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**WOUNDED WARRIOR PROJECT
STATEMENT FOR THE RECORD**

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS**

HEARING ON

**“THE HONORING OUR PROMISE TO ADDRESS
COMPREHENSIVE TOXICS ACT OF 2021”**

March 29, 2022

Chairman Tester, Ranking Member Moran, and distinguished members of the Committee, thank you for inviting Wounded Warrior Project (WWP) to submit the following statement on H.R. 3967, the *Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2021*. WWP strongly supports this legislation, and we are grateful to the Committee for holding today’s hearing.

Wounded Warrior Project’s mission is to connect, serve, and empower our nation’s post-9/11 wounded, ill, and injured veterans, Service members, and their families and caregivers. We are meeting our mission through life-changing programming, public policy advocacy, and partnership with like-minded organizations. Since our founding in 2003, WWP has grown from a small, volunteer-led program to an organization with over 800 employees across the country and overseas. Our programs cover a range of services, including benefits counseling, mental health treatment, physical health and wellness activities, job placement assistance, and social engagement opportunities. These programs, services, and connection points contribute to our organizational impact and inform the positions in our statement.

Last year, our nation marked the 20th anniversary of the beginning of the Global War on Terrorism. Throughout this period, young Americans have volunteered for service in the U.S. Military, understanding the risk of combat in places like Iraq, Afghanistan, and elsewhere. They did so with some understanding of the danger to life and limb posed by enemy fire and roadside bombs. Less understood 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.

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



Just as our nation has a responsibility to provide health care and benefits to veterans who suffer physical and mental injuries in service, we must also meet the needs of those who suffer from illnesses associated with toxic exposures, both on the battlefield and in peacetime. The Department of Veterans Affairs (VA) estimates that as many as 3.5 million post-9/11 veterans served in areas where they may have been exposed to burn pits and other toxic substances. Now, many of them have developed rare diseases like cancers, respiratory conditions, and other serious illnesses. These conditions are often appearing earlier in life than one might expect and without any family medical history that might help make sense of their unexpected appearance. Sadly, the commonality around these illnesses have been overseas deployments and exposure to toxic substances in service. With this in mind, WWP is committed to addressing their toxic wounds with the same urgency which we address the physical and invisible wounds of war.

Results from WWP's 2021 *Annual Warrior Survey* illustrate the extent to which post-9/11 veterans suffered toxic exposure during their service and the health conditions they are now facing. Among those deployed in support of Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), and Operation New Dawn (OND), 72.8% reported serving near a burn pit, meaning a burn pit was located either on their base or close enough that they could see smoke. Of those, 67.4% report being near a burn pit on a daily basis. Additionally, nearly all warriors (97.9%) reported some exposure to hazardous or toxic substances during military service, which include desert sands, petrochemicals, and powerful solvents.

Historically, Congress has dealt with military toxic exposures 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 to specifically address the toxic exposure concerns of current and future generations of veterans.

Multiple pieces of legislation introduced in the Senate during the 117th Congress would address individual challenges faced by current-era veterans who were exposed to toxic substances. Notable examples include the *Toxic Exposures in the American Military (TEAM) Act* (S. 927), introduced by Senators Tillis and Hassan, the *Veterans Burn Pits Exposure Recognition Act of 2021* (S. 437), introduced by Senators Sullivan and Manchin, and the *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021* (S. 952), introduced by Senators Gillibrand and Rubio. Similar efforts were seen in the U.S. House of Representatives.

Recognizing that these bills were complementary, they were combined into omnibus legislation offering comprehensive solutions: Chairman Tester's *Comprehensive and Overdue Support for Troops (COST) of War Act* (S. 3003), and House Veterans' Affairs Committee Chairman Takano's *Honoring our PACT Act*. WWP voiced strong support for these landmark pieces of legislation, which would fully address the toxic exposure concerns of the current generation of veterans. In doing so, they would also finally create parity for the post-9/11 generation with what Congress has done to provide health care and benefits for previous generations of veterans who suffered toxic exposures during military service.

On March 3, 2022, the House voted to pass the *Honoring Our PACT Act* on a bipartisan basis with the strong support of WWP and the veterans service organization (VSO) community, and a statement of support from the White House. We note that the version of the bill passed by the House contained several changes to the text as originally introduced. We understand that many of these changes were made to ensure that VA can smoothly implement the legislation without disrupting services for veterans currently in the system. While we offer certain suggestions that we believe would further strengthen the bill, WWP continues to fully support the House passed *Honoring Our PACT Act*, as it would accomplish all of our legislative priorities regarding toxic exposures as outlined below.

Health Care Eligibility for All Exposed Veterans

Wounded Warrior Project strongly believes that VA health care enrollment eligibility should be granted to any veteran who suffered toxic exposures while in service, regardless of service connection. Context proves that establishing service connection is an exceedingly difficult task for those seeking treatment for toxic-exposure related conditions. According to VA, from June 2007 to July 2020, only 2,828 of the 12,582 veterans (22%) who claimed conditions related to burn pit exposure were granted service connection.¹ This is generally consistent with findings from our *Annual Warrior Survey*, which revealed that warriors who filed claims for conditions related to toxic exposures were successful only 31.9% of the time. One critical consequence of a denied disability claim is an inability to access to VA care. Reversing that outcome is a top priority.

Our call for guaranteed 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 permanent Priority Group 6 VA health care enrollment without the need to establish a service-connected disability. Those who served on active duty at Camp Lejeune for at least 30 days between August 1, 1953, and December 31, 1987, are also guaranteed permanent Priority Group 6 enrollment eligibility due to their exposure to contaminated drinking water. In contrast, veterans who served in combat during the Global War on Terrorism, all of whom were potentially exposed to burn pits or other toxic substances, are only eligible for enrollment on this basis for a period of five years after separation.²

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 OEF, OIF, and OND,³ all of whom are now outside the five-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 2021,⁴ it can be reasonably estimated that nearly 750,000 current-era veterans who served

¹ *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. 3 (2020) (statement of Laurine Carson, Dep. Exec. Dir., Vet. Benefits Admin., Dep't of Vet. Aff.).

² See 38 U.S.C. § 1710.

³ U.S. DEP'T OF VET. AFFAIRS, ANALYSIS OF VA HEALTH CARE UTILIZATION AMONG OPERATION ENDURING FREEDOM (OEF), OPERATION IRAQI FREEDOM (OIF), AND OPERATION NEW DAWN (OND) VETERANS 6 (2017).

⁴ U.S. DEP'T OF VET. AFFAIRS, FACT SHEET: VBA CLAIMS DATA -- COMPARISON BY COHORTS (as of March 2021) 6 (2021).

in areas of known exposure are presently ineligible for VA health care if they have not established a service-connected disability. If 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.

If enacted, the *Honoring Our PACT Act* would expand permanent Priority Group 6 enrollment eligibility to any veteran who was discharged after August 2, 1990, and served in an area of known exposure, regardless of location. This would include any veteran who participated in a “toxic exposure risk activity” inside or outside the United States as reflected by the Individual Longitudinal Exposure Record (ILER). The *Honoring Our PACT Act* would also expand eligibility to include any veteran who served after certain dates in locations of current-era deployments, to include Iraq, Afghanistan, Uzbekistan, and surrounding areas; and contingency operations, to include Operations Enduring Freedom, Freedom’s Sentinel, Iraqi Freedom, New Dawn, Inherent Resolve, and Resolute Support Mission.

A significant change made in the current version of the *Honoring Our PACT Act* is that it now includes a 10-year phase-in period for enrollment eligibility, with those who were discharged at earlier dates gaining access to care sooner. Veterans who participated in a toxic exposure risk activity or deployed to a covered location and were discharged from August 2, 1990 to September 11, 2001 would be eligible beginning October 1, 2024; those discharged from September 12, 2001 to December 31, 2006 would be eligible beginning October 1, 2026; those discharged from January 1, 2007 to December 31, 2012 would be eligible beginning October 1, 2028; and those discharged from January 1, 2013 to December 31, 2018 would be eligible beginning on October 1, 2030. All remaining veterans who participated in a covered contingency operation would become eligible on October 1, 2032.

Another change made to the original version of the *Honoring Our PACT Act* is that the current version now incorporates the health care expansion language of Chairman Tester and Ranking Member Moran’s *Health Care for Burn Pit Veterans Act* (S. 3541). This provision would extend eligibility for Priority Group 6 enrollment for recently discharged combat veterans from five years to 10 years. For those who were discharged over 10 years ago, it would establish a one-year open enrollment period, beginning on October 1, 2022. An outreach plan by VA would be required to inform veterans of these new eligibility rules.

When combined, these provisions represent a significant expansion of health care eligibility for veteran who suffered toxic exposures while in service. However, we have identified certain gaps in eligibility that would be created by this incremental approach. For instance, a veteran who was discharged in 2006 after being exposed to burn pits in Afghanistan and who misses the one-year open enrollment period ending on September 30, 2023, would become ineligible for enrollment under the new statute until October 1, 2026 (unless they are establish service connection or eligibility under some other authority). If the veteran was discharged in 2007, they would be ineligible from September 30, 2023, to October 1, 2028.

While we understand that the 10-year phase-in was designed to avoid overwhelming the Veterans Health Administration with a sudden influx of new patients, we would like to offer suggestions that we feel would further strengthen the legislation without doing away with the

phase-in altogether. The 10-year enhanced enrollment period and the one-year open enrollment period complement the phase-in by mitigating gaps in eligibility to some extent. If the 10-year period were extended, or the open enrollment period is lengthened, the gaps could be further reduced. We also suggest that any covered veteran who presents at a VA facility with a potentially life-threatening condition (if left untreated) should be granted immediate enrollment eligibility, regardless of when they were discharged, at any time during the phase-in period.

Although WWP would strongly support these changes, failure to adopt them would not prevent our continued support for Senate passage of the legislation. In any case, once the phase-in period is complete, the *Honoring Our PACT Act* would finally provide parity to the post-9/11 generation by granting them the same access to VA care that Congress has established for previous generations of exposed veterans. This would ultimately achieve one of our long-held priorities to provide permanent access to lifesaving treatment and preventative care to all those who were exposed to toxic substances while in service.

Another change made to the *Honoring Our PACT Act* is that it also now includes the language of the *Supporting Expanded Review for Veterans in Combat Environments (SERVICE) Act of 2021* (S. 2102), introduced by Senators Boozman and Wyden, and passed by the Senate on March 24, 2022. This provision would require VA to offer mammograms to women veterans who served in areas of known exposure, regardless of whether they have any other risk factors for breast cancer such as age, symptoms, or family history. We believe this could provide lifesaving early detection for women veterans who were exposed to toxic substances. WWP fully supports this provision.

A Scientific Framework

In recognition of the challenges associated with establishing direct service connection for toxic exposure-related conditions, Congress has historically created mechanisms to require VA to decide 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 *Honoring Our PACT Act* would address this by establishing a Formal Advisory Committee to review scientific data and receive public input on all potential exposure-related conditions in veterans and their family members who were military dependents. The Committee would be subject to the *Federal Advisory Committee Act* (P.L. 92-464), except for the sunset requirement, allowing it to operate permanently. The Committee would be comprised of nine members, with five members appointed by VA and four members appointed by Congress, with at least two members representing veteran service organizations.

Upon review of the scientific data, the Committee would have the option to advance recommendations to the Secretary of Veterans Affairs for formal evaluation. This process, which would be established by the Secretary, would assign the strength of evidence for a positive association to one of four categories: “sufficient,” “equipoise or above,” “below equipoise,” or “against.” This formal evaluation process would be completed in no more than 120 days. Upon

receiving the results of a formal evaluation, the Secretary would have 160 days to establish a presumption of service connection or publish reasoning in the Federal Register explaining why presumptive service connection is not warranted.

We recognize that VA is also piloting its own internal presumptive decision-making model. WWP praises VA for taking this proactive step to formalize the Secretary's broad authority to establish presumptive disabilities when warranted by scientific data. The pilot is scheduled to conclude in April 2022, and we will assist VA in any way we can to support this process. Regardless of how its created, we look forward to supporting the establishment of a scientific framework that maintains a level of independence, adheres to an evidentiary standard of positive association, and requires decisions within established timeframes. The *Honoring Our PACT Act* in its current form accomplishes these goals.

The *Honoring Our PACT Act* would also require that whenever a presumption of service connection is established or modified, VA must identify claims from all covered veterans who were previously denied service connection for that condition. Outreach and reevaluation of this group's claims would be required and, if granted, they would be awarded an effective date of the previously denied claim. WWP supports this provision.

Concession of Exposure

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. Since the veteran 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 *Honoring Our PACT Act* would address this by conceding that any veteran who was deployed to locations of known exposure, to include Iraq, Afghanistan, Uzbekistan, and surrounding areas was exposed to a list of substances, chemicals, and airborne hazards that the Secretary shall establish and maintain. This represents a change from the original version of the legislation, which conceded exposure for covered veterans to burn pits and other toxic substances currently accepted by the VA adjudication manual. If enacted, we look forward to working with VA to ensure that the list of substances reflects the toxic exposures experienced by veterans who served in covered locations. 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 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)), in recognition of that fact that many 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, proving 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.

Presumptive Disabilities

Recognizing the possible relationship between in-service exposure and illnesses, the U.S. has invested resources in scientific studies to determine the nature of those associations. 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 previous epidemiologic studies found them inadequate to associate illnesses with airborne hazards, 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.⁵ Unfortunately, new studies could take years without the promise of more conclusive outcomes.

The *Honoring Our PACT Act* would bypass this scientific gridlock by establishing a presumption of service connection for any veteran who served on current-era deployments to areas of known exposure and is now suffering from any one of 24 different cancers or serious respiratory conditions, including head cancer, neck cancer, respiratory cancer, gastrointestinal cancer, reproductive cancer, lymphoma, lymphomatic cancer, kidney cancer, brain cancer, pancreatic cancer, melanoma, asthma, chronic bronchitis, chronic obstructive pulmonary disease, constrictive or obliterative bronchiolitis, emphysema, granulomatous disease, interstitial lung disease, pleuritis, pulmonary fibrosis, sarcoidosis, chronic sinusitis, chronic rhinitis, and glioblastoma.

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, offering 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.

While we understand that any influx of new claims would create an increased workload for the Veterans Benefits Administration (VBA) in the short term, this gives us no pause in our support for the *Honoring Our PACT Act*. Historically, WWP and the VSO community have been critical of the VA claims backlog and have supported policies and legislation aimed at reducing it. We see a clear distinction, however, between a backlog that is the result of

⁵ NAT’L ACADS. OF SCIS., ENG’R, AND MED., RESPIRATORY HEALTH EFFECTS OF AIRBORNE HAZARDS EXPOSURES IN THE SOUTHWEST ASIA THEATER OF MILITARY OPERATIONS 181 (2020).

processing inefficiencies or the need for modernization, and an increased claims workload resulting from a significant number of new claims filed by veterans who have been waiting far too long for the care and benefits they deserve. WWP looks forward to working with Congress and VA to ensure VBA is properly resourced and staffed to handle any increased workload that would result from passage of the *Honoring Our PACT Act*.

In August 2021, VA announced that it would begin processing claims for asthma, rhinitis, and sinusitis on a presumptive basis for veterans who served in Southwest Asia, Afghanistan, Uzbekistan, and surrounding areas due to presumed exposure to particulate matter. While WWP applauded the Secretary for using his rulemaking authority to establish these presumptive conditions, we expressed our disappointment with VA's decision to only include veterans who can produce evidence that their conditions manifested within 10 years of discharge. We believe that this unfairly excludes many veterans who were discharged over 10 years ago and may have chosen to self-treat for these conditions. Given the slim chances of establishing service connection, these individuals may have never gathered evidence to file a claim or sought a formal diagnosis of their symptoms. Consequently, they have no medical evidence of when their conditions first manifested, even if symptoms have been present since returning from deployment. For this reason, we urge Congress to codify these presumptive conditions without the 10-year time limitation by passing the *Honoring Our PACT Act*.

Additionally, VA recently announced that it would initiate rulemaking to establish nine rare cancers of the throat and lungs as presumptive disabilities due to exposure to particulate matter. WWP commends the VA for this additional step and looks forward to the rulemaking process. Passage of the *Honoring Our PACT Act* would serve to codify these conditionals as presumptive disabilities for veterans who served in areas of known exposure, as they would all fall under the category of respiratory cancer.

Other Provisions

Finally, the *Honoring Our PACT Act* contains various provisions to support toxic exposure research, improve toxic exposure training for VA employees, promote toxic exposure-related VA resources for veterans, and expand on toxic exposure registries and records. Notably, this would include the establishment of a toxic exposure questionnaire to be administered during all VA primary care appointments. Currently, veterans are asked questions during primary care exams regarding mental health, lifestyle, and smoking to identify those who may need additional help or information on VA programs available to them. By adding questions regarding toxic exposures to these primary care visits, we hope that the provider and the veteran can start to identify possible health risks that could lead to early detection of any underlying conditions.

In closing, WWP thanks the Committee for prioritizing this urgent issue and considering the *Honoring Our PACT Act*. We are proud to champion this landmark legislation which would finally provide parity to current-era veterans who suffered toxic exposure by granting them the same access to care and earned benefits as previous generations of exposed veterans before them. We now urge Congress to work swiftly on a bicameral basis to address any outstanding concerns and send this comprehensive toxic exposure legislation that accomplishes each of our stated goals to the president's desk without delay.