



WOUNDED WARRIOR PROJECT

STATEMENT FOR THE RECORD

HOUSE COMMITTEE ON VETERANS' AFFAIRS

LEGISLATIVE HEARING

On

H.R. 1273, Vietnam Veterans Liver Fluke Study Act ; H.R. 1355, the K2 Veterans Care Act of 2021; H.R. 1585, Mark Takaki Atomic Veterans Healthcare Parity Act of 2021; H.R. 1972, Fair Care for Vietnam Veterans Act of 2021; H.R. 2127, the Toxic Exposure in the American Military (TEAM) Act; H.R. 2268, Keeping Our Promises Act; H.R. 2368, the Conceding Our Veterans' Exposures Now and Necessitating Training (COVENANT) Act; H.R. 2372, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; H.R. 2436, the 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, the Palomares Veterans Act of 2021; H.R. 2607, the Fairly Assessing Service-related Exposure Residual (FASTER) Presumptions Act; Discussion Draft, Fort McClellan Health Registry Act (Rep. Tonko); Discussion Draft, PFAS Registry Act of 2021; Draft Legislation, Fort McLellan Health Registry Act;

May 5, 2021

Chairman Takano, Ranking Member Bost, and distinguished members of the House Committee on Veterans' Affairs – thank you for inviting Wounded Warrior Project (WWP) to submit this written statement. 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. 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.

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



H.R. 1273, *Vietnam Veterans Liver Fluke Study Act*

The *Vietnam Veterans Liver Fluke Study Act* would require the Department of Veterans Affairs (VA) to conduct an epidemiological study on the prevalence of cholangiocarcinoma in veterans who served in Vietnam. The study would identify the rate of incidence of cholangiocarcinoma in this population and require VA to track and report its findings in VA central cancer registry.

Cholangiocarcinoma is a type of cancer that affects the bile duct. Those with a history of a past infection from tiny parasites called liver flukes may be at increased risk of cholangiocarcinoma. Liver flukes are found in freshwaters of Southeast Asia and can enter the human body when someone is eating raw or under-cooked fish. Once ingested, the liver flukes grow to adulthood inside the human bile duct. The irritation and scarring caused by liver flukes can lead to bile duct cancer.

While VA informs Vietnam veterans about the increased risk of bile duct cancer due to liver fluke infections, VA is not aware of any studies that show that bile duct cancer occurs more often in U.S. Vietnam War veterans than other groups of people. This legislation will identify if Vietnam War veterans have a higher risk of bile duct cancer. If they do, the next logical step would be to pass legislation granting presumptive disability to classify this illness for this population of veterans. Wounded Warrior Project (WWP) is taking a leading role in advocating for toxic exposure-related illnesses in all generations of veterans, and as such, WWP is proud to support the *Vietnam Veterans Liver Fluke Study Act*. We thank Representative Zeldin and Representative Garbarino for their continued advocacy on this issue.

H.R. 1355, 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 K2,¹ including elevated levels of tetrachloroethylene and particulate matter, the presence of depleted uranium, and the potential for daily contact with radiation that existed for up to 100 percent of the assigned units². 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

¹ National Security Subcommittee Releases Newly Declassified Documents Revealing How Servicemembers Were Exposed to Multiple Toxic Hazards on Karshi-Khanabad Airbase, 2020, <https://oversight.house.gov/news/press-releases/national-security-subcommittee-releases-newly-declassified-documents-revealing>

² https://oversight.house.gov/sites/democrats.oversight.house.gov/files/4.1_Environmental%20Site%20Surve%202002.pdf#page=27

and hematopoietic tissue³. 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.

The *K2 Veterans Care Act of 2021* would address this disparity by creating a framework for establishing 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 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 may speed up the process of establishing service connection by removing one layer of decision-making, we believe that recommendations made by NASEM as an independent, non-profit organization should require approval by either VA or Congress before becoming final. Second, we recommend that language be added to require VA 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 Representative Lynch for introducing this legislation.

H.R. 1585, *Mark Takaki Atomic Veterans Healthcare Parity Act of 2021*

The *Mark Takaki Atomic Veterans Healthcare Parity Act of 2021* would create a presumption of service-connection for certain illnesses in veterans who participated in the clean-up of Enewetak Atoll in the Marshall Islands between January 1, 1977, and December 31, 1980. During this time, Service members were exposed to radiation while cleaning up nuclear fallout waste from U.S. atomic bomb tests. This bill would consider this population to be radiation-exposed for purposes of presumption of service-connection for specified cancers and special medical treatment at VA hospitals.

At least 4,000 Service members were dispatched in the late 1970s to clean up the fallout from U.S. atomic bomb testing conducted around the Marshall Islands a few decades earlier. From 1948 to 1958, 43 nuclear bomb tests were conducted at Enewetak Atoll, which is located about 850 miles from Hawaii. In the 1970s, under threat of legal action by island natives, the U.S. conducted a clean-up of the nuclear bomb sites. Many of the Service members who participated in the clean-up have passed away due to cancers and other deadly illnesses.

³ Army Public Health Center, *Health Status of Personnel Formerly Deployed to Karshi-Khanabad (K2): A Comparative Assessment of Post-Deployment Medical Encounters*, October 2015.

Wounded Warrior Project is taking a leading advocacy role to extend benefits and health care to veterans with a history of toxic exposure in service. This advocacy extends to those exposed to radiation in the Marshall Islands. WWP fully supports the *Mark Takaki Atomic Veterans Healthcare Parity Act of 2021*, and we appreciate Representative Meng for her steadfast dedication to these veterans.

H.R. 1972, *Fair Care for Vietnam Veterans Act of 2021*

Section 9109 of the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021* (P.L. 116–283) expanded VA’s list of medical conditions associated with Agent Orange exposure to include hypothyroidism, bladder cancer, and Parkinsonism. While this represented a significant step forward to provide Vietnam-era veterans with their earned benefits, the list of diseases associated with a presumption of exposure for veterans who served in Vietnam is not comprehensive. In November 2018, the National Academies of Sciences, Engineering, and Medicine reported that there is sufficient evidence of an association linking exposure to Agent Orange and other herbicides with hypertension and monoclonal gammopathy of undetermined significance (MGUS).⁴ These two conditions are not included on VA’s list of presumptive conditions, excluding many veterans from the presumptive path to service connection that is available to others.

The *Fair Care for Vietnam Veterans Act* would expand the list of diseases associated with exposure to certain herbicide agents to include hypertension and MGUS. This would allow for approximately 490,000 Vietnam-era veterans to pursue service connection on a presumptive basis.

Although WWP primarily serves the population of wounded, ill, and injured post-9/11 veterans, we hope to see veterans of all eras receive the benefits they have earned. VA must be prepared to expand its list of medical conditions associated with Agent Orange exposure to include conditions with sufficient scientific evidence of an association. WWP supports the *Fair Care for Vietnam Veterans Act* and thanks Representative Harder for his continued leadership to address the long-term health consequences of military toxic exposures.

H.R. 2127, 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

⁴ Hertz-Picciotto, Irva, et al. “Veterans and Agent Orange.” Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Eleventh Biennial Update), *The National Academies of Sciences, Engineering, and Medicine*, 2018, available at <https://www.nap.edu/read/25137/chapter/1>.

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 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 2021,⁷ it can be reasonably estimated that nearly 750,000 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 who are seriously ill from having to wait until their

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.

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 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 shows 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 Ranking Member Bost for introducing this important legislation.

H.R. 2268, the *Keeping Our Promises Act*

For decades, our nation’s Vietnam-era veterans have been leading the fight for recognition of toxic exposure and its consequences. Congress, for its part, has made significant strides in recent years, passing landmark legislation like the *Blue Water Navy Act* and expanding the list of medical conditions presumptively associated with exposure to Agent Orange. With respect to the latter, many members of this Committee were critical in the recent inclusion of hypothyroidism, bladder cancer, and Parkinsonism as presumptive conditions, as enacted through the *National Defense Authorization Act for Fiscal Year 2021*. However, gaps in care still exist.

The *Keeping Our Promises Act* seeks to address these gaps by extending presumption of service connection to Vietnam-era veterans exposed to herbicides and currently suffering from prostate cancer, A.L. amyloidosis, early-onset peripheral neuropathy, ischemic heart disease, stroke, or hypertension. For all these conditions, the National Academies of Sciences, Engineering, and Medicine has concluded that – at minimum – suggestive evidence exists linking each to Vietnam-era herbicides.⁸

Further, the *Keeping Our Promises Act* extends the sunset date in which VA must make determinations regarding the addition of conditions to its list of presumptives, imposes additional reporting requirements, and prohibits cost as a factor for denying the addition of any disease. The changes are designed to improve accountability and ensure VA remains governed by evidence-based policies and practices.

Wounded Warrior Project supports H.R. 2268, the *Keeping Our Promises Act*. While WWP serves the generation of post-9/11 veterans, we stand by our brothers- and sisters-in-arms from all eras in the fight for the benefits they have earned. WWP is proud to advocate for comprehensive care for toxic exposure-related illnesses, and as such, we believe VA must expand its list of medical conditions associated with Agent Orange as sufficient evidence

⁸ <https://www.nap.edu/read/25137/chapter/1>

emerges. WWP thanks Representative Westerman for championing this legislation as well as the members of this Committee who have cosponsored it, including Representatives Jack Bergman, Gus Bilirakis, and Aumua Amata Coleman Radewagen.

H.R. 2368, the *Conceding Our Veterans' Exposures Now and Necessitating Training (COVENANT) Act*

As members of this Committee well know, exposures to toxic substances and airborne hazards have been the cost of service for generations of veterans. For the post-9/11 Service members and veterans that WWP serves, that cost is manifesting in outcomes like rare cancers, respiratory conditions, and other debilitating diseases that threaten their wellbeing and their lives. We thank Congress and this Committee for its clearly stated interest in addressing toxic exposure, proven through the many legislative solutions that have been introduced in the 117th Congress.

The *COVENANT Act* represents a comprehensive approach to addressing the many challenges associated with military toxic exposures. Among its many important provisions, the bill seeks to concede exposure to numerous toxic hazards across a comprehensive list of locations, streamline the benefits process, offer improved access to health care, and standardize training for VA examiners. Each of these objectives represents a critical component to addressing toxic exposure.

Firstly, precedent set by our Vietnam-era counterparts suggests that conceding exposure is an important first step to care and significantly increases the likelihood that a veteran's toxic exposure-related claims will succeed. Though many Vietnam veterans lack documentation proving their exposure to herbicides like Agent Orange, Congress acted in their favor, enacting language to presume exposure (38 U.S.C. § 1116 (f)). Post-9/11 veterans deserve the same consideration.

The *CONVENANT Act* includes an extensive list of illnesses that would be presumed as service-connected – such as cancers, lung diseases, forms of bronchiolitis, and asthma – if a veteran was stationed at any of the locations on an equally extensive list that includes areas across the Middle East, Southwest Asia, East Africa, and the Philippines. This provision is designed to provide immediate relief to veterans who are suffering now, with little time to wait for long-term epidemiological studies to conclusively prove the nexus between their service and their illness. The lengthy and complex process associated with these studies, while important for building evidence-based standards and practices, has long been a barrier to swift action. As the National Academies of Science, Engineering, and Medicine noted in a recent analysis, many studies on toxic exposures are inconclusive owing in large part to “lack of good exposure characterization” as well as “widespread use of self-reported health outcomes and exposures.”⁹ These may be valid concerns, and VA must adapt to meet the challenges; however, veterans should not bear the burden of inadequate data collection.

⁹ <https://www.nap.edu/read/25837/chapter/2#5>

Additionally, the *COVENANT Act* establishes a standardized training curriculum, medical opinion process, and compensation and pension examination for toxic exposure-related disability claims. Doing so will ensure more fair and consistent consideration for veterans seeking care and compensation.

Finally, the *COVENANT Act* would provide permanent Priority Group 6 health care to all veterans who served in one of the locations covered by the bill, regardless of their disability claim status. This is a model that has been adopted in the past to provide care for veterans of the Vietnam War as well as the Persian Gulf War, allowing these veterans access to care without the burden of establishing a service-connected disability. WWP would like to clearly state the critical nature of this provision. As previously noted, we estimate that as many as 750,000 deployed post-9/11 veterans have not established a service-connected disability and are presently beyond the 5-year special combat eligibility period. This means they have lost the ability to enroll in VA care on that basis and consequently have no safety net should they become ill. No veteran who served in an area of known exposure should be turned away for VA medical care simply because he or she has been unable to establish a service connection. While we prefer the more expansive health care eligibility provision of the *TEAM Act*, which is designed to guarantee permanent enrollment eligibility for all veterans who served in areas of known exposure, irrespective of era or location, we appreciate the spirit of this section and agree that access to care must be a top priority.

Wounded Warrior Project supports the *COVENANT Act* and its key provisions to provide concession of exposure, establish presumptive disabilities, improve training for personnel in the disability claims process, and expand access to care. We strongly believe that each of these represents critical components that must be included in any comprehensive toxic exposure solution this Congress, and we thank Representative Luria for introducing this important bill.

H.R. 2372, 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.”¹⁰ Consequently, NASEM recommends that new epidemiologic studies should be conducted. 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 at least one of more than 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 disease, pleuritis, pulmonary fibrosis, and sarcoidosis. The bill 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.¹¹

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 critical means of financial support, 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

¹⁰ National Academies of Sciences, Engineering, and Medicine, *Respiratory health effects of airborne hazards exposures in the Southwest Asia Theater of Military Operations*, 2020.

¹¹ Institute of Medicine, *Long-term health consequences of exposure to burn pits in Iraq and Afghanistan*, 2011.

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. It is unreasonable to continue to ask these veterans 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 Representatives Ruiz and Fitzpatrick for its introduction.

H.R. 2436, 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.¹² A common 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 or other locations of known exposure. 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 on a presumptive basis.

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

¹² *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>.

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 concession of exposure 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 Representatives Slotkin and Meijer for introducing this legislation.

H.R. 2530, the *Enewetak Atoll Cleanup Radiation Study Act*

The *Enewetak Atoll Cleanup Radiation Study Act* would require the Secretary of VA to enter into an agreement with the National Academies of Science, Engineering, and Medicine to conduct a study of radiation exposure related to the clean-up of the Enewetak Atoll. This study will specifically research the level of radiation exposed by members of the Armed Forces who participated in the clean-up at this location.

While WWP supports this legislation, we are under the assumption that there are only 400 living veterans that participated in the Enewetak Atoll clean-up operation. Many of those who served with them have already passed away, some with cancers that could easily be linked to high exposure to radiation. While we fully support any study in toxic exposure, we feel that for this group of veterans, H.R. 1585 is a more comprehensive piece of legislation to support this population. Waiting for a study to expand benefits and healthcare to these 400 veterans might take longer than they have. We support the passage of H.R. 2530 but not as a replacement to H.R. 1585. WWP feels there is substantial evidence of radiation exposure to grant presumptive disability as it stands. We thank Representative Nehls for introducing this legislation.

H.R.2569, *Veterans Agent Orange Exposure Equity Act*

Unlike veterans who served in Vietnam, veterans who performed in the broader theater of operations in Thailand, Laos, or Cambodia during the Vietnam-era have no presumption of service connection for conditions associated with Agent Orange or other herbicides. A declassified Department of Defense (DoD) report states that herbicides were used to eliminate foliage that provided concealment for enemy forces on the fenced-in perimeters of Thai bases, yet no statute currently exists conceding exposure to herbicides for the veterans who served at those locations.¹³ While the VA Adjudication Procedures Manual-(M21-1) states that certain veterans may have been exposed to herbicides in Thailand, this policy only includes those whose occupational specialties or duties brought them near the perimeters of specified bases; this excludes all those who may have been exposed inside the bases, and even those who served on the perimeter may struggle to provide proof of their duties. Moreover, in January 2020, VA released an updated DoD list of locations where tactical herbicides were used, tested, or stored

¹³ Institute of Medicine (US) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides., 1994, <https://www.ncbi.nlm.nih.gov/books/NBK236347/>

by the U.S. military outside of Vietnam.¹⁴ Locations within Cambodia and Laos were both included in this list.

If enacted, this legislation would require that a presumption of service connection be established for diseases associated with herbicide exposure for those who performed in the following locations: at a U.S. Army base or Royal Thai Air Force base from January 9, 1962, to May 7, 1975; at the Royal Thai Army Replacement Training Center from January 1, 1964, to April 30, 1964; in Laos from December 1, 1965, to September 30, 1969; or in Cambodia at Mimot or Krek, Kompon Cham Province from April 16, 1969, to April 30, 1969.

This bill would ensure that all Vietnam-era veterans who served not only within Vietnam but also within close proximity to the country would be covered by VA's presumptive service connection laws. WWP supports this legislation, believing that veterans of all eras who were made ill as a result of military toxic exposures should be afforded access to the care and benefits, they need. We thank Representative Cartwright for his continued advocacy on behalf of this population.

H.R. 2580, the *Palomares Veterans Act of 2021*

On January 17, 1966, a U.S. Air Force B-52 bomber and a KC-135 tanker aircraft collided over Palomares, Spain, while attempting inflight refueling. During the collision, four thermonuclear weapons were released. The parachutes on two of the weapons failed to deploy, and although there was no nuclear detonation, the chemicals explosives detonated upon impact, releasing radioactive plutonium. Clouds of plutonium dust were scattered in the air, contaminating large areas of land. Over the course of the next three months, approximately 1,600 military and civilian personnel worked to decontaminate the accident site.¹⁵

The *Palomares Veterans Act of 2021* would provide a presumption of service-connection for veterans who served in the response effort in Palomares, Spain, from January 17, 1966, to March 31, 1967. WWP supports H.R. 2580 and thanks Representative Hayes for her continued leadership on this issue to ensure these veterans receive the care and benefits they deserve.

H.R. 2607, the *Fairly Assessing Service-related Exposure Residual (FASTER) Presumptions Act*

Countless veterans faced exposure to environmental hazards and other toxic substances during service, including airborne hazards from burn pits, radiation from atomic testing, and water contaminated with per- and polyfluoroalkyl substances (PFAS). This exposure has led to adverse health impacts for many, including cancers, birth defects, infertility, and respiratory conditions. Veterans dealing with these serious health issues face an added burden of navigating a cumbersome disability benefits claim process, presenting a barrier to accessing care for those

¹⁴ U.S. DEP'T OF VET. AFFAIRS, PUBLIC HEALTH, "Herbicide Tests and Storage Outside the U.S.," available at https://www.publichealth.va.gov/docs/agentorange/dod_herbicides_outside_vietnam.pdf

¹⁵ U.S. DEP'T OF VET. AFFAIRS, PUBLIC HEALTH, "Aircraft Collision Cleanup at Palomares, Spain," available at <https://www.publichealth.va.gov/exposures/radiation/sources/palomares.asp>

who are suffering from the long-term effects of toxic exposure. To support their claims, veterans must locate service records and provide medical evidence, which they may not have access to or which may not exist. This lengthy and stressful process often results in delays while conditions steadily worsen.

The *FASTER Presumptions Act* would seek to modernize VA's disability claims process and remove barriers to ensure that veterans who are suffering from toxic exposure-related health concerns receive their benefits faster. There are several critical components to this legislation. First, it would provide a new decision-making framework for VA to establish presumptions for service connection based on toxic exposures. This new process includes a Formal Advisory Committee, a Science Review Board, and a Working Group to recommend to the Secretary whether to establish a presumption of service connection. An expert advisory panel for Constrictive Bronchiolitis would also be created. We note that all of the positions in each newly established component of this framework would be appointed by the Secretary.

This section would also grant exposed veterans' temporary access to VA health care for any condition that is pending research recommended by the Formal Advisory Committee. While we appreciate the intent of this section to expand care to exposed veterans who are otherwise ineligible, we strongly prefer the health care provision of the *TEAM Act*, which would grant permanent enrollment eligibility to all veterans who were exposed to toxic substances during service, irrespective of their current diagnoses or service connection status.

Second, this bill requires DoD and VA to develop and execute a plan to strengthen health data collection, which would be integrated into the electronic health record modernization and individual longitudinal exposure record (ILER) programs.

Third, the *FASTER Presumptions Act* would commission an epidemiological study, a toxicology study, and a study of total and respiratory disease mortality to examine the personal health information of veterans who served in Southwest Asia.

Finally, it would require VA to provide employee and medical examiner training to improve toxic exposure claims adjudications no less than once a year.

Wounded Warrior Project supports most provisions of the *FASTER Presumptions Act*, and we believe that improved data collection and analysis, along with training for VA medical examiners, are absolutely critical going forward. While we agree that a permanent scientific framework for establishing presumptive conditions now and in the future is needed, we prefer the fully independent Toxic Exposure Review Commission, which includes VSO representation, and scientific reviews conducted by NASEM as an entity independent of the federal government as envisioned by the *TEAM Act* over the Formal Advisory Committee and Science Review Board appointed by the Secretary as envisioned by this legislation. However, we see a great deal of value to the establishment of a Working Group to advise the Secretary on the establishment of presumptions, and we believe insight into its deliberations would bring an added level of transparency that has not existed under previous similar frameworks. We look forward to continuing to work with the Committee to address these issues, and we thank Representative Trone for introducing this important bill.

Discussion Draft, *PFAS Registry Act of 2021*

One of WWP's goals is to empower wounded warriors to be their own best advocates. That goal is supported by pursuing initiatives that allow veterans to contribute to impactful data gathering and to build a knowledge base of the issues that may affect their health and wellness. Much like our interest in encouraging warriors to enroll in VA's Airborne Hazards and Open Burn Pit Registry, WWP supports a similar effort being pursued through the *PFAS Registry Act*.

Per- and polyfluoroalkyl substances (PFAS) are the larger family of chemicals that includes perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) compounds that have, to varying degrees, contaminated drinking water at several military installations across the country. Under the *PFAS Registry Act*, VA would be required to establish and maintain a national database for veterans and Service members experiencing health problems possibly due to PFAS contamination. The registry would function in a similar fashion to the VA Airborne Hazards and Open Burn Pit Registry, as members would receive updates on recent scientific developments – including the effects of PFAS exposure, availability of possible treatment options, and information on what resources may be available to address their health concerns.

There is reason to believe that health concerns related to PFAS may be both serious and widespread. In March 2018, DoD released a report indicating that, of 524 military installation drinking water systems tested, 36 sites tested above potentially hazardous levels set by the Environmental Protection Agency, and over 400 sites had known or suspected release of PFOS/PFOA (as of August 31, 2017). More recently, DoD testified on March 11, 2020, before the House Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies to report on its proactive measures to reduce the risks posed by PFOS and PFOA to human health. Nevertheless, prior exposure raises the possibility of future health issues, including developmental delays in fetuses and children; decreased fertility; increased cholesterol; changes to the immune system; increased uric acid levels; changes in liver enzymes; and prostate, kidney, and testicular cancer.

As part of our interest in ensuring that veterans with a history of toxic exposure in service are properly cared for, WWP supports the *PFAS Registry Act*. Veterans across the country will have the opportunity to benefit from improved public health-tracing and targeted information-sharing related to the health and treatment options that may need to be considered due to their prior service. We appreciate Representative Pappas for considering moving this legislation forward and advocating for those exposed to contaminated drinking water in service.

Draft Legislation, *Fort McClellan Health Registry Act*

Fort McClellan, located in Calhoun County, Alabama, was one of the Army's most active bases in the 20th century, reaching its pinnacle of operations during World War II. The base housed the Army Military Police Corps, the Women's Army Corps, and the Army Chemical School and served as an Army Recruit Training Center at various times from its opening in 1917

to its eventual closure in 1999 as a result of the Army Base Closure and Realignment Committee (BRAC) program. Fort McClellan's research mission put it at high risk for exposure to herbicide agents and radioactive materials, an issue exacerbated by the nearby Monsanto chemical plant, which released polychlorinated biphenyls (P.C.B.s) into the environment.

While VA acknowledges that Service members stationed at Fort McClellan may have been exposed to P.C.B.s, radioactive compounds, and chemical warfare agents – including mustard gas and nerve agents – it still alleges that “there are no adverse health conditions associated with service” at the base.¹⁶

The *Fort McClellan Health Registry Act* aims to help veterans, VA, and the scientific community better understand the outcomes of toxic exposures at Fort McClellan by establishing a registry of veterans who, after being stationed at the base, have sought VA benefits and care. The registry would track applications for care and compensation as well as health examinations and other relevant medical information.

Wounded Warrior Project supports the *Fort McClellan Health Registry Act*. In our work to advocate for post-9/11 veterans struggling with toxic exposures, VA's Airborne Hazards and Open Burn Pit Registry has been a critical source of information. Nearly 250,000 veterans have enrolled in the Burn Pit Registry, contributing valuable medical information and data that will help VA to understand and respond to toxic exposures for years to come. Fort McClellan veterans deserve the same opportunity. We thank Representative Tonko for being a voice for the veterans of Fort McClellan.

Closing

Wounded Warrior Project thanks the House 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.

¹⁶ <https://www.publichealth.va.gov/exposures/fort-mcclellan/index.asp>