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FINANCIAL OFFICER,  
DEPARTMENT OF VETERANS AFFAIRS  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

**March 21, 2024**

Good morning, Chairman Bost, Ranking Member Takano, and other Members of the Committee. Thank you for inviting us here today to present our views on the draft Toxic Exposure Fund Improvement Act (dated February 21, 2024), which would affect Department of Veterans Affairs (VA) programs and services. Joining me today are Laura Duke, Chief Financial Officer, Veterans Health Administration (VHA), and Lasheeco Graham, Chief Financial Officer, Office of Financial Management, Veterans Benefits Administration (VBA).

While our testimony will address the elements of the hearing invitation, I want to first take this opportunity to thank the Committee and the Congress for the tremendous work done by you and your professional staff members in working with VA to deliver world-class health care and benefits to millions of Veterans, their families, and caregivers. In recent years, Veterans have been empowered with more health care options through laws such as the VA MISSION Act of 2018 (P.L. 115-182). Women Veterans now have greater access to critical care and services following the enactment of the Deborah Sampson Act of 2020 (title V of P.L. 116-315). In August 2023, we celebrated the one-year anniversary of the Honoring our PACT Act of 2022 (the PACT Act) – one of the largest expansions of VA health care and benefits our country has ever seen. The impact these laws have on the health and well-being of the brave men and women who have served our country fulfills a promise we have made to care for them and ensure they receive the benefits they have dutifully earned.

I am excited to share that VA recently announced that **all** Veterans who meet basic service and discharge requirements and were exposed to toxins and other hazards while serving in the military—at home or abroad—are eligible to enroll directly in VA health care as of March 5, 2024. This means that all Veterans who served in the Vietnam War, Gulf War, Iraq, Afghanistan, the Global War on Terror, or any other combat zone after 9/11 are eligible to enroll directly in VA health care without first applying for VA benefits. Additionally, Veterans who never deployed but were exposed to toxins or hazards while training or on active duty in the United States are also eligible to enroll.

**A. PACT Act Implementation and the Cost of War Toxic Exposures Fund**

As of February 25, 2024, VA has completed more than 5.25 million toxic exposure screenings, and there are more than 4 million current enrollees in the PACT Act

planning population.<sup>1</sup> VA has approved 720,945 claims related to the PACT Act for Veterans or Survivors, and approximately 911,777 total Veterans and Survivors have completed PACT Act related claims.<sup>2</sup> These numbers, however, do not convey the true impact. Let me share with you one Veteran's journey with the PACT Act.

Randall Doerr, a retired Marine Corps gunnery sergeant (GYSGT), served with distinction through combat tours in Afghanistan and Iraq. During these deployments, GYSGT Doerr was exposed to burn pits and fine particulate matter. On February 6, 2019, he submitted a claim for his newly diagnosed Non-Hodgkin's lymphoma (NHL), attributing the condition to environmental hazard exposure in the Southwest Asia theater. Although his claim was initially denied, the enactment of the PACT Act on August 10, 2022, proved significant for GYSGT Doerr. VA received his supplemental claim for NHL on February 23, 2023, with a VA examiner opining that the diagnosed NHL is at least as likely as not due to Southwest Asia exposures. A subsequent rating decision assigned a 100 percent evaluation and generated a retroactive award of \$11,409.<sup>3</sup>

The PACT Act is having an impact, but our work is far from over. We are applying lessons learned and best practices as we implement potentially the largest health care and benefits expansion in VA history. We are improving the way we reach Veterans and strive to continuously improve delivery of care and services. We acknowledge we have a commitment to the American public to ensure proper oversight and transparency of the funds and resources we have been entrusted to manage. This testimony will describe VA's views on the draft bill, our ongoing efforts on TEF oversight and methodology, and lessons learned that we are applying as we strive for excellence.

## **B. VA's Position on the Toxic Exposure Fund Improvement Act**

Given the complexities and dynamics of our experience with PACT Act implementation, VA is confident that its current authorities are sufficient to continue implementing the PACT Act's expansion of health care and benefits to Veterans with environmental exposures in the manner intended by Congress. While VA appreciates the opportunity to work with the Committee to offer technical assistance on prior drafts of the bill, amending the PACT Act as suggested by the bill would severely constrain VA's ability to provide timely, high-quality health care and benefits to all Veterans, including those with toxic exposure. While the draft bill reflects some input from VA on critical implementation issues, there remain significant and substantial technical and programmatic issues that would frustrate operationalizing the bill if enacted.

**VA opposes this draft bill.**

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<sup>1</sup> [VA-PACT-Act-Dashboard-Issue-28-030124\\_FINAL\\_508.pdf](#)

<sup>2</sup> [VA-PACT-Act-Dashboard-Issue-28-030124\\_FINAL\\_508.pdf](#)

<sup>3</sup> [VA-PACT-Act-Dashboard-Issue-28-030124\\_FINAL\\_508.pdf](#)

### **C. Analysis of the Toxic Exposure Fund Improvement Act**

Section 2(a) of the bill would replace the current 38 U.S.C. § 324 with a new statute. The proposed section 324(a) would direct VA to use any funds appropriated pursuant to the authorization of appropriations in proposed section 324(b)(3) to carry out the purposes of the Toxic Exposure Fund described in proposed section 324(b)(4).

Proposed section 324(b)(1) would establish in the Treasury an account, known as the Toxic Exposure Fund (the Fund), to carry out the purposes described in proposed section 324(b)(4). Proposed section 324(b)(2)(A) would require transfer from the savings described in section 324(e)(1) to the Toxic Exposure Fund the following amounts: \$26.411 billion for fiscal year (FY) 2026, \$28.524 billion for FY 2027, \$30.806 billion for FY 2028, \$33.271 billion for FY 2029, \$35.932 billion for FY 2030, \$38.807 billion for FY 2031, \$41.912 billion for FY 2032, and \$45.264 billion for FY 2033. Proposed section 324(b)(2)(B) would provide that any amounts transferred under subparagraph (A) would remain unavailable for obligation or expenditure until such amounts are appropriated. Proposed section 324(b)(2)(C) would provide that any of these amounts not appropriated for an FY would be available for appropriation, under certain terms and conditions, during the subsequent FY.

, Under proposed section 324(b)(2)(C)(ii), the Office of Management and Budget (OMB) would have to calculate, and the budget would have to include, adjustments reflecting such carried over amounts. Proposed section 324(b)(3)(A) would authorize to be appropriated for each of FYs 2026-2033 an amount not to exceed the total amount transferred to the Fund under paragraph (2); these amounts, if appropriated, would remain available until expended. Proposed section 324(b)(3)(B) would provide that, for any of FYs 2026-2033 for any discretionary appropriation under the heading "Toxic Exposure Fund" provided to VA, the total amount of such appropriations for the applicable FY (not to exceed the total amount remaining in the Fund) would be subtracted from the estimate of discretionary budget authority and the resulting outlays for any estimate under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985, and the amount transferred to the Fund would be reduced by the same amount. Proposed section 324(b)(4) would state that amounts appropriated from the Fund would be available for: (1) the delivery of Veterans' health care under the PACT Act, subject to the eligibility criteria in 38 U.S.C. § 1710(e), as added by the PACT Act; (2) any expenses, including administrative and information technology (IT) expenses, incident to the delivery of such Veterans' health care or the delivery of benefits under the PACT Act, including to carry out section 701 of the PACT Act; and (3) medical research under the PACT Act. Amounts appropriated from the Fund would not be available for leases as authorized or approved under 38 U.S.C. § 8104.

Proposed section 324(c) would set forth requirements relating to accountability and oversight. Proposed paragraph (1) would require VA, not later than 180 days after the date of enactment of this Act, to submit a work plan to Congress that includes the proposed allocation of funds authorized to be appropriated pursuant to section 324(b)(3)

for each of FY 2025-2033. The workplan would have to include the amount of money to be obligated or expended in each year from the Fund and a description of how each such account supports the strategic goal of serving Veterans exposed to toxic materials. VA would have to submit a report to Congress annually (not later than January 1 of each of FY 2027-2033 that includes the amount of money obligated or expended in the prior FY from the Fund, a description of any such project using funds, and whether such projects are serving Veterans exposed to toxic materials. VA would have to provide an update in the form of testimony and any additional reports to Congress upon request.

Proposed section 324(d) would state that no amounts could be transferred into the Fund from amounts that were designated by Congress as an emergency requirement pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

Proposed section 324(e) would provide that the amounts made available under section 324(b)(2) would be derived from savings generated through the modification of the Fund by enactment of this Act to cover the cost of the Fund; any funds in excess of the total amounts so made available would be returned to the Treasury's general fund. VA would have to include in the documents supporting the President's budget request detailed estimates of the sums described in section 324(b) for the applicable FY. VA could establish policies and procedures for developing the annual detailed estimates, after consultation with Congress.

Proposed section 324(f) would state that the budgetary effects of this section would not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. § 933(d)). Similarly, the budgetary effects of this section would not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 from the 115<sup>th</sup> Congress. No amounts in the Fund could be made available except to the extent provided in advance in appropriations acts; any act that rescinded or reduced amounts in such accounts would not be estimated as a reduction in direct spending under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985.

Section 2(c) of the bill would specify that amounts made available by the Fiscal Responsibility Act of 2023 (FRA, P.L. 118-5) would be carried out consistent with requirements of 38 U.S.C. § 324, as amended. Section 2(c) would also deem the amounts appropriated by the FRA for FY 2024 and FY 2025 to the TEF as amounts transferred to the Fund, and such funds would be treated in the same manner as amounts so transferred for each of FY 2026-2033. Nothing in section 2(c) could be construed to require such amounts for FY 2024 and 2025 to be reappropriated by Congress, and such funds would be available for obligation and expenditure without being subject to future appropriation.

Section 3(a) of the bill would require VA to submit an annual assessment on the funding provided to carry out the Fund, beginning not later than November 1, 2024. Section 3(b)

would require VA to submit to Congress by October 1, 2033, a report containing proposed funding levels for the Fund for each of FY 2034-2045. Section 3(c) would provide that, unless a joint resolution of disapproval is enacted into law, on October 1, 2034, and on October 1 of each of FY 2035-2045, there would be appropriated to the Fund the amount submitted by VA under section 3(b)(1), which would then be subject to appropriation for the purposes of the Fund. Section 3(d) would establish a process for a joint resolution, as referenced in section 3(c).

We understand that the draft bill was written with the intent to change the budgetary treatment of the TEF from scoring as direct spending to discretionary spending for purposes of how the Congressional Budget Office (CBO) and OMB estimate the effects of future authorizing legislation on spending from the TEF. As previously noted by CBO and OMB, some of the costs of such legislation that would otherwise have been paid from discretionary appropriations for VA will now be paid in part from the TEF. As a result, cost estimates for future legislation that would affect activities potentially covered by the TEF now show effects on both discretionary authorization levels and direct spending (most commonly called mandatory spending). In general, legislation that would result in an increase in mandatory spending is required to be offset with a reduction in mandatory spending or increase in revenues under the Statutory Pay-As-You-Go Act of 2010 (PAYGO). As a result, certain VA authorization bills under consideration in Congress have been newly subject to this PAYGO requirement, and we appreciate the Committee's desire to solve this issue. However, this bill leads to undesirable effects on TEF execution and budgeting. There are six primary issues that would adversely affect VA, as outlined below.

Initially, there is no existing mechanism that would allow VA to execute the transfer of savings under the proposed section 324(e). It appears that the intent is to transfer savings from the reduction in direct spending that CBO would score to this bill. The savings transferred into the Fund would then be subject to future appropriation but exempt from being counted for purposes of discretionary budgetary enforcement. However, the savings referred to is based on scoring and does not correlate to actual dollars that can be transferred. Due to a real difference in the timing between when amounts are scored by CBO and when amounts are appropriated into an account, the savings identified are not able to be transferred into an account for future spending. In other words, the reduction in direct spending that is anticipated to be scored by CBO does not generate actual cash in a Treasury account that can be transferred for future use. Because there is no funding in a Treasury account, it is unclear how the funding would be transferred to the Fund.

The impact of this is that VA's ability to provide benefits and services for toxic-exposed Veterans would be significantly jeopardized. The draft bill authorizes appropriations from the Fund, but without balances in the Fund, no appropriation could be provided from existing funds. As a result, additional appropriations from other sources would be needed to replace the funding that was intended to be appropriated from the Fund, and these additional appropriations would score as a cost for budget enforcement.

Second, the draft bill would both sunset the authority and impose a fixed limit on the amount that could be appropriated to the new Fund without being scored for budget enforcement. The current authority in 38 U.S.C. § 324 is permanent (i.e., without a sunset date) and limits the appropriation to the amount necessary to increase funding over the FY 2021 baseline for Veterans' health care and benefits associated with exposure to environmental hazards and medical and other research relating to exposure to environmental hazards.

Unless funds are appropriated that exceed the fixed amount authorized and exempt from budget enforcement, it could significantly constrain VA's ability to respond to needs in future years as VA continues to evaluate, research, and determine costs related to toxic exposures, including for conditions that may be established in the future to be related to toxic exposure. The sunset date creates uncertainty about the source of funding for allowable activities under the Fund when that date is reached.

Third, the bill would change the allowable purposes of the Fund. Under its current authorization, the TEF is available to fund Veterans' health care and benefits associated with exposure to environmental hazards, as well as research associated with exposure to environmental hazards, and to carry out the continuation of modernization, development, and expansion of capabilities and capacity of information technology systems and infrastructure of VBA, including for claims automation, under section 701 of the PACT Act. Under the draft bill, the new purposes would authorize the Fund to fund the delivery of Veterans' health care under the PACT Act, any expenses incident to the delivery of Veteran's health care or benefits under the PACT Act, and medical research under the PACT Act, and would maintain the same purpose related to section 701.

This would narrow the purpose of the new Fund and complicate implementation, particularly as it pertains to Veterans who, prior to PACT Act implementation, were already eligible for health care or benefits as a result of exposure to environmental hazards. Moreover, the draft bill would complicate implementation in FY 2024, as section 2(c) would specify that the FY 2024 appropriation provided by the FRA would also be required to conform to the new purpose. Because FY 2024 is already underway, the bill would introduce significant uncertainty as to whether current execution of the TEF funding would align with the new purpose. Additionally, because the bill would narrow the purpose of the new Fund, VA would face further pressure to fund Veterans' health care, benefits delivery, and research with limited discretionary resources, potentially constraining VA's ability to provide timely, high-quality care and benefits to all Veterans, including those with toxic exposures. In addition, to the extent VA would require additional discretionary funding to replace resources previously provided in the TEF, Veterans services provided by other Executive Branch agencies, such as the Departments of Labor, Health and Human Services, and Housing and Urban Development, could be impacted, thereby reducing critical resources to Veterans who need them most.

Fourth, Title II of the PACT Act provides VA a statutory process to establish presumptions of service connection in relation to toxic exposures. However, it is unclear whether, under the draft bill, the Fund would be available for benefits created pursuant to Title II that were not specifically included in the PACT Act.

If the draft bill does have the impact of limiting the availability of the Fund to support future presumptive conditions, the draft bill would significantly and adversely affect Veterans and their dependents. For example, by limiting the Fund to only administrative expenses incident to the delivery of benefits under the PACT Act, the draft bill may not allow the Fund to support outreach related to the establishment and implementation of presumptions created in the future regarding toxic exposure but not expressly included in the PACT Act. VA is continuing to evaluate the health consequences of Veterans' toxic exposures, but the costs of these efforts would potentially be excluded from the Fund's coverage. VA recently announced expanded outreach beyond our efforts in 2023 to ensure we reach more Veterans, with greater emphasis on Veterans in under-represented communities. As written, this bill could potentially prohibit spending for enhanced outreach and would exclude pre-PACT Act herbicide issues from the Fund. Other affected populations could include radiation-exposed Veterans, combat Veterans, and Camp Lejeune Veterans and family members, among others.

Fifth, the proposed § 324(b) identifies the first applicable FY as 2026. However, under the proposed § 324(c)(1), VA would be required to submit a workplan associated with FY 2025 as well. Additionally, the current language for the TEF in § 324(c) refers to the authorization of investment in three identified categories, but under the proposed bill this "investment" term would no longer appear. This would create ambiguity that would result in operational challenges. It is unclear if the language in the proposed § 324(c) is meant for flexibility or exclusion. Section 2(c) of the bill would allow for the use of funds already appropriated for FY 2024 and FY 2025, but it is unclear if it would be appropriate to submit a workplan for FY 2025 as well.

The bill would also introduce further confusion given technical issues with the language. For example, the bill uses the term "toxic materials" in proposed § 324(c)(1)(B)(ii) and (2)(A)(iii), but this term is not used in any other statute. These references are in the context of the required workplan and reporting requirements, but it is unclear if this is intended to refer to some other concept than "environmental hazards" as currently used in § 324(c), or more generally "toxic exposure" or "toxic-exposed veterans", as those terms were defined in the PACT Act. Additionally, the bill's inclusion of limits on the use of the Fund to the costs of health care "under the PACT Act" misses that Veterans may be eligible under multiple authorities, some of which were added by the PACT Act and some of which predated the PACT Act. For example, combat Veterans are eligible for a 10-year window following their discharge or release under 38 U.S.C. 1710(e)(1)(D), but many of these Veterans are also "covered veterans" under 38 USC 1710(e)(1)(H), as added by the PACT Act. The bill is ambiguous as to whether VA could use resources in the Fund for health care for these Veterans, whose enrollment may have predated the PACT Act but who are nevertheless eligible "under the PACT Act" as well.

In summary, the bill could significantly complicate VA's ability to implement the PACT Act and furnish health care and benefits for Veterans and family members with toxic exposures. The complexity and construct of the draft bill, even given changes made based on VA's discussions with the Committee, remain. The draft bill could limit funding for health care delivery, information technology and Veteran outreach efforts, benefits administration, and critical research in toxic exposure. In doing so, this draft bill would short-change Veterans and make it more difficult for them to receive the timely and high-quality care and services they have earned.

#### **D. TEF Methodology and Oversight**

The TEF is not available to implement and operationalize the entire PACT Act. As enacted at 38 U.S.C. § 324(c), the TEF is available to increase funding for investment in: (1) the delivery of Veterans' health care associated with exposure to environmental hazards in the active military, naval, air, or space service; (2) expenses incident to the delivery of Veterans' health care and benefits associated with exposure to environmental hazards in the active military, naval, air, or space service, including administrative expenses, such as information technology and claims processing and appeals, and excluding leases as authorized or approved under 38 U.S.C. § 8104; (3) medical and other research relating to exposure to environmental hazards (38 U.S.C. §324(c)(3)), and (4) continuation of the modernization, development, and expansion of capabilities and capacity of IT systems and VBA infrastructure, including for claims automation, to support expected increased claims processing for newly-eligible Veterans pursuant to the PACT Act.

VA's Financial Policy Documents are publicly available on our website at <https://department.va.gov/financial-policy-documents>; VA has provided a specific methodology to estimate the health care expenditures and expenses incident to the delivery of Veterans' health care and benefits associated with exposure to environmental hazards as well as medical and other research relating to exposure to environmental hazards.<sup>4</sup> VA exercises oversight of TEF funding through VA's governance process consistent with the TEF spend plan approved by Congress in 2022. Spending oversight and funding execution will be routinely reviewed by the VA Investment Review Council and during monthly budget reviews hosted by VA's Office of Management. VA provides regular briefings to the Eight Corners on TEF spending and methodology and section 254 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations, Act, 2024 (Div. A of P.L. 118-40), requires quarterly TEF reporting, and VA will continue to provide transparency and oversight as good stewards of the Nation's resources.

#### **E. TEF Lessons Learned and Way Ahead**

VA has acknowledged and sought to improve our internal controls around the TEF by implementing lessons learned from previous supplemental funding. To help ensure Administrations and Staff Offices are using TEF appropriately, we have been diligently

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<sup>4</sup> [Chapter 12 - Toxic Exposures Fund - Financial Policy Documents \(va.gov\)](#)



reviewing our legal requirements to develop individual methodologies and codify those within our VA Financial Policy. The key tenet of each methodology is the ability to estimate, track, and reconcile costs and expenses incident to the delivery of Veterans' health care and benefits as well as medical research associated with environmental exposures.

## **Conclusion**

VA appreciates the opportunity to present VA's position on this bill. The issues and impact addressed today are both technical and programmatic. We emphasize, though, the true impact this bill would have, if enacted, on Veterans. Congress enacted the PACT Act to honor our pledge to the men and women who served and sacrificed and came home needing care. Our Veterans are not technical or programmatic issues – they are people—people like Randall Doerr, who look to VA to honor our promise and deliver world-class care they can count on, now and in the future. I am proud to be part of this noble mission to care for the Nation's Veterans.

This concludes my testimony. My colleagues and I are prepared to respond to any questions you may have.