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## WOUNDED WARRIOR PROJECT

**Statement of  
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**Before the**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

**“Reviewing VA’s Implementation of the *PACT Act*”**

**May 16, 2023**

Chairman Luttrell, Ranking Member Pappas, and distinguished members of the House Committee on Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs – thank you for inviting Wounded Warrior Project (WWP) to participate in today’s hearing on the delivery of disability compensation benefits under the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (P.L. 117-168). WWP commends the Subcommittee for its work on this landmark legislation, and we were proud to support its successful passage into law last year. Providing access to care and benefits for veterans suffering from the health consequences of military toxic exposures remains a top WWP priority in the 118th Congress, and we share and appreciate the Subcommittee’s continued commitment to ensure the successful implementation of this historic law.

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 over 188,000 registered post-9/11 warriors and 47,000 of their registered family members. In addition to programming focused on mental and physical health, our advocacy before the Subcommittee is informed by financial wellness services that include assisting veterans with their disability claims at the Department of Veterans Affairs (VA).

For two decades, Service members who were deployed to post-9/11 battlefields were exposed to dangerous fumes from burn pits and other toxic chemicals. Consequently, many veterans now suffer from respiratory conditions, cancers, and other serious illnesses, but have historically struggled to obtain service connection. The *PACT Act* comprehensively addressed this issue, representing the largest expansion of VA benefits in decades. VA deserves praise for moving swiftly to deliver lifechanging benefits to exposed veterans who need them, many of



whom have been waiting for years; however, implementing such significant legislation understandably carries with it certain challenges. WWP's views and suggestions to address those challenges are given in the spirit of partnership with VA and are informed by our network of accredited National Service Officers, colleagues who respond to phone calls and emails in our Resource Center, and the warriors they interact with on a daily basis.

### ***Disability Claims Processing***

Prior to the passage of the *PACT Act*, many veterans who submitted VA disability compensation claims for toxic exposure-related conditions (particularly those who suffered exposures during post-9/11 deployments) often faced significant obstacles when attempting to link their illnesses to service. Establishing an in-service "injury" was challenging because exposure to burn pits and other toxic substances was often not documented in the veteran's military record. Establishing a connection to service, or "nexus," was made difficult by the fact that many medical conditions associated with toxic exposure are more likely to manifest several years after discharge and be related to exposures not documented in the service medical record. These factors would most often culminate in VA finding insufficient evidence to establish service connection.

The *PACT Act* addressed these challenges by establishing over 20 new presumptive conditions related to toxic exposures, allowing VA to presume these conditions are service connected for veterans who served in areas of known exposure. While the majority of these conditions are cancers and respiratory illnesses associated with Gulf War and post-9/11 service in Iraq, Afghanistan, and surrounding areas, it also created two new conditions associated with Agent Orange exposure and expanded qualifying service locations for Agent Orange and radiation exposure. The new law also created a legal concession that toxic exposure occurred for veterans who served in certain locations (*see* 38 U.S.C. § 1119 (b)) and required that any veteran who submits a disability claim and participated in a toxic exposure risk activity (TERA) be granted a medical examination and nexus opinion if the evidence in the claim is insufficient to grant service connection. This is especially useful for veterans who are claiming conditions that are not presumed to be connected to service pursuant to the *PACT Act*. The legislation defines TERA as any activity recorded in an exposure record tracking system, such as the Individual Longitudinal Exposure Record (ILER), or any other exposure as determined by VA.

These new policies have understandably resulted in a significant influx of new disability claims. As of May 6, 2023, the Veterans Benefits Administration (VBA) has received over 546,529 *PACT Act*-related claims since the bill was signed into law on August 10, 2022, representing 33.9 percent of the total claims received over that time period.<sup>1</sup> Although this larger workload has created an increase to the claims backlog, we believe this is necessary to ensure that exposed veterans, many of whom have been filing claims unsuccessfully for years, are finally able to access the health care and benefits they need. VA has already begun implementing provisions of the legislation that granted the ability to hire additional employees to address the increased workload, and WWP believes it is critical that Congress continues to fully fund these important authorities.

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<sup>1</sup> U.S. DEP'T OF VET. AFFAIRS, *VA PACT Act Performance Dashboard 2*, May 12, 2023, available at [https://www.accessocare.va.gov/pdf/VA\\_PACTActDashboard\\_Issue6\\_051223\\_508.pdf](https://www.accessocare.va.gov/pdf/VA_PACTActDashboard_Issue6_051223_508.pdf).

One strategy VA is utilizing to address the increased workload is Automated Decision Support (ADS) technologies. This technology is designed to scan a veteran's records to extract relevant information such as current medical treatment history and locations of service, and then generate an Automated Review Summary Document (ARSD), which is then reviewed by a Veterans Benefits Administration (VBA) claims processor with full adjudicative discretion for a decision. VA is currently using ADS for 56 diagnostic codes – numeric codes associated with specific medical diagnoses – and states that the technology is significantly improving processing times. WWP service officers report that all ARSDs that they have reviewed have been accurate and presumably helpful in the processing of the claim. WWP believes that ADS shows great potential for further expansion beyond *PACT Act* claims.

Since VA began processing for all *PACT Act* claims, VBA has completed 266,690 claims, 79.7 percent of which have been approved.<sup>2</sup> This represents a significant improvement over the less than one-third grant rate that WWP Annual Warrior Survey respondents reported before the passage of the bill.<sup>3</sup> Still, WWP has noticed a degree of inconsistency with the way *PACT Act* claims are processed, particularly with respect to unnecessary TERA exams and nexus opinions being ordered when the evidence in the file – which includes documentation of service in a designated exposure area and a diagnosis of a presumptive condition – is sufficient to grant the claim without further development. If not caught by a WWP (or other) service officer, these unnecessary exams could slow down the claim and, if the exam results in a negative nexus opinion, could result in an erroneous denial.

Another error is occasional failure by VBA processors to recognize the list of the most common presumptive cancer diagnoses recognized by the *PACT Act* and found on pages 24 to 28 of VBA Policy Letter 20-22-10.<sup>4</sup> If uncorrected, this could also lead to an incorrectly adjudicated claim. We encourage VBA to consider whether supplemental training may be necessary to increase consistency and accuracy of claims processing.

One strategy VBA has used in the past when presented with a large number of exposure-related claims was to establish a “special mission.” This approach was used to improve the processing efficiency of Camp Lejeune, radiation, mustard gas or Lewisite, and other potentially complex claims.<sup>5</sup> Similarly, VBA has established specialized processing teams at designated regional offices to process Blue Water Navy claims.<sup>6</sup> This allows VBA to train designated staff on those specific issues and centralize research, development, and processing of related claims to increase accuracy and speed through specialization. In addition to the potential for connecting veterans to their *PACT Act*-related benefits sooner, improved adjudication of these claims has potential to mitigate downstream effects on all VA claims that may be caused by overdevelopment, supplemental claim filing, and appeals related to the high volume of *PACT Act* claims. We encourage VA to consider whether a “special mission” would be similarly advantageous for processing *PACT Act* claims.

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<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> A full copy of the 2022 Annual Warrior Survey can be viewed at <https://www.woundedwarriorproject.org/mission/annual-warrior-survey>.

<sup>4</sup> See U.S. DEP'T OF VET. AFFAIRS, VBA Letter 20-22-10 (Dec. 22, 2022) (available at <https://www.regulations.gov/document/VA-2022-VACO-0002-0176>).

<sup>5</sup> See U.S. DEP'T OF VET. AFFAIRS, VA ADJUDICATION PROCEDURE MANUAL M21-1, PART II, SUBPART II, CH. 3, 3.1.b-c (2022).

<sup>6</sup> See U.S. DEP'T OF VET. AFFAIRS, VA ADJUDICATION PROCEDURE MANUAL M21-1, PART VIII, SUBPART I, CH. 1, 1.A.1.a. (2021).

## ***Toxic Exposure Presumption Process***

In recognition of the challenges associated with establishing direct service connection for toxic exposure-related conditions, Congress has historically created mechanisms to require VA to decide whether to establish presumptive service connection when scientific data show a link between specific exposures and associated illnesses, as it did for Vietnam veterans with the *Agent Orange Act of 1991* (P.L. 102-4). However, no law existed prior to the passage of the *PACT Act* to require VA determinations on illnesses associated with all toxic exposures, regardless of location or period of service.

The *PACT Act* established a permanent VA Working Group to continuously review evidence and receive input from Veterans Service Organizations (VSOs) and the public on all potential exposure-related conditions in veterans and their family members who were military dependents, now and in the future. This Working Group is required to make recommendations to the Secretary of Veterans Affairs on whether to establish a presumption of service connection for an exposure related condition. To form its recommendations, the Working Group will continuously review scientific literature, VBA claims data, and other factors including the level of disability and mortality caused by the condition, whether conditions are deployment-related, the rarity of conditions, and the quantity and quality of the information available.

When conducting their reviews, WWP encourages the Working Group to expand the types of conditions it considers for association with burn pits and other toxic substances present on post-9/11 deployments beyond the two categories of presumptive conditions established by the *PACT Act* – respiratory conditions and cancers. While these categories of conditions are closely associated to exposure to airborne hazards, they do not capture the full range of illnesses that exposed post-9/11 veterans are experiencing. In our most recent Annual Warrior Survey, the health condition veterans most commonly believed to be associated with their toxic exposure was neurological problems (35.1%). Hypertension (33.2%), Chronic Multisymptom Illness (24.4%), immune system problems (10.5%), and liver conditions (7.8%) were also conditions that veterans commonly believe are associated with exposures while in service. WWP looks forward to working with VA to help identify these and other conditions that we believe warrant further consideration.

## ***Access to Health Care***

Although we recognize that VA health care eligibility may not be under the jurisdiction of this Subcommittee, we would like to take this opportunity to address access to care. Under the *PACT Act*, recently discharged combat veterans now have a 10-year enhanced enrollment period (up from 5 years), and veterans who were discharged more than 10 years ago have a limited one-year period to enroll for care (October 1, 2022, to September 30, 2023). For exposed veterans who miss the one-year open enrollment, there is a 10-year phase-in for permanent access to Priority Group 6 enrollment based on discharge date.

Wounded Warrior Project is concerned that the one-year open enrollment followed by the 10-year phase-in leaves some potential gaps in eligibility. From August 2022, when the *PACT*

*Act* became law, to April 2023, there were 244,544 new VA health care enrollees.<sup>7</sup> Of those, it is estimated that only 77,337 were from the *PACT Act* eligible population. We believe this is a relatively small number in a system of over 9 million enrollees.

Modest measures can be taken to address any eligibility gaps that may exist for exposed veterans. First, Congress can consider extending the one-year open enrollment period for an additional year to protect against lack of awareness or urgency among the post-9/11 community. Second, the Veterans Health Administration (VHA) can continuously evaluate the number of veterans who enroll for care under the *PACT Act* to determine the impact on capacity to deliver high quality and timely care. If VHA has sufficient resources to meet additional demand at any point, we encourage VA to use its existing authority to modify the phase-in to an earlier date to grant permanent access to care for more exposed veterans sooner.

### ***Veteran Outreach***

To realize the full potential of the *PACT Act*, veterans must know about the disability compensation and care that are now available, as well as an easy-to-understand path to accessing them. For this reason, WWP has conducted significant outreach to warriors and their families to inform them about the new law includes what they can expect, and what actions they can take to realize its potential benefits. WWP's outreach efforts include e-mail, social media, a dedicated page on our website, written materials, a summary video, live webinars, and co-sponsoring a nationally televised panel discussion on the passage of the *PACT Act* to reach veterans across the country in as many ways as possible. Additionally, we continue to work with VA to find innovative way to reach out to veterans who are not connected to the VA or may not be highly active in a Veteran Service Organizations (VSOs), but more can be done.

Since the *PACT Act* became law, VA's outreach efforts to VSOs and veterans have been exceptional. From their *PACT Act* "Week of Action" events in all 50 states, to town halls and awareness events that WWP staff have personally attended, to claims clinics and outreach letters mailed directly to veterans and survivors that VSOs can view within electronic claims files, VA is clearly committed to reaching as many potential beneficiaries as possible. VA, in collaboration with the Department of Defense, has also proactively engaged with Active-Duty Service members to educate them on the *PACT Act* and how to access their benefits. VA's *PACT Act* webpage is highly informative and easy to navigate, and their biweekly *PACT Act* Performance Dashboard is a model of transparent communication. WWP commends VA for their robust outreach supports their continued efforts to educate potentially eligible veterans and survivors about *PACT Act* benefits but encourages both VA and Congress to increase outreach as we get closer to the two deadlines highlighted above.

### **CONCLUSION**

Wounded Warrior Project thanks the Subcommittee on Disability Assistance and Memorial Affairs and its distinguished members for inviting our organization to submit this

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<sup>7</sup> U.S. DEP'T OF VET. AFFAIRS, *supra* note 1, at 1.

statement. We are grateful for your attention and efforts towards addressing the critical issue of ensuring that PACT Act benefits and care are delivered as effectively as possible. We look forward to continuing to work with you on these issues and are standing by to assist in any way we can towards our shared goals of serving those that have served this country.