exposure disability claims. This legislation would ensure that we do not repeat past mistakes when it comes to veterans that have toxic exposures. Creating a presumptive benefit for veterans who are suffering would remove the burden of proof that a burn pit or overseas toxic exposure is the direct cause of their illness. Many veterans might not become sick for years after their exposure, making their claims process more complicated and proving a direct link to their illness incredibly difficult. Additionally, due to the nature of these exposures and where they occurred, it is unrealistic to believe that a 100% link will ever be established between toxic exposures and a growing number of illnesses. This is why we must ensure that those who are currently ill have access to the benefits and health care that they deserve.

The *TEAM Act* will ensure that all veterans are able to access high quality VA care for any toxic related issues. This protects veterans that may be waiting on a disability claim from VA, or those that are not yet sick, and receive the care that they deserve. By significantly expanding the eligibility of VA health care to cover veterans that have been exposed to toxins, both foreign and



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domestic, we can ensure that no veteran falls through the cracks again. In addition to providing health care for veterans, this legislation would also create a framework for an independent commission to establish presumptive conditions for veterans that will cover all toxic exposures, both foreign and domestic, into the future. This will protect future generations of veterans in the future from exposures that are impossible to predict today. IAVA was proud to join with our VSO allies in the TEAM Coalition and our Congressional allies to introduce this legislation and we are committed to seeing it's passage by the end of the 117th Congress.

Additionally, while both of these bills will help veterans that have been exposed to toxic exposures both overseas and domestically, they will also increase studies done on these exposures to help both veterans and health care professionals. While 100% direct links of toxic exposure to certain illnesses may be challenging to establish, increased research can help determine veterans and their health care providers with valuable information that could save lives.

IAVA, our VSO allies, and many members of this committee have been on the forefront of toxic exposure issues for years. It is thanks to that work that the VA Burn Pit Registry has continued to increase in the number of veterans that are registered, giving VA crucial information on their symptoms. Important legislation has been passed in recent years that strengthens that registry, like the IAVA-backed *Burn Pits Accountability Act*, and other legislation that will increase tracking, reporting, and researching these exposures. However, more must be done to help those that are suffering from their illnesses due to exposure now. Those that have been exposed and are sick need access to the life-saving resources that VA offers. IAVA will continue to fight until they have access to the health care and benefits that they rightfully deserve.

There is no one bill that will tackle the incredibly large issue of over 3.5 million servicemembers and veterans that have been exposed to burn pits and other toxins. However, IAVA believes that both the *TEAM Act* and the *War Fighters Act* will complement each other to ensure that veterans are protected, and are able to get the health care and disability benefits that they deserve. They will also create incredibly important frameworks to ensure that veterans are protected from future exposure. We also support legislative efforts to provide government transparency into what servicemembers were exposed to during their deployments, as well as improved data tracking, and research into causes and cures for related illnesses.

Members of the Committee, thank you again for the opportunity to share IAVA's views on these issues today. I look forward to answering any questions you may have and working with the Committee in the future.



Statement of Travis Horr
Before the Senate Veterans' Affairs Committees
April 28th, 2021

Biography of Travis Horr:

Travis Horr serves as the Director of Government Affairs, working to advance IAVA's advocacy efforts in Washington, D.C. Prior to IAVA, he worked at a strategy consulting firm, as well as political campaigns in both Maine and Delaware. Travis served in the Marine Corps Infantry for four years and was stationed at Marine Barracks 8th & I in Washington D.C., and Camp Pendleton, CA. He deployed to Helmand Province, Afghanistan in 2010 in support of OEF. Travis is a Maine native and graduated from the University of Southern Maine with a B.A. in Political Science with Honors utilizing the Post-9/11 GI Bill.



Written Statement for the Senate Committee on Veterans' Affairs

April 28 Hearing

Kate Hendricks Thomas, PhD

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Marine Corps veteran

Researcher, University of Alabama Center for Evaluation

Adjunct Faculty, George Mason University's Department of Global and Community Health

My name is Dr. Kate Hendricks Thomas, and I am a public health professional whose research focuses on the well-being of military-connected women. My recent book is titled *Invisible Veterans: What Happens When Military Women Become Civilians Again*, and much of my scientific literature focuses on health promotion for military women. I will share research and one or two statistics with you in this written testimony, but the truth is that a great deal of my work is informed by my own experiences as a woman veteran, and that story is the focus of this testimony.

Long before I became an academic, I was a Marine Corps Military Police Officer. I served from 2002-2012 in garrison commands, overseas in Iraq, and aboard Parris Island, the training command where the Marine Corps makes Marines. I loved the Marine Corps; it was my identity, and Marines are my people. Unfortunately, I did not know that my military service came with significant risks of toxic exposure. In 2005, as I ran laps around the burn pit in Fallujah, I never imagined that I would be diagnosed with a terminal cancer before I turned 40.

My watch as a Marine is over, but I still feel a tremendous responsibility to the community I call home. We need to raise awareness about toxic exposures so that other women veterans know their risks, push for early screenings, and receive VHA and VBA benefits if their exposures become diseases. For this reason I strongly support the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act.

Issue Background

Military women have important challenges when discussing adverse health outcomes post-service. Women constitute approximately 15% of the armed services (Murdoch et al., 2006), and represent a fast-growing segment in the veteran population (Albright, et al., 2019). Female service members and veterans have complex healthcare needs (Carlson, Stromwall, & Lietz, 2013). Duhart (2012) indicated that female veterans returning from deployment were more likely than their male counterparts to report mental health concerns such as posttraumatic stress (PTS), depression, and suicidal thoughts. Additionally, women veterans are more at risk for breast cancer than civilian women, with incidence rates falling between 20-40%, compared to 12% in civilian women (McDaniel, Diehr, Davis, Kil, & Thomas, 2018). According to a study focused on cancer occurrence at Walter Reed Army Medical Center, military personnel were found to be nearly 40 percent more likely to develop breast cancer than non-military people (Zhu, et al., 2009).

My Story

My deployment to Iraq fell in 2005. I was stationed in Fallujah but convoyed often to Baghdad, al Hillah, and Ramadi. The burn pits of Al Anbar province were a constant, ignored presence. After all, I was 25 and invincible – I knew Improvised Explosive Devices were a risk, but paid no mind to the flaming poison surrounding me.

I left the service and returned to school, along the way marrying a wonderful man and having a son. I was at an annual primary care appointment at my local VHA in 2018 when my provider made an odd comment. “I want you to go get a mammogram, Kate. Based on where you’ve been stationed it is a good idea to do it early.” That mammogram led to a diagnosis of metastatic breast cancer; I had terminal cancer at 38 and a three-year-old at home.

As I sought treatment, I was dismayed by wait times at the VHA facilities when it came to getting scans and appointments. Things must move faster in the stage IV setting, where a delay in treatment can lead to unexpected disease progression. My local VHA treated a great deal of prostate and colon cancer, but seemed surprised by a young woman veteran seeking care there. For this reason, I sought (and still do seek) care in the civilian cancer sector. This is the reason that bills proposing merely to open VHA access to veterans are insufficient. Without a list of presumptive conditions attached to benefits, women veterans like me will not get the care we need unless we personally pay for it.

My oncologist expressed surprise at the heterogeneity and aggressiveness of my cancer. She ran tests and next-generation sequencing and we learned that I have no genetic risk factors for this; my cancer is an anomaly. For this reason, my oncologist told me that she believed my cancer was exposure-related, as such cancers tend to behave aggressively, mutating often. I don’t have one type of breast cancer; I have three.

I reconnected with the only other woman I was stationed with in Iraq. She has the same type of cancer. Anecdotal as it may be, this clue led me to even more strongly believe that burn pits in Iraq created this illness in both of us.

My medical team wrote letters of support for a VBA benefits claim that was denied, as was my appeal. My son will not receive survivor’s benefits and my family will have to shoulder the financial burden of my specialty care as long as I am able to live unless the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act is passed.

The Way Forward

Passage of the Rubio/Gillibrand toxic exposure bill will provide survivor's benefits for my young son and take care of veterans who are paying the true cost of war for all of us. Consider me grateful to connect with you, and to support your efforts in the future in any way I can.

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The Honorable Jon Tester
Chairman
Committee on Veterans Affairs
United States Senate
Washington, DC 20510

The Honorable Jerry Moran
Ranking Member
Committee on Veterans Affairs
United States Senate
Washington, DC 20510

Dear Chairman Tester and Ranking Member Moran,

I am writing to express my support for S.1071, the VA AID Act of 2021. The purpose of this bill is to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for a pension from the Department of Veterans Affairs (VA). Close to 80% of all pension claims submitted are kicked back, rejected or denied based on inadequate presentation of the claim.

The VA has a history of backlogged claims to adjudicate, which has only increased due to operational challenges during the pandemic, reaching over 200,000 claims. Many of these claimants are elderly and frail, in need of home health care, assisted living care or nursing home care, and are in dire financial circumstances. Their lives depend on these resources to maintain a basic level of health and dignity. They do not have the time in age or health to withstand the increased wait times for their VA claim decisions. This pilot program will contribute to solving the issue of the claim backlog.

It is my understanding that national organizations like Veteran of Foreign Wars are opposed to this bill because they erroneously believe that the independent contractor

selected for the pilot program will be able to charge claimants. The current laws prevent anyone charging claimants to assist with the preparation, presentation, and prosecution of a claim. The VA AID Act of 2021, S. 1071, does not change that. In fact, quite the opposite.

The VA AID Act of 2021 would allow the VA to secure an independent contractor who meets high standards of professionalism, training, skillset, and proven ability to manage and track a heavy caseload, while being compensated by the VA (not claimants) under the direct supervision of the VA.

Unfortunately, neither the VA nor the numerous VSOs, while doing what they have always done, have been able to reduce the caseload while providing swift, accurate adjudication of claims. The VA AID Act of 2021 is a new, out-of-the-box solution that I am confident will work if implemented properly.

I am Victoria Collier, a Veteran of the United States Air Force (1989 – 1995) and Army Reserves (2001-2004). I am also a certified elder law attorney and accredited attorney by the VA. As both an elder care attorney for 19 years and currently as co-owner of Patriot Angels, a private organization that has advocated for over 150,000 veterans and their families in their time of need, I have seen first-hand that applications can be adjudicated in a timely manner – when the claim is presented properly from the beginning. Patriot Angels, to date, has received 9,041 approvals, many of which were adjudicated and approved in less than two weeks. The national average is between 9 – 18 months.

For eight years Patriot Angels has been assisting in the lengthy application process for the VA pension Aid and Attendance. Unfortunately, the application process can be daunting, with an application ranging from 50-150 pages in length after all of the required ancillary forms are included. Those seeking this pension are of the most vulnerable and elder population, making it nearly impossible for them to complete this application correctly on their own. Providing a white-glove service for these veterans and widows to hold their hand through the application process, start to finish will ensure they receive their earned benefits in a timely manner.

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I fully support this bill on behalf of our nation's veterans and their families and urge Congress to pass S.1071, The VA AID Act of 2021.

Victoria L. Collier, J.D., CELA, CEPA

USAF and USAR Veteran

Co-Owner, Patriot Angels



STATEMENT FOR THE RECORD

MILITARY OFFICERS ASSOCIATION OF AMERICA

HEARING ON PENDING LEGISLATION

1ST SESSION OF THE 117TH CONGRESS

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

APRIL 28, 2021

CHAIRMAN TESTER, RANKING MEMBER MORAN, and Members of the Senate Committee on Veterans' Affairs, the Military Officers Association of America (MOAA) is pleased to submit this statement for the record offering our views on pending legislation before the committee addressing a variety of issues including toxic exposures, disability claims, and survivor benefits.

MOAA does not receive any grants or contracts from the federal government.

EXECUTIVE SUMMARY

On behalf of the Military Officers Association of America (MOAA), the largest and most influential military and veterans service organization representing all uniformed services, including active duty and Guard and Reserve members, retirees, veterans, caregivers, survivors, and their families, we thank you for convening this hearing on pending legislation to improve the lives of veterans and survivors.

The legislation pending before the committee reflects many of the critical priorities MOAA and our fellow veteran service organizations (VSOs) have shared for several years. We applaud the leadership of Chairman Tester and Ranking Member Moran on their bipartisan approach for the Veterans' Affairs Committee.

The Committee's prioritization of comprehensive toxic exposure reform is aligned with MOAA's spring advocacy campaign focused on S. 437, the *Veterans Burn Pits Exposure Recognition Act of 2021*, and S. 927, the *Toxic Exposure in the American Military Act*. These complementary bills, if enacted, will provide lasting reforms felt for generations to come by increasing health care access, recognizing exposure to burn pits, and improving the presumptive process.

Additionally, MOAA is pleased to see the inclusion of several bills focused on caring for our survivors. MOAA has joined with our partners in The Military Coalition and other VSOs in supporting these fixes, specifically, S. 976, the *Caring for Survivors Act of 2021*. When a family loses a loved one in service to our nation, our nation owes them economic security after they suffered the ultimate sacrifice. Fixing these outdated policies is the least we can do for our nation's survivors.

Overview of MOAA's Positions:

SUPPORT

- S. 89 Ensuring Survivor Benefits During COVID-19 Act of 2021
- S. 189 Veterans' Disability Compensation Automatic COLA Act of 2021
- S. 219 Aid and Attendance Support Act of 2021
- S. 437 Veterans Burn Pits Exposure Recognition Act of 2021
- S. 444 Advancing Uniform Transportation Opportunities (AUTO) for Veterans Act
- S. 454 K2 Veterans Care Act of 2021
- S. 458 Veterans Claim Transparency Act of 2021
- S. 565 Mark Takai Atomic Veterans Healthcare Parity Act of 2021

- **S. 657** A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes.
- **S. 731** Department of Veterans Affairs Information Technology Reform Act of 2021
- **S. 810** Fair Care for Vietnam Veterans Act of 2021
- **S. 927** Toxic Exposure in the American Military (TEAM) Act
- **S. 976** Caring for Survivors Act of 2021
- **S. 1031** A bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.
- **S. 1039** A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes.
- **S. 1095** A bill to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-State tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes.
- **S. 1096** A bill to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.
- **S. 1188** A bill to direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans, and for other purposes (SFC Heath Robinson Burn Pit Transparency Act)

NO POSITION

- **S. 894** Hire Veteran Health Heroes Act of 2021 – MOAA believes the VA already has the existing authority and ability to implement.
- **S. 952** Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021 – See comments below.
- **S. 1093** A bill to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes – See comments below.

OPPOSE

- **S. 1071** A bill to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes – See comments below.

TOXIC EXPOSURE REFORM

Without a clear and consistent process for supporting direct service connection and establishing presumptives, veterans and survivors are left discouraged by the VA and without the health care and benefits they deserve. Veterans, survivors, and their families need Congress and the VA to

aggressively support direct service connection, an effective presumptive process, and transparent reporting around toxic exposures. While there is no single bill that meets all these requirements, many of the bills in the hearing fill critical gaps for our veterans and survivors.

CONCEDING EXPOSURE AND SUPPORTING DIRECT SERVICE CONNECTION

Conceding exposure to toxic materials has been an essential part of veterans getting recognition for their illnesses. Without this step being taken, veterans are left fighting an uphill battle to prove they were often exposed to the toxic chemicals, the presence of which having been acknowledged by the Department of Defense (DoD). MOAA believes servicemembers should not have to bear the burden of proving their exposure to toxic substances, regardless of where they have been deployed or stationed.

Multiple generations of veterans are still fighting the VA for recognition of their exposures, and it is time we recognize all exposures to Agent Orange in Thailand, as well as the toxic exposures for veterans at Karshi-Khanabad (K2) and in locations where burn pits were used.

DoD reporting through the Project Contemporary Historical Examination of Current Operation (CHECO) Report confirms significant quantities of Agent Orange were used in Thailand for base defense. However, the VA [adjudicates cases](#) in a manner that limits recognition to certain military occupational specialties or perimeter duty. Comparing this to what we know about Agent Orange exposure and the broad concession we give to those who served in Vietnam, MOAA believes conceding exposure for those who served in Thailand by passing S. 657 is the right thing to do for our veterans.

MOAA supports recognition of radiation exposure for the 4,000 servicemembers who supported cleanup operations on the Enewetak Atoll in the Marshall Islands between 1977 and 1980. While the DoD position is that safety protocols were fully adhered to, and that radiation levels were similar to those from an X-ray, the servicemembers themselves and safety inspections of the operations contradict this assessment. Servicemembers report personal protective equipment was unavailable or unusable, safety monitors such as plutonium inhalation air samplers were broken, and film badges failed in the austere environment. In the face of serious health challenges for servicemembers exposed to radiation involved in cleaning up Enewetak Atoll, MOAA supports the passage of S. 565.

In response to the terrorist attacks on September 11th, servicemembers deployed to K2 Air Base in Uzbekistan to support our nation's military operations in Afghanistan. Between 2001 and 2005, an estimated 15,000 troops were exposed to toxic materials and radiological hazards, according to [DoD documents](#). The initial reporting for servicemembers in the K2 cohort shows increased risks of rare cancers and other illnesses. MOAA is encouraged that the VA and others are conducting studies on these illnesses. We know hazardous materials were present, and we should offer help to servicemembers who are ill now. Passage of S. 454 would support servicemembers seeking necessary care and benefits, which MOAA earnestly supports.

With an estimated [3.5 million veterans](#) exposed to burn pits during their service to our nation, we must ensure support for those who served and are ill now. Using DoD records, we can determine when and where servicemembers have been exposed to burn pits, and the toxic materials to which they were exposed. Passing S. 437 will help servicemembers pursue direct service connection while a scientific consensus is being built around presumptive conditions. In addition to conceding exposure,

the bill supports veterans by providing a medical examination when an ill servicemember does not have the necessary medical evidence to link their illness and service. MOAA strongly supports and encourages the committee to once again pass this bill.

MOAA Supports:

- **S. 437** Veterans Burn Pits Exposure Recognition Act of 2021
- **S. 454** K2 Veterans Care Act of 2021
- **S. 565** Mark Takai Atomic Veterans Healthcare Parity Act of 2021
- **S. 657** A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes.

FIXING THE PRESUMPTIVE PROCESS

The framework established by the *Agent Orange Act of 1991* provided a trusted process to effectively evaluate and add presumptive service connection when scientific consensus has determined a positive association between an exposure and a condition. The sunseting of the Act and not applying this standard to all illnesses has hurt servicemembers whose conditions have scientific consensus supporting their claim but are not recognized.

MOAA recommends Congress build upon this framework with the concepts included in the National Academies of Sciences, Engineering, and Medicine (NASEM) *Improving the Presumptive Disability Decision-Making Process for Veterans* report in 2008.

Essential aspects to fixing the presumptive process MOAA supports are: a transparent advisory committee with VSO input; an independent scientific review board; clear deadlines for the VA Secretary to respond to scientific consensus; a positive association standard; and regular reporting from the VA on claims approval and denial data for presumptives and other conditions of special interest for Congress.

MOAA firmly backs the standard of positive association for presumptive conditions. While causation is appealing to pursue and should be one of the means for establishing direct service connection, it is often nearly impossible to establish causality given the dynamics of warfare or service assignments. When the evidentiary standard for causative links between an exposure and a condition is not attainable, positive association is one of the means by which we can ensure veterans receive the benefits they deserve. Raising the standard to causation alone will eliminate access to benefits for millions of servicemembers whose exposures were not documented in detail, or where conditions manifest among servicemembers to a significant degree but the hazard itself is unknown.

The *Toxic Exposure in the American Military Act* helps restore these principles to the presumptive process and expands health care access to those who served in the Global War on Terrorism. MOAA strongly urges swift passage of S. 927.

Further, we recommend any updates to the process have the science review board adopt a written protocol for evidence review and apply the following four-level scheme:

- Sufficient: The evidence is sufficient to conclude that a positive association relationship exists.
- Equipose and Above: The evidence is sufficient to conclude that a positive association relationship is at least as likely as not, but not sufficient to conclude that a positive association relationship exists.
- Below Equipose: The evidence is not sufficient to conclude that a positive association relationship is at least as likely as not or is not sufficient to make a scientifically informed judgment.
- Against: The evidence suggests the lack of a positive association relationship.

MOAA Supports:

- S. 927 Toxic Exposure in the American Military (TEAM) Act

ESTABLISHING NEW PRESUMPTIVES

It can take decades for a scientific consensus to be established around a presumptive illness. When this high bar has been met, the VA should immediately add linked conditions. Failing to add a presumptive condition after NASEM releases a consensus report associating illnesses to exposures erodes the trust of veterans and VSOs in the VA.

Two additional Agent Orange illnesses should be added based on the scientific standard followed for decades: hypertension and Monoclonal Gammopathy of Undetermined Significance (MGUS). Hypertension was linked by NASEM in 2006 as “limited or suggestive evidence of an association” and then increased to “sufficient evidence of an association” in their 2018 report. MGUS, a newly considered condition in the 2018 report, was classified at the highest level of association. Calls to further study these linked conditions only harm veterans and survivors. MOAA supports S. 810 and the presumption it provides for two scientifically associated conditions.

When presumptive conditions are caveated with manifestation periods or compensable ratings requirements, laws and regulations turn into evidentiary barriers that many veterans cannot retroactively prove. If time limitations are placed on a presumptive condition, the laws or regulations should be written in a way that follows the scientific evidence and, when not properly documented or diagnosed at the time, provides a reasonable path for the veteran to have their illness recognized by the VA. MOAA has concerns with certain presumptives for both Vietnam and Persian Gulf War veterans. Given that we are still fighting in nations where Gulf War Illness is a concern, MOAA supports S. 1039 because it removes the restrictions on the presumptive period to the benefit of thousands of veterans who experience unexplained symptoms.

The exposures by servicemembers to burn pits and other airborne hazards suggest increased rates of cancer and other rare illnesses. We are extremely concerned by denials of veterans who have met the requirements for direct service connection when they provided evidence of a current disability or condition, evidence of an event or a disease or injury in the service, and evidence of a medical link or opinion that the current diagnosed condition “is at least as likely as not” related to the event in-service. A bill before the committee establishes nearly 20 presumptives for conditions related to burn pits and other airborne hazards. NASEM reports have not yet established a positive association for all these illnesses. Therefore, MOAA takes no position on S. 952. We urge Congress to take immediate

action to concede exposure in accordance with S. 437 and order a review under the new law of all denied claims to ensure appropriate adjudication for those veterans and their survivors.

MOAA Supports:

- **S. 810** Fair Care for Vietnam Veterans
- **S. 1039** A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes.

MOAA Takes No Position On:

- **S. 952** Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021

INCREASE REPORTING

MOAA's recommendations to improve the presumptive process should come with increased reporting for presumptives and other conditions emerging for toxic exposures.

Currently, it is difficult for Congress and the public to monitor if a presumptive condition, or any other condition, warrants additional oversight to improve VA's training, processes, or additional research. While the VA provides aggregated claims data, there is limited available data on specific conditions and populations. These data limitations prevent VA's identification of emerging illnesses, evaluation, training, and reasons for denial of claims.

Congress should require the VA to provide a public, quarterly, aggregated report on all future veterans' claims submitted to the VA for presumptive conditions or "special interest conditions," such as illnesses being evaluated for potential links to burn pit exposure. Specifically, before the committee is the *SFC Heath Robinson Burn Pit Transparency Act*, which would expand the reporting requirements around burn pits with critical data for oversight and awareness of burn pits to provide a clearer picture. MOAA support S. 1188 and encourages increasing reporting along all presumptives and additional conditions believed to be related to toxic exposures.

MOAA Supports:

- **S. 1188** A bill to direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans, and for other purposes (SFC Heath Robinson Burn Pit Transparency Act)

VETERANS' CLAIMS, PROCESSING, AND PAYMENTS

The pandemic caused a backlog in processing disability claims, and we applaud the work of Congress and the VA to address the possible challenges of these delays and your work together to minimize the impact on veterans. As our nation recovers, MOAA is eager to work with Congress, the VA, and VSOs to resolve the backlog as quickly as possible. This, along with reducing veteran unemployment, should be a top priority for the Veterans Benefits Administration (VBA).

PAYMENTS AND PROCESSING

As our nation recovers from the coronavirus pandemic, veterans need VA's focus on reducing the disability claims backlog and addressing veteran unemployment. MOAA is concerned the establishment of a fourth administration will distract from these priorities. While VA works on these priorities, we recommend Congress require a competitive and thorough business case analysis examining VBA's structure and specifically explore the feasibility of a fourth administration; as such, MOAA takes no position on S. 1093.

A regular cost-of-living adjustment (COLA) is vital for many veterans to ensure their Social Security and service-connected disability payment support them. Veterans and their families should not worry whether Congress will act each year to pass legislation allowing for cost-of-living adjustments. Linking all future COLA rates directly to Social Security cost-of-living allowance increases will bring a great deal of relief to veterans. MOAA supports S. 189.

As we ask more of the VA, a robust information technology (IT) approach is critical to the department's success. Adding transparency and reporting requirements to the IT budgeting process will enhance Congress' and stakeholder's understanding of where the VA is spending its funding and what additional support may be needed to make necessary improvements. MOAA supports S. 731.

MOAA Supports:

- S. 189 Veterans' Disability Compensation Automatic COLA Act of 2021
- S. 731 Department of Veterans Affairs Information Technology Reform Act of 2021

MOAA Take No Position On:

- S. 1093 A bill to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes.

CLAIMS

The removal of the "48-hour review" eliminated a path for VSOs to receive notification and quickly resolve adjudication errors. VBA launched a pilot Claims Accuracy Request (CAR) program in response to VSO concerns. VBA's collaborative approach on this project is encouraging, and MOAA hopes to see more collaboration going forward. If this pilot proves successful, we will encourage VBA to expand this to all claims and call on Congress to codify the CAR requirement into law. MOAA supports the intent of S. 458 and will urge Congress to swiftly pass this bill if VA's collaborative approach changes.

Claims accuracy is an essential component of claim adjudication, and reviews should be regularly conducted to ensure disparities do not exist for underrepresented and minoritized veterans, to include race, ethnicity, and gender identity. MOAA supports the Government Accountability Office (GAO) review of claims as directed in S. 1031.

While we have seen a growing backlog of disability claims from the pandemic, there is no indication of a sharp increase in non-service-connected pension claims. Adding complexity to a claim process that does not show a backlog is unnecessary given the accessibility of nonprofit organizations that are able and willing to support these claims – MOAA opposes S. 1071.

MOAA Supports:

- **S. 458** Veterans Claim Transparency Act of 2021 – Support pending results of CAR pilot.
- **S. 1031** A bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.

MOAA Opposes:

- **S. 1071** A bill to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes.

ADDITIONAL CARE

Before the committee are two bills that enhance the quality of life and care for disabled veterans MOAA strongly supports. Adjusting the Aid and Attendance (A&A) rate as directed in S. 219 to support the increased costs for the pandemic is essential for veterans who need help with daily activities. Most of these veterans are on fixed incomes, and the increased costs of care for A&A have been coming out of their pockets. We urge quick action on this bill.

Adapting vehicles to allow veterans mobility is costly, but the current program only provides the grant once in a lifetime. This presents veterans with a challenging and unfair choice: Drive a vehicle that could be unsafe, or lose freedom of mobility. Adapting the law in accordance with S. 444 is necessary and honors our continued commitment to care for those who sacrificed for our nation. MOAA strongly supports this bill.

MOAA Supports:

- **S. 219** Aid and Attendance Support Act of 2021
- **S. 444** Advancing Uniform Transportation Opportunities (AUTO) for Veterans Act

SURVIVORS

Congress has made incredible strides over the past two years to care for our survivors, and there is more work to do. New issues have arisen due to the pandemic, and others have been around for decades. The bills considered by the committee meet critical parity needs and offer claims support for our survivors.

The current death toll from COVID-19 is more than [11,000 veterans](#). As the pandemic continues to stress our national health care system, the possibility of overlooking service-connected conditions as principal or contributory on the death certificates of veterans who pass from COVID-19 has become a reality. To mitigate the risks of denied Dependency and Indemnity Compensation (DIC) claims for survivors, we ask Congress to pass legislation to require an additional medical opinion of our fallen heroes whose survivors would benefit from the additional review for their veteran's claim. MOAA supports the passage of S. 89.

Survivors who receive DIC have not had the amount significantly adjusted in nearly two decades. The amount paid for DIC lags behind other federal survivors' programs by nearly 12 percent. MOAA supports the improvements for survivor compensation in S. 976.

Survivors' education benefits are one small way our nation recognizes the sacrifice our survivors have made. Establishing parity for these bills with other VA education benefits makes sense. MOAA supports in-state tuition rates for survivors as in S. 1095 and expanding the Fry Scholarship for service-connected deaths that occur within 120 days of separation.

MOAA Supports:

- **S. 89** Ensuring Survivor Benefits During COVID-19 Act of 2021
- **S. 976** Caring for Survivors Act of 2021
- **S. 1095** A bill to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-State tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes.
- **S. 1096** A bill to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.

CONCLUSION

MOAA appreciates the opportunity to present our views and recommendations on these important bills. We look forward to working with the Committee on the passage of MOAA-supported legislation and stand by to offer additional comments on other important measures before the Committee today.

Military-Veterans Advocacy

Statement for the Record in Support of:
S. 657, S. 927, S. 952, and other bills

Submitted to the United States Senate Veterans Affairs Committee,
April 28, 2021



Commander John B. Wells, USN (Ret)
Chairman

Introduction

Distinguished Chairman Jon Tester Ranking Member Jerry Moran and other members of the Committee, thank you for the opportunity to present Military-Veterans Advocacy's views on S. 657, S. 927, S. 952 and other bills.

About Military-Veterans Advocacy

Military-Veterans Advocacy Inc. (MVA) is a tax-exempt IRC 501(c)(3) organization based in Slidell, Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation, and education, MVA seeks to obtain benefits for those who are serving or have served in the military. In support of this goal, MVA provides support for various legislation on the State and Federal levels as well as engaging in targeted litigation to assist those who have served. We currently have over 1500 proud members and our volunteer board of directors litigates, legislates, and educates in support of veterans. MVA analyzes and supports/opposes legislation, assists Congressional staffs with the drafting of legislation and initiates rulemaking requests to the Department of Veterans Affairs. MVA also files suits under the Administrative Procedures Act to obtain judicial review of veterans' legislation and regulations as well as *amicus curiae* briefs in the Courts of Appeal and the Supreme Court of the United States. MVA is also certified as a Continuing Legal Education provider by the State of Louisiana to train attorneys in veterans' law.

MVA is composed of five sections: Blue Water Navy, Agent Orange Survivors of Guam, Veterans of Southeast Asia, Veterans of the Panama Canal Zone and Veterans of Okinawa. We are a member of the TEAMS Coalition and the Radiation Exposure Compensation Act Working Group. MVA works closely with Veterans Service Organizations including the United States Submarine Veterans, Inc., the National Association of Atomic Veterans, the Association of the United States Navy, Veterans Warriors, and other groups working to secure benefits for veterans.

**Military-Veterans Advocacy's Chairman, Commander John B. Wells
USN (Ret.)**

MVA's Chairman, Commander John B. Wells, USN (Retired) has long been viewed as a technical expert on herbicide exposure. A 22-year veteran of the Navy, Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He possessed a mechanical engineering subspecialty, was qualified as a Navigator and for command at sea and served as the Chief Engineer on several Navy ships.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veteran's law. He is counsel on several pending cases concerning herbicide and other toxic exposures. Commander Wells was the attorney on the *Procopio v. Wilkie* case that extended the presumption of herbicide exposure to the territorial sea of the Republic of Vietnam, which laid the groundwork for the Blue Water Navy Vietnam Veterans Act. He has initiated lawsuits on behalf of MVA to further extend the presumption and to cover veterans in Thailand, Guam, American Samoa, and Johnston Island. He also initiated judicial review of the Appeals Modernization Act which is pending at the Court of Appeals for the Federal Circuit. Since 2010 he has visited virtually every Congressional and Senatorial office to discuss the importance of enacting veterans' benefits legislation. With the onset of covid, Commander Wells has conducted virtual briefings for new Members of Congress and their staffs.

S. 657 A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes.

MVA has worked with Senator Boozman's office to draft S 657. The bill originated with MVA's Veterans of Southeast Asia Section and is designed to overcome the extremely narrow VA regulation limiting the presumption of herbicide exposure to those veterans with duties on the perimeter.

S 657 extends the cut-off date for the presumption until June 30, 1976 from the arbitrary May 7, 1975 date which marked the evacuation of United States personnel from the Republic of Vietnam. Military personnel remained in Thailand for an additional fourteen months and exposure continued until at least June 30, 1976. The Comptroller General's Report to Congress estimated that as many as 250 military personnel remained in Thailand as of July 20, 1976. *See, [Withdrawal of U.S. Forces From Thailand: Ways To Improve Future Withdrawal Operations](#)*, November of 1977 at pg. 1. [LCD-77-446 Withdrawal of U.S. Forces from Thailand: Ways to Improve Future Withdrawal Operations \(gao.gov\)](#). *See also, New York Times*, March 21, 1976. [THAILAND ORDERS LAST U.S. FORCES TO LEAVE BY JULY - The New York Times \(nytimes.com\)](#). These troops remained to administer the Military Assistance program. The remainder of the military presence left by the end of June 1976.

The VA's M21-1 Manual extends "a special consideration of herbicide exposure on a factual basis" to veterans "whose duties placed them on or near the perimeters of Thailand military bases." (M21-1 Manual § IV.ii.1.H.4.a). In particular, the Manual instructs adjudicators to concede "herbicide exposure on a direct/facts-found basis" to specific categories of veterans, including security personnel, military police, and those whose duties are "otherwise near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence." (M21-1 Manual § IV.ii.1.H.4.b). But it denies the same automatic concession to veterans whose sleeping quarters, mess and recreation halls, or other regular activities outside their regular "duties" occurred on or near the perimeter of the same bases. *Id.* (requiring specific factual review).

By limiting the presumption of service connection conceded by VA to only those veterans with *duties* on the perimeter of the base, the rules require VA's front-line adjudicators to make distinctions between veterans with no basis in fact. Veterans who merely ate, slept, exercised, or played near the perimeters of the Thailand military bases were exposed to herbicides no less than security forces and military police who *worked* near the same perimeter.

VA was of course correct to extend a presumption of herbicide exposure to veterans whose duties took them to the perimeter of military bases in Thailand. The Contemporary Historical Examination of Current Operations Report for Base Defense in Thailand ("CHECO Report"), prepared in 1973, documented numerous practices in use at the relevant bases in Southeast Asia during the Vietnam era.

Among other security measures, the CHECO Report confirms that the military employed herbicides at the perimeters of its bases in Thailand to assist with vegetation control, improve visibility, and deny enemy forces cover and concealment. As a recent GAO report notes, many if not most of the herbicides in use in Southeast Asia, even if not formally designated as Agent Orange, “contained the form of n-butyl 2,4,5-T found in Agent Orange and thus its associated contaminant, 2,3,7,8-TCDD.” *Agent Orange, Actions Needed to Improve Accuracy and Communication of Information on Testing and Storage Locations* at 11, GAO 19-24 (Nov. 2018), available at <https://www.gao.gov/assets/gao-19-24.pdf>, see also 38 CFR § 3.307(a)(6)(i) (defining “herbicide agent” to include “2,4-D; 2,4,5-T and its contaminant TCDD”).

But while extending the presumption of herbicide exposure to veterans with duties on the perimeter is correct, denying that same presumption to other servicemembers stationed on the same base, at the same time, defies logic and common sense.

Herbicides do not politely confine themselves to landing on the precise plants the military wishes to eliminate. As early as December 1971, the Army Field Manual 3-3: Tactical Employment of Herbicides (“Field Manual”) acknowledged that ground-spraying methods were only partly effective in reducing wind drift. The Army Field Manual recommended a 500-meter buffer distance “to avoid damage to desirable vegetation near the target [of the spraying].” In other words, the evidence shows that surfaces within five football fields of the perimeter of Thailand bases would be contaminated with toxins whenever herbicides were deployed at the base perimeter by any available method.

One MVA member, Jay Cole had sleeping quarters within 60 meters of the perimeter of U-Tapao Air Force Base in Thailand. He also crossed the base perimeter, though admittedly not as part of his duties. It is not hard to see that Mr. Cole would regularly contact doorknobs, windows, and other exterior surfaces exposed to drifting herbicide droplets. Military bunks were hardly airtight. Interior surfaces, clothing, and personal possessions likely were exposed as well. All this would add up to exposure at least comparable to the security forces and military police afforded the presumption of exposure under the M21-1 Manual — consider whether one’s exposure is more likely when one’s desk or one’s toothbrush is a few dozen yards from clouds of herbicide sprayed along the fences.

But because Mr. Cole's duties on the flight line were away from the perimeter, VA did not presume exposure to herbicide and denied his claim.

Other contamination vectors beyond wind drift would have spread herbicide throughout each of the Thailand bases, and that herbicide was used in the interior itself. As a result, the presumption of herbicide exposure should extend to all veterans stationed at Thailand bases during the Vietnam era, regardless of where on the base they were located.

As noted in the Field Manual, Agent Orange was mixed with diesel fuel in a 1:10 ratio before spraying, to help the herbicide adhere to the plants and deliver its toxic payload. But that same mixture adheres well to soil, clothing, shoes, containers, equipment, and vehicles within the spray zone or the down-wind drift zone. As a result, the herbicide-diesel mixture would have attached itself to the personnel near the perimeter of the base, or even those merely crossing through the perimeter, and followed them to all areas of the base. The same personnel, and any vehicles crossing through the perimeter area, would have tracked soil and mud coated in the herbicide-diesel mixture into barracks, garages, mess halls, latrines, showers, laundries, offices, and various other facilities, even deep in the interior of the base. And because many if not all these facilities were shared by a number of veterans, even those who rarely if ever, visited the perimeter would have been exposed to the toxins.

In addition, it is likely that the same herbicides used at the perimeter of the base were used elsewhere in the interior as well. For example, the CHECO Report notes that the U.S. Embassy's Rules of Engagement approved herbicides for use "on areas within the perimeter"—not only *at* the perimeter. The CHECO Report also describes, for example, use of herbicides at the Korat Air Force Base in 1972. There, "[v]egetation control was a serious problem" not only at "many sectors of the concertina wire *on the perimeter*" but also "at the critical RTAF area near the end of the runway" and "in the area contiguous to the unrevetted KC-135 parking ramp." CHECO Rpt at 68. To combat the problem, the base had received permission to use herbicides and begun spraying the affected areas. Similarly, at Nakhon Phanom Air Force Base, "heavy use of herbicides kept [vegetation] growth under control *in the fenced areas*." CHECO Rpt at 69. (emphasis added). And at U-Tapao, where Mr. Cole was stationed, "[v]egetation control was all but impossible *over the entire reservation*" in part because the base was unable to get herbicides during the first half of 1972. CHECO Rpt. At 75. The inescapable

conclusion is that the military made regular use of herbicides well within the interior of the Thailand bases, at least when it could get its hands on them.

Thus, the evidence shows that herbicides would have been present in all areas of the base, whether because they were tracked throughout the facility on the clothing and shoes of those personnel with duties on the perimeter, because they clung to the vehicles transitioning in and out of the base, or because the military directly sprayed in the interior itself. Yet the VA rules nevertheless afford a presumption of herbicide exposure only to those veterans with duties on the base perimeter.

Although VA promised in 2017 to account for these disparate treatments of veterans, the M21-1 corrects none of the known flaws. VA was not ignorant of the flaws in its adjudication of claims for herbicide exposure in Thailand. The VA also agreed to grant MVA's petition for rulemaking. [Microsoft Word - Thailand response letter 3.17.20.docx \(militaryveteransadvocacy.org\)](#) But no Notice of a Proposed Rule has been issued in the Federal Register. Consequently, MVA has filed suit against the Secretary under 38 U.S.C. § 502 to force the VA to conduct rulemaking. Congressional action through S. 657 will help to hasten that action and ensure that veterans are provided their earned benefits.

MVA supports the passage of S. 657 and thanks Senator Boozman for his leadership in this area.

S. 927 TEAM Bill
S. 952 Warfighters Bill

MVA consolidates their comments for both S. 927 and S. 952 because they are both solutions to an important problem – that of burn pits. While the bills somewhat overlap, there are strengths to each bill that require passage of both bills – or the merger of the two.

Although the bills address all toxic exposures, they are primarily brought to the forefront because of Open-Air Burn Pits. These burn pits were endemic throughout the Iraq/Afghanistan theaters but were also used in other areas including the Continental United States.

The MVA Chairman represents the estate of a burn pit victim, LCDR

Celeste Santana, who was an Environmental Health Officer at Camp Leatherneck Afghanistan in 2009. She took daily air samples at the rim of the burn pit and reported to the Base Commander and the Marine Corps General Officer that harmful levels of toxins were being discharged into the air. Cashiered for her repeated protestations, she eventually developed multiple myeloma and passed away in 2018.

Petty Officer Lauren Price, the founder of MVA partner Veteran Warriors, served in Iraq. Mobilized as part of Operation Enduring Freedom she was also exposed to burn pits and was medically retired from the Navy. She developed cancer and after a decade long struggle and succumbed to this toxic wound in March of 2021.

These two brave women are examples of the tens of thousands of veterans who have sickened and sometimes died as a result of exposure to open air burn pits. Although combat operations have ended in both areas we have still not recognized the self-inflicted wounds caused by burn pits. As with Agent Orange, sick and dying veterans now come a decade later to beg for their earned benefits.

In 2010, the Government Accountability Office reported to Congress that: “the military has relied heavily on open pit burning in both conflicts, and operators of burn pits have not always followed relevant guidance to protect servicemembers from exposure to harmful emissions.” GAO Report 11-63, *DOD Should Improve Adherence to Its Guidance on Open Pit Burning and Solid Waste Management* (2010) (Report Highlights). The report went on to note that each soldier generated 10 pounds of solid waste per day and that much of this, including toxic plastics, were burned in the open-air burn pits. Despite this finding, the Institute of Medicine failed to find enough evidence to connect burn pits and lung diseases. IOM (Institute of Medicine). 2011. *Long-term health consequences of exposure to burn pits in Iraq and Afghanistan*. Washington, DC: The National Academies Press. The reason for this curious finding became readily apparent during the testimony of Dr. Steve Coughlin before the House Veterans Affairs Committee. [Dr. Steven S. Coughlin | House Committee on Veterans Affairs](#) Dr. Coughlin revealed that while working for the Department of Veterans Affairs, he was ordered to suppress any evidence showing a causal connection between burn pits and breathing disorders.

Notably, the Special Inspector General for Afghanistan Reconstruction (hereinafter SIGAR) revealed that: “[a]lthough DOD knew about the risks associated with open-air burn pits long before contingency operations began in Afghanistan, it was not until 2009 that U.S. Central Command (CENTCOM) developed policies and procedures to guide solid waste management, including requirements for operating, monitoring, and minimizing the use of open-air burn pits.” SIGAR, *Final Assessment: What We Have Learned From Our Inspections of Incinerators and Use of Burn Pits in Afghanistan* (February 2015) at 1. The SIGAR Report went on to confirm the service member complaints of a connection between health risks and burn pits, noting that: “Recent health studies have raised concerns that the particulate matter and toxic smoke contaminated with lead, mercury, dioxins, and irritant gases generated by open-air burn pits could negatively affect an individual’s organs and body systems, such as the adrenal glands, lungs, liver, and stomach.” *Id.* Often called the Agent Orange of the 21st Century, the damage to American and Allied service members by this toxic waste pollution is still being assessed. Unfortunately, while it is being assessed, people are dying.

S. 927, in an effort to stem the bleeding, provides medical coverage to victims of toxic exposure. One strength of this bill is does not have a beginning date/ S. 952 on the other hand only covers veterans who served after August 2, 1990. S. 927, like S. 952, covers all toxic exposures including radiation, PFAS, asbestos, depleted uranium, and herbicide. The legislative history should reflect that this does not apply just to burn pits but to all forms of toxic exposure.

MVA also welcomes the requirement that the Secretary respond within 60 days to the recommendations of the National Academy of Sciences, Engineering and Medicine (NASEM) to add diseases to the presumptive coverage list. As the Committee knows, the VA has taken the approach of stonewalling these recommendations. That led to the inclusion of three herbicide presumptive diseases in the 2021 National Defense Authorization Act (NDAA) and the need to cover an additional presumptive as evidenced by Senator Tester’s S. 810, which MVA also supports.

Including a Toxic Exposure Research Committee along with its annual report to Congress, is an important provision of this bill. MVA has proposed similar legislation with broader scope in the past, however we believe that this Commission is an important step towards reaching the goal of identifying toxic

exposure in its early stages and implementing preventative measures. This approach will save lives and be more economical than the current “catch-up” we are playing now. MVA does suggest DOD involvement as necessary to ensure that problems associated with toxic exposure are detected and corrected.

The weakness of S. 927 is that it only provides for medical care and not compensation. S. 952 corrects this deficiency by also provided for disability compensation and survivor benefits. This is necessary since veteran victims are often forced to leave the work force decades before the average American. Often spouses are also required to quit employment to act as caregivers. This results in a lower standard of living for the veteran victim and his family. Compensation will help alleviate this predicament.

One of the strengths of S. 952 is the use of deployment awards to define eligibility to toxic exposure. This successfully narrows the focus to those who served in areas where toxic exposure was prevalent. The bill also provides a wider list of diseases than S. 927, but more important, allows for an expanded ability to make changes. While S. 927 requires the Secretary to respond to recommendations from NASEM, S. 952 expands the list of “interested parties” to include veterans’ service organizations, other veterans’ groups, collective bargaining agents, medical associations or state and local governments. This expansion just makes sense as does the requirement that the Secretary respond to Congress and in the Federal Register.

S. 952 also strengthens the relationship and codifies requirements for cooperation between the Secretary and NASEM. The relationship between the two worked well under the original Agent Orange Act and S. 952’s provisions work to restore that relationship for more recent toxic exposure issues.

Our allies in Australia have often taken a proactive approach to toxic exposure. It was the Australians who detected the exposure of Blue Water Navy to herbicides by tracking the health of all their veterans and thereby discovering clusters of diseases and disabilities quickly. At best, the United States has been reactive, not proactive when it comes to the identification of victims of military toxic exposure. This needs to change. These two bills are important first steps in making that change and they have the wholehearted support of MVA and our members.

This should not be a case of choosing one bill over the other. They complement each other well. MVA urges the Committee to merge these two bills into one emphasizing the strengths of each.

MVA thanks Senators Gillibrand and Tillis for introducing these two bills.

S. 89 Ensuring Survivor Benefits During COVID-19 Act of 2021

MVA supports S 89. This bill will require the Secretary of Veterans Affairs to secure medical opinions for veterans with service-connected disabilities who die from Covid-19 to determine whether their service-connected disabilities were the principal or contributory causes of death. This is especially important since many of the underlying medical conditions are service connected. In analyzing these deaths for purposes of Dependent's Indemnity Compensation, it is important to review the entire picture and the totality of the circumstances.

S. 189 Veterans' Disability Compensation Automatic COLA Act of 2021

This bill will provide for annual cost-of-living adjustments to be made automatically by law each year in the rates of disability compensation for veterans with service-connection disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. Enacting annual legislation to codify a cost-of-living increase is a waste of legislative resources. Tying these increases to Title II of the Social Security Act just makes good sense and we support this common sense legislation.

S. 219 Aid and Attendance Support Act of 2021

MVA lacks sufficient information to take a position on this bill.

S. 437 Veterans Burn Pits Exposure Recognition Act of 2021

MVA supports this legislation however notes that it could be merged with S. 927/S. 952. This bill will concede exposure to airborne hazards and toxins from burn pits under certain circumstances. It has long been said that burn pits are the Agent Orange of the 21st Century. Unfortunately, our combat forces put expediency over safety and utilized burn pits even when environmentally friendly incinerators were available. Today we see the best of our youth who willingly

served in Iraq and Afghanistan wracked with cancers and lung disorders as a direct result of burn pits. We cannot undo the damage, but we can take care of our heroes, both medially and financially. We believe S 437 is a step in the right direction.

S. 444 AUTO for Veterans Act

This bill will authorize the Secretary of Veterans Affairs to provide or assist in providing an additional vehicle adapted for operation by disabled individuals to certain eligible persons. Automobiles, like all machines, will wear out over time. The ten-year period included in the bill is most reasonable and within the scope of the need. There is a limited class of persons eligible for these vehicles, and the cost should not be prohibitive. This bill is long overdue and MVA supports it.

S. 454 K2 Veterans Care Act of 2021

This bill will provide health care and benefits to veterans who were exposed to toxic substances while serving as members of the Armed Forces at Karshi Khanabad Air Base, Uzbekistan. Troops stationed at "K2" were exposed to high levels of radiation from yellowcake uranium residue at the Uzbek base. It is estimated that the radiation levels were 7-9 times the normal background radiation. We estimate that 10,000 military members were exposed - many of whom have developed rare cancers associated with radiation exposure. MVA supports this legislation but notes that it could be merged with the S. 927/S. 952.

S. 458 Veterans Claim Transparency Act of 2021

MV takes no position on this bill, however there is some concern that this may lengthen the appeals process without a corresponding increase in accuracy.

S. 565 Mark Takai Atomic Veterans Healthcare Parity Act of 2021

This bill will provide for the treatment of veterans who participated in the cleanup of Agnatic Atoll as radiation-exposed veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs. It is time to move this bill off dead center and provide these veterans their earned benefits while they are still alive. MVA supports this bill.

S. 731 Department of Veterans Affairs Information Technology Reform Act

MVA lacks sufficient information to take a position on this bill.

S. 810 Fair Care for Vietnam Veterans

MVA strongly supports this bill. This bill will expand the list of diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in the Republic of Vietnam to include hypertension. Hypertension has been identified by the National Academy of Science, Engineering and Medicine (NASEM) as associated with exposure to Agent Orange and other herbicides. It is certainly epidemic throughout the veteran's community. It is time to force the VA to comply with the science as confirmed by NASEM

S. 894 Hire Veteran Health Heroes Act of 2021

MVA supports this common sense legislation.

S. 976 Caring for Survivors Act of 2021.

MVA supports S 976. Too often we forget about the survivors of disabled veterans who dies from service-connected illnesses. This bill is a good first step in reversing that trend.

S. 1031 A bill to require the Comptroller General of the United States to conduct a Study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.

MVA lacks sufficient information to take a position on this bill.

S. 1039 A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes.

MVA lacks sufficient information to take a position on this bill. MVA cannot take a position until the bill language is provided.

S. 1071 A bill to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes.

MVA lacks sufficient information to take a position on this bill. MVA cannot take a position until the bill language is provided.

S. 1093 A bill to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes.

MVA lacks sufficient information to take a position on this bill. MVA cannot take a position until the bill language is provided.

S. 1095 A bill to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-State tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes.

MVA lacks sufficient information to take a position on this bill. MVA cannot take a position until the bill language is provided.

S. 1096 A bill to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.

MVA lacks sufficient information to take a position on this bill. MVA cannot take a position until the bill language is provided.

S. 1188 A bill to direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans, and for other

purposes (SFC Heath Robinson Burn Pit Transparency Act)

MVA lacks sufficient information to take a position on this bill. MVA cannot take a position until the bill language is provided.

Conclusion

MVA is impressed by the wide range of bills pending before the Committee. On behalf of our membership, we would like to extend our thanks to the Chairman, Ranking Member, and remaining Committee members for the opportunity to comment on this legislation.

A handwritten signature in black ink, reading "John B. Wells", is centered on a rectangular background with a fine, dotted grid pattern.

John B. Wells
Commander USN (retired)
Chairman

**STATEMENT FOR THE RECORD
PARALYZED VETERANS OF AMERICA
FOR THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
ON PENDING LEGISLATION
APRIL 28, 2021**

Chairman Tester, Ranking Member Moran, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on pending legislation impacting the Department of Veterans Affairs (VA) that is before the Committee. No group of veterans understand the full scope of benefits and care provided by VA better than PVA members—veterans who have incurred a spinal cord injury or disorder (SCI/D). PVA provides comment on the following bills included in today's hearing.

S. 89, the Ensuring Survivor Benefits During COVID-19 Act of 2021

PVA supports this bill which requires VA to obtain medical opinions when a veteran with a service-connected disability dies from COVID-19. Directing a review of these cases to ascertain whether a service-connected disability contributed to the cause of death will help ensure survivor benefits are not diminished whenever a service-connected disability was the principal or contributory cause of death.

S. 189, the Veterans' Disability Compensation Automatic COLA Act of 2021

The annual cost-of-living adjustment (COLA) bill is important legislation that must pass each year to ensure that veterans and survivors are able to receive any COLA due to them. Although this critical legislation has been used in the past as a vehicle to pass other important veterans legislation, PVA does not object to making the COLA automatic going forward. Automatically providing access to any COLA would add a level of certainty for veterans expecting annual increases equal to those provided under title II of the Social Security Act.

S. 219, the Aid and Attendance Support Act of 2021

VA provides funds through special monthly compensation/aid and attendance (SMC/A&A) for those veterans who require the regular aid of another person to complete activities of daily living such as eating, bathing, dressing and undressing, transferring, and toileting. These benefits help offset the costs of acquiring care, which is often provided in a veteran's home. SMC is an additional benefit provided to veterans with service-connected disabilities who meet certain disability requirements. In the case of veterans receiving VA pension benefits, A&A is provided when warranted in addition to the basic pension rate.

Shortly after the pandemic began, some veterans who receive home care services that allow them to remain in their homes were informed that they would need to pay more for these services because providers were experiencing higher costs due to the need to buy additional personal protective equipment like masks, gowns, and gloves to protect the home health workers and their veteran clients. In other cases, rates rose due to shortages of providers, including absence due to illness, forcing the veteran to obtain costly replacement care on short notice.

VA benefits like SMC/A&A help veterans remain in their own homes where they are arguably safer during this pandemic. As a nation, we must do everything we can to help them remain safely in their homes and alleviate some of the burden of these increased costs. Because the needs of each veteran and the amount of financial support they receive from VA varies, a flat rate increase of these benefits is appropriate to help offset increased costs that are directly related to the ongoing pandemic.

S. 437, the Veterans Burn Pits Exposure Recognition Act of 2021

PVA supports this bill which would remove obstacles for veterans seeking VA compensation and health care for exposure to toxins produced by military burn pits. VA does not provide a presumption of service connection for diseases related to burn pit exposure at this time. Exposed veterans must file for direct service connection. VA has denied nearly 80 percent of these claims since 2007. A recent report¹ from the National Academies of Sciences, Engineering, and Medicine concluded that the available evidence does not allow a definitive determination to be made about any potential association between airborne hazards in the theater and numerous respiratory health outcomes. The report characterizes existing research as inadequate, and advises that additional research be done, including longitudinal studies that by design take years.

We believe Congress should not wait for more studies to be completed. The Veterans Burn Pits Exposure Recognition Act concedes exposure for any veteran who served in locations with burn pits recognized by VA, which in turn means they were likely exposed to specific toxins like those in section three of the bill. It also requires VA to request a medical opinion to determine any causal link between the veteran's disability and several known toxins listed within the bill.

S. 444, the AUTO for Veterans Act

PVA strongly supports this legislation which would allow veterans who have not received an automobile allowance in 10 or more years to receive another one. Being able to receive more than one auto grant would allow veterans the freedom to purchase new, safe vehicles when the lifespan of their current vehicle has ended.

For an individual living with a disability, having freedom and independence boosts mental health. Relying on others for everything, especially transportation, can be frustrating, leaving veterans feeling helpless and lowering their self-worth. Having access to an adapted vehicle allows veterans to feel stronger; build inner confidence and pride in their ability to maintain their health and meet work and family obligations; and attend community engagements.

VA's Automobile Allowance was established in August 1946 to assist severely disabled World War II veterans with the purchase of an automobile or other conveyance to help them be able to navigate their communities. Changes have been made in subsequent years to expand eligibility or allow modest increases to the value of the payment. But little has been done to ensure the program still meets the needs of disabled veterans— particularly those with catastrophic disabilities. Vehicles that meet the dimensions for adaptation are larger in size; thus, they tend to be more expensive, running anywhere from \$30,000 to \$60,000 and higher. The allowance does not cover the whole cost of the vehicle, but it does contribute toward the purchase of one.

¹ [Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations](#) | National Academies

Currently, eligible veterans or servicemembers who have a disability related to their service may receive a one-time payment (\$21,795.57) to help them purchase an adapted vehicle. Qualifying conditions include loss, or permanent loss of use, of one or both feet; loss, or permanent loss of use, of one or both hands; permanent decreased vision in both eyes: 20/200 vision or less in your better eye with glasses, or greater than 20/200 vision but with a visual field defect that has reduced your peripheral vision to 20 degrees or less in your better eye; a severe burn injury; or amyotrophic lateral sclerosis (ALS).

As a result of medical advancements, veterans with SCI/D are living decades longer than they did following World War II. They are also living through complex injuries that might previously have resulted in death. Top that with the fact that the average vehicle's useful life is approximately 11 years. This means the current benefit does not match the lifespan of our veterans. Due to the high cost of adapted or adaptable vehicles, veterans are driving vehicles well past their lifespan. For example, one of our members received his automobile allowance 42 years ago and his vehicle now has over a half a million miles. Repairs are costly, but he cannot afford to purchase a new vehicle, and spends a good amount on expensive repairs due to the age of his vehicle. But since the repairs are cheaper than buying a new vehicle, it is what he can afford. Providing additional automobile allowances would give veterans access to reliable, safe transportation as well as allow veterans to take advantage of innovative automobile design and mobility equipment advancements.

S. 454, the K2 Veterans Care Act of 2021

As many as 15,000 U.S. servicemembers deployed to Karshi-Khanabad Air Base (K2) in Uzbekistan, an old Soviet military site leased to the U.S. from the Uzbek government between 2001 and 2005 to support military operations into northern Afghanistan following the terrorist attacks of September 11, 2001. Many who served at K2 have now developed serious health issues which are believed to be caused by exposure to multiple cancer-causing toxic chemicals and radiological hazards at this site. PVA supports the K2 Veterans Care Act which establishes a "presumption of service connection" for the veterans who served at K2 and have since been diagnosed with toxic exposure-related illnesses.

S. 458, the Veterans Claim Transparency Act of 2021

In 2020, VA ended a decades-old practice allowing veterans and their representatives time to review benefits determinations prior to VA's final decision. PVA adamantly disagreed with VA's decision because the 48-hour review period allowed our service officers to mitigate errors and reduced the need for appeals. The Veterans Claim Transparency Act requires VA to reestablish the review period, and thanks to pressure from the leadership of this Committee, which included the introduction of this bill, VA worked with veterans service organizations (VSO) to create a new system that restores the review process.

The Claims Accuracy Request (CAR) program, which was launched on April 19 allows veterans representatives opportunities to request an expeditious review and determination in accordance with a Higher-Level Review. If successful, the Veterans Benefits Administration (VBA) may make this pilot program permanent and expand its scope to include all claimants. We are encouraged with the collaboration with VBA and optimistic that the changes to the notification process and the CAR program will address our concerns. If successful, we will request this program be codified

into law. We are grateful to the Committee leadership for providing the necessary impetus to achieve this level of cooperation from VA and we continue to support S. 458. However, we also believe it would be premature to advance this legislation until the results of the pilot are known.

S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act of 2021

Between 1948 and 1958, 43 nuclear weapons were detonated over Enewetak Atoll including "Ivy Mike," the first hydrogen bomb, which was 700 times more powerful than the bomb dropped on Hiroshima, Japan. Between 1977 and 1980, at least 4,000 U.S. servicemembers were detailed to try and "clean" the Atoll's islands of residual radioactive fallout. Despite their efforts, some of them remain uninhabitable to this day. Much of the work completed by servicemembers was done without equipment to protect them from the effects of radiation and today many of these veterans are suffering from various types of cancer, respiratory problems, and other conditions. PVA supports this bill which would classify the veterans who participated in the cleanup of Enewetak Atoll as "radiation-exposed veterans." Their cancers and other eligible illnesses would then be presumed to be service-connected injuries, entitling them to file disability claims and receive VA health care.

S. 657, to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes.

VA currently awards service-connected benefits for exposure to toxic chemicals to veterans whose duties placed them on or near the perimeters of Thai military bases from February 28, 1961, to May 7, 1975. This restriction arbitrarily disqualifies other veterans stationed in Thailand that may be able to prove their exposure. PVA supports this bill which would modify the current presumption of service connection for this region, alleviating the unreasonable burden for these veterans to prove they were exposed to Agent Orange and other toxic chemicals used by the U.S. during the Vietnam War.

S. 731, the Department of Veterans Affairs Information Technology Reform Act of 2021

In recent years, Congress has provided VA with large sums of money to upgrade its information technology (IT) systems, including \$16 billion to provide an electronic health records system that will be interoperable with the Defense Department's health records system. To ensure funds provided are spent as effectively as possible, Congress must remain updated on the status of these projects. PVA strongly supports this legislation which would require VA to inform Congress by January 31 each year about its progress on IT projects that cost over \$25 million with lifecycles of three years or more. These reports must include the functional and performance capabilities of the project, estimated lifecycle and operations, management costs, and milestones. Other language strengthens the chief information officer's role within VA, ensuring that position is engaged in strategic planning, IT workforce issues, budgeting, investment management, and emerging technologies.

S. 810, the Fair Care for Vietnam Veterans Act of 2021

PVA supports this legislation which would add hypertension and monoclonal gammopathy of undetermined significance to VA's list of conditions associated with Agent Orange exposure. Thousands of Vietnam War veterans have been waiting more than four decades for VA to recognize these conditions which have been linked to Agent Orange exposure. Once this legislation is passed, health care benefits and disability compensation would finally be awarded to these veterans.

S. 894, the Hire Veteran Health Heroes Act of 2021

Proper staffing of VA facilities is a big concern for PVA, and we readily support logical efforts like this bill which have the potential to help VA fill some of its thousands of open positions. Nearly 13,000 active duty medical department members separate from the military each year but there is no formal plan in place to actively recruit them for further employment in other federal health care programs like VA. PVA supports this legislation which directs VA to design a plan to actively recruit separating medical personnel to work in VA Medical Centers and submit a report to Congress on the efficacy of the identification and referral of separating members. We believe this legislation could help VA move the needle on filling lingering vacancies that currently inhibit the Department's ability to provide health care to veterans.

S. 927, the Toxic Exposure in the American Military Act, or the TEAM Act

Millions of veterans have been exposed to toxic substances during the course of their military service. These include herbicides, burn pits, and radiation which can lead to serious illnesses like cancer, respiratory diseases, and skin conditions. Currently, VA does not have a presumption of service connection for conditions linked to toxic exposure that could entitle veterans to receive monthly disability compensation. Also, they are not eligible to seek care from VA to treat any illnesses that may result from toxic exposure unless they are otherwise eligible to enroll in the VA health care system. This legislation would make the necessary changes so veterans can access the care and benefits they need to recover from toxic exposure. Thousands of servicemembers and veterans suffering from exposure to hazardous substances are in desperate need care. We urge Congress to pass the TEAM Act as quickly as possible.

S. 952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021

Like other bills being examined during this hearing, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act seeks to remove the cumbersome, and in many cases impossible, "burden of proof" from the veteran to provide enough evidence to establish a direct service connection between their health condition and burn pit exposure. Unlike the other legislation being considered today, this measure contains helpful language that allows interested parties to petition the VA Secretary to add a disease to the list of presumptive conditions associated with burn pit exposure. Within 90 days of the receipt of such petition, the Secretary would then seek the assistance of the National Academies of Sciences, Engineering, and Medicine to determine if there is a positive association between the exposure to the toxic agent and the occurrence of that disease in humans. The result would be the establishment of a process for veterans and other entities to identify additional hazardous substances and conditions related to burn pit exposure, and the means to ensure such claims are thoroughly examined by a credible agency.

S. 976, the Caring for Survivors Act of 2021

Dependency and Indemnity Compensation (DIC) is a monthly benefit paid to eligible survivors of servicemembers who died on active duty, active duty for training, or inactive duty training; or veterans who die as a result of a service-connected injury or disease or were totally disabled by a service-connected condition for at least 10 years or within five years of being released from active duty service. DIC is also applicable if the veteran was a former prisoner of war and died after September 30, 1999. This benefit is critically overdue for improvements to ensure it is meeting the needs of survivors. DIC rates have not kept up with the cost of living.

PVA supports the Caring for Survivors Act of 2021 which brings parity between the DIC pay rate and the benefit survivors of federal civil service retirees receive. The surviving spouses and eligible children are dealing not only with the loss of their loved one but are left to deal with the loss of their loved one's income or compensation. This legislation eliminates the inequity for survivors of our nation's heroes compared to survivors of federal employees.

Additionally, no one knows better than the members of PVA the impact that their service-connected conditions can have on their life expectancy. PVA supports the provision in this legislation that would allow for survivors of a veteran who passes away before the 10-year date to receive a partial DIC benefit. Many of these survivors have put their careers on hold to become caregivers for their loved one, and now with the loss of their veteran, face significant income barriers. These veterans' lives have been cut short by their service-connected condition and this compassionate legislation ensures these families are not left destitute and keeps America's promise to care for the survivors of those whose health was impacted by their military service.

PVA believes that this legislation could be improved by adding language that would eliminate the DIC "Kicker" time requirement for the survivors of veterans who die from amyotrophic lateral sclerosis (ALS), an aggressive disease that leaves many veterans totally incapacitated and reliant on family members and caregivers. The DIC "Kicker" provides a small additional monthly allowance for survivors of veterans with a 100 percent service-connected disability for eight continuous years. Because of the nature of this disorder, individuals diagnosed with ALS have an average lifespan of between two to five years and are often unable to meet DIC's eight-year requirement. ALS is a presumptive service-connected disease which VA automatically rates at 100 percent due to the progressive nature of the disease. Many spouses quit their jobs to become full-time caregivers to assist their veteran during the last years of this deadly disease. PVA asks that language waiving the eight-year requirement be added to this legislation to improve the benefits for the survivors of veterans who die from ALS, allowing these men and women to receive the DIC "Kicker."

S. 1031, to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.

Targeted studies²³ have already revealed problems in the dispersion of certain VA benefits for women and nonwhite veterans but a more thorough evaluation is needed to determine the extent of the problem with all VA benefits. PVA supports this bill which would direct the Government Accountability Office (GAO) to study disparities in access to VA benefits associated with race and ethnicity. It seeks to further verify and understand the extent of disparities in VA's delivery of veterans' benefits, so Congress can take appropriate action to address any problems.

S. 1039, A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes.

PVA supports this bill which would permanently extend VA's authority to grant benefits for Gulf War Illness and would broaden the definition of Persian Gulf Veteran to include those who served in Afghanistan, Israel, Egypt, Turkey, Syria, and Jordan.

² [Racial Disparities in VA Service Connection for Posttraumatic Stress Disorder Disability on JSTOR](#)

³ [Equity in Veterans Affairs Disability Claims Adjudication in a National Sample of Veterans \(nih.gov\)](#)

We particularly appreciate the requirement for VA to develop a single Disability Benefit Questionnaire for Gulf War illnesses and provide training to VA health care personnel. Both actions would facilitate more timely and accurate consideration of disability compensation for veterans suffering from this illness.

S. 1071, to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes.

PVA has major concerns with this legislation and does not support it at this time. First, we question the need for the pilot program. There are currently less than 12,000 pending pension claims and roughly 23 percent of them have been pending more than 125 days. Compared to VA's claims process as a whole, the pension process works fairly well. Like other accredited VSO representatives, PVA's service officers provide many of the types of assistance listed in this legislation free of charge. Second, the legislation does not require any reporting from the contractor to VA or from VA to Congress during the pilot project. Rather, GAO would review the project and report its success within 90 days after the three-year pilot concludes. We believe that reports during the pilot would be needed so that VA could understand whether the project is enhancing the application process for claimants. Third, the bill does not appear to provide for an open bidding process for the selection of the third-party entity.

Before Congress considers such a drastic step as this pilot, GAO should be directed to examine the pension application process to help define the nature of any perceived problems. VA should then be given the opportunity to improve the process with the tools already available to the Department.

S. 1093, to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes.

PVA strongly supports this legislation which would create a new administration within VA to oversee the agency's education, training, employment, and other programs focused on helping veterans as they transition to civilian life. The new Veterans Economic Opportunity and Transition Administration would be headed by an Under Secretary for Veterans Economic Opportunity and Transition.

Two of the programs that would transition to the new administration include VA's Veterans Readiness and Employment (VR&E) program and the Specially Adapted Housing (SAH) program. These programs are relatively small in terms of budget and numbers of veterans served. However, they are vital to veterans who have catastrophic disabilities as a result of their military service. Without them, these veterans would not be able to access independent living services or adapt their homes to meet their disability-related access needs. Unfortunately, these programs, along with other VA economic opportunity programs, simply are not able to receive the staffing, IT, and other supports needed due to their position within VBA. This administration plays the crucial role of providing needed disability compensation and pension benefits to veterans. Removing programs like VR&E from VBA's list of responsibilities will not only allow for more attention to be placed on those programs but it will also allow them to better focus on processing claims for compensation and pension benefits.

Under an Economic Opportunity and Transition Administration, programs like VR&E and SAH will receive a higher level of visibility. This increased visibility will foster stronger oversight and accountability for the delivery of services and benefits. We believe that such oversight and accountability will help to foster the innovation needed to ensure that the delivery of these benefits and services is modernized. It will also allow for focused collaboration with other agencies and programs, including the Department of Labor's Veterans' Employment and Training Service, that also serve veterans, increasing program efficiencies.

S. 1095, to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-State tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes.

This legislation would allow veterans who are in their final period of their program of education to enroll in classes not required toward their course of study to have enough credits to receive the full-time housing stipend. PVA supports this legislation which would be effective August 1, 2021, so that those using VA Educational Services are not impacted with a financial burden while working to finish their program of education.

S. 1096, to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.

PVA strongly supports this legislation which would expand eligibility for the Fry Scholarship to the survivors of veterans who die from a service-connected illness or injury within 120 days of separation. It would bring parity to these surviving spouses and children who are currently eligible for all other survivor benefits except this one.

Senate Discussion Draft, the SFC Heath Robinson Burn Pit Transparency Act

PVA supports this legislation which would require VA to submit quarterly reports on veterans' burn pit exposure, and to inform veterans of the Airborne Hazards and Open Burn Pit Registry if a veteran presents at a medical facility for treatment related to exposure to toxic chemicals caused by open burn pits. It also requires health care providers to inform veterans who mention "burn pits" about the existing Burn Pit Registry so they are aware of it and can register themselves; and enables family members to add a veteran to the Burn Pit Registry after his or her death.

PVA would once again like to thank the Committee for the opportunity to submit our views on some of the legislation being considered today. We look forward to working with the Committee on this legislation and would be happy to take any questions for the record.

**Statement for the Record
Before the
Senate Committee on Veterans' Affairs
United States Senate
28 APR 2021**

**Presented by
Sharri L. Briley**

**Surviving Spouse of CWO3 Donovan Lee Briley, US ARMY
Dco/160th Special Operations Aviation Regiment**

My name is Sharri Briley and in 1993 I was a 28-year-old wife to a handsome helicopter pilot, CWO3 Donovan Briley, and mother to a beautiful 5-year-old daughter named Jordan. We were living a very happy life in Ft. Campbell, KY. My husband was part of an elite military unit known as the "Night Stalkers" that used black hawk helicopters to transport special forces operators into difficult battle situations around the world. 8,300 miles away, in an African city called Mogadishu, in a country known as Somalia, a civil war was taking place. This civil war had already claimed hundreds of thousands of lives and the United States government, along with the United Nations, sent in military personnel to try and bring peace to the region. They were also used to help get food and supplies to the people caught up in the middle of the conflict. These civilians were starving and dying at an alarming rate. One man continued to fight against our peacekeeping force and his name was Mohamed Farrah Aidid. His militia declared war on soldiers that were there to help the people of Somalia. My husband was one of those soldiers.

On 3 Oct 1993, US Forces received intelligence that Aidid was going to be at a certain location in Mogadishu that day. Our brave men, who had trained for years for just such an occasion, flew in on black hawk helicopters to capture the man who was responsible for so many senseless deaths in his own country. The US Forces did not expect much of a fight, but unknown to them a terrorist by the name of Osama Bin Laden had begun supplying Aidid's militia with money and more sophisticated weapons. What followed that day is depicted in the Academy Award winning film, "Blackhawk Down."

The first black hawk shot down that day was co-piloted by my husband; he died that day, 3 Oct 1993, 8,300 miles away from his daughter Jordan and me. In the movie "Blackhawk Down" they actually show my husband trying to call me that morning, but I was not home, and we didn't get to tell each "goodbye." That is the kind of sacrifice our men and women in the military, and their families, are asked to make. I know Donovan loved his fellow Night Stalkers and the Special Forces operators that fought and died that day on a distant shore. Eighteen very brave men were killed and several more severely wounded. There are books and movies written about how events like that show the tragic human toll from battle, and I want you to know that my heart was

broken, but to this day I remain very proud of Donovan and his fellow soldiers. They sacrificed their lives that day to help others.

After Donovan's death, I packed up Jordan and moved back to my hometown of Little Rock. A few years later, when Jordan was a sophomore in high school, she wrote a poem to her father and she called it, "My Hero":

My Hero

I have a hero who is close to my heart.
 I see the world through his eyes;
 He gave me life,
 But now, many years later we're far apart.
 This hero you see is not only mine,
 He gave his life for his country;
 He fought and he died.
 He was selfless and true;
 Loyal and brave.
 The hero is my father,
 Which I am proud to say.
 On earth I will miss him,
 But these days soon will end.
 And one of these days
 We will surely meet again.

A much more famous writer, Ernest Hemingway, once wrote, "Every man's life ends the same way. It is only the details of how he lived and how he died that distinguish one man from another."

Even though my daughter and I received social security, it was only with the additional income provided by Dependency and Indemnity Compensation (DIC) that I was able to remain a stay-at-home mom. The DIC concept was created in 1956 by the Hardy Bill HR 1096 and supported by the Bradley Report (Gen Omar Bradley) for Pres Eisenhower and reviewed the veterans benefit system. Coincidentally, DIC "flat-rate" was created in 1993, and my husband's date of death was October 1993. For the next ten years, only minor enhancements (cost of living adjustments) were made. Here we are almost twenty years later and the DIC rates have failed to keep up with the cost of living.

The DIC rates now are far smaller than what federal retiree employees receive. Additionally, the ten-year rule results in some survivors being left with nothing. Losing your spouse is devastating and so is the loss of their income for the family. Compared to a federal employee's survivor's income, DIC provides a very low rate of compensation. Because of this, I must budget very carefully and take on part-time work to maintain our household expenses. Once my daughter went to college, the social security stopped, and I had to accept a fulltime job. As stated before, DIC is not enough to support the household expenses. If the DIC were increased as proposed, the survivor would be relieved of the worry of trying to make ends meet. My husband and I had planned to raise our daughter with me as a stay-home-mom. The loss of my husband should not be the loss of that dream for my daughter and me.

There is a disparity between the percentage of income a DIC recipient is paid and the percentages given to recipients of other retirement and pension plans. Currently, an eligible surviving spouse would receive a basic DIC benefit of \$1,215 monthly. This is 41.0% of the basic compensation rate for a veteran with a spouse receiving disability compensation at the 100% disabled rating. SBP recipients receive 55% of the military retiree's retirement pay. Federal employee pension plans provide 55% of retirement pay, or 50% of retirement pay along with an initial lump-sum payment, depending on the plan. A low-income elderly or disabled veteran may be eligible for the Improved Disability Pension. In the event of his or her death, the surviving spouse may be eligible for the Improved Death Pension Benefit. The surviving spouse would receive, under the Improved Death Pension, about 51.2% of the veteran's Improved Disability Pension. As a percentage of 100% disability compensation, DIC is the only federal plan that is below the 50% or more level for survivors associated with other retirement or pension benefits.

I am grateful to Senator Tester and to Senator Boozman (from my beloved home state of Arkansas) for introducing "Caring for Survivors Act 2021 – S. 976" on behalf of the United States Senate Committee on Veterans' Affairs.

Legislation on the DIC has been stagnant since 2003 – This survivor benefit is long overdue for improvement. With no increases in the rate, the DIC has fallen short of the intent of this compensation. I strongly urge the Senate Veterans Affairs committee to mark up and pass this important legislation. It will bring much needed help to so many surviving spouses.

I am a member of the Facebook group called DIC Surviving Spouses, and I am also a proud member of Gold Star Wives of America, Inc. I currently hold the office of the president for the South-Central Region as well as the former elected position of the Development Committee Chairman of the Gold Star Wives of America, Inc. National Board. This organization has given me a purpose and the courage to stand alongside other widows/widowers that desperately need a voice to ensure that our rightful benefits are obtained just as our fallen soldiers were promised.

I truly appreciate the consideration of this bill and want to especially thank Senator Boozman for having the back of this Arkansas girl. God bless you all and GOD BLESS AMERICA!

STATEMENT OF PETER SULLIVAN
ON BEHALF OF THE SERGEANT SULLIVAN CIRCLE
TO THE SENATE COMMITTEE ON VETERANS AFFAIRS
RE S. 952, THE PRESUMPTIVE BENEFITS FOR WAR FIGHTERS
EXPOSED TO BURN PITS AND OTHER TOXINS ACT OF 2021

The Sergeant Sullivan Circle is pleased to join Burn Pits 360 and several other veterans support organizations in supporting the Gillibrand-Rubio bill, S. 952 that would establish a presumption that illnesses commonly contracted by US military who were deployed to toxic environments in Iraq, Afghanistan and other countries are service connected.

The Sergeant Sullivan Circle advocates for improvement in health care for military personnel who suffer from complex deployment-related diseases. The Circle's name honors the memory of my son, Marine Corps Sergeant Thomas Joseph Sullivan, who died in 2009 from complications of respiratory, the gastrointestinal and other diseases that stemmed from his service in Iraq in 2004-05. He was in peak physical condition when he arrived in Iraq and was recognized for Combat Valor. He was not wounded by bullets or bombs, but suffered and, ultimately, died from the consequences of exposure to Iraq's otherwise toxic environment.

In his post-deployment health record, Tom reported that he had congestion and rectal bleeding while deployed and had been exposed to an open pit used to burn feces (among other things), emissions from local chemical plants, as well as ever present sand and dust that include natural toxic elements like heavy metals. These man-made and natural elements combined to make for very hazardous air quality that flunks EPA safety standards by a large margin. Our Government knew these health risks, but took no force protection measures – not even providing N-95 face masks.

In the summer of 2008, Tom's condition reached a crisis stage. He was experiencing excruciating and diffuse pain and his doctors could not figure out the connection with his respiratory, gastrointestinal or other conditions. Tom asked for a fresh, multidisciplinary assessment by a team of experts. Instead, he was sent to a clinic that offered him a program of exercise (which he could not do) and psychological counseling (which added insult to injury). In other words, they treated him as psychosomatic case. His doctors never probed the link between toxic exposures and the symptoms he exhibited and reported. A few months later, Tom suddenly died at home, at age 30, leaving a 28 year old wife and 3 year old daughter.

Tom's doctors said they were unaware of other Iraq and Afghanistan veterans with conditions like his. He felt alone and isolated. After his death, we learned that there are many "Toms" who also were dismissed as mental cases, just as

veterans before them who suffered the effects of Agent Orange and Gulf War Illness.

A presumption seems to be the only effective way to ensure that those made sick by their service to our country are treated with the dignity and fairness they have earned by putting their lives on the line. It would make clear that their suffering is real and not a product of a psychological disorder and spare them of the torture of unrealistic burdens of proof. It would also help concentrate the minds of DoD and VA medical practitioners that they should not dismiss patients with difficult-to-diagnose conditions as "head cases," but rather should go the extra mile, and try harder to understand the disease through greater collaboration and clinical research drawing on case histories.

S. 952 would be an excellent step toward enabling our warriors to qualify for the health benefits and compensation that have earned by serving our Nation.

For suggested revisions to S. 952, please see my Supplemental Statement.

Respectfully submitted,

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SUPPLEMENTAL STATEMENT OF PETER SULLIVAN ON BEHALF OF THE
SERGEANT SULLIVAN CIRCLE ON S. 952 – SUGGESTED REVISIONS

No legislative measure is fully perfect, and S. 952 is no exception. The following suggestions are offered in the hope that they would make the bill more perfect.

First, put asthma on an equal footing with other listed diseases.

The bill excludes asthma from the presumption unless it “was diagnosed after service in a country or territory [specified in the bill]...” where the service member was deployed. This condition is not applied to any of the other listed diseases. The rationale for the exclusion is unclear. Military personnel are not ordinarily deployed to war zones if they had been previously diagnosed with asthma. The few who are cleared for deployment should not be penalized. If their conditions are re-activated or otherwise aggravated by service in the war zone, there is no good reason to deny them benefit of the presumption. It should be kept in mind that asthma is a one of the most common diseases from which veterans of our Nation’s recent wars suffer. It is strongly urged that the exclusion language be deleted and, thereby, avoid discrimination against veterans that have asthma.

Second, add gastro-intestinal diseases (e.g., Crohn’s, ulcerative colitis, colitis, irritable bowel disease, GERD) to the list of diseases qualifying for the exemption or at least designate them for priority study in the provisions of the bill enabling additions to the list of qualifying diseases.

As noted in my statement, my son Tom suffered from both respiratory and gastrointestinal (GI) diseases. Following his death, we learned that many veterans of our Nation’s wars having respiratory diseases have a GI disorder as a co-morbid condition. Both diseases likely arise from the same toxic exposures.

Third, broaden the definition of “covered toxin” for the purpose of studies of possible additions to diseases to make clear it includes one of EPA’s criteria pollutants known a “particulate matter.”

This could be accomplished by adding “,including, but not limited to, particulate matter” after “Any toxic chemical or toxic fume”. Iraq and Afghanistan, for example, have an abundance of PM10 (10 or small micrometers) and PM2.5 (2.5 or smaller micrometers) that are considered hazardous by EPA.



KENNETH GREENBERG

POLICY DIRECTOR

VETSFIRST, A PROGRAM OF UNITED SPINAL ASSOCIATION

PENDING LEGISLATION HEARING

SENATE COMMITTEE ON VETERAN'S AFFAIRS

APRIL 28, 2021

Chairman Tester, Ranking Member Moran and members of the Senate Committee on Veterans' Affairs, I appreciate the opportunity to present VetsFirst, a program of United Spinal Association and to state the program's views on pending legislation before the Committee. Throughout our history, from our founding by a group of paralyzed World War II veterans in New York City 75 years ago to now, we have served as a leading voice advocating for veterans, especially disabled veterans, on policies related to adaptive housing and automobiles, compensation ratings and caregiving and mental health issues.

We have worked to improve existing services and to enhance benefits to ensure veterans achieve the highest level of independence and quality of life such as access to VA financial and health care benefits, housing, transportation, and employment services and opportunities. We are not only a VA-accredited national veterans service organization, but also, along with United Spinal Association, an advocacy leader for all people with disabilities.

Today's legislative hearing addresses important topics to our membership, veterans, and the at large disability community. We look forward to building on our strong relationships with Senators and Committee staff as Congress considers reforms on the delivery of health care services and benefits in the 117th Congress.

VetsFirst recognizes the importance of pending legislation before the Committee and provides its views and comments on pending benefits legislation and pending toxic exposure legislation.

Benefits Improvements Legislation

This SVAC hearing is considering a number of bills to address benefits improvements and VetsFirst welcomes the opportunity to share its views on three proposals.

S. 444 – Advancing Uniform Transportation Opportunities (AUTO) for Veterans

Act. Modernizing the VA Automobile Adaptive Grant program is a major priority for VetsFirst. Access to an adapted vehicle is essential to the mobility and health of disabled veterans who need a reliable means of transportation to get them to and from work, meet family obligations, and attend medical appointments.

Congress currently authorizes the Department of Veterans Affairs (VA) to provide one-time grants in the amount of approximately \$21,500 to service-connected disabled veterans to purchase a new or used automobile with appropriate adaptive equipment to accommodate their disability. On average, the cost to replace modified vehicles ranges from \$40,000 to \$65,000 when the vehicle is new and \$21,000 to \$35,000 when the vehicle is used. VA is providing one-third to one half of the costs. These substantial costs, coupled with inflation, present a financial hardship for many disabled veterans who need to replace their primary mode of transportation once it reaches its life of service.

Position: VetsFirst strongly supports and urges Congress to immediately pass

S. 444 and establish multiple automobile grants, for veterans to use once every ten years, equaling the current grant maximum in effect at the time of vehicle replacement. By doing so, veterans will have access to safe, reliable transportation. This is a bipartisan bill and VetsFirst commends and appreciates that SVAC Members Manchin, Boozman, and Hassan are already cosponsors.

S. 976, the bipartisan Caring for Survivors Act of 2021 aims to bring payments to Dependency and Indemnity Compensation (DIC) recipients in line with payments to surviving spouses of other Federal employees. The rate of compensation paid to survivors of servicemembers who die in the line of duty—or veterans who die from service-related injuries or diseases—has been minimally adjusted since its establishment in 1993. DIC payments currently lag behind other programs' payments by nearly 12 percent.

When a veteran receiving compensation passes away, the surviving spouse often suffers a devastating loss of income because the rate of survivors' compensation is less than 50 percent of what a totally disabled veteran receives. The economic consequences may be amplified if that spouse had been the veteran's caregiver and that compensation was their sole income source. In contrast, monthly benefits for survivors of federal civil service retirees are calculated as a percentage of the retiree's benefits up to 55 percent. **To address this inequity, Congress should pass S. 976 so that the rate of compensation for DIC is indexed to 55 percent of a 100 percent disabled veteran's compensation.**

Also, under current law, the DIC restricts benefits for survivors if the veteran was disabled for less than ten years before his or her death. For the survivor of a veteran with a 100 percent disability rating to receive DIC, the veteran must have had that rating for 10 consecutive years. However, if the veteran passes away due to a nonservice-connected condition before reaching 10 consecutive years of being totally disabled, the dependents are not eligible for any DIC benefit. The DIC program would be more

equitable for all survivors if they were eligible for a partial DIC benefit starting at five years of the veteran being rated totally disabled and reaching full entitlement at 10 years to protect against spousal impoverishment after the loss of their veteran spouse. **S. 976, The Caring for Survivors Act of 2021 would reduce the timeframe a veteran needs to be rated totally disabled from ten to five years—broadening eligibility to more survivors.**

Position: VetsFirst strongly supports and urges Congress to immediately pass S. 976. This is a bipartisan bill and VetsFirst commends and appreciates that SVAC Chairman Tester and Boozman are already sponsors/cosponsors.

S. 458, Veterans Claim Transparency Act of 2021. In April 2020, VA eliminated the critical 48-hour review period—a decades-old practice allowing veterans and their representatives time to review benefits determinations prior to VA's final decision—as it promotes efficiency, mitigates potential errors, and reduces the need for appeals. S. 458 would reinstate the review period to ensure accredited Veterans Service Organizations, attorneys, and claims agents can review and course correct benefits determinations, prior to VA's final decision. This critical program is used by VSOs to correct numerous mistakes that improved the accuracy of VA decisions, lessened the burden on the appeal system, and prevented substantial issues for the claimant. VVA strongly advocates in favor of reestablishing this important program.

Position: VetsFirst strongly supports and urges Congress to immediately pass S. 458, Veterans Claim Transparency Act. This is a bipartisan bill and VetsFirst commends and appreciates that SVAC Chairman Tester and Boozman are already sponsors/cosponsors.

Benefits Improvements Legislation Conclusion

The 117th Congress must be the Congress that addresses critical benefits improvement issues and provides veterans the benefits that they deserve. VetsFirst will work tirelessly on three bills to address these issues. We believe that S.444, AUTO for Veterans Act, S. 976, Caring for Survivors Act, and S. 458, Veterans Claim Transparency Act must be passed into law this year. VetsFirst looks forward to working with SVAC and the bill sponsors to pass a comprehensive benefits bill this year.

Toxic Exposure Pending Legislation

This SVAC hearing is considering a number of bills to address toxic exposure and VetsFirst welcomes the opportunity to share its views on three proposals.

More than six million veterans of all eras have been exposed to toxic substances in the course of their military service such as herbicides, burn pits, radiation, engine fumes, and chemically laced improvised explosive devices and more. These exposures can potentially lead to serious illnesses including, but not limited to, cancers, respiratory diseases, autoimmune disorders, and skin conditions. Unfortunately, many veterans

suffering from these illnesses still lack access to the lifesaving care they need and deserve.

S. 927, Toxic Exposure in the American Military (TEAM Act) will ensure that all veterans are provided a fair and uniform process to receive health care and benefits to which they are entitled following exposure to toxicants during their service. The legislation improves the provision of health care from VA and requires VA to respond to scientific evidence to establish conditions, create an independent commission to review exposures, and improve training for Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA) employees to address toxic exposure.

If enacted, the TEAM Act would reform the way VA evaluates and provides care for all veterans suffering from conditions that may be associated with toxic exposures in the following ways:

- Grants VA health care enrollment in Priority Group 6 to veterans who served in areas of known toxic exposure and creates mechanisms for the enrollment of veterans who may be exposed to toxic substances in the future. Traditionally, VA health care eligibility is contingent on establishing a service-connected disability which can take months or even years. This provision will ensure that veterans who suffered toxic exposures get the care they need without delay.
- Requires VA to respond to scientific evidence of associations between diseases and toxic exposures for the purposes of establishing presumptive disabilities.
- Establishes a commission to review toxic exposures in veterans and recommend independent studies to VA and Congress.
- Requires VA to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to study potential associations between diseases and toxic exposures in veterans.
- Improves training for VA health care and benefits employees on toxic exposure related issues.
- Adds questions about toxic exposures to VA primary care questionnaires.

Position: VetsFirst strongly supports and urges Congress to immediately pass S.927, The TEAM Act. This is a comprehensive bipartisan bill and VetsFirst commends and appreciates that SVAC members Tillis, Hassan and Ranking Member Moran are already sponsors/cosponsors.

S. 437 – The Veterans Burn Pits Exposure Recognition Act legislation which addresses a barrier currently preventing many veterans from getting VA health care and benefits for illnesses and diseases related to exposure to burn pits. **The bill would recognize and concede their exposure during deployed service.**

The bill removes the unreasonable presumption and burden on the veteran to prove that they were exposed to burn pits while serving at an installation where they were in use. Many of our veterans across America who were exposed to open-air burn pits in the Middle East and Afghanistan are now facing health complications without healthcare coverage and benefits.

S.437, the Veterans Burn Pits Exposure Recognition Act would:

- Acknowledge an information gap. Given the limited information that exists about exactly when and where burn pits were active, or the precise locations of individuals who served near them, it is unreasonable for a veteran to prove they were exposed to specific toxins from specific burn pits on specific days.
- Recognize ongoing research being conducted by the Departments of Defense and Veterans Affairs.
- Accept that veterans who served near burn pits in Iraq, Afghanistan and other locations were exposed to airborne hazards, toxins and particulate matters. This recognition and concession can potentially aid thousands of veterans who otherwise do not have documentation of their exposure.

Position: VetsFirst strongly supports and urges Congress to immediately pass S.437, The Veterans Burn Pits Exposure Recognition Act. This is a bipartisan bill and VetsFirst commends and appreciates that SVAC members Manchin, Sullivan, Tillis, Hassan, Sinema, Boozman, Blumenthal, and Sanders are already cosponsors.

S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act.

This bill would provide presumptive VA benefits to servicemembers who have deployed and have illnesses due to exposure to burn pits and other toxins. Approximately 3.5 million veterans have been exposed to burn pits that spewed toxic fumes and carcinogens into the air. Specifically, the bill would establish a **list of new diseases as service-connected for which veterans can receive VA benefits as a result of toxic exposure while serving in the military.** This legislation does for victims of toxic exposures and burn pits what the Agent Orange Act did for veterans who were exposed to Agent Orange in Vietnam.

S.952 would remove the burden of proof from the veteran to provide enough evidence to establish a direct service connection between their health condition and exposure. Rather, the veteran would only need to **submit documentation that they received a campaign medal associated with the Global War on Terror or the Gulf War and they suffer from a qualifying health condition.** Campaign medals are awarded to members of the armed forces who deploy for military operations in a designated combat zone or geographical theater.

The bill outlines the criteria for veterans eligible for presumptive conditions as those having served on active duty on or after August 2, 1990 and received a campaign medal for deployment to one of the missions which an exposure might have occurred. They include Afghanistan Campaign Medal, Armed Forces Expeditionary Medal, Armed Forces Reserve Medal – w/ "M device," Armed Forces Service Medal, Global War On Terrorism Expeditionary Medal, Inherent Resolve Campaign Medal, Iraqi Campaign Medal, and Southwest Asia Service Medal.

Presumptive conditions include a wide range of cancers and respiratory illnesses, including: asthma, that was diagnosed after service, head cancer of any type, neck

cancer of any type, respiratory cancer of any type, gastrointestinal cancer of any type, reproductive cancer of any type, lymphoma cancer of any type, lymphomatic cancer of any type, kidney cancer, brain cancer, melanoma, chronic bronchitis, chronic obstructive pulmonary disease, constrictive bronchiolitis or obliterative bronchiolitis, emphysema, granulomatous disease, interstitial lung disease, pleuritis, pulmonary fibrosis, sarcoidosis.

In addition, the Secretary of Veterans Affairs, in conjunction with the National Academies of Sciences (NAS), are directed to evaluate petitions to determine whether there is scientific evidence of a link between additional diseases and exposure to one of the covered toxins, for potential addition to the list of presumptive diseases. Following the recommendation by NAS, the Secretary must add that disease to the list or publicly state why it is not being added.

Finally, the bill would create a presumption for disability or death incurred by a civilian federal employee of the Department of Defense, State Department or an element of the intelligence community, caused by the same list of diseases, and would make it compensable under the Federal Employees' Compensation Act (FECA) if that employee had served overseas in support of military operations.

Position: VetsFirst strongly supports and urges Congress to immediately pass S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act. This is a bipartisan bill and we urge SVAC to work with Senators Gillibrand and Rubio and include it in legislation addressing toxic exposure.

Toxic Exposure Legislation Conclusion

The 117th Congress must be the Congress that addresses the critical issue of toxic exposure and provides veterans the health care and benefits that they deserve. VetsFirst will work tirelessly on three bills to address these issues. We believe that S. 927, Toxic Exposures in the American Military (TEAM) Act, S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act, and S. 437, Veterans Burn Pits Exposure Recognition Act must be passed into law this year.

Position: VetsFirst looks forward to working with SVAC and bill sponsors to pass a comprehensive bill on toxic exposure this year.

Chairman Tester, Ranking Member Moran, and members of SVAC, I would like to thank you for the opportunity to present the views of VetsFirst on pending benefits and toxic exposure legislation. We commend you for all you do for veterans and look forward to continuing our work with you to ensure that veterans have timely access to high quality care and all the benefits that they have earned and deserve.