

## Open Letter on Toxic Exposure Legislation Pending Before the 117<sup>th</sup> Congress

On March 4, 1865, atop a muddy Pennsylvania Avenue near the United States Capitol, thousands of spectators gathered to witness then-President Abraham Lincoln's second inaugural address. President Lincoln framed his speech on the moral and religious implications of war; rhetorically questioning how a just God could unleash such terror upon mankind and our nation.

Tragically, mankind has borne witness to its fair share of armed conflict before and since. While domestic and international strife has remained stagnant, the tools of peace and weapons of war have evolved due to human ingenuity. Consequently, millions of servicemembers have either passed away or faced lifelong challenges from toxic exposures. It is, after all, no coincidence the first consolidation of federal Veterans programs took place following World War I.

In his speech, President Lincoln affirmed our government's obligation to care for servicemembers and their families with the words, "To care for him who shall have borne the battle and for his widow, and his orphan." Today, these words serve as the mission of the Department of Veterans Affairs (VA). One will even find a pair of metal plaques bearing these words flank the entrance to the VA's Washington, D.C. headquarters.

While these words have seemingly stood the test of time, so too has unwarranted procrastination and egregious inaction. Still today, almost fifty years since the final helicopter fight when Agent Orange was used in Vietnam, millions of servicemembers exposed to toxic substances are not receiving the health care and benefits they need and rightfully deserve. As recent as this past September, it has been reported that approximately seventy-eight percent of disability claims related to toxic exposure have been denied by the VA.

Perhaps it goes without saying the time for action is now. But unlike years prior, we are on the precipice of advancing landmark legislation that would place veterans exposed to toxic substances in a much more advantageous position to receive the care and benefits they need – and your support is required.

On May 25, 2021, Senate Veterans' Affairs Committee Chairman Jon Tester introduced the *COST of War Act of 2021*. One day later, House Veterans' Affairs Committee Chairman Mark Takano introduced the *Honoring our PACT Act of 2021*. While each of these bills would potentially provide healthcare and benefits to millions of veterans exposed to airborne hazards and burn pits, there are differences each respective committee and chamber must reconcile.

During this process, the Air Force Sergeants Association (AFSA), a 75,000+ member organization dedicated to defending and improving the quality of life of servicemembers past and present and their families, respectfully requests your consideration of the following:

- I. Expand a presumption of service connection to include K-2 veterans.

Both the *COST of War Act of 2021* and *Honoring our PACT Act of 2021* include provisions that would expand a presumption of service connection for certain eligible veterans. However, despite an overwhelming amount of evidence from declassified documents provided by the Department of Defense (DoD) that detailed multiple hazards and toxins that servicemembers were exposed to while deployed to Camp Stronghold Freedom at Karshi-Khanabad (K-2), Uzbekistan, H.R.1355/S.454, the *K2 Veterans Care Act of 2021*, which establishes a presumption of service connection for certain diseases becoming manifest in a veteran who served at K-2, was not included in either omnibus package. As such, the AFSA respectfully requests your support to provide health care and benefits to veterans who were exposed to toxic substances while serving as members of the Armed Forces at K-2, Uzbekistan.

- II. Ensure health care personnel and processors of claims have adequate training with respect to toxic exposure veterans.

Both the *COST of War Act of 2021* and *Honoring our PACT Act of 2021* include provisions that strive to ensure health care personnel and processors of claims have adequate training with respect to toxic exposure veterans. However, the

AFSA respectfully requests preference be granted to the language as explicated in the *Honoring our PACT Act of 2021*. While the *COST of War Act of 2021* requires the Secretary of Veterans Affairs to provide education and training to health care personnel and processors of claims, the *Honoring our PACT Act of 2021* goes one step further by outlining a standard training curriculum that would better promote programmatic continuity, consistency, and accuracy. In the AFSA's view, this, either independent of or in conjunction with the codification of S.458, the *Veterans Claim Transparency Act of 2021*<sup>1</sup>, would positively impact health outcomes for veterans seeking care from the VA.

III. Provide for reevaluations of claims for compensation involving certain presumptions of service connection.

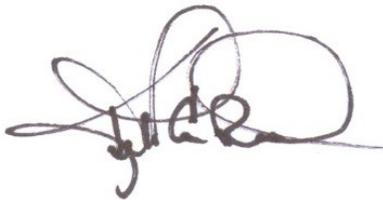
Both the *COST of War Act of 2021* and *Honoring our PACT Act of 2021* include provisions that bestow the Secretary of Veterans Affairs the capacity to make changes in presumptions of service connection. Moreover, both bills include AFSA supported provisions that would allow a veteran and/or survivor to retain awarded compensation and/or dependency and indemnity compensation if the Secretary removes an illness from a presumption of service connection previously established. However, the AFSA urges support of the *Honoring our PACT Act of 2021*, SEC. 203. REEVALUATION OF CLAIMS FOR COMPENSATION INVOLVING PRESUMPTIONS OF SERVICE CONNECTION. This provision requires the VA Secretary to allow for the reevaluation of a claim whenever a law, including through a regulation or Federal court decision, establishes or modifies a presumption of service connection. In its simplest form, this would ensure that health care and benefits are apportioned appropriately to veterans and/or survivors in accordance with policy as it evolves.

IV. Require consultation with congressionally chartered, membership-based Veteran Service Organizations (VSO's) on select appointments to de jure advisory bodies.

Both the *COST of War Act of 2021* and *Honoring our PACT Act of 2021* establish de jure administrative entities that advise the VA Secretary on specific manners of toxic exposure policy and procedure. However, the composition and nature of each of the respective entities in each Act are starkly different. With exception to the *Honoring our PACT Act of 2021*, § 1172. Formal Advisory Committee on Toxic Exposure (2)(A)(i-iv), the AFSA respectfully requests preference be granted to the *COST of War Act of 2021*, SEC. 202 IMPROVEMENTS TO ABILITY OF DEPARTMENT OF VETERANS AFFAIRS TO ESTABLISH PRESUMPTIONS OF SERVICE CONNECTION BASED ON TOXIC EXPOSURE as opposed to the *Honoring our PACT Act of 2021*. In its simplest form, this recommendation would change the allowed number of appointments by each eligible actor to be reflective of the *Honoring our PACT Act of 2021*, § 1172. Formal Advisory Committee on Toxic Exposure (2)(A)(i-iv).

Regardless, the AFSA urges the inclusion of language in the reconciled toxic exposure Act analogous to SEC. 202. THE COMMISSION (c)(2)(e), Public Law 115-82, the *John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018*, that would require the Secretary of Veterans Affairs to consult with congressionally chartered, membership-based VSOs on the prospective appointments to the de jure administrative entities aforementioned.

The AFSA commends you for your thoughtful consideration of the various toxic exposure measures pending before the 117<sup>th</sup> Congress and policy positions outlined on behalf of our 75,000+ members. As always, we are prepared to present more details and discuss these issues with you and your staff if deemed necessary.



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<sup>1</sup> S.458, the *Veterans Claim Transparency Act of 2021*, reinstates a decades-old pre-decisional review policy that grants accredited service officers the opportunity to review and course-correct benefits determinations.