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WOUNDED WARRIOR PROJECT
STATEMENT OF
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LEGISLATIVE HEARING

ON

S. 89, Ensuring Survivor Benefits During COVID-19 Act of 2021; S. 219, Aid and Attendance Support Act of 2021; S. 437, Veterans Burn Pits Exposure Recognition Act of 2021; S. 444, AUTO for Veterans Act; S. 454, K2 Veterans Care Act of 2021; S. 458, Veterans Claim Transparency Act of 2021; S. 565, Mark Takai Atomic Veterans Healthcare Parity Act of 2021; 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; S. 731, Department of Veterans Affairs Information Technology Reform Act of 2021; S. 810, Fair Care for Vietnam Veterans; S. 927 Toxic Exposure in the American Military (TEAM) Act; S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; S. 976, Caring for Survivors Act of 2021; 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; 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; and Draft Legislation.

April 28, 2021

Chairman Tester, Ranking Member Moran, and distinguished members of the Senate 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. Although we support most of the proposed legislation, our comments will be focused on those bills where we can offer further thoughts for Committee members to consider. While we do not oppose any one piece of legislation, we abstained from offering our support or comments on proposed legislation that was

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out of our scope of expertise or where we were still working with the sponsors and stakeholders to better inform our position. 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.

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

The *Ensuring Survivor Benefits During COVID-19 Act of 2021* would require the Department of Veterans Affairs (VA) to secure a medical opinion to determine whether a service-connected disability was the principal or contributory cause of death for any disabled veteran who dies from the Coronavirus Disease 2019 (COVID-19). This bill would ensure that those with service-connected disabilities that may have exacerbated their COVID-19 illness, leading to death, have all the benefits afforded to them as a veteran who died directly from their service-connected disability.

Surviving spouses, children, or parents of a Service member who died in the line of duty, or the survivor of a veteran who died from a service-related injury or illness, may be eligible for a tax-free monetary benefit called VA Dependency and Indemnity Compensation (VA DIC). The base rate for DIC for a surviving spouse is \$1,357.56 and the amount fluctuates for children and parents depending on their circumstances. The *Ensuring Survivor Benefits During COVID-19 Act of 2021* would help guarantee that DIC benefits are extended to survivors of veterans whose original death certificate did not indicate that a service-connected disability was a principal or contributory cause of death related to COVID-19, but for which a subsequent medical opinion indicates such a relationship.

There are many cases where a veteran's disability can affect the outcome of his or her chances of survival to a COVID-19 infection. To illustrate a likely example, consider a veteran with severely decreased lung capabilities due to a service-connected disability. In that case, it is possible that the decrease in lung capacity led to an additional complication when infected by the COVID-19 virus. This is just one possible case where a service-connected disability could affect the likelihood of someone's COVID-19 recovery. Those who have passed away deserve our full support, and the surviving family members should not be left with no means of financial support. Thus, WWP supports S. 89, the *Ensuring Survivor Benefits During COVID-19 Act of 2021*, and we thank Senator Sinema and Senator Tillis for introducing this legislation.

S. 219, *Aid and Attendance Support Act*

The Aid and Attendance program is designed to provide extra financial support from VA to veterans in need of in-home assistance with everyday tasks like bathing, dressing, or eating. Approximately one-third (32 percent) of respondents to WWP's 2020 *Annual Warrior Survey* reported the need for support services like these due to their service-incurred injuries or illnesses. Perhaps more than any period in recent history, the COVID-19 pandemic has illuminated the importance of this benefit. Though many Aid and Attendance beneficiaries represent those most vulnerable to the COVID-19 virus, some were forced to forgo the support services they rely on

due to increasing costs by providers who incurred the extra expense of supplies like masks, gloves, gowns, and other protective equipment.

Today, VA has vaccinated over two million veterans and over 279,000 employees. WWP is optimistic about the progress that has been made, and we see a path to pre-pandemic operations quickly emerging. However, the risk of the virus has not been fully eradicated, nor has the fear that some veterans and health care workers face when receiving or performing in-home health care. Protective measures are still in place, and the costs of personalized health care are still high. In fact, a recent study found that the cost of in-home care has increased over the last year in large part due to the COVID-19 pandemic and resulting increases in the costs of training on new safety procedures, testing, cleaning supplies, and personal protective equipment.¹ More than half of long-term care providers (62 percent) predicted that they will be forced to raise rates in the next six months, thus passing on the burden of the COVID-19 pandemic to high-risk patients.

The *Aid and Attendance Support Act* will temporarily increase the amount of Aid and Attendance funding distributed to veterans by 25 percent, allowing beneficiaries to maintain the standard of care that they need throughout the public health emergency and the days following. For this reason, WWP supports S. 219, the *Aid and Attendance Support Act* and thanks Senator Cortez-Masto for her leadership on this issue.

S. 444, Advancing Uniform Transportation Opportunities (AUTO) for Veterans Act

The *Advancing Uniform Transportation Opportunities for Veterans Act* or *AUTO Act* will authorize VA to provide any eligible veteran or Service member with an additional automobile under VA's automobile allowance grant program once every ten years. Currently, a veteran or Service member with a specified service-connected disability or impairment may not receive more than one automobile under the program. This bill would expand a currently one-time benefit to a lifetime benefit for severely disabled veterans and Service members.

The VA automobile allowance grant program is reserved for a veteran or Service member who has lost the use of one or both feet, one or both hands, or who has incurred a severe burn injury, permanent decreased vision in both eyes, amyotrophic lateral sclerosis, or ankylosis in one or both knees or the hip. If qualified, the veteran or Service member will receive a one-time payment of \$21,488.29 to help buy a specially equipped vehicle. Many of these vehicles have features like modified steering, specialized braking capabilities, and wheelchair lifts or ramps.

Maintaining independence is critical in the reintegration process into civilian society and the workforce. Few things help more with independence than a vehicle. However, purchasing or modifying a vehicle with adaptations for injured and disabled veterans is costly. These are lifetime injuries and illnesses, and as such, the benefits available to those who have incurred them should reflect a lifetime of need and support. WWP supports the *Advancing Uniform*

¹ *Genworth 17th Annual Cost of Care Survey: COVID-19 Exacerbates Already Rising Long Term Care Costs; Care Providers Foresee Additional Rate Hikes in 2021*, available at <https://newsroom.genworth.com/2020-12-02-Genworth-17th-Annual-Cost-of-Care-Survey-COVID-19-Exacerbates-Already-Rising-Long-Term-Care-Costs-Care-Providers-Foresee-Additional-Rate-Hikes-in-2021>

Transportation Opportunities for Veterans Act or AUTO Act. We thank Senator Collins and Senator Manchin for introducing this legislation.

S. 437, the Veterans Burn Pits Exposure Recognition Act of 2021; S. 454, the K2 Veterans Care Act of 2021; S. 458, the Veterans Claim Transparency Act of 2021; S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act of 2021; 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; S. 810, the Fair Care for Vietnam Veterans; S. 927 the Toxic Exposure in the American Military (TEAM) Act; S. 952, the Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; S. 976, the Caring for Survivors Act of 2021; and 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

Wounded Warrior Project applauds the Committee's focus on addressing the needs of those who suffer from illnesses associated with exposure to toxic substances, both on the battlefield and in peacetime. For nearly 20 years, a significant number of post-9/11 veterans have been exposed to contaminants such as burn pits, toxic fragments, radiation, and other hazardous materials found on deployments to countries like Iraq, Afghanistan, Uzbekistan, and elsewhere. Now, far too many of them are experiencing severe, rare, and early-onset conditions, which we suspect are closely correlated to their exposures. WWP is committed to addressing their toxic wounds with the same urgency which we address the physical and invisible wounds of war.

Although WWP primarily serves post-9/11 wounded, ill, or injured warriors through direct programs and advocacy, we frequently advocate for all generation of veterans. We recognize that challenges associated with toxic exposures has affected generations of veterans long before the attacks on September 11, 2001 and therefore supports S. 565, *Mark Takaki Atomic Veterans Healthcare Parity Act of 2021*, 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*, S. 810, *Fair Care for Vietnam Veterans*, and S. 1039, *to amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes*.

In Focus: S. 437, 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.² A common

² *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>.

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. 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.

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 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 it 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 Senator Sullivan and Senator Manchin for introducing this legislation.

In Focus: S. 454, 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, including elevated levels of tetrachloroethylene and particulate matter, the presence of depleted uranium, and the potential for daily contact with radiation existed for up to 100 percent of the assigned units³. 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 and hematopoietic tissue⁴. 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.

³ https://oversight.house.gov/sites/democrats.oversight.house.gov/files/4.1_Environmental%20Site%20Surve%202002.pdf#page=27

⁴ Army Public Health Center, *Health Status of Personnel Formerly Deployed to Karshi-Khanabad (K2): A*

The *K2 Veterans Care Act of 2021* would address this disparity by creating a framework to establish 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, as written, would establish presumptive disabilities by reason of a positive association as determined by NAMSEM, without requiring the approval of the VA Secretary. While we understand that this would speed up the process in theory by removing one layer of decision-making, we believe that recommendations made by NASEM as an independent, non-profit organization would require approval by either the Secretary or Congress before becoming final. Second, we recommend that language be added to require the Secretary 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 Senator Blumenthal and Senator Baldwin for introducing this legislation.

In Focus: S. 927, 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 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 5-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 thousand 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 those who are seriously ill from having to wait until their 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

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.

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 show 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 Senator Tillis and Senator Hassan for their dedication of the wounded, ill, and injured veterans and Service members of the past, present, and future.

In Focus: S. 952, 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.”⁸ Consequently, NASEM recommends that new epidemiologic studies should be conducted.⁸ 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 any of at least 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, lymphatic 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

⁸ National Academies of Sciences, Engineering, and Medicine, *Respiratory health effects of airborne hazards exposures in the Southwest Asia Theater of Military Operations*, 2020.

disease, pleuritis, pulmonary fibrosis, and sarcoidosis. It 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.⁹

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 lifeline, 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 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. With no end in sight, it is unreasonable to continue to ask them 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 Senator Gillibrand and Senator Rubio for its introduction. Furthermore, we believe that when taken together with the *Veterans Burn Pits Exposure Recognition Act of 2021* and the *TEAM Act*, these three complimentary bills fit together like pieces of a puzzle to fully address toxic exposure concerns, not only for the current generation of veterans, but for future generations as well. Accordingly, we ask Congress to pass all three pieces of legislation without delay, finally creating a lasting solution for all veterans who have been made ill as a result of military toxic exposures.

⁹ Institute of Medicine, *Long-term health consequences of exposure to burn pits in Iraq and Afghanistan*, 2011.

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

Under the *Department of Veterans Affairs Information Technology Reform Act*, VA would be required to submit detailed reports to the Senate and House Committees on Veterans Affairs and the Appropriations Subcommittee on Military Construction, Veterans Affairs and Related Agencies in both chambers before committing funds to major information technology (IT) projects. Additionally, VA would be required to provide updates on these projects in its annual budget request and whenever there are notable variances to the projected costs, schedules, or deliverables. The bill would also generate new reports related to cloud migration and Office of Management and Budget-directed capital planning and investment controls.

As stated in the FY 2021 Department of Veterans Affairs Budget in Brief, “the technology and resources required to support VA strategic priorities underpin every aspect of the care and services delivered to Veterans.” To properly support its oversight of the country’s largest integrated health system and its associated benefits administration, Congress should have additional insight on the vision and progress of VA’s most critical IT projects. While VA should be commended for being one of only three federal agencies that improved its Federal Information Technology Acquisition Reform Act (FITARA) scorecard grade in 2020, that momentum can and should continue with additional reforms.

Wounded Warrior Project supports the *Department of Veterans Affairs Information Technology Reform Act* out of recognition that agency functioning and budgeting will improve with efficient and modernized IT systems in place. VA reported that it was in the process of completing many of the requirements included in the previous version of this bill from the 116th Congress and subsequently improved its FITARA scorecard grade from a C+ in 2019 to a B+ in 2020. We are hopeful that similar improvements can be achieved in the near future with the reforms proposed by the *Department of Veterans Affairs Information Technology Reform Act* and we thank Chairman Tester for continuing to advocate for progress in VA’s IT management capabilities.

S. 976, *Caring for Survivors Act*

Dependency and Indemnity Compensation (DIC) is not only a benefit to support economic stability among veteran families, but also an important way to honor those who have died in the line of duty or from service-related injuries and illnesses. After the loss of their loved one, many survivors rely on this benefit to meet their basic needs.

However, the DIC program has been historically resistant to modernization. Under current law, DIC is restricted to those whose veteran counterpart was rated as totally disabled for at least ten years preceding his or her death. This effectively bars payment to the survivors of veterans who developed severe illnesses or injuries late in life, or a totally disabling disability which onset rapidly.

The *Caring for Survivors Act* would reduce this limitation from ten years to five, allowing more survivors eligibility for DIC. In addition, the legislation would reform the DIC

payment structure, better aligning it with the Civil Service Retirement System (CSRS) and other federal survivor benefits which allow survivors to capture payments of up to 55 percent of their late loved one's prior compensation. WWP supports the *Caring for Survivors Act* in its effort to improve benefits for the families of fallen veterans. We want to extend our thanks to Chairman Tester and Senator Boozman for their bipartisan cooperation and leadership on this important issue.

S. 1031, 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

Over the next few decades, our nation's Armed Forces will become significantly more diverse. The proportion of White veterans is projected to decrease from 74 percent to 61 percent while the numbers of Black, Hispanic, Asian, American Indian or Alaska Native, and multi-racial veterans are all projected to rise.¹⁰ WWP has witnessed similar trends as the number of racial and ethnic minorities in our Alumni population has steadily increased from 24 percent in 2010¹¹ to 36 percent in 2020¹². Attention and commitment are needed to ensure that this increasingly diverse veteran population is able to access the benefits they have earned without racial inequality, discrimination, or prejudice.

Senator Raphael Warnock's legislation would require the Government Accountability Office (GAO) to conduct a study on disparities associated with race and ethnicity with respect to certain benefits administered by VA. This study would assess whether there are racial and ethnic disparities regarding: compensation benefits; disability ratings, particularly ratings based on pain; and denials of claims for benefits and would develop accompanying recommendations to augment data collection of any disparities identified.

While WWP fully supports this legislation's intent to better identify potential disparities in VA's benefits system, we want to highlight potential areas where the current data may not provide a true picture. VA's process for tracking race and ethnicity is often inconsistent or incomplete. Some programs rely on the judgment of a VA employee to determine a veteran's race and ethnicity; others do not track this demographic at all, deeming it irrelevant to the program's delivery. As the December 2019 GAO Report "Opportunities Exist for VA to Better Identify and Address Racial and Ethnic Disparities" noted, "weaknesses in race and ethnicity data due to problem with the completeness and accuracy continue to limit VA's ability to identify and address disparities in health care outcomes."¹³ We encourage VA to review its racial and ethnic data collection methods, implement standard procedures across both VBA and VHA, and fully integrate these standards into the benefits process to ensure that any studies, such as the one proposed by S. 1031, are reliable and complete.

¹⁰ DEP'T OF VET. AFFAIRS, OFFICE OF HEALTH EQUITY, Racial and Ethnic Minority Veterans, available at https://www.va.gov/HEALTH/EQUITY/Race_Ethnicity.asp.

¹¹ The 2010 *Annual Warrior Survey* is available for download and review at <https://www.woundedwarriorproject.org/media/bzzdswif/2010-wwp-alumni-survey.pdf>

¹² The 2020 *Annual Warrior Survey* is available for download and review at <https://www.woundedwarriorproject.org/mission/annual-warrior-survey>.

¹³ GAO, "Opportunities Exist for VA to Better Identify and Address Racial and Ethnic Disparities," (December 2019). Available at <https://www.gao.gov/assets/gao-20-83.pdf>.

Additionally, it is important to note that the objectives of S. 1031 may already be met through current initiatives. Section 5401 of the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care Benefits Improvement Act* (P.L. 116-315) requires VA to analyze the data of every benefit and service offered to a veteran, disaggregated by gender, race, and ethnicity. The results of this ongoing study may bring answers to the questions posed by this legislation, or more importantly, identify new disparities that deserve further exploration. In addition, we appreciate that Section 5401 includes language to protect the anonymity of veterans. This consideration should also be applied to the study proposed in S. 1031.

WWP thanks Senator Warnock for his dedication to serving our nation's minority veterans, and we look forward to working with the Senator and this Committee to ensure equitable and comprehensive benefits for all who have served.

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

The *Veterans Claim Transparency Act of 2021* would require VA to provide a veteran's disability claim representative with the opportunity to review a VBA proposed compensation and pension (C&P) claim determination before the decision becomes final. Under this bill, VA would be required to notify the representative in writing that a proposed determination is ready for review and may not make a final determination until the review period has ended. The review period is set at 48-hours. This was previously known as the 48-hour review period and was, until recently, a standard VBA policy.

Historically, veteran service officers would use the 48-hour review period to correct minor (but impactful) mistakes made by VA when adjudicating a VA benefits claim. Mistakes generally include mismatching Social Security numbers, clear misinterpretations of VA benefit policy, or misspelled names. Recently, VA removed the 48-hour review period and is in the process of implementing a new policy known as the Claim Accuracy Request (CAR) pilot program. The CAR pilot program review period will act as the new process for informing VA that a mistake in a claim was due to general misprocessing of information. The new process requires a veteran service officer to submit a Higher-Level Review (HLR) VA Form 20-0996, annotated on the top of the margin on the third page of the HLR paperwork with "Claim Accuracy Request," and submit the form to VBA. VBA will review HLR forms with the annotation and move quickly to inform the service officer why the decision will or will not be altered.

Wounded Warrior Project has found that some service officers would like to go back to the old 48-hour review period. We also found that some are looking forward to the new CAR HLR review process. For those service officers that have contacts at VA to assist in a 48-hour review request, they feel that the new HLR process will take longer than previously. For those service officers that do not have a contact at VA, they feel that the new HLR process will be more effective than submitting a 48-hour review request and not hearing anything back before the 48-hour review timeline is over. For these reasons, WWP supports the *Veterans Claim Transparency Act of 2021* but we would also like to see how the new CAR HLR process works

out and which might be best for veterans and service officers long term. Service officers having a review period is important to hold VBA accountable for minor mistakes, but if the former 48-hour review period only works for those with VA contacts, then there needs to be an option for those who do not have “an in” at VA. Therefore, while WWP supports this legislation, we would like to also see how the new CAR HLR process works and determine whether it could replace the old 48-hour rule. We thank Chairman Tester and Senator Boozman for introducing this legislation.

S. _____, 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.

This bill would expand eligibility for the Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) to spouses and children of individuals who die from a service-connected disability within 120 days of serving in the Armed Forces. Currently, eligibility for the Fry Scholarship is limited to surviving spouses and children of an active-duty Service member who dies in the line of duty on or after September 11, 2001.¹⁴ Once the Service member transitions out of the military, the family is no longer eligible for the Fry Scholarship, regardless of when the veteran passes away.

The Fry Scholarship pays a benefit equal to the current Post-9/11 GI Bill for individuals attending an institution of higher education. Beneficiaries attending school may receive up to their full tuition and fees, to include a monthly living stipend and book allowance, to obtain a degree in higher education and advance their career opportunities. Unfortunately, for Service members who transition out of the military due to severe disabilities, such as cancers from toxic exposure, and die from a service-connected disability soon after they are discharged, the family is ineligible for the Fry Scholarship because the Service member did not die “in the line of duty.” WWP supports this legislation and will continue to advocate for the families of the fallen anyway we can.

S. _____, to authorize the Secretary of Veterans Affairs to carry out a pilot program to provide pension claim enhancement assistance to individuals.

Undoubtedly, the COVID-19 pandemic has placed a strain on the already time-consuming VA benefits process; the Veterans Benefits Administration (VBA) is currently experiencing a backlog of more than 200,000 outstanding claims.¹⁵ As a result, VBA has taken steps to increase the capacity of its contractors to perform examinations, exercised the use of telehealth platforms, and in some cases, reintegrated in-person examinations. Nonetheless, claims decisions for veterans have slowed, a result which may critically impact the economic wellbeing of many who we serve.

¹⁴ VA Fry Scholarships, (2021), available at <https://www.va.gov/education/survivor-dependent-benefits/fry-scholarship/>

¹⁵ Veterans Benefits Administration Reports, (2021), Available at https://www.benefits.va.gov/reports/detailed_claims_data.asp

For WWP, the backlog caused by COVID-19 has only resolidified our commitment to assisting veterans to create well-researched, consequential claims. Our process is heavily reliant on upfront evidence-gathering, ensuring that the claims we submit are clear, complete, and detailed. WWP's Benefits team boasts a 90 percent claim approval rate.

The *VA AID Act* has a similar ethos: by connecting veterans with claim enhancement assistance, more veterans can get their claim right the first time, reducing VBA's burden and granting veterans their earned pensions faster. The bill would establish a three-year pilot program to connect veterans with third-party support services to ensure pension claims are fully developed and accurate. While WWP is supportive of Senator Cruz's intent to streamline the benefits process, we believe many organizations and resources already exist to meet this need, free of charge to the veteran and their families. WWP and many other likeminded organizations employ expert National Service Officers who can confidently guide veterans through the pension claims process, and in many cases, increase the likelihood of a positive result for the veteran. Additionally, the current backlog for the Aid and Attendance program is around 700 claims, so we do not see a large enough need of Aid and Attendance requests that would require funding outside groups of what current VSO's offer for free. We look forward to working with Senator Cruz and this Committee to improve the timeliness, accuracy, and accessibility of the benefits claims process but at this time, WWP does not support this legislation.

Closing

Wounded Warrior Project thanks the Senate 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.