

# Pending Legislation

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Statement of

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Before the

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Committee on Veterans' Affairs

With Respect To

**Pending Legislation**

Washington, D.C.

Chairman Tester, Ranking Member Moran, and members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this committee.

The VFW calls upon Congress to work in a bipartisan manner and with stakeholder Veterans Service Organizations (VSOs) to develop a comprehensive solution for toxic exposure. We need a solution that will take care of all veterans from past generations, provide current service men and women the reassurance they will be provided for, and have a system in place to ensure that all future generations of service members receive care and

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benefits if they face exposures as well. The brave men and women who wear our nation's uniform are asked to serve in the most dangerous and austere environments on earth. They faithfully serve our country with an implicit understanding that any health conditions arising in service or resulting therefrom will be treated by the Department of Veterans Affairs (VA). This understanding is one of the many components of a social contract, the terms to which our nation mutually assents whenever an individual answers the call to service in the armed forces. The obligations of this agreement are no less binding when a veteran has a health condition related to an airborne hazard, a toxic exposure, or the environment in which that individual served.

During the last century, veterans returned home from war with an array of unexplained health conditions and illnesses associated with the toxic exposures and environmental hazards they encountered in service. Today is no different, and toxic exposure has become synonymous with military service. For this reason, it is time for Congress to change the framework through which VA benefits are granted for individuals with conditions associated with toxic exposures and environmental hazards.

First, the VFW recommends that a commission, independent from the Department of Defense (DOD) and VA, be established to identify toxic and environmental exposures incident to military service. Once sufficient information exists regarding the presence of a toxic or environmental exposure, the commission would be charged with conducting a study on the adverse health effects associated with the exposure.

This proposal is consistent with a recommendation from the September 2020 National Academies of Sciences, Engineering, and Medicine (NASEM) report entitled *Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations*. In that report, the committee recommended, inter alia, that VA establish an independent panel of experts to evaluate diagnoses assumed to be associated with exposure to burn pits, including pulmonary pathologists, toxicologists, and epidemiologists to evaluate these diagnoses. The report states that “such a committee is critical to ensuring that VA has a consistent approach in establishing or denying a diagnosis and evaluating its possible service connection . . . [and that veterans] are receiving a fair review that uses the best science.” This recommendation is consistent with the VFW's belief that conditions related to toxic exposures should be referred to an independent commission as part of the greater framework.

Second, the VFW recommends that NASEM review and evaluate the available scientific evidence regarding certain diseases and exposure to toxic substances. In light of institutional experience gained through the implementation of the *Agent Orange Act of 1991*, the VFW believes that NASEM is well-suited to conduct such analysis. Furthermore, NASEM should conduct its evaluations on toxic exposures and environmental hazards based on the recommendations of the independent commission.

Finally, the VFW believes Congress should require VA to grant a presumption of service connection for the conditions deemed to be associated with toxic exposures and environmental hazards. To effectuate this requirement, VA would consider the conclusions reached by NASEM, resolving any doubt regarding associations in favor of veterans. In other words, VA should grant a presumption if the scientific evidence suggests that a disease is at least as likely as not to be associated with a toxic exposure or environmental hazard. Any other standard would be a stark departure from Congress' historical approach to toxic exposure law and would pose an unreasonably high bar to the establishment of presumptive benefits.

Former VFW Washington Office Executive Director Larry Rivers provided testimony on this very issue in May 1990 before the House Veterans' Affairs Subcommittee on Compensation, Pension, and Insurance in connection with H.R. 3004, a precursor to Public Law 102-4, the *Agent Orange Act of 1991*. During that hearing, Mr. Rivers observed that the pursuit of a "perfect understanding predicated upon scientific certainty" had stalled efforts to provide comprehensive benefits to veterans who were exposed to Agent Orange. To overcome this paradox, the Agent Orange Act implemented a process for establishing a presumption of service connection based on a "significant correlation" between exposure and the onset of disease. Then, as now, we believe this represents a fair and compassionate solution to a complex problem, and that the pursuit of scientific certainty of causation is both elusive and futile.

The framework we suggest is very similar to that of the Agent Orange Act. Until the expiration of the VA Secretary's authority to promulgate regulations under that act, the Agent Orange model proved to be an efficacious method of granting presumptive benefits to veterans. For this reason, the VFW believes Congress should enact legislation that would establish an independent commission to identify toxic exposures and environmental hazards and trigger additional studies, require NASEM to evaluate the scientific evidence regarding the association of health conditions and toxic exposures and environmental hazards, and require VA to grant presumptive service-connected benefits for conditions

associated with toxic exposures and environmental hazards based on NASEM's findings.

All the toxic exposure-related bills listed in this testimony have portions that, if combined, would form a complete package that would cover as many veterans as possible. The VFW believes all of these proposals are complementary and in combination would accomplish the goal of true toxic exposure reform for all generations of veterans.

### **S. 89, Ensuring Survivor Benefits During COVID-19 Act of 2021**

The VFW supports this proposal to ensure veterans who die due to service-connected conditions are properly taken care of. COVID-19 has wreaked havoc on our country for over a year, and veterans have been affected just like all other Americans. Some veterans who passed away after contracting COVID-19 may not have had all the contributory causes of death listed on their death certificates, making their families ineligible for certain benefits. This proposal would require VA to secure a medical opinion to determine if a service-connected disability was the principal or contributory cause of death, hopefully providing benefits for survivors.

### **S. 189, Veterans' Disability Compensation Automatic COLA Act of 2021**

Every year Congress introduces legislation to make cost-of-living adjustments to the rates of disability compensation for veterans with service-connected disabilities, and the rates for dependency and indemnity compensation for survivors. These increases are the same percentage as that for Social Security benefits. The VFW supports this legislation which would provide automatic increases in the rates for these benefits when increases are made for Social Security each year. This would provide a guarantee to veterans and survivors that their payments will always be aligned to counteract inflation.

### **S. 219, Aid and Attendance Support Act of 2021**

The COVID-19 pandemic has created unanticipated barriers and challenges for all of us, including those veterans who receive Special Monthly Compensation (SMC)/Aid and Attendance (A&A) benefits. These veterans who rely on home care services were impacted

by the lack of medical supplies, personal protective equipment, and health care professionals who aid them in activities of daily living. Some veterans covered the additional costs out of their own pockets, while others have foregone the needed home care because of the unexpected expense.

Even though the VFW has not heard this specific concern from our members, we do know the problem exists. The VFW supports these veterans facing unprecedented circumstances and endorses this legislation to provide a temporary increase of Special Monthly Compensation (SMC)/Aid and Attendance (A&A) benefits to ensure veterans can afford the care and equipment they need.

### **S. 437, Veterans Burn Pits Exposure Recognition Act of 2021**

When a veteran files a VA disability claim for a condition related to burn pit exposure, the claim has an 80% chance of being denied. Providing sufficient evidence of the exposure is nearly impossible as most veterans do not have any record of exposure in their military personnel records or other proof of the in-service event. The VFW supports this legislation which would concede exposure to toxic chemicals associated with burn pits for veterans deployed to locations where burn pits are known to have been used. This would remove the heavy burden of proof from exposed veterans for conditions not yet determined as presumptive. We see this bill as key to resolving one of the most pressing issues for toxic exposures today.

### **S. 444, AUTO for Veterans Act**

The VFW supports this legislation as it would expand the current program to align with more realistic expectations of vehicle ownership. Service-connected injuries last a lifetime, but cars do not. Veterans should not have to pay additional costs associated with modified vehicles to accommodate their special needs due to service-connected injuries.

The current adaptive automobile grant for disabled veterans is an incredible benefit for those who need this program. VA is currently authorized to provide a one-time grant to veterans who are unable to drive due to a service-connected disability. This grant may be used for the purchase of a specially equipped automobile. However, the one-time use of this grant does not take into account modern vehicular needs for veterans and vehicles in the

21st century.

A single-use grant for vehicle adaptations is not enough considering the average American owns multiple vehicles in their lifetime. Veterans who have previously received a grant must pay any expenses associated with the purchase of a new vehicle themselves. These substantial costs, coupled with inflation, present a financial hardship for many disabled veterans who need to replace their primary mode of transportation once it reaches its life of service.

### **S. 454, K2 Veterans Care Act of 2021**

From 2001 to 2005, thousands of U.S. service members were stationed at the Karshi-Khanabad Air Base in Uzbekistan, known as K2. Declassified DOD documents indicate that the former Soviet base was heavily contaminated with remnants from chemical weapons, radioactive uranium, jet fuel, and other toxic hazards. It was also found that open burn pits were used. Service members report that they saw signs warning them of the contaminants, witnessed glowing pond water, and smelled chemicals burning. Veterans who served at K2 have reported high rates of cancers, neurological disorders, and other serious conditions that, for some, have led to permanent disability or death. Unfortunately, the evidence of their exposure to these toxins has not been sufficient to receive VA benefits for their conditions.

The VFW supports this legislation which would provide K2 veterans with care and benefits for conditions associated with these exposures. We would also like to provide a recommendation that since the scientific body mentioned in the bill has been designated as NASEM, a formal agreement between VA and NASEM should be included.

### **S. 458, Veterans Claim Transparency Act of 2021**

In April 2020, without prior notice to veterans or VSOs, VA eliminated the 48-hour review period which had been in place for decades. This VA policy was an essential feature of the VA claims process, functioning as an independent quality review check on claims decisions before final ratings were sent to veterans. The VFW is grateful to Chairman Tester and

Senator Boozman for introducing this legislation and for bringing much needed attention to this issue. As a result of your efforts and continued pressure to preserve VSO notification, representatives from VA came together with the VFW and other VSOs to work on a potential solution. The Claims Action Review (CAR) pilot program was launched last week and will run throughout the summer with monthly updates to VSOs. While we support the intent of the legislation, we must first evaluate the CAR pilot program and then determine the best way forward to codify VSO notification and review.

### **S. 565, Mark Takai Atomic Veterans Healthcare Parity Act of 2021**

From 1948 to 1958, the United States conducted 43 nuclear tests at Enewetak Atoll on the Marshall Islands. Approximately 6,000 veterans participated in the massive cleanup project of the test sites, which ran from May 1977 through May 1980. The VFW supports this legislation which would provide health care benefits to these radiation-exposed “atomic veterans” who participated in the cleanup of Enewetak Atoll, ensuring they receive the same benefits given to other service members involved in active nuclear tests.

### **S. 657, A bill to modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era, and for other purposes.**

Declassified DOD records show that herbicides were used to control vegetation on military bases in Thailand where U.S. service members served during the Vietnam War. Currently, VA grants benefits only for specific veterans who prove they participated in “regular perimeter duty on the fenced-in perimeters” of those bases. The idea that a person could have been exposed to these harmful agents only if they were on a portion of a base ignores both science and common sense. The fact is that veterans were exposed on all parts of these bases and now suffer from the effects of Agent Orange. The VFW supports this legislation to include veterans who served in Thailand during the Vietnam era for a presumption of service connection for exposure to herbicides and to provide long overdue recognition and care that these veterans deserve.

### **S. 731, Department of Veterans Affairs Information Technology Reform Act of**

## **2021**

The VFW supports this proposal to increase oversight of VA Information Technology (IT) projects. The legacy technology platforms within VA are a common problem to providing care and benefits. This proposal would require proper accounting and planning for any major IT projects moving forward. This would also require VA to provide a priority list for all currently unfunded IT proposals. Identifying the lack in proper IT resources will help mitigate future pitfalls caused by gaps in IT programs.

### **S. 810, Fair Care for Vietnam Veterans**

In 2018, NASEM found that “sufficient evidence of an association” exists between Agent Orange exposure and hypertension and monoclonal gammopathy of undetermined significance (MGUS). VA has not added these to the list of presumptive conditions, even though the science shows they meet a stronger evidentiary standard than some of the previously approved conditions. The VFW supports this legislation to add hypertension and MGUS to VA’s list of presumptive conditions associated with herbicide exposure.

### **S. 894, Hire Veteran Health Heroes Act of 2021**

The VFW supports this provision to create alternative pathways for veterans to attain gainful employment after leaving active duty. Thousands of qualified troops with medical training transition into civilian life every year, and this proposal would help streamline employment opportunities within VA for anyone seeking to continue practicing health care in their civilian lives.

### **S. 927, A bill to improve the provision of health care and other benefits from the Department of Veterans Affairs for veterans who were exposed to toxic substances, and for other purposes (TEAM).**

The VFW strongly supports this legislation which would provide critical reforms and guidance necessary for VA to effectively grant care and benefits to veterans suffering from



conditions due to toxic exposures. This legislation includes two major components which are key to comprehensive toxic exposure reform—a permanent framework and expansion of health care.

In alignment with the VFW's top priority, this legislation would: establish an independent commission to review toxic and environmental exposures incident to military service and recommend independent studies; require VA to enter into an agreement with NASEM to conduct studies on possible associations between diseases and toxic exposures; and require VA to respond to those scientific findings when a positive association is found with exposure to a toxic substance and grant presumptive service connection when warranted. The VFW believes that the comprehensive approach provided in this legislation would address past, present, and future toxic exposures at locations both domestic and abroad.

In addition, this legislation expands VA health care enrollment eligibility for all veterans exposed to toxic substances during their service. This is especially important for veterans who urgently need health care for conditions associated with their exposure but have not fully completed the VA disability claims process.

### **S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021**

The VFW supports this proposal as it aligns with our organization's resolutions and priorities to provide care and benefits for all who have been exposed in service. A key provision in this proposal is the petition mechanism for addressing new toxic exposures. Grassroots advocacy is the lifeblood of veteran organizations and the petition component of this bill would allow for veterans' voices to be heard directly within VA.

### **S. 976, Caring for Survivors Act of 2021**

The rate of Dependency and Indemnity Compensation (DIC) paid to the survivors of service members who died in the line of duty or to veterans who died from service-related injuries or illnesses has only minimally increased since the benefit was created in 1993. The VFW supports this legislation to increase DIC payments to survivors, reaching parity with

payments made to surviving spouses of other federal employees.

This legislation also addresses the need to protect survivors, who may also be caregivers, in cases where the veteran is totally disabled for less than the arbitrary period of ten years and dies from a non-service-connected condition. Currently, in those cases, the survivors would not receive DIC. The VFW supports this legislation to provide benefits in these situations, gradually starting at five years and increasing to the full amount at ten years. This would extend DIC eligibility to more survivors and ease some of the financial burdens with which they suddenly may be faced.

We do, however, have requests for clarification regarding the bill as it is currently written. As it is not explicitly stated, we want to ensure that the increase to DIC is the same for the base pay for all recipients of the benefit, even those receiving added amounts such as the eight-year provision for Aid and Attendance. We would also like clarification on the date of January 1, 1993, included in the Individuals Described section. We request clarification that the date would not exclude any current group of eligible DIC recipients from the increase.

Additionally, the VFW recommends making an exception to the ten-year time frame for payments to the surviving spouses of veterans who die from ALS. This is because the average life expectancy for someone diagnosed with ALS is two to five years.

**S. 1031, A bill to require the Comptroller General of the United States to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by the Secretary of Veterans Affairs, and for other purposes.**

The VFW supports this legislation requiring a study to be conducted on race and ethnic disparities for compensation benefits, disability ratings, and the rejection of developed benefit claims from VA.

As the population of minority veterans continues to grow, VA needs to adapt to meet the

need for access to both benefits and health care services. Women, LGBT, and racial and ethnic minority veterans face barriers and challenges across different life domains. In 2014, less than one quarter of the total veteran population were minorities. This number is expected to increase to 35.7% in 2040.

While the number of minority veterans increases, so does their use of the Veterans Benefits Administration (VBA). In the 2018 annual report, the VA Adversity Committee on Minority Veterans recommended that VBA publish a report identifying and addressing potential racial and ethnic disparities. VA concurred with the recommendation in principle and said it would assess the available data, but indicated that a statistically valid report would not be achievable because of significant voids in the VBA data.

This legislation would provide valuable information to recognize and address potential disparities, identify improvement areas within VBA, and assist facilities with better data collection practices. Lack of inclusivity and consistency hinders the collection of accurate data, which could benefit all veterans and their families.

**S. 1039, A bill to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes.**

Although U.S. military operations in the Persian Gulf are currently ongoing, authorization to provide benefits will expire on December 31, 2021. The VFW supports this legislation to permanently extend VA's authority to grant benefits for Gulf War Illness (GWI). It would also broaden the definition of Persian Gulf veteran to include those who served in Afghanistan, Israel, Egypt, Turkey, Syria, and Jordan.

Gulf War Illness, known also as chronic multi-symptom illness and undiagnosed illnesses, is often misdiagnosed as it presents itself as a conglomeration of symptoms. Currently, VA uses separate Disability Benefits Questionnaires (DBQs) to evaluate GWI symptoms individually.

This legislation would create a single DBQ for Gulf War Illness to be used when a veteran presents with one or more GWI symptoms. It would also provide training to VA medical examiners for Gulf War disability claims.

**S. 1071, A bill to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals submitting claims for pension from the Department of Veterans Affairs, and for other purposes.**

The VFW strongly opposes this legislation as this bill would open the door for consultants to prey on the most vulnerable in the veterans' population. Additionally, nothing in this proposal would accomplish the stated purpose of this bill. The intent as stated in the bill text, "in order to reduce the backlog of the Department of Veterans Affairs for claims for pension," would not be achieved by this legislation. In fact, it could do just the opposite.

VA already has standards through which it accredits VSO representatives, claims agents, and attorneys, ensuring that these entities have the requisite training and abide by federal regulations in assisting veterans. The VFW vehemently maintains that veterans should never have to pay to access their benefits. In fact, this proposal flies in the face of why VA recognizes VSOs for the purposes of preparation, presentation, and prosecution of claims before the agency.

The VFW in no uncertain terms believes that the prospect of even a pilot program for veterans to utilize these consulting services—especially one that further enriches these companies through a federal contract—would harm our veterans. We must instead improve consumer protection for veterans and encourage veterans seeking benefits to work with highly skilled, professional, and VA-accredited advocates who will provide superior representation and advocacy without taking veterans' earned benefits.

**S. 1093, A bill to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration, and for other purposes.**

The VFW supports this proposal to establish the Veterans Economic Opportunity and Transition Administration in the Department of Veterans Affairs. VA is comprised of three administrations—the National Cemetery Administration (NCA), the Veterans Benefits Administration (VBA), and the Veterans Health Administration (VHA). VBA is in charge of not only compensation and pension, but also the GI Bill, vocational rehabilitation, housing and business loans, and the broadly defined transition assistance program, which is shared with the Departments of Labor, Defense, and Homeland Security.

The VFW believes our nation's focus on the economic opportunities of our veterans must be permanent. In reality, not all veterans seek VA health care when they are discharged, they do not need assistance from the NCA, and they do not all seek disability compensation. However, the vast majority are looking for gainful employment and/or education. Congress should recognize the value of these programs by separating them into their own administration focused solely on their utilization and growth.

The VFW has long proposed that Congress creates a fourth administration under VA with its own undersecretary whose sole responsibility is the economic opportunity programs. This legislation would permit the new Secretary of Veterans Economic Opportunity and Transition Administration to refocus resources, provide a champion for these programs, and create that central point of contact for VSOs and Congress. This would ensure that the GI Bill, Veteran Readiness and Employment, home loan, and other economic opportunity centered benefits receive the attention they deserve.

**S. 1095, A bill to amend title 38, United States Code, to provide for the disapproval by the Secretary of Veterans Affairs of courses of education offered by public institutions of higher learning that do not charge veterans the in-state tuition rate for purposes of Survivors' and Dependents' Educational Assistance Program, and for other purposes.**

The VFW supports this proposal, which would require VA to disapprove programs of education for payment of benefits under chapter 35 at public institutions of higher learning if the school charges tuition and fees in excess of the rate for resident students. This bill would expand the requirements of the *Veterans Access, Choice, and Accountability Act of*

2014 (Pub. L. 113-146) for individuals receiving benefits under chapter 35. This commonsense protection should exist for all recipients of VA education benefits at public institutions, regardless of whether they are a veteran, dependent, or survivor.

**S. 1096, A bill to amend title 38, United States Code, to expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship to include spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces, and for other purposes.**

The VFW supports this proposal to expand the Fry Scholarship. This legislation would enable surviving families of certain veterans, who were previously not eligible for this benefit, to utilize the incredible Fry Scholarship. Parity of benefits is an important issue for the VFW, and we are glad this is being made a priority.

**Draft Bill, A bill to direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans, and for other purposes (SFC Heath Robinson Burn Pit Transparency Act)**

The VFW supports this proposal to establish regular reports regarding toxic exposure claims. Toxic exposure claims from veterans are rejected at a rate of almost 80%. Many of these veterans are left confused, hurt, and angry after denial. There is not enough information provided as to why these rejections occur and what similarities VA is tracking regarding these claims. Regular reporting about the types of claims, the demographics of the claimants, and VA responses are critical in ensuring these problems are identified and rectified quickly.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you may have. Thank you.