



# **STATEMENT FOR THE RECORD**

**MILITARY OFFICERS ASSOCIATION OF AMERICA**

**HEARING ON PENDING LEGISLATION**

**1<sup>ST</sup> SESSION OF THE 117<sup>TH</sup> CONGRESS**

**BEFORE THE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS**

**MAY 5, 2021**

**CHAIRMAN TAKANO, RANKING MEMBER BOST**, and Members of the House 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 toxic exposure 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 Takano and Ranking Member Bost 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 H.R. 2436, the *Veterans Burn Pits Exposure Recognition Act of 2021*, and H.R. 2127, 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.

### **Overview of MOAA's Positions:**

#### *SUPPORT*

- **H.R. 1273** Vietnam Veterans Liver Fluke Study Act
- **H.R. 1355** K2 Veterans Care Act of 2021
- **H.R. 1585** Mark Takai Atomic Veterans Healthcare Parity Act of 2021
- **H.R. 1972** Fair Care for Vietnam Veterans Act of 2021
- **H.R. 2127** TEAM Act
- **H.R. 2268** Keeping Our Promises Act
- **H.R. 2436** Veterans Burn Pits Exposure Recognition Act of 2021
- **H.R. 2530** Enewetak Atoll Cleanup Radiation Study Act
- **H.R. 2569** Veterans Agent Orange Exposure Equity Act
- **H.R. 2580** Palomares Veterans Act of 2021
- **Discussion Draft**, Fort McClellan Health Registry Act
- **Discussion Draft**, PFAS Registry Act of 2021

#### *NO POSITION*

- **H.R. 2368** COVENANT Act

- **H.R. 2372** Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act
- **H.R. 2607** FASTER Presumptions Act

See statement for comments and recommendations for the bills with no position.

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## **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 has 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.

The Vietnam War was not limited to that single country. The war and its effects crossed into Thailand, Laos, and Cambodia through operations and support efforts. DoD reporting through the Project Contemporary Historical Examination of Current Operations (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.

DoD recognizes herbicides were sprayed in [Laos and Cambodia](#) while not recognizing personnel who may have been on the ground were exposed. While U.S. activities in these countries remains a sensitive issue, it is past time we at least recognize exposures in these countries.

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, Laos, and Cambodia by passing H.R. 2569 is the right thing to do for our veterans. VA recognizes Agent Orange was sprayed there; now we should formally recognize service on the ground. MOAA recommends the dates covering Thailand be extended until June 30, 1976 in accordance with the CHECO report.

Like Agent Orange, the negative ramifications of radiation live on for our veterans as well. Following a B-52 crash over Palomares, Spain, releasing plutonium across the countryside, 1,500 servicemembers partook in the three-month-long cleanup operation. VA [contests](#) all the necessary safety procedures were followed. However, a recent Court of Appeals for Veterans Claims (CAVC) [ordered](#) VA to reexamine how it evaluates disability claims from the incident. CAVC found VA did not fulfill its legal duty when assessing whether dose estimates from the Air Force were based on sound science. The consequences of VA's abdication of their duty have harmed the veterans who sought recognition from VA for their health conditions from radiation exposure. MOAA supports H.R. 2580.

Additionally, 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 H.R. 1585.

Another bill covering the Enewetak Atoll cleanup requires an additional review after the Defense Threat Reduction Agency [acknowledgement](#) of gaps in the safety protocols. A fresh review using National Academies of Sciences, Engineering, and Medicine (NASEM) will ensure a more thorough analysis and encourages NASEM to look at shortfalls in the safety requirements. MOAA supports the study required in H.R. 2530.

In response to the terrorist attacks on September 11<sup>th</sup>, 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 H.R. 1355 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 H.R. 2436 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:**

- **H.R. 1355** K2 Veterans Care Act of 2021
- **H.R. 1585** Mark Takai Atomic Veterans Healthcare Parity Act of 2021
- **H.R. 2436** Veterans Burn Pits Exposure Recognition Act of 2021

- **H.R. 2530** Enewetak Atoll Cleanup Radiation Study Act
- **H.R. 2569** Veterans Agent Orange Exposure Equity Act
- **H.R. 2580** Palomares Veterans Act of 2021

### ***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 that Congress build upon this framework with the concepts included in the 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 H.R. 2127.

The *FASTER Presumptions Act* offers fixes to the presumptive process as well. Given past delays by VA Secretaries in recognizing some illnesses that have met the scientific burden of proof, MOAA is concerned about the bill's deviations from the process followed under the *Agent Orange Act of 1991*. MOAA would like to see increased separation of the advisory committee and the science review board from VA. The checks and balances approach with stringent transparency will support veteran trust in the process and independent analysis. A unique concept proposed in this bill is a "working group" to support expedited review by the VA Secretary. We are very interested in this concept and believe it could help expedite the review and approval of presumptives. Given the recommendations we would like to see, MOAA has not taken a position on H.R. 2607.

As the VA Secretary adds conditions as presumptives through regulation, MOAA supports the codification of these illnesses. By doing so, Congress adds a layer of protection for veterans which

reduces the chances of changes to how an individual Secretary recognizes an illness. MOAA supports passage of H.R. 2268.

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.
- Equipoise 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 Equipoise: 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:**

- **H.R. 2127** Toxic Exposure in the American Military (TEAM) Act
- **H.R. 2268** Keeping Our Promises Act

**MOAA Takes No Position On:**

- **H.R. 2607** FASTER Presumptions 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 H.R. 1972 and the presumption it provides for two scientifically associated conditions.

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. Several bills before the committee establish 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 H.R. 2372 and H.R. 2368. We urge

Congress to take immediate action to concede exposure in accordance with H.R. 2436 and order a review under the new law of all denied claims to ensure appropriate adjudication for those veterans and their survivors.

**MOAA Supports:**

- **H.R. 1972** Fair Care for Vietnam Veterans

**MOAA Takes No Position On:**

- **H.R. 2372** Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021
- **H.R. 2368** COVENANT Act

***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 are several bills that conduct additional research and build registries for toxic exposures that we are very concerned about.

When evidence emerges, veterans were exposed to toxic materials or some other occupational hazard, it should be commonplace for VA to dig deeper on that issue. VA [acknowledges](#) there are concerns and said a determination cannot be made either way until there is more evidence. MOAA believes additional research is needed to examine the incidence of cholangiocarcinoma. Given that [20 percent of veterans tested positive](#) for the related parasite in a VA pilot study, we should take a broader look at this issue. MOAA supports H.R. 1273.

Fort McClellan's [history](#) of being a site for the development and testing of toxic materials is in need of further examination. While VA acknowledges the hazardous chemicals there, they do not recognize the negative health consequences of those who were stationed there. Establishing a registry would aid those stationed there and provide a baseline for further studies. MOAA supports the draft language to establish a Fort McClellan Health Registry.

MOAA also supports the establishment of a per- or poly-fluoroalkyl substances (PFAS) health registry. As evidence grows on the effects of PFAS or "forever chemicals," early establishment of a registry will only aid the researchers and health experts given the [widespread](#) use by our military at over 700 known and suspected sites.

**MOAA Supports:**

- **H.R. 1273** Vietnam Veterans Liver Fluke Study Act
- **Discussion Draft**, Fort McClellan Health Registry Act
- **Discussion Draft**, PFAS Registry Act of 2021

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**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.