

Honoring Our Promise to Address Comprehensive Toxics Act of 2021 (Honoring Our PACT Act of 2021)



Section-by-Section Summary—Rules Committee Print

SECTION 1: SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE; TABLE OF CONTENTS.

This section includes a table of contents and specifies that this Act may be cited as the “Honoring our Promise to Address Comprehensive Toxics Act of 2021” or the “Honoring our PACT Act of 2021”.

TITLE I - EXPANSION OF HEALTH CARE ELIGIBILITY FOR VETERANS

Subtitle A- Toxic-Exposed Veterans

Section 101: Short title.

This title may be cited as the “Conceding Our Veterans’ Exposures Now And Necessitating Training Act” or the “COVENANT Act”.

Section 102: Definitions relating to toxic-exposed veterans.

This section defines “toxic exposure” and defines “toxic-exposed veterans” as a veteran described in section 1710(e)(1) of title 38 United States Code.

This section defines “toxic exposure risk activity” and includes any risk of exposure recorded in an exposure tracking record system, which documents exposures to toxic substances.

Additionally, the Secretary of VA has the authority to determination that a veteran participated in a toxic exposure risk activity when an exposure tracking record system does not contain the appropriate data.

Section 103: Expansion of health care for specific categories of toxic-exposed veterans and veterans supporting certain overseas contingency operations.

Expands access to healthcare (hospital care, medical services and nursing home care) under Priority Group 6 for three categories of veterans:

Honoring Our PACT Act of 2021

- 1) Those who participated in a toxic exposure risk activity while serving on active duty, active duty for training, or inactive duty for training;
- 2) Those who served in certain locations during specific periods of time (listed in Sec 302 of the text); or
- 3) Those who were deployed in support of a specific contingency operation

Enrollment for care under categories 1 or 2 will occur in a phased manner:

- Beginning October 1, 2024, for veterans who were discharged or release during the period beginning on August 2, 1990 to September 11, 2001.
- Beginning October 1, 2026, for veterans who were discharged or release during the period beginning on September 12, 2001 to December 31, 2006.
- Beginning October 1, 2028, for veterans who were discharged or release during the period beginning on January 1, 2007 to December 31, 2012.
- Beginning October 1, 2030, for veterans who were discharged or release during the period beginning on January 1, 2013 to December 31, 2018.

Enrollment for care under the third category will not begin until October 1, 2032.

In all instances, the Secretary has the authority to modify the start date for any phase so long as VA has the resources to do so. If VA seeks to move up any timeline, it must first notify Congress of its intent and publish the new date in the Federal Register.

Calls on VA to develop a plan to conduct outreach to newly eligible veterans under each phase of enrollment.

Section 104: Assessment of Implementation and Operation.

Under this provision, VA must provide Congress an assessment within 180 days of enactment outlining the personnel and material resources needed to implement Section 103.

In addition, VA will need to establish information systems not later than October 1, 2024, to assess the implementation of Section 103. Said information collected will be provided to Congress in an annual report.

Subtitle B- Certain Veterans of Combat Service

Section 111: Expanded Period of Eligibility for Health Care for Certain Veterans of Combat Service.

Expands enhanced eligibility for healthcare under Priority Group 6 for combat veterans from five years after separation to ten years.

Makes available a one-year open enrollment period for veterans who are outside of their ten-year enrollment eligibility period.

Codifies the Department of Veterans Affairs' (VA) current interpretation of combat veteran to include the following medals and medal categories:

Honoring Our PACT Act of 2021

- The Armed Forces Expeditionary Medal
- Service Specific Expeditionary Medal
- Combat Era Specific Expeditionary Medal
- Campaign Specific Medal or other combat theater awards established by public law or executive order

Calls on VA to develop a plan to conduct outreach to newly eligible veterans under this section.

Requires VA to submit a report not later than January 30, 2024, regarding the number of veterans who enrolled during the one-year open enrollment period.

This section becomes effective October 1, 2022.

TITLE II - TOXIC EXPOSURE PRESUMPTION PROCESS

Section 201: Short Title.

This title may be cited as the “Fairly Assessing Service-related Toxic Exposure Residuals Presumptions Act” or the “FASTER Presumptions Act”.

Section 202: Improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure.

This section provides new procedures that VA must follow to establish new presumptions for service connection based on toxic exposures. The new decision process includes a Formal Advisory Committee and rules for formal evaluation, recommendation, and secretarial action upon recommendation.

This section defines illness as a disease or other condition affecting the health of an individual.

This section establishes a *Formal Advisory Committee* made up of nine members, with five appointed by the Secretary and four appointed by Congress in a bipartisan manner. Each member will serve a two-year term.

The Committee reviews data on potential toxic exposures and determines whether to recommend advancement of a nomination for formal evaluation to the Secretary. The Committee would fall under the Federal Advisory Committee Act except this would be a permanent committee not subject to the two-year renewal requirement. This section also requires annual reports to the Committees on Veterans’ Affairs of the Senate and House of Representatives by the Formal Advisory Committee.

This section establishes rules for formal evaluation. The Secretary must establish a process to conduct a formal evaluation with respect to each recommendation made by the Formal Advisory Committee. The Secretary must ensure that each formal evaluation covers scientific evidence, claims data, and other factors determined appropriate. The Secretary must ensure that each formal evaluation reviews scientific evidence in a manner that conforms to principles of

Honoring Our PACT Act of 2021

scientific and data integrity; is free from suppression or distortion of scientific or technological findings, data, information, conclusions, or technical results; and evaluates the likelihood that a positive association exists between an illness and a toxic exposure while serving in the active military, naval, air, or space service.

This section establishes that a formal evaluation must include reviewing all relevant data to determine the strength of evidence for a positive association based on four categories: ‘sufficient’, ‘equipoise or above’, ‘below equipoise’, or ‘against’. Not later than 120 days after the date on which a formal evaluation is commenced, the element of the Department that conducts the evaluation must submit to the Secretary a recommendation with respect to establishing a presumption of service connection for toxic exposure and illness, or modifying an existing presumption of service connection, covered by the evaluation.

This section establishes rules for secretarial action upon recommendation. Not later than 160 days after the date on which the Secretary receives a recommendation to establish or modify a presumption of service connection, and if the Secretary determines that the presumption, or modification is warranted, the Secretary must issue regulations setting forth the presumption or commence revising regulations. If the Secretary determines that a presumption, or modification, is not warranted, the Secretary must publish in the Federal Register a notice of the determination, including the reasons supporting the determination. The Secretary may issue regulations to remove an illness from a presumption of service connection while veterans and survivors awarded compensation for such illness on the basis of the presumption would maintain their benefits.

This section establishes secretarial authorities. The Secretary may modify the process under which the Secretary conducts formal evaluations and issues regulations under certain conditions. If the Secretary proposes to modify the process under which the Secretary conducts formal evaluations or issues regulations, the Secretary must notify the Committees on Veterans’ Affairs of the House of Representatives and the Senate of the proposed modifications.

This section requires the Secretary to submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on the implementation of, and recommendations for, this section’s established process.

This section requires the Secretary to seek to enter into an agreement with a nongovernmental entity or a federally funded research and development center to conduct a review of the implementation of this section’s established process.

Section 203: Reevaluation of claims for compensation involving presumptions of service connection.

This section requires that when a regulation or Federal court decision establishes or modifies a presumption of service connection, the Secretary must identify all claims for compensation that were previously received and denied. The Secretary must conduct outreach to this group of individuals by publishing public notice on the internet website of the Department and notifying veterans service organizations of the ability of such veterans to elect to have a claim so

Honoring Our PACT Act of 2021

reevaluated. If the claim is then granted, the Secretary must establish an effective date as if the new presumption was in effect at the time of the prior claim.

TITLE III - IMPROVING THE ESTABLISHMENT OF SERVICE-CONNECTION PROCESS FOR TOXIC-EXPOSED VETERANS

Section 301: Short title.

This title may be cited as the “Veterans Burn Pits Exposure Recognition Act”.

Section 302: Presumptions of toxic exposure.

This section directs the Secretary to consider any entry in an exposure tracking record system, to include the Individual Longitudinal Exposure Record (ILER), that qualifies as a toxic exposure risk activity as a presumption of exposure for a claim for service connection. If the exposure tracking record system does not contain the necessary information, the VA should consider the totality of the circumstances of the veteran’s service before making a decision.

This section establishes a presumption of exposure to substances, chemicals and airborne hazards the Secretary may determine appropriate, for veterans who served in certain locations. It also allows the Secretary to add or remove substances in collaboration with DOD.

Section 303: Medical nexus examinations for toxic exposure risk activities.

This section requires VA provide medical examinations and/or medical nexus opinions for any veteran who submits a claim for a service-connected disability relating to toxic exposure with evidence of a disability and participation in a toxic exposure risk activity.

TITLE IV - PRESUMPTIONS OF SERVICE-CONNECTION

Section 401: Treatment of veterans who participated in the cleanup of Enewetak Atoll as radiation-exposed veterans for purposes of presumption of service-connection of certain disabilities by Department of Veterans Affairs.

This section may be cited as the “Mark Takai Atomic Veterans Healthcare Parity Act”.

This section designates veterans who participated in the radioactive cleanup of Enewetak Atoll from January 1977 to December 1980 as radiation-exposed veterans who are eligible for the presumption of service connection for associated diseases.

Honoring Our PACT Act of 2021

Section 402: Treatment of veterans who participated in nuclear response near Palomares, Spain, as radiation-exposed veterans for purposes of presumption of service-connection of certain disabilities by Department of Veterans Affairs.

This section may be cited as the “Palomares Veterans Act”.

This section designates veterans who participated in the cleanup of the crashed Nuclear weapon carrying B-52 off the coast of Palomares Spain in the 1960s as radiation-exposed veterans who are eligible for the presumption of service connection for associated diseases.

Section 403: Presumptions of service connection for diseases associated with exposures to certain herbicide agents for veterans who served in certain locations.

This section may be cited as the “Veterans Agent Orange Exposure Equity Act”.

This section expands the locations for which a presumption of service connection is warranted based on exposure to herbicides such as Agent Orange. The expanded list of locations includes veterans who meet the following criteria:

- Service in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976;
- Service in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969;
- Service in Cambodia at Mimot or Krek, Kompon Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969; or
- Service in Guam or American Samoa, or in the territorial waters thereof, during the period beginning on January 9, 1962, and ending on July 31, 1980, or served on Johnston Atoll or on a ship that called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977.

This section defines the term “Vietnam-era herbicide-exposed veteran’ for purposes of healthcare eligibility.

Section 404: Addition of additional diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in certain locations.

This section may be cited as the “Fair Care for Vietnam Veterans Act”.

This section adds hypertension and monoclonal gammopathy of undetermined significance (MGUS) to the list of presumptive disabilities associated with exposure to herbicide agents such as Agent Orange.

Honoring Our PACT Act of 2021

Section 405: Improving compensation for disabilities occurring in Persian Gulf War veterans.

This section removes the end dates for Gulf War Illness disability eligibility and requires VA staff to enact a DBQ specifically to ensure that Gulf War veterans are screened for Gulf War Illness with a mandated report to Congress on this implementation annually.

Section 406: Presumption of service connection for certain diseases associated with exposure to burn pits and other toxins.

This section may be cited as the ‘‘Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act’’.

This section creates a presumption of service connection for veterans who were exposed to airborne hazards and burn pits based on the location and dates of their service. The presumption applies to the following conditions:

- 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.
- Lymphomatic cancer of any type.
- Kidney cancer.
- Brain cancer.
- Pancreatic cancer.
- Melanoma.
- Asthma diagnosed after service
- Chronic bronchitis.
- Chronic obstructive pulmonary disease.
- Constrictive bronchiolitis or Obliterative bronchiolitis.
- Emphysema.
- Granulomatous disease.
- Interstitial lung disease.
- Pleuritis.
- Pulmonary fibrosis.
- Sarcoidosis.
- Chronic Sinusitis.
- Chronic Rhinitis.
- Glioblastoma.

This section grants the Secretary authority to add to the list pursuant to regulations established under Title II of this bill.

TITLE V - RESEARCH MATTERS

Section 501: Coordination by Department of Veterans Affairs of toxic exposure research.

This section designates VA as the official coordinating authority for toxic exposure-related studies and research performed by the federal government. It requires the creation of a Toxic Exposure Research Strategic Plan to organize and sort toxic exposure-related research at different federal agencies and requires the Secretary to submit an annual report to Congress on the implementation of the plan.

Honoring Our PACT Act of 2021

Section 502: Data collection, analysis, and report on treatment of veterans for illnesses related to toxic exposure.

This section requires the Secretary of VA to collect, compile, and coordinate medical data for veterans receiving health care to further identify potential links between illnesses, military history, and toxic exposure. This section requires the Secretary to submit to the Committee on Veterans' Affairs in the Senate and House of Representatives an annual report outlining these efforts.

Section 503: Studies related to veterans who served in Southwest Asia and certain other locations.

This section requires that VA performs a mortality study, an epidemiological study and a toxicology study to assess the health trends of veterans who served in Southwest Asia during the War on Terror and reports these findings back to Congress within 180 days.

Section 504: Study on health trends of post 9/11 veterans.

This section requires an epidemiological study on the health trends of all Post 9/11 veterans.

Section 505: Study on cancer rates among veterans.

This section requires a study on the incidence of cancers among veterans.

Section 506: Study on feasibility and advisability of furnishing hospital care and medical services to dependents of veterans who participated in toxic exposure risk activities

This section directs VA to conduct a study on the feasibility of providing CHAMPVA benefits to dependents of veterans for healthcare costs related to toxic exposures experienced on military bases and other DoD maintained facilities.

This section defines qualifying dependent and requires that a report on the study be sent to Congress not later than two years after enactment of the Act.

TITLE VI - IMPROVEMENT OF RESOURCES AND TRAINING REGARDING TOXIC-EXPOSED VETERANS

Section 601: Short title; Definitions.

This title may be cited as the "Toxic Exposure in the American Military Act" or the "TEAM Act".

This section states the terms "active military, naval, or air service", "toxic exposure", and "toxic-exposed veteran" have the meanings given those terms in section 101 of title 38, United States Code.

Honoring Our PACT Act of 2021

Section 602: Publication of list of resources of Department of Veterans Affairs for Toxic Exposure Veterans and outreach program for such veterans and caregivers and survivors of such veterans.

This section requires VA to publish a list of the benefits and healthcare resources available to veterans and survivors related to toxic exposures on an annual basis.

This section requires the Secretary to develop with input from the community, an informative outreach program for veterans concerning illness that may be related to toxic exposure and available benefits.

Section 603: Incorporation of toxic exposure questionnaire during primary care appointments.

This section directs VA to incorporate a toxic exposure questionnaire during primary care appointments to improve understanding by the Department of toxic exposures of veterans while serving in the Armed Forces. The questions must be determined with input from medical professionals.

Section 604: Training for personnel of the Department of Veterans Affairs with respect to toxic exposure veterans.

This section requires training on toxic exposure for healthcare personnel.

This section also requires improved standardized training for VA benefit personnel, such as claims processors and health care personnel conducting examinations, to assist in the accurate adjudication of toxic exposure claims.

This section requires VA conduct quarterly, randomized review of the quality of claims adjudication of claims relating to toxic exposure.

TITLE VII – REGISTRIES, RECORDS, AND OTHER MATTERS

Section 701: Registry of individuals exposed to per- and polyfluoroalkyl substances on military installations.

This section requires the Secretary, within one year of enactment, create and maintain a registry of individual's who may have been exposed to per- and polyfluoroalkyl substances (PFAS).

This section requires the Secretary submit a report to Congress on the status of data collection and any recommendations on addressing the needs of veterans exposed to PFAS within 2 years with a follow up report due in 5 years.

Honoring Our PACT Act of 2021

Section 702: Fort McClellan Health Registry.

This section requires the VA to establish a Fort McClellan Health Registry and provide the option of a health examination and consultation to any veteran who was stationed at Fort McClellan. Also requires the VA to do appropriate outreach to veterans listed in the registry about their options, new research, and the consequences of toxic substance exposure.

Section 703: Independent study on Individual Longitudinal Exposure Record.

This section requires DOD enter into a contract with an independent research entity to conduct a study on the ILER to assess the quality of location and exposure date, and determine whether a member of the Armed Forces can be reasonably assured that any toxic exposure they experienced during service will be reflected in their records.

Section 704: Biannual report on Individual Longitudinal Exposure Record.

This section requires DOD to review ILER periodically to determine whether additional exposures should be added, based on geography, occupation, and timeframe of service. It also requires periodic reports to Congress.

Section 705: Correction by members of the Armed Forces of exposure records.

Requires the Secretary of Defense to allow for service members and veterans to correct their military records as they pertain to toxic exposures.

Section 706: Federal cause of action relating to water at Camp Lejeune, North Carolina.

This section allows certain individuals to bring an action in the United States District Court for the Eastern District of North Carolina to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.