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# Honoring Our PACT Act of 2022 (P.L. 117-168): Expansion of Health Care Eligibility and Toxic Exposure Screenings

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## **Honoring Our PACT Act of 2022 (P.L. 117-168): Expansion of Health Care Eligibility and Toxic Exposure Screenings**

Numerous legislative measures were introduced in the 117<sup>th</sup> Congress to address the health and disability compensation concerns of veterans potentially exposed to toxic substances during military service. The culmination of this effort was the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (P.L. 117-168), which President Biden signed into law on August 20, 2022. The Honoring our PACT Act of 2022 contains nine titles. As part of a series of CRS reports on various provisions in the Honoring our PACT Act of 2022, this report focuses on Title I and Section 603 of Title IV.

Title I (Conceding Our Veterans' Exposure Now and Necessitating Training Act of 2022, or the COVENANT Act of 2022) of the Honoring our PACT Act of 2022 expands health care eligibility via two major pathways. The first expands health care for specific categories of veterans exposed to toxic substances, and the second expands the health care enrollment period for certain veterans of combat service.

The first pathway includes three different authorities:

1. The act authorizes the Secretary to provide hospital care (including mental health services and counseling), medical services, and nursing home care for any illness, unless there is insufficient medical evidence to conclude that the illness is attributable to such service, to a veteran who participated in a “toxic exposure risk activity” while serving on active duty, active duty for training, or inactive duty training. A “toxic exposure risk activity” means any activity that requires a corresponding entry in the Individual Longitudinal Exposure Record (ILER) of the veteran who carried out the activity, or any activity that the Secretary “determines qualifies for the purposes of this subsection” (e.g., hospital care, medical services, and nursing home care) to reasonably protect the health of veterans.
2. The act authorizes the Secretary to provide hospital care (including mental health services and counseling), medical services, and nursing home care for any illness, unless there is insufficient medical evidence to conclude that the illness is attributable to such service, to any veteran who, on or after August 2, 1990, performed active military, naval, air, or space service while assigned to a duty station in, including airspace above, Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, or United Arab Emirates; or who, on or after September 11, 2001, performed active military, naval, air, or space service while assigned to a duty station in, including airspace above, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, the Philippines, or any other country determined by the Secretary.
3. The act authorizes the Secretary to provide hospital care (including mental health services and counseling), medical services, and nursing home care for any illness, unless there is insufficient medical evidence to conclude that the illness is attributable to such service, to a veteran who was deployed for any of the following contingency operations: Operation Enduring Freedom, Operation Freedom’s Sentinel, Operation Iraqi Freedom, Operation New Dawn, Operation Inherent Resolve, or Resolute Support Mission.

The second pathway expands the period of eligibility for enrollment in the VA health care system for certain combat service veterans. The act extends the period of enrollment in the VA health care system from 5 to 10 years. Veterans who served between September 11, 2001, and before October 1, 2013, but who prior to the act could not enroll during the five-year period of post-discharge eligibility, were granted an additional one-year period of enrollment eligibility beginning on October 1, 2022. Furthermore, the act clarified that service in the “Persian Gulf War” includes any veteran who, during such period of service, received the Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal, Combat Era Specific Expeditionary Medal, Campaign Specific Medal, or any other combat theater award established by a federal statute or an executive order. The enrollment

expansion became effective on October 1, 2022. The above criteria also applies to National Guard and Reserve personnel who were called to active duty by federal executive order and who served in a theater of combat operations after November 11, 1998.

Section 603 of Title VI (Fairly Assessing Service-related Toxic Exposure Residuals Presumptions Act of 2022, or the FASTER Presumption Act of 2022) required VA to implement toxic exposure screening of all enrolled veterans to help determine potential toxic exposures during active military, naval, air, or space service. VA implemented toxic exposure screenings on November 8, 2022.

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## Introduction

On August 10, 2022, President Biden signed into law the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (P.L. 117-168). The act marked the culmination of a legislative effort, spanning several congresses, to comprehensively address health care eligibility and disability compensation policies for veterans exposed to a wide variety of occupational and environmental hazards during military service. Over the years, as evidenced by numerous Senate and House Veterans' Affairs Committee hearings and studies,<sup>1</sup> Congress and the Department of Veterans Affairs (VA) have grappled with how to provide disability compensation and eligibility for health care to veterans with illnesses and disabilities related to, or possibly related to, environmental or occupational exposures.

Providing this type of disability compensation and health care eligibility to veterans can be challenging; for example, when the scientific evidence is incomplete, when the association between environmental exposure and illness is unclear, and when other factors (e.g., natural aging, family history, and lifestyle habits) might contribute to the illness or disability. In other words, incorporating “science into difficult and contentious veteran compensation policy decisions”<sup>2</sup> is hard, especially when considering environmental exposures during deployment and “latent diseases allegedly associated with exposures many years earlier.”<sup>3</sup> Given these challenges, Congress “has taken a piecemeal approach to addressing military exposures.”<sup>4</sup>

From time to time, Congress has passed legislation related to care and benefits for former prisoners of war, service in Vietnam, exposure to ionizing radiation, service during the Persian Gulf War, contaminated drinking water at Camp Lejeune North Carolina, and Blue Water Navy Vietnam veterans, among other legislative efforts.

In response to mounting concerns about the use of open burn pits during Operation Iraqi Freedom (OIF) in Iraq and Operation Enduring Freedom (OEF) in Afghanistan, and the potential impacts on the health of veterans who served at or near open burn pit sites in Afghanistan and the

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<sup>1</sup> In 2007, the Veterans' Disability Benefits Commission (established in accordance with P.L. 108-136 as amended by P.L. 109-163, see 38 U.S.C. §1101 notes) examined benefits for veterans exposed to environmental/occupational hazards and—because “an increasing proportion of benefits is paid through a presumptive decision-making process”—tasked the then-Institute of Medicine (IOM; since 2015 known as the National Academy of Medicine [NAM], part of the National Academies of Sciences, Engineering, and Medicine [NASEM]) to examine the presumptive decisionmaking process and “recommend a framework that would rely on scientific principles.” Veterans' Disability Benefits Commission, *Honoring the Call to Duty: Veterans' Disability Benefits in the 21<sup>st</sup> Century*, Washington, DC, October 2007, pp. 18, 111; U.S. Congress, House Committee on Government Reform, Subcommittee on National Security, Veterans Affairs and International Relations, *Gulf War Veterans: Linking Exposures*, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 27, 2000 (Washington: GPO, 2001); U.S. Congress, Senate Committee on Veterans' Affairs, *Military Exposures: The Continuing Challenges of Care and Compensation*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 10, 2002, S.Hrg. 107-792 (Washington: GPO, 2002); U.S. Congress, Senate Committee on Veterans' Affairs, *VA/DOD Response To Certain Military Exposures*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., October 8, 2009, S.Hrg. 111-437 (Washington: GPO, 2010); U.S. Congress, Senate Committee on Veterans' Affairs, *Examining The Impact of Exposure to Toxic Chemicals on Veterans and the VA's Response*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., September 29, 2015, S.Hrg. 114-371 (Washington: GPO, 2016).

<sup>2</sup> Mark Brown, “The Role of Science in Department of Veterans Affairs Disability Compensation Policies for Environmental and Occupational Illnesses and Injuries,” *Journal of Law and Policy*, vol. 13, no. 2 (2005), p. 606.

<sup>3</sup> Mark Brown, “The Role of Science in Department of Veterans Affairs Disability Compensation Policies for Environmental and Occupational Illnesses and Injuries,” *Journal of Law and Policy*, vol. 13, no. 2 (2005), p. 606.

<sup>4</sup> U.S. Congress, Senate Committee on Veterans' Affairs, *Examination of Exposures to Environmental Hazards During Military Service And Health Care For Camp Lejeune And Atsugi Naval Air Facility Veterans And Their Families Act Of 2010*, report to accompany S. 3378, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 17, 2010, S.Rept. 111-189, p. 2.

Southwest Asia theater of operations,<sup>5</sup> Congress passed legislation to study the potential health effects associated with exposure to open burn pit emissions during deployment. The earliest legislation to do so was the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (P.L. 112-260), which authorized VA to establish a registry of veterans and current servicemembers who may have been exposed to "toxic airborne chemicals and fumes caused by open burn pits"<sup>6</sup> within one year after enactment. Moreover, H.Rept. 115-929 to accompany the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019 (H.R. 5895; P.L. 115-244), required VA to rename the Airborne Hazards Center of Excellence (AHCE) at the War Related Illness and Injury Study Center as the Airborne Hazards and Burn Pits Center of Excellence, and to focus on clinical, translation research, and education pertaining to airborne hazards and open burn pit exposure-related concerns of veterans.<sup>7</sup> In 2009, VA requested the then-Institute of Medicine (IOM; now the National Academy of Medicine of the National Academies of Sciences, Engineering, and Medicine [NASEM]) to assess "the potential long-term health effects of exposure to burn pits in Iraq and Afghanistan," and to examine the feasibility and design of a long-term epidemiological study of veterans exposed to burn pit emissions.<sup>8</sup> NASEM issued its report in October 2011. According to the report findings, among other conclusions,

... service in Iraq or Afghanistan—that is, a broader consideration of air pollution than exposure only to burn pit emissions—might be associated with long-term health effects, particularly in highly exposed populations (such as those who worked at the burn pit) or susceptible populations (for example, those who have asthma), mainly because of the high ambient concentrations of PM [particulate matter] from both natural and anthropogenic, including military, sources. If that broader exposure to air pollution turns out to be sufficiently high, potentially related health effects of concern are respiratory and cardiovascular effects and cancer.<sup>9</sup>

The NASEM report further recommended a well-designed epidemiologic study of the potential health effects of environmental exposures among U.S. military personnel and veterans who were deployed at burn pit sites. It further noted that determining the incidence of chronic diseases or cancers with long latency periods would require tracking study subjects for many years.<sup>10</sup>

The Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (P.L. 112-260) further required independent assessments of the Airborne Hazards and Open Burn Pit Registry (AHOBPR) that was established by VA in June 2014 and a follow-up report not later than five years after completion of the initial report.<sup>11</sup> VA contracted with NASEM to evaluate the registry.

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<sup>5</sup> The VA defines the Southwest Asia theater of operations as "Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations" (38 C.F.R. §3.317(e)(2)). Also see "What's included in the Southwest Asia theater of military operations?" <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/gulf-war-illness-southwest-asia/>; and <https://www.publichealth.va.gov/exposures/gulfwar/military-service.asp>.

<sup>6</sup> 38 U.S.C. §527 note.

<sup>7</sup> In 2013, VA established the Airborne Hazards Center of Excellence (AHCE) at the New Jersey War Related Illness and Injury Study Center.

<sup>8</sup> National Academies of Science, Engineering, and Medicine, *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan*, October 31, 2011, National Academies Press, Washington, DC, p. 13.

<sup>9</sup> National Academies of Science, Engineering, and Medicine, *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan*, October 31, 2011, National Academies Press, Washington, DC, p. 7.

<sup>10</sup> National Academies of Science, Engineering, and Medicine, *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan*, October 31, 2011, National Academies Press, Washington, DC, p. 117.

<sup>11</sup> Department of Veterans Affairs, "Establishment of the Airborne Hazards and Open Burn Pit Registry," 79 *Federal*

The law required that the assessment include, among other things, “recommendations regarding the most effective and prudent means of addressing the medical needs of eligible individuals with respect to conditions that are likely to result from exposure to open burn pits”<sup>12</sup> Among other findings, the initial report “concluded that the exposure data are of insufficient quality or reliability to make them useful in anything other than the most general assessments of exposure potential.”<sup>13</sup> As required by P.L. 112-260, NASEM conducted another reassessment of the AHOBPR, and its findings were released in October 2022. The findings concluded that “the stated registry purposes of ‘research about potential health effects of airborne hazards’ and conducting population health surveillance are unattainable, that data collection to meet these purposes is not helpful, and that efforts to address these important functions could be pursued in other, more effective ways.” NASEM recommended that VA initiate a new phase for the AHOBPR.<sup>14</sup>

In September 2018, VA requested NASEM to study the health effects of airborne hazards and respiratory health outcomes in veterans who participated in military operations in Southwest Asia. The NASEM study committee developed a list of 27 respiratory health outcomes to review, such as respiratory cancers, asthma, chronic bronchitis, chronic obstructive pulmonary disease, emphysema, chronic persistent cough, shortness of breath (dyspnea), and wheezing, and released its findings in September 2020. Among its findings, the NASEM study committee concluded that of the 27 respiratory health outcomes examined, only chronic persistent cough, shortness of breath (dyspnea), and wheezing met the criteria for limited or suggestive evidence of an association,<sup>15</sup> and that the remaining 24 conditions had inadequate or insufficient evidence to determine an association.<sup>16</sup> In testimony before the House Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs, NASEM stated:

It is clear that military personnel and veterans are experiencing respiratory health problems, and our committee [Committee on the Respiratory Health Effects of Airborne Hazards Exposure in the Southwest Asia Theater of Military Operations] wishes to emphasize that these findings do not mean that there is no association between service in the Southwest Asia theater and these conditions. Instead, the committee found that the available epidemiologic evidence does not allow a definitive determination to be made about any potential association.<sup>17</sup>

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*Register* 36142-36144, June 25, 2014.

<sup>12</sup> P.L. 112-260, Title II, Section 201(b)(iii). National Academies of Sciences, Engineering, and Medicine, *Assessment of the Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry*, February 2017, National Academies Press, Washington, DC, p. 13.

<sup>13</sup> National Academies of Sciences, Engineering, and Medicine, *Assessment of the Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry*, February 2017, National Academies Press, Washington, DC, p. 5.

<sup>14</sup> National Academies of Sciences, Engineering, and Medicine, *Reassessment of the Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry*, October 14, 2022, The National Academies Press, Washington, DC, p. 3.

<sup>15</sup> NASEM defines limited or suggestive evidence of an association as an outcome for which “the evidence must suggest an association between an in-theater exposure and a respiratory outcome in studies of humans, but it can be limited by an inability to confidently rule out chance, bias, or confounding.” (Source: Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations, a briefing on a National Academies report to congressional staff, September 10, 2020).

<sup>16</sup> National Academies of Sciences, Engineering, and Medicine. Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations. September 11, 2020, The National Academies Press, Washington, DC, pp. 5-6. Also see Department of Veterans Affairs, “Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter,” 86 *Federal Register* 42724-42733, August 5, 2021.

<sup>17</sup> U.S. Congress, House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial

Frustrated by a persistent lack of scientific evidence to link certain diseases or conditions with environment exposures during military service, veterans turned to Congress for legislation that would enable them to obtain VA medical care and disability compensation.

## Brief Legislative History

At the start of the 117<sup>th</sup> Congress, the House and Senate Veterans' Affairs Committees (HVAC and SVAC, respectively) made veterans' exposure to toxic substances a legislative priority.<sup>18</sup> Although numerous measures were introduced in the 117<sup>th</sup> Congress to address the health and disability compensation concerns of veterans potentially exposed to toxic substances, the HVAC and SVAC began drafting legislation that incorporated various provisions of multiple stand-alone bills.<sup>19</sup>

On June 17, 2021, then-Chairman Mark Takano of HVAC introduced the Honoring our Promise to Address Comprehensive Toxics Act of 2021, or the Honoring our PACT Act of 2021 (H.R. 3967). A markup of the bill was held on June 24, 2021. The text of H.R. 3967, as ordered reported (H.Rept. 117-249 Part 1) by the Committee on Veterans' Affairs, with modifications, was then included in House Rules Committee Print 117-33. Following floor debate, the House passed an amended version of the bill on March 3, 2022.<sup>20</sup> On October 19, 2021, Chairman Jon Tester of SVAC reported the Comprehensive and Overdue Support for Troops of War Act of 2021, or the COST of War Act of 2021 (S. 3003), to the Senate. In the meantime, SVAC Chairman Jon Tester and Ranking Member Jerry Moran decided on a "three-step approach" to address issues

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Affairs, *Toxic Exposures: Examining Airborne Hazards in the Southwest Asia Theater of Military Operations*, Statement of Dr. Sverre Vedal, Professor Emeritus, Department of Environmental and Occupational Health Sciences University of Washington School of Public Health, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 23, 2020.

<sup>18</sup> House Committee on Veterans' Affairs, "Chairman Takano Announces Priorities for the 117<sup>th</sup> Congress," press release, February 22, 2021, <https://democrats-veterans.house.gov/news/press-releases/chairman-takano-announces-priorities-for-the-117th-congress>; House Committee on Veterans' Affairs, "Ranking Member Bost Spearheads House Effort to Address Toxic Exposures, Introduces TEAM Act with Senator Tillis," press release, March 23, 2021, <https://veterans.house.gov/news/documentsingle.aspx?DocumentID=5800>; Senate Committee on Veterans' Affairs, "Tester to Take Gavel as Chairman of the Senate Veterans' Affairs Committee," press release, January 26, 2021, <https://www.veterans.senate.gov/2021/1/tester-to-take-gavel-as-chairman-of-the-senate-veterans-affairs-committee->; Senate Committee on Veterans' Affairs, "Sen. Moran Confirmed as Ranking Member, Announces Priorities for the 117<sup>th</sup> Congress," press release, February 9, 2021, <https://www.veterans.senate.gov/2021/2/sen-moran-confirmed-as-ranking-member-announces-priorities-for-the-117th-congress>.

<sup>19</sup> Some of these bills included, the following (in no specific order): S. 437, Veterans Burn Pits Exposure Recognition Act of 2021; H.R. 1585, Mark Takai Atomic Veterans Healthcare Parity Act; 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; H.R. 1972, Fair Care for Vietnam Veterans Act of 2021; S. 927, TEAM Act; H.R. 2127, TEAM Act; S. 952, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; H.R. 2372, Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2021; S. 1039, To amend title 38, United States Code, to improve compensation for disabilities occurring in Persian Gulf War veterans, and for other purposes; H.R. 2192, Camp Lejeune Justice Act of 2021; H.R. 2268, Keeping Our Promises Act; H.R. 2368, COVENANT Act of 2021; H.R. 2436, Veterans Burn Pits Exposure Recognition Act of 2021; H.R. 2569, Veterans Agent Orange Exposure Equity Act; H.R. 2601, SFC Heath Robinson Burn Pit Transparency Act; S. 1188, SFC Heath Robinson Burn Pit Transparency Act; H.R. 2607, FASTER Presumptions Act; S. 1151, Palomares Veterans Act of 2021; H.R. 2825, Fort McClellan Health Registry Act; H.R. 6659, Health Care for Burn Pit Veterans Act; H.R. 5599, Burn Pit PROMISE Act; S. 1393, Toxic Exposure Training Act of 2021; S. 3003, COST of War Act of 2021; S. 3541, Health Care for Burn Pit Veterans Act; and H.R. 3967, Honoring our PACT Act of 2022. This is not an exhaustive list of the measures introduced.

<sup>20</sup> "Honoring Our Promise to Address Comprehensive Toxics Act of 2021," *Congressional Record*, daily edition, vol. 168, no. 38 (March 2, 2022), pp. H1219-H1246.

pertaining to health care, disability compensation, and presumptive service-connection.<sup>21</sup> To address health care eligibility as a first step, on February 1, 2022, the Chairman and ranking member introduced the Health Care for Burn Pit Veterans Act (S. 3541), which passed the Senate by unanimous consent on February 16, 2022. Compared with the COST of War Act of 2021 (S. 3003), the Health Care for Burn Pit Veterans Act (S. 3541) focused on extending the period of enrollment in the VA health care system for veterans who served in a theater of combat operations. As Senator Tester stated during Senate consideration of S. 3541, “It expands the screening period of healthcare eligibility for combat veterans who served after September 11, 2001, from 5 years to 10,” and “provides an open enrollment period for any post-9/11 combat veteran who is more than 10 years from separation.”<sup>22</sup>

On May 24, 2022, SVAC Chairman Jon Tester and Ranking Member Jerry Moran released the text of the SVAC version of the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022 that addressed the latter two steps and included provisions related to health care, disability compensation, and presumptive service-connection among other provisions.<sup>23</sup> On June 8, 2022, the text of the measure was proposed by Senator Tester as S.Amdt. 5051 to H.R. 3967,<sup>24</sup> and it passed the Senate on June 16, 2022.<sup>25</sup> Among other provisions, the Senate-passed version included several provisions that would affect VA employee compensation, including the authority to buy out the service contracts of health care professionals to whom VA has offered employment at rural or highly rural VA facilities. These service contract buyouts were to be exempt from taxation. Since the Origination Clause in the U.S. Constitution (Article 1, Section 7) requires that revenue bills originate in the House and specifies that the Senate may not propose any amendment that would raise revenue to a House-passed nonrevenue measure this tax-exempt provision created what is known as a “blue-slipping” issue.<sup>26</sup> The House then took up an unrelated measure previously passed by the Senate (S. 3373), included the text of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, excluded the tax-exempt provision, and passed it on July 13,

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<sup>21</sup> Senate Committee on Veterans’ Affairs, “Tester, Moran Introduce Landmark Bill to Provide Health Care for Post-9/11 Toxic-Exposed Veterans,” press release, February 1, 2022, <https://www.veterans.senate.gov/newsroom/majority-news/tester-moran-introduce-landmark-bill-to-provide-health-care-for-post-9/11-toxic-exposed-veterans>; Senate Committee on Veterans Affairs, “Tester, Moran Bill to Expand VA Health Care for Post-9/11 Veterans Unanimously Clears Senate,” press release, February 16, 2022, <https://www.veterans.senate.gov/2022/2/breaking-tester-moran-bill-to-expand-va-health-care-for-post-9-11-veterans-unanimously-clears-senate>.

<sup>22</sup> “Health Care for Burn Pit Veterans Act,” Senate Debate Health Care for Burn Pit Veterans, *Congressional Record*, vol. 168, no. 31 (February 16, 2022), p. S734.

<sup>23</sup> Senate Committee on Veterans’ Affairs, “Tester, Moran Release Text of Historic Bipartisan Toxic Exposure Legislation,” press release, May 24, 2022, <https://www.veterans.senate.gov/2022/5/tester-moran-release-text-of-historic-bipartisan-toxic-exposure-legislation>.

<sup>24</sup> “Text of Amendments,” SA 5051. Mr. Tester (for himself and Mr. Moran) submitted an amendment intended to be proposed by him to the bill H.R. 3967, to improve health care and benefits for veterans exposed to toxic substances, and for other purposes, *Congressional Record*, daily edition, vol. 168, no. 97 (June 7, 2022), pp. S2818-S2838.

<sup>25</sup> “Honoring Our Promise to Address Comprehensive Toxics Act of 2021,” *Congressional Record*, daily edition, vol. 168, no. 102 (June 15, 2022), pp. S2947-S2958.

<sup>26</sup> For more information on “blue-slipping,” see CRS Report R46556, *Blue-Slipping: Enforcing the Origination Clause in the House of Representatives*.

2022.<sup>27</sup> The Senate agreed to the House amendment to S. 3373 and passed the measure on August 2, 2022.<sup>28</sup> The bill was signed by the President on August 10, 2022.<sup>29</sup>

## Cost of War Toxic Exposures Fund (TEF)

Section 805(a) of the Honoring our PACT Act of 2022 (P.L. 117-168) established the Cost of War Toxic Exposure Fund (TEF), to be administered by the VA Secretary.<sup>30</sup> The act appropriates \$500 million for the TEF for FY2022, to remain available until September 30, 2024. The act further authorizes appropriations (such sums as are necessary) to the fund for FY2023 and each subsequent fiscal year for costs associated with the delivery of health care associated with environmental hazards during active military service. Moreover, funds from the TEF could be used for costs associated with medical and other research related to environmental hazards, along with administrative expenses related to benefits, including information technology, benefit claims processing, and adjudicating appeals from veterans.<sup>31</sup> Appropriations provided for the TEF would be considered “direct spending” and treated as an “appropriated entitlement” (see text box below). Furthermore, the fund is exempt from mandatory sequestration provisions in section 256(h) of Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended.

The Honoring our PACT Act of 2022 also required VA to submit to the Senate and House Appropriations Committees a spend plan for how the department plans to obligate the \$500 million made available under Section 806 of the act. The Consolidated Appropriations Act, 2023 (P.L. 117-328), provides \$5.0 billion in mandatory (direct) funding for TEF, to remain available until September 30, 2027. These funds would be used for new costs associated with eligibility expansions authorized in the Honoring our PACT Act of 2022 (P.L. 117-168). According to explanatory statement accompanying the Consolidated Appropriations Act, 2023, there is no shift in discretionary appropriations to the TEF.<sup>32</sup>

### What Are Appropriated Entitlements?

While some entitlement programs, such as Medicare and Social Security, are permanently appropriated, some programs, such as veterans disability compensation and veteran survivor’s Dependency and Indemnity Compensation (DIC) program and pensions, are annually appropriated entitlements known as appropriated entitlements. Generally, appropriated entitlements go through the annual appropriations process but are not subject to annual appropriations decisions of the congressional appropriations committees. “The Appropriations

<sup>27</sup> “Protecting Our Gold Star Families Education Act,” *Congressional Record*, daily edition, vol. 168, no.115 (July 13, 2022), pp. H6001-H6025.

<sup>28</sup> “Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022,” *Congressional Record*, daily edition, vol. 168, no.129 (August 2, 2022), pp. S3845-S3852.

<sup>29</sup> The White House, “Remarks by President Biden at Signing of S. 3373, “The Sergeant First Class Heath Robinson Honoring Our Promises to Address Comprehensive Toxics (PACT) Act of 2022,” August 10, 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/10/remarks-by-president-biden-at-signing-of-s-3373-the-sergeant-first-class-heath-robinson-honoring-our-promises-to-address-comprehensive-toxics-pact-act-of-2022/>.

<sup>30</sup> 38 U.S.C. §324.

<sup>31</sup> 38 U.S.C. §324 note, “The Secretary of Veterans Affairs may use, from amounts appropriated to the Cost of War Toxic Exposures Fund ... such amounts as may be necessary to continue the modernization, development, and expansion of capabilities and capacity of information technology systems and infrastructure of the Veterans Benefits Administration, including for claims automation, to support expected increased claims processing for newly eligible veterans pursuant to this Act.”

<sup>32</sup> Explanatory Statement Submitted By Mr. Leahy, Chair Of The Senate Committee on Appropriations, Regarding H.R. 2617, Consolidated Appropriations Act, 2023 *Congressional Record*, vol. 168, Book II (December 20, 2022), p. S9235.

Committees have little or no discretion as to the amounts they provide.... Even though this funding is included in an appropriations bill, it is still considered mandatory spending rather than discretionary spending.” For example, for veterans’ disability compensation, Congress provides annual funding for tax-free monthly payments to eligible veterans with disabilities due to disease or injury incurred or aggravated during military service through annual Military Construction, Veterans Affairs, and Related Agencies Appropriations Act. However, the actual funding level for disability compensation is determined by the “entitlement” criteria in Chapter 11 of Title 38 of the *United States Code* (U.S.C.). The appropriations act appropriates the sums necessary to cover the cost of disability compensation payments. Congress, during the appropriations process, does not have the discretion to change the amount spent on the disability compensation program.

**Sources:** CRS Report RS20129, *Entitlements and Appropriated Entitlements in the Federal Budget Process*, and CRS Report R44641, *Trends in Mandatory Spending: In Brief*; and CRS Report 98-720 (out of print but available to congressional clients from the author). *Manual on the Federal Budget Process*, p. 26; U.S. Congress, Senate Committee on the Budget, *The Congressional Budget Process: An Explanation*, committee print, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 1998, S.Prt. 105-67 (Washington: GPO, 1998), p. 6; and 38 U.S.C. §§1110, 1121, 1131, and 1141.

## TEF and Future Authorizing Legislation

During a House Veterans’ Affairs Committee markup of several measures on September 21, 2022, then-ranking member Mike Bost asked how the Congressional Budget Office (CBO) plans to score certain authorizing legislation pertaining to VA health care given the new TEF. Then-Chairman Mark Takano acknowledged that the TEF had created some issues for the committee in terms of how future authorizing legislation would be scored.<sup>33</sup> On December 7, 2022, CBO issued a statement on how it plans to score future veterans benefits and programs authorizing legislation because of the TEF:

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<sup>33</sup> In his statement, Representative Bost stated: “We have some serious problems and it is going to paralyze this Committee and make it tougher to serve veterans, if we don’t solve it and well that’s because the changes that the Senate made to the Toxic Exposure Fund in the PACT Act, it is making new legislation much more expensive for taxpayers. Because of the Fund, what used to be discretionary costs are now mandatory and CBO must add millions or even billions of dollars to their bill estimates. We just saw this with the extenders bill. Congress passed it every few years to continue a wide range of important VA programs that would otherwise expire. Now we have never had any problem doing so, however, this year CBO initially scored the extenders at over \$1.1 billion in mandatory costs. That said, after some intervention by the Budget Committee and CBO reconsidered and concluded it is too early to score the extenders bills this way, but the CBO warned us that every future extenders bill will be much more expensive. The budget gimmicks in the Toxic Exposure Fund are already creating a serious obstacle to advancing many of the bills this committee is responsible for including some of those we will consider today.” Chairman Mark Takano responded by stating: “[I]t raises an important issue which is the long-term implications of the Cost of War Toxic Exposure Fund or TEF as it has become known, as created by the Honoring our PACT Act. Now this Fund is absolutely crucial to ensuring VA has the resources necessary to fully support our veterans and to deliver the new benefits available to them without having to sacrifice existing programs, and so any potential change to this Fund and how it operates must be considered very carefully and requires the input of other committees that have a stake in this issue to include Appropriations Committee and the Budget Committee.... The Toxic Exposure Fund has created some complications for the committee in terms of how legislation is being scored. Historically certain benefits programs have always been considered mandatory spending and we address that as it comes up such as in Representative Fletcher’s bill. However much of our legislation especially related to health care issues has not been subject to mandatory spending. At present CBO has taken a very rigid and nuanced approach to scoring legislation in the wake of the PACT Act passage and estimating that many bills will have 30 percent mandatory spending costs whether or not the subject of the legislation is toxic exposure. However, I believe that as implementation begins and more cost estimates and data are available, CBO will be able to adjust its assumptions and more finely tune its methodology.... Now I remind you that the intent of the PACT Act, the intent of Congress in the PACT Act, was to stop pitting veterans against seniors, children, and other Americans. It means not pitting toxic exposed veterans against other veterans.” See “Full Committee Business Meeting and Markup,” September 21, 2022, <https://democrats-veterans.house.gov/events/hearings/full-committee-business-meeting-and-markup> (not an official transcription, but based on the transcript generated by YouTube). On December 7, 2022, CBO issued a “Statement for the Record Regarding How CBO Would Estimate the Effects of Future Authorizing Legislation on Spending From the Toxic Exposures Fund.”

[T]he TEF will provide support for five kinds of activities: health care, processing disability claims, medical research, modernizing information technology (IT) programs, and other services. Some future authorizing bills may affect the costs of those types of activities, both for veterans generally and for veterans with toxic exposures. As a result, some of those costs could now be paid in part from the TEF (thereby increasing mandatory spending) and some could be paid, as they have been previously, from discretionary appropriations (thereby increasing discretionary authorization levels). CBO would therefore include the effects of both types of payments in its cost estimates for such legislation.... CBO would allocate 21 percent of the added costs of subsequent legislation to the TEF in 2023; that amount would grow to 42 percent by 2032. Those amounts would be shown as mandatory spending in CBO’s cost estimates.<sup>34</sup>

## Expansion of Health Care Eligibility

### Background

The Veterans Health Administration (VHA) of the Department of Veterans Affairs (VA) provides health care, social services, and other supportive services to veterans and family members of veterans who meet certain eligibility criteria specified in law and its implementation regulations. VHA operates the nation’s largest public integrated direct-health care delivery system<sup>35</sup> and pays for care provided to veterans under specified criteria.<sup>36</sup> In FY2023, of the approximately 18.6 million veterans living in the United States, 9.06 million were enrolled in the VA health care system, and about 7.32 million were estimated to receive care.<sup>37</sup>

Generally, a veteran has to meet *three* basic criteria to be eligible for VA health care.<sup>38</sup> First, the veteran must meet the basic eligibility requirement of “veteran status.” That is, a claimant must first establish veteran status as a condition of eligibility. For VA benefits purposes, a “veteran” is a person who served in the *active military, naval, air, or space service*, and who was discharged or released under conditions other than dishonorable.<sup>39</sup> Second, the veteran must meet “active duty” requirements. Third, the veteran must have served a minimum period of continuous active duty.

The term “active military, naval, air service or space service” includes “(A) *active duty*; (B) *any period of active duty for training* during which the individual concerned was disabled or dies from a disease or injury incurred or aggravated in line of duty; (C) *and any period of inactive duty for training* during which the individual concerned was disabled or dies (i) from injury incurred

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<sup>34</sup> Congressional Budget Office, Statement for the Record Regarding How CBO Would Estimate the Effects of Future Authorizing Legislation on Spending From the Toxic Exposures Fund, December 7, 2022, pp. 1-2, <https://www.cbo.gov/publication/58843>.

<sup>35</sup> Department of Veterans Affairs, FY2024 Congressional Submission, *Medical Programs* vol. 2 of 5, March 2023, p. VHA – 42.

<sup>36</sup> 38 U.S.C. §1703.

<sup>37</sup> Department of Veterans Affairs, FY2024 Congressional Submission, *Medical Programs* vol. 2 of 5, March 2023, p. VHA – 42.

<sup>38</sup> Department of Veterans Affairs, Veterans Health Administration, *Eligibility Determination*, VHA DIRECTIVE 1601A.02(4) amended April 5, 2023, pp. 9-10.

<sup>39</sup> 38 U.S.C. §101(2).

or aggravated in line of duty; or (ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.”<sup>40</sup>

In addition to establishing their veteran status, individuals who enlisted in the Armed Forces after September 7, 1980, as well as those (officer and enlisted) who entered active duty after October 16, 1981, and had (1) not previously completed at least 24 months of continuous active duty service or (2) not previously been discharged or released from active duty under 10 U.S.C. §1171, must meet a length-of-service requirement. In general, servicemembers must have completed the shorter of 24 months of continuous active duty service, or the full period for which they were called or ordered to active duty.<sup>41</sup> There are certain exemptions to this requirement. Such exemptions include, among others, servicemembers (1) discharged for a disability incurred or aggravated during active-duty service; (2) discharged for a hardship under 10 U.S.C. §1173 or “early out” under 10 U.S.C. §1171; or (3) who served prior to September 7, 1980.<sup>42</sup> National Guard members and reservists activated under Title 10 of the *U.S. Code* must also complete the minimum active duty service requirement.<sup>43</sup> For example, a reservist or National Guard member federally activated to serve in Iraq or Afghanistan for a period of six months who served the entire period would satisfy the active duty service requirement needed to qualify for veteran status.

Once these basic requirements are met, veterans fall into two broad health care eligibility categories. The first eligibility category includes veterans with service-connected disabilities;<sup>44</sup> Medal of Honor recipients; Purple Heart recipients; former prisoners of war; veterans exposed to toxic substances and environmental hazards, such as Agent Orange; and veterans whose attributable income is not greater than an amount established by a “means test.”<sup>45</sup> The second eligibility category includes veterans who may be eligible to receive care through VA to the extent resources permit.<sup>46</sup> Most eligible veterans are required to formally enroll in VA’s health care system to receive services.<sup>47</sup> All enrolled veterans are offered a standard medical benefits package, which includes (but is not limited to) inpatient and outpatient medical services, pharmaceuticals, durable medical equipment, and prosthetic devices.<sup>48</sup> In addition, VHA provides long-term services and supports, and nursing home care to eligible veterans.

From time to time Congress has enacted legislation providing special treatment authorities for certain groups of veterans. These special treatment authorities include health care for veterans

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<sup>40</sup> 38 U.S.C. §101(24)

<sup>41</sup> 38 U.S.C. §5303A.

<sup>42</sup> 38 U.S.C. §5303A.

<sup>43</sup> Department of Veterans Affairs, Veterans Health Administration, *Eligibility Determination, Minimum Active Duty Service Requirements*, VHA DIRECTIVE 1601A.02(4) amended April 5, 2023, p. A-1.

<sup>44</sup> The term “service-connected” means, with respect to disability, that such disability was incurred or aggravated in the line of duty in the active military, naval, air, or space service. VA determines whether veterans have service-connected disabilities and, for those with such disabilities, assigns ratings from 0% to 100% based on the severity of the disability. Percentages are assigned in increments of 10%.

<sup>45</sup> VA is required to furnish hospital care and medical services to a veteran who is unable to defray the expenses of necessary care as stipulated in law and regulations. 38 U.S.C. §1710(a)(2)(G); 38 U.S.C. §1722(a).

<sup>46</sup> 38 U.S.C. §1710(a)(3).

<sup>47</sup> 38 U.S.C. §1705; 38 C.F.R. §17.36(a). In some cases, VA provides care to non-enrolled veterans in the following classes: veterans who need treatment for a VA-rated service-connected disability, veterans who are VA rated as 50% or more service-connected disabled, and veterans who were released from active duty within the previous 12 months for a disability incurred or aggravated in the line of duty.

<sup>48</sup> 38 C.F.R. §17.38.

potentially exposed to toxic substances or environmental hazards during their military service. The next section discusses these special treatment authorities, along with the three new categories established by the Honoring our PACT Act of 2022 (P.L. 117-168) and amendments to existing authorities made by the act, where applicable. **Figure 1** provides a high-level overview of how veterans will be eligible for VA health care under the eligibility criteria for toxic exposure or deployment to a combat theater.

## **Health Care Eligibility for Toxic Exposures<sup>49</sup>**

Current law provides eight separate criteria under which veterans potentially exposed to toxic substances or environmental hazards during their military service may be eligible for VA health care. In addition, combat theater veterans have an enhanced period of enrollment eligibility during which veterans may receive care for medical conditions possibly related to their service. In total, veterans are eligible for VA health care services through nine separate statutory eligibility provisions (see **Figure 1**).

### **Vietnam-Era, Herbicide-Exposed Veterans<sup>50</sup>**

In April 1970, Congress held the first of many hearings on the health effects of Agent Orange.<sup>51</sup> Policymakers began to address the health concerns of Vietnam-era veterans in 1981 with the passage of the Veterans' Health Care, Training and Small Business Loan Act (P.L. 97-72). The act granted Vietnam-era veterans' priority status for health care at VA facilities by recognizing a veteran's own report of exposure as sufficient proof to receive medical care, unless there was evidence to the contrary. This authority was further amended by the Veterans' Health Care Eligibility Reform Act of 1996 (P.L. 104-262). Under this authority, a veteran does not have to demonstrate a link between a certain health condition and exposure to Agent Orange to be eligible for medical care; instead, medical care is provided unless the VA determines that the condition did not result from exposure to Agent Orange, or unless the condition has been identified by the National Academy of Sciences (NAS) as having "limited/suggestive" evidence of *no* association between the occurrence of the disease and exposure to a herbicide.<sup>52</sup> According to the VA, "[T]he determination of whether a Vietnam-era herbicide-exposed veteran's disability may be related to that exposure is strictly a clinical judgment to be made by the responsible physician (acting in accordance with the guidelines issued by the Under Secretary of Health and [conditions identified by the National Academy of Sciences])."<sup>53</sup> Treatment authority authorized by P.L. 104-262 was extended at various intervals by the Veterans Programs Enhancement Act of 1998 (P.L. 105-368) and the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (P.L. 107-135), until it was permanently authorized by the Caregivers and Veterans Omnibus Health Services Act of 2010 (P.L. 111-163).

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<sup>49</sup> 38 U.S.C. §1710(a)(2)(F) and (e).

<sup>50</sup> 38 U.S.C. §1710(e)(1)(A).

<sup>51</sup> U.S. Congress, Senate, Committee on Commerce, Subcommittee on Energy, Natural Resources, and the Environment, *Effects of 2,4,5-T and Related Herbicides on Man and the Environment*, 91<sup>st</sup> Cong., 2<sup>nd</sup> sess., April 7, 1970 (Washington: GPO, 1970).

<sup>52</sup> "Limited/suggestive" evidence of no association is when several adequate studies, covering the full range of levels of exposure that human beings are known to encounter, are consistent in not showing a positive association between any magnitude of exposure to herbicides and the outcome of disease.

<sup>53</sup> Department of Veterans Affairs, "Third Party Billing for Medical Care Provided Under Special Treatment Authorities," 82 *Federal Register* 55548, November 22, 2017.

The Honoring our PACT Act of 2022 (P.L. 117-168) amended the definition of Vietnam-era herbicide-exposed veteran to include the following:

Veterans who served on active military, naval, air, or space service<sup>54</sup>

- in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975;
- in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976, without regard to where on the base the veteran was located or what military job specialty the veteran performed;
- in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969;
- in Cambodia at Mimot or Krek, Kampong Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969; or
- 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.

In addition, a veteran may be considered a Vietnam-era herbicide-exposed veteran if the VA Secretary finds the veteran may have been exposed during active service to dioxin during the Vietnam-era, regardless of the geographic area of such service, or was exposed during such service to a toxic substance found in an herbicide or defoliant used for military purposes during such era, regardless of the geographic area of such service.

Veterans who have served active military, naval, air, or space service as specified above during the Vietnam-era are eligible for hospital care, medical services, and nursing home care even if there is insufficient medical evidence to conclude that such disability may be associated with herbicide exposure. Such veterans are deemed ineligible in cases where VA determines that the condition did not result from exposure to Agent Orange, or in cases where the condition has been identified by NAS as having “limited/suggestive” evidence of no association between the occurrence of the disease and exposure to a herbicide.<sup>55</sup> Veterans are exempt from copayment and third-party billing for hospital care, medical services, nursing home care, and medications prescribed on an outpatient basis for any condition possibly associated with herbicide exposure.<sup>56</sup>

Under the provisions in the Honoring our PACT Act of 2022 (P.L. 117-168), Vietnam-era veterans who served in the above-mentioned time periods and locations are eligible to enroll in the VA health care system beginning October 1, 2022.<sup>57</sup>

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<sup>54</sup> 38 U.S.C. §1710(e)(4)(A) and 38 U.S.C. §1116(d).

<sup>55</sup> 38 U.S.C. §1710(e)(2)(A).

<sup>56</sup> 38 C.F.R. §17.108.

<sup>57</sup> Department of Veterans Affairs, “VA opens health care eligibility for Vietnam, Gulf War, post-9/11 Veterans under PACT Act,” press release, September 28, 2022, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5826>.

## **Radiation-Exposed Veterans<sup>58</sup>**

The Veterans' Health Care, Training and Small Business Loan Act of 1981 (P.L. 97-72) established eligibility for VA medical care for veterans whose conditions may have resulted from radiation exposure on the same basis as eligibility as that provided for Vietnam-era, herbicide-exposed veterans. The Veterans' Health Care Eligibility Reform Act of 1996 (P.L. 104-262) made permanent this authority for veterans exposed to radiation. Under this authority, veterans who served on active duty and participated in a radiation-risk activity (see definition below),<sup>59</sup> as well as individuals who, while a member of a reserve component of the Armed Forces, participated in a radiation-risk activity during a period of active duty for training or inactive-duty training, are eligible for hospital care, medical services, and nursing home care for any presumptive disease listed at 38 U.S.C. §1112(c)(2),<sup>60</sup> or for any other disease for which there is credible evidence showing a positive association between the disease in humans and exposure to ionizing radiation, as determined by the Secretary.<sup>61</sup> Veterans are exempt from copayment and third-party billing for hospital care, medical services, nursing home care, and medications prescribed on an outpatient basis for any condition possibly associated with radiation exposure.<sup>62</sup>

The Honoring our PACT Act of 2022 (P.L. 117-168) amended the definition of “radiation-risk activity” to include veterans who took part in the cleanup of Enewetak Atoll from January 1, 1977, through December 31, 1980; veterans who served in the cleanup of the collision of a United States Air Force B-52 bomber over Palomares, Spain, from January 17, 1966, through March 31, 1967; and veterans involved in the cleanup and decontamination effort of a B-52 bomber crash in Thule, Greenland, from January 21, 1968, to September 25, 1968.<sup>63</sup>

This expanded definition of “radiation-risk activity” includes the following:<sup>64</sup>

- Onsite participation in a test involving the atmospheric detonation of a nuclear device (without regard to whether the nation conducting the test was the United States or another nation).

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<sup>58</sup> 38 U.S.C. §1710(e)(1)(B).

<sup>59</sup> 38 U.S.C. §1112(c)(3)(B).

<sup>60</sup> The diseases are the following: leukemia (other than chronic lymphocytic leukemia); cancer of the thyroid; cancer of the breast; cancer of the pharynx; cancer of the esophagus; cancer of the stomach; cancer of the small intestine; cancer of the pancreas; multiple myeloma; lymphomas (except Hodgkin's disease); cancer of the bile ducts; cancer of the gall bladder; primary liver cancer (except if cirrhosis or hepatitis B is indicated); cancer of the salivary gland; cancer of the urinary tract; bronchiolo-alveolar carcinoma; cancer of the bone; cancer of the brain; cancer of the colon; cancer of the lung; and cancer of the ovary.

<sup>61</sup> 38 U.S.C. §1710(e)(1)(B)(ii).

<sup>62</sup> 38 C.F.R. §17.108.

<sup>63</sup> The United States conducted nuclear weapons detonation tests from 1948 to 1958 on Enewetak Atoll in the Marshall Islands. Nearly 20 years after the nuclear weapons detonation tests had ended in 1958, U.S. military personnel participated in the cleanup efforts on Enewetak Atoll beginning in 1977. This cleanup effort was referred to as the Enewetak Radiological Support Project. On January 17, 1966, a U.S. Air Force B-52 bomber collided with its refueling tanker, and four thermonuclear bombs fell near Palomares, Spain. Two of the bombs detonated and dispersed plutonium. In another incident, on January 21, 1968, a fire on a U.S. Air Force B-52 bomber flying over Greenland caused it to crash 7½ miles from Thule Base on the ice of North Star Bay. “The conventional high explosives in the B-52's four thermonuclear bombs went off, scattering radioactive debris over the ice, but there was no nuclear detonation.” (Sources: *Foreign Relations of the United States, 1964–1968*, Volume XII, Western Europe, <https://history.state.gov/historicaldocuments/frus1964-68v12/d1> and <https://www.publichealth.va.gov/exposures/radiation/sources/index.asp>).

<sup>64</sup> 38 U.S.C. §1112(c)(3)(B).

- The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.
- Internment as prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II that (as determined by the Secretary) resulted in potential exposure to ionizing radiation comparable to that of veterans occupying Hiroshima or Nagasaki, Japan.
- Service in a capacity that, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA, 42 U.S.C. §7384l(14)).<sup>65</sup>
- Cleanup of Enewetak Atoll during the period beginning on January 1, 1977, and ending on December 31, 1980.
- Onsite participation in the response effort following the collision of a United States Air Force B-52 bomber and refueling plane that caused the release of four thermonuclear weapons in the vicinity of Palomares, Spain, during the period beginning January 17, 1966, and ending March 31, 1967.
- Onsite participation in the response effort following the on-board fire and crash of a U.S. Air Force B-52 bomber that caused the release of four thermonuclear weapons in the vicinity of Thule Air Force Base, Greenland, during the period beginning January 21, 1968, and ending September 25, 1968.

### **Persian Gulf War Veterans<sup>66</sup>**

As it did for Vietnam-era veterans exposed to Agent Orange, Congress passed, in 1993, P.L. 103-210, which provides additional authority for VA to provide health care for veterans of the Persian Gulf War.<sup>67</sup> For these veterans, health care is provided for medical conditions possibly related to exposure to toxic substances or environmental hazards during active duty service in the Southwest Asia theater of operations during the Persian Gulf War.<sup>68</sup> Veterans who served on active duty between August 2, 1990, and November 11, 1998, in the Southwest Asia theater of operations during the Persian Gulf War are eligible for hospital care, medical services, and nursing home care for any disability, unless medical evidence is insufficient to conclude that such disability might be associated with service in the Persian Gulf War.

Veterans are exempt from copayment and third-party billing for hospital care, medical services, nursing home care, and medications prescribed on an outpatient basis for any condition possibly associated with service in the Persian Gulf War.<sup>69</sup>

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<sup>65</sup> For additional information on EEOICPA, see CRS Report R46476, *The Energy Employees Occupational Illness Compensation Program Act (EEOICPA)*.

<sup>66</sup> 38 U.S.C. §1710(e)(1)(C).

<sup>67</sup> The term “Persian Gulf War” means “the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law” (38 U.S.C. §101(33)). Currently, no end date has been prescribed by the President or Congress.

<sup>68</sup> U.S. Congress, House Committee on Veterans’ Affairs, *Priority VA Health Care for Persian Gulf War Veterans*, report to accompany H.R. 2535, 103<sup>rd</sup> Cong., July 29, 1993, H.Rept. 103-198.

<sup>69</sup> 38 C.F.R. §17.108.

## Combat-Theater Veterans<sup>70</sup>

In 1998, Congress—responding to growing concern over Persian Gulf War veterans’ undiagnosed illnesses—passed the Veterans Programs Enhancement Act of 1998 (P.L. 105-368). The act entitled veterans (including National Guard and reserve components) who served on active duty in a theater of combat operations during a period of war<sup>71</sup> after the Persian Gulf War to enroll in VA health care during a two-year period following the date of discharge and to receive care, even if medical evidence is insufficient to conclude that such illnesses are attributable to such service. In 2007, the National Defense Authorization Act (NDAA; P.L. 110-181), FY2008, created a five-year period of enrollment eligibility for veterans who served in a theater of combat operations after November 11, 1998.<sup>72</sup> The Clay Hunt Suicide Prevention for American Veterans Act (P.L. 114-2) authorized an additional one-year enrollment eligibility period for veterans who were discharged from active duty after January 1, 2009, and before January 1, 2011, but who did not enroll during the five-year period of post-discharge eligibility. This one-year period began on February 12, 2015, the enactment date of the Clay Hunt Suicide Prevention for American Veterans Act. It ended on February 12, 2016.<sup>73</sup>

The Honoring our PACT Act of 2022 (P.L. 117-168) amended the five-year period and extended it to 10 years. In addition, the act further broadened the types of veterans who could qualify based on service in the Persian Gulf War. Veterans who served between September 11, 2001, and before October 1, 2013, but who could not enroll during the five-year period of post-discharge eligibility (i.e., before October 1, 2022), would get an additional one-year period of enrollment eligibility starting October 1, 2022 (i.e., until September 30, 2023). Furthermore, the act clarifies that service in the Persian Gulf War applies to any veteran who, during such period of service, received the Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal, Combat Era Specific Expeditionary Medal, Campaign Specific Medal, or any other combat theater award established by a federal statute or an executive order. These amendments became effective on October 1, 2022.<sup>74</sup>

In general, returning combat veterans are assigned to Priority Category 6, unless they are eligible for placement in a higher enrollment priority category based on other eligibility criteria.<sup>75</sup> These

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<sup>70</sup> 38 U.S.C. §1710(e)(1)(D).

<sup>71</sup> VA uses the term “a period of hostility”—“during a period of war after the Gulf War, or during a period of hostility after November 11, 1998” Department of Veterans Affairs, Veterans Health Administration, *Registration and Enrollment*, VHA DIRECTIVE 1601A.01(1), amended January 10, 2023, p. 14.

<sup>72</sup> The Clay Hunt Suicide Prevention for American Veterans Act (P.L. 114-2) authorized an additional one-year period of eligibility to enroll for those veterans who were discharged from active duty after January 1, 2009, and before January 1, 2011, but who did not enroll during the five-year period of post-discharge eligibility. This one-year period began on February 12, 2015, the enactment date of the Clay Hunt Suicide Prevention for American Veterans Act. It ended on February 12, 2016. Expanded eligibility under the act was established in response to concerns that the five-year special eligibility period was not an adequate amount of time for veterans seeking mental health treatment. U.S. Congress, Senate Committee on Veterans’ Affairs, *Clay Hunt Suicide Prevention for American Veterans Act*, report to accompany H.R. 203, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., April 23, 2015, S.Rept. 114-34 (Washington: GPO, 2015), p. 9.

<sup>73</sup> The expanded eligibility under the act was established in response to concerns that the five-year special eligibility period was not an adequate amount of time for veterans seeking mental health treatment. U.S. Congress, Senate Committee on Veterans’ Affairs, *Clay Hunt Suicide Prevention for American Veterans Act*, report to accompany H.R. 203, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., April 23, 2015, S.Rept. 114-34 (Washington: GPO, 2015), p. 9.

<sup>74</sup> Department of Veterans Affairs, “VA opens health care eligibility for Vietnam, Gulf War, post-9/11 Veterans under PACT Act,” press release, September 28, 2022, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5826>.

<sup>75</sup> 38 U.S.C. §1705(a)(6). In general, most veterans are required to formally enroll in the VHA health care system to receive services. Once a veteran is enrolled, the veteran remains in the system and does not have to reapply for enrollment annually. Veterans are placed in one of eight priority enrollment categories or Priority Groups.

veterans are eligible for hospital care, medical services, and nursing home care for any illness, unless medical evidence is insufficient to conclude that such disability may be associated with service in the Persian Gulf War. Veterans are not charged copays for medication or treatment of conditions potentially related to their combat service.<sup>76</sup> At the end of the 10-year period, veterans enrolled in Priority Category 6 may be reenrolled in Priority Category 7 or 8, or a higher enrollment priority category, depending on their service-connected disability status and income level. Some may be required to make copayments for nonservice-connected conditions based on copay requirements for Priority Category 7 and 8.<sup>77</sup> The above criteria also apply to National Guard and reserve personnel who were called to active duty by federal executive order and who served in a theater of combat operations after November 11, 1998. The most recent discharge date is used for servicemembers who have been called to duty multiple times.

### **Veterans Who Participated in Operation Shipboard Hazard and Defense (SHAD)/Project 112 Tests<sup>78</sup>**

Between 1962 and 1973, the Department of Defense (DOD) planned and conducted chemical and biological warfare tests at the Deseret Test Center in Fort Douglas, UT. The testing program, known as Project 112, included shipboard and land-based testing. Project Shipboard and Hazard Defense (SHAD) was the shipboard part of these tests.<sup>79</sup> According to DOD, “SHAD was designed to test ships’ vulnerability to biological or chemical attack.”<sup>80</sup> In response to health concerns of veterans who were involved in Deseret Test Center tests, Congress passed the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003 (P.L. 108-170), which authorized hospital care, medical services, and nursing home care for any illness, without a requirement for service-connection.

Veterans are exempt from copayment and third-party billing for hospital care, medical services, nursing home care, and medications prescribed on an outpatient basis for any condition possibly associated with these chemical and biological tests.<sup>81</sup>

### **Camp Lejeune Veterans<sup>82</sup>**

In response to potential health effects of contaminated water at the Marine base at Camp Lejeune, NC, Congress passed the Honoring America’s Veterans and Caring for Camp Lejeune Families Act of 2012 (P.L. 112-154), as amended by the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235, Division I, Title II, Section 243).<sup>83</sup> This act established a presumptive service connection for veterans’ health care for one or more of 15 diseases and health

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<sup>76</sup> 38 C.F.R. §17.108.

<sup>77</sup> If veterans’ financial circumstances place them in Priority Group 8, they will be “grandfathered” into a Priority Group 8a or Priority Group 8c, and their enrollment in VA will be continued, regardless of the date of their original VA application. Also see Department of Veterans Affairs, Veterans Health Administration, *Registration and Enrollment*, VHA DIRECTIVE 1601A.01(1), amended January 10, 2023.

<sup>78</sup> 38 U.S.C. §1710(e)(1)(E).

<sup>79</sup> U.S. Congress, House Committee on Veterans’ Affairs, *Health Care for Veterans of Project 112/Project Shad Act of 2003*, report to accompany H.R. 2433, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., July 16, 2003, p. 8.

<sup>80</sup> *Ibid.*

<sup>81</sup> 38 C.F.R. §17.108.

<sup>82</sup> 38 U.S.C. §1710(e)(1)(F).

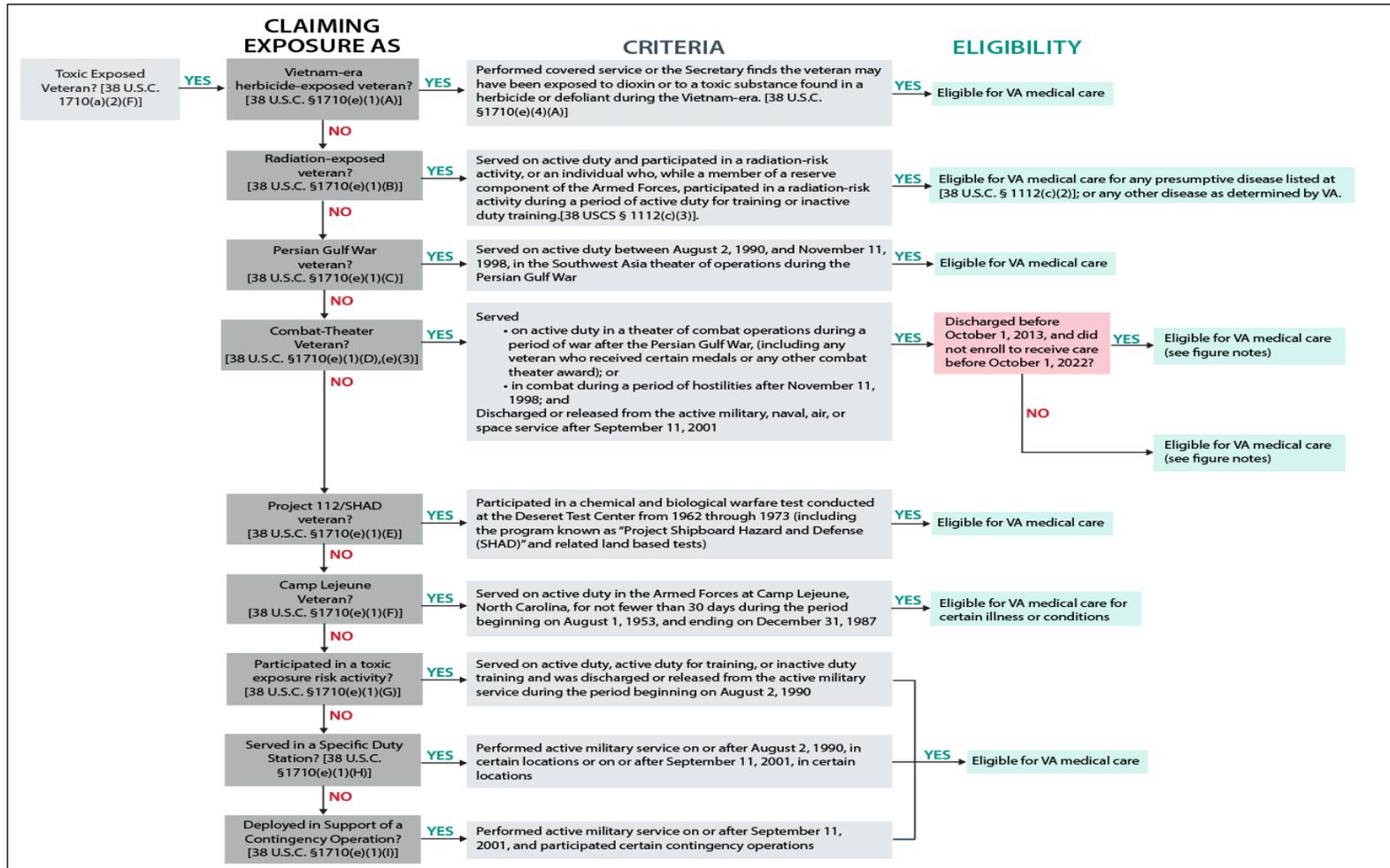
<sup>83</sup> To read the studies conducted about the contamination, see <https://www.atsdr.cdc.gov/sites/lejeune/health-effects.html>.

conditions that may be associated with exposure to trichloroethylene (TCE), tetrachloroethylene (PCE), vinyl chloride, and other contaminants discovered in drinking water supplies at Camp Lejeune. Veterans and their family members who worked or lived at Camp Lejeune for no less than 30 days (consecutive or nonconsecutive) from August 1, 1953, to December 31, 1987, generally are eligible for VA health care services under this law. Eligible veterans and family members can receive free care for any of the 15 covered illnesses or conditions.<sup>84</sup> To be eligible, a veteran or former reservist or member of the National Guard (1) must have been stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties, and (2) must have served on active duty for at least 30 days (consecutive or nonconsecutive) during the period beginning on August 1, 1953, and ending on December 31, 1987.

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<sup>84</sup> A covered illness or condition includes any of the following: esophageal cancer; lung cancer; breast cancer; bladder cancer; kidney cancer; leukemia; multiple myeloma; myelodysplastic syndromes; renal toxicity; hepatic steatosis; female infertility; miscarriage; scleroderma; neurobehavioral effects; and Non-Hodgkin's lymphoma (38 U.S.C. §1710(e)(1)(F); 38 C.F.R. §17.400).

**Figure I. High-Level Overview of Eligibility Pathways for Toxic Exposed Veterans**



**Source:** Figure prepared by CRS based on 38 U.S.C. §§1710(e)(1)(A), 1710(e)(1)(B), 1710(e)(1)(C), 1710(e)(1)(D), 1710(e)(1)(E), 1710(e)(1)(F), 1710(e)(1)(G), 1710(e)(1)(H), and 1710(e)(1)(I), and 38 C.F.R. §17.400.

**Notes: Combat Theater Veterans:** Veterans who served on active duty in a theater of combat operations during a period of war after the Persian Gulf War, including those who received the Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal, Combat Era Specific Expeditionary Medal, Campaign Specific Medal, or any other combat theater award established by a federal statute or an executive order; or in combat against a hostile force during a period of hostilities after November 11, 1998, and who were discharged between September 11, 2001, and October 1, 2013, but who did not enroll in the VA health care system before October 1, 2022, are eligible to enroll in the VA health care system during a special enrollment period beginning October 1, 2022, and ending in September 30, 2023. All other combat theater veterans are eligible for enrollment in VA health care within a 10-year period from date of discharge or release. Once enrolled, veterans would remain enrolled in the VA health care system, and enrolled veterans may seek care at any VA facility and do not need to reestablish eligibility for enrollment purposes.

## **Veterans Who Participated in a Toxic Exposure Risk Activity (TERA)<sup>85</sup>**

The Honoring our PACT Act of 2022 (P.L. 117-168) amends current law and authorizes hospital care (including mental health services and counseling), medical services, and nursing home care to veterans who participated in a “toxic exposure risk activity”<sup>86</sup> while serving on active duty, active duty for training, or inactive duty training. In these cases, health care is authorized for any illness, unless medical evidence is insufficient to conclude that the condition is attributable to such service. The term toxic exposure risk activity means a record in an exposure tracking system indicating that the veteran carried out the activity; or where the VA determines that it is “reasonably prudent” to provide care and services to a veteran to protect the health of such veteran. The tracking system means a system, program, or pilot program used by VA or DOD to track how veterans or members of the Armed Forces have been exposed to various occupational or environmental hazards; and also includes the Individual Longitudinal Exposure Record (ILER), or successor system (see **Figure 2**).<sup>87</sup>

Veterans would be exempt from copayment and third-party billing for hospital care, medical services, nursing home care, and medications prescribed on an outpatient basis for any condition possibly associated with a toxic exposure risk activity.

Under the Honoring our PACT Act of 2022, the Secretary is required to implement the phase-in enrollment of veterans who participated in a toxic exposure risk activity as follows:<sup>88</sup>

- October 1, 2024, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on August 2, 1990, and ending on September 11, 2001;
- October 1, 2026, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on September 12, 2001, and ending on December 31, 2006;
- October 1, 2028, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on January 1, 2007, and ending on December 31, 2012; and
- October 1, 2030, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on January 1, 2013, and ending on December 31, 2018.

The Secretary may revise these phase-in dates based on the number of veterans seeking care and the available resources. When modifying the dates, the Secretary must notify the Senate and House Committees on Veterans’ Affairs of the proposed modification and publish a notice with the modified date in the *Federal Register*.

## **Veterans Who Served in a Specific Duty Station<sup>89</sup>**

The Honoring our PACT Act of 2022 (P.L. 117-168) amends current law and authorizes VA to provide hospital care (including mental health services and counseling), medical services, and nursing home care for any illness, unless medical evidence is insufficient to conclude that the

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<sup>85</sup> 38 U.S.C. §1710(e)(1)(G).

<sup>86</sup> 38 U.S.C. §1710(e)(4)(C).

<sup>87</sup> 38 U.S.C. §1710(e)(4)(C) and 38 U.S.C. §1119(c)(2).

<sup>88</sup> 38 U.S.C. §1710(e)(6)(A).

<sup>89</sup> 38 U.S.C. §1710(e)(1)(H).

condition is attributable to such service. The provision of this care is authorized for any veteran based on active duty in specific locations, which are broken out into two categories (see **Figure 2**).

Under the first category, eligibility would be granted to any veteran who on or after August 2, 1990, performed active military, naval, air, or space service while assigned to a duty station in the following locations (including the air space above): Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, or the United Arab Emirates.

Under the second category, eligibility would be granted to any veteran who on or after September 11, 2001, performed active military, naval, air, or space service while assigned to a duty station (including the air space above) in the following locations: Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, the Philippines, or any other country determined relevant by the Secretary.

Veterans would be exempt from copayment and third-party billing for hospital care, medical services, nursing home care, and medications prescribed on an outpatient basis for any condition possibly associated with service in these locations.

Under the Honoring our PACT Act of 2022, the Secretary is required to implement the phase-in enrollment of veterans who were stationed at a specific duty station location as follows:<sup>90</sup>

- October 1, 2024, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on August 2, 1990, and ending on September 11, 2001;
- October 1, 2026, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on September 12, 2001, and ending on December 31, 2006;
- October 1, 2028, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on January 1, 2007, and ending on December 31, 2012; and
- October 1, 2030, for veterans who were discharged or released from the active military, naval, air, or space service during the period beginning on January 1, 2013, and ending on December 31, 2018.

The Secretary may revise these phase-in dates based on the number of veterans seeking care and the available resources. When modifying the dates, the Secretary must notify the Senate and House Committees on Veterans' Affairs of the proposed modification and publish a notice with the modified date in the *Federal Register*.

## **Veterans Deployed in Support of Contingency Operations<sup>91</sup>**

The Honoring our PACT Act of 2022 (P.L. 117-168) amends current law and authorizes VA to provide hospital care (including mental health services and counseling), medical services, and nursing home care for any illness, unless medical evidence is insufficient to conclude that the condition is attributable to such service. The provision of this care is authorized for veterans who were deployed for any of the following contingency operations (see **Figure 2**):<sup>92</sup>

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<sup>90</sup> 38 U.S.C. §1710(e)(6)(A).

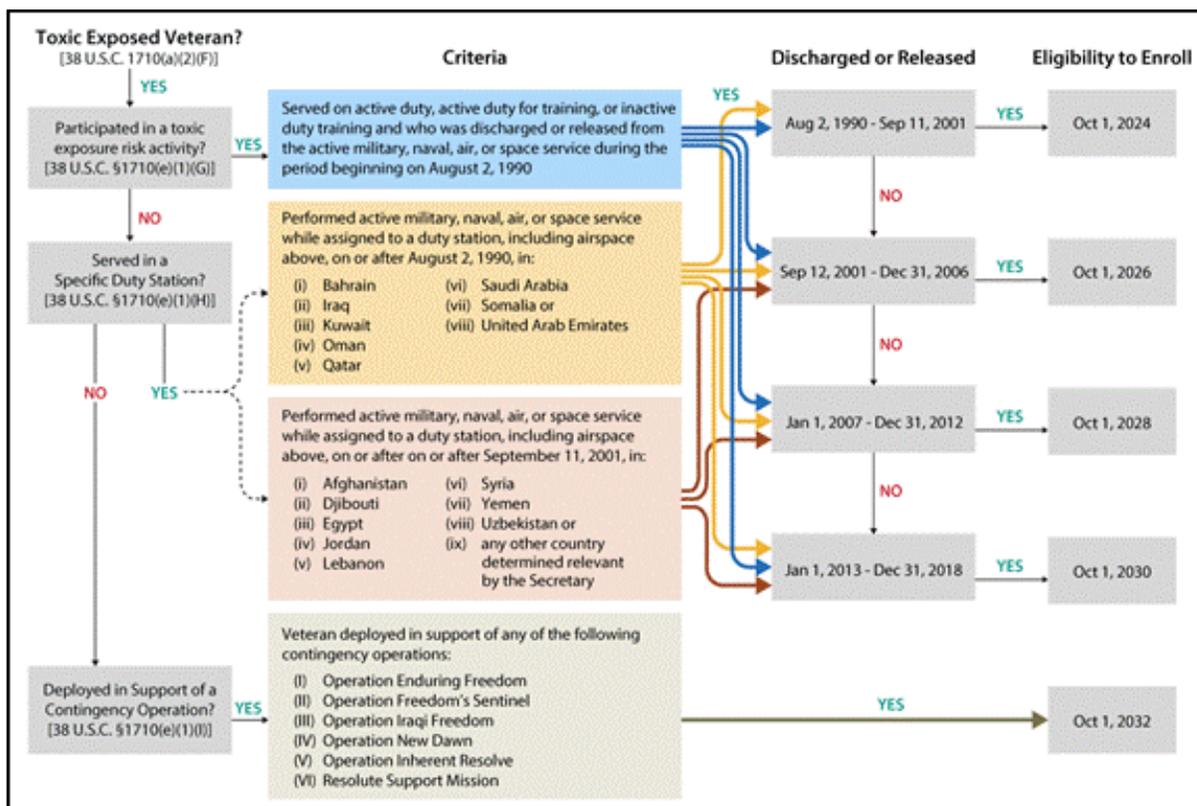
<sup>91</sup> 38 U.S.C. §1710(e)(1)(I).

<sup>92</sup> For details and dates of these contingency operations, see CRS Report RS21405, *U.S. Periods of War and Dates of Recent Conflicts*.

- Operation Enduring Freedom,
- Operation Freedom’s Sentinel,
- Operation Iraqi Freedom,
- Operation New Dawn,
- Operation Inherent Resolve, or
- Resolute Support Mission.

Under the Honoring our PACT Act of 2022, the Secretary is required to implement the phase-in enrollment of veterans based on “contingency operations” on October 1, 2032. The Secretary may revise this phase-in date based on the number of veterans seeking care and the available resources. When modifying the dates, the Secretary must notify the Senate and House Committees on Veterans’ Affairs of the proposed modification and publish a notice with the modified date in the *Federal Register*.

**Figure 2. Expansion of Health Care for Specific Categories of Toxic-Exposed Veterans and Veterans in Specific Contingency Operations**



**Source:** Figure prepared by CRS based on 38 U.S.C. §1710(e)(1)(G), (H), and (I) and 38 U.S.C. §1710(e)(6).

**Notes:** VA Secretary could modify the enrollment eligibility dates to an earlier date based on available resources and number of veterans receiving care.

## Toxic Exposure Screenings of Veterans

Section 603 of the Honoring our PACT Act of 2022 (P.L. 117-168) mandated that VHA implement toxic exposure screenings to identify veterans enrolled in the VA health care system

with potential toxic exposures during military, naval, air, or space service as part of their health care screenings. The act mandated that the department implement this requirement by November 8, 2022.<sup>93</sup> The law also required that enrolled veterans must be screened at least once every five years. The Secretary is required to consider updating the screening tool at least biennially to ensure that it contains the most current information. According to VA, “Veterans who are not enrolled and who meet eligibility requirements will have an opportunity to enroll and receive the screening,”<sup>94</sup> and information gathered during the toxic exposure screening will be included in veterans’ electronic health records and be used to connect them with applicable VA benefits and services.<sup>95</sup>

Prior to implementing the screening tool across VA medical centers and clinics nationwide, VHA piloted the toxic exposure screening tool at 13 medical facilities. Based on feedback from the pilot sites, VHA revised the screening tool before deploying it to all VA health care facilities. During the initial phases, the toxic exposure screening will be administered either during or outside of primary care appointments. When conducted during a primary care appointment, the screening would be conducted by a licensed practical nurse (LPN) on the veteran’s care team<sup>96</sup> or by the primary care provider. When conducted outside of the primary care appointment, the screening would be conducted by the appropriate non-primary care staff member. For veterans who are not assigned to a primary care team, or who wish to be screened sooner, the screening would be completed by a Toxic Exposure Screening (TES) Navigator.<sup>97</sup>

The screening tool is included in VHA’s Computerized Patient Record System (CPRS) and appears as a clinical reminder to VHA providers (see example of first screen in **Figure 3**).

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<sup>93</sup> Department of Veterans Affairs, “Tomorrow, all Veterans enrolled in VA health care will be eligible for new toxic exposure screenings,” press release, November 7, 2022, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5838>.

<sup>94</sup> U.S. Congress, Senate Committee on Veterans’ Affairs, *Hearing on the Department of Veterans Affairs Implementation of the SFC Heath Robinson Honoring our PACT Act*, statement of Shereef Elnahal, Under Secretary for Health, and Joshua Jacobs, Senior Advisor for Policy, “Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs,” 117<sup>th</sup> Cong., November 16, 2022.

<sup>95</sup> Veterans Health Administration, Department of Veterans Affairs, “Agency Information Collection Activity: Veteran Toxic Exposure Screening Tool (PACT Act),” 87 *Federal Register* 72594-72595, November 11, 2022.

<sup>96</sup> Generally, veterans enrolled in the VA health care system are assigned to a primary care team known as a Patient Aligned Care Team (PACT). The team is composed of a primary care provider (doctor, nurse practitioner, or physician’s assistant), clinical pharmacist, registered nurse (RN), and licensed practical nurse (LPN) or medical assistant. See <https://www.patientcare.va.gov/primarycare/pact/Resources.asp>.

<sup>97</sup> U.S. Congress, House Committee on Veterans’ Affairs, *Hearing on Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation*, statement of Shereef Elnahal, Under Secretary for Health, and Joshua Jacobs, Senior Advisor for Policy, “Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs,” 117<sup>th</sup> Cong., December 7, 2022.

**Figure 3. Toxic Exposure Screening Tool Clinical Reminder**

Reminder Resolution: Toxic Exposure Screening

VHA Clinical Reminder for Toxic Exposures Version 1.4

As required by the Honoring our PACT Act (Public Law 117-168), VA is screening all enrolled Veterans to help address potential toxic exposures while serving in the Armed Forces. This screening will occur at least once every 5 years and the Veteran is offered Toxic Exposure Screening information.

Possible exposures include:

- Open Burn Pits/Airborne Hazards
- Gulf War related exposures
- Agent Orange
- Radiation
- Camp Lejeune contaminated water exposure
- Other exposures

++ ALL STAFF, EXCEPT CLINICIANS: Read the following to Veteran/caregiver ++

- Participation in this survey is voluntary
- If you choose not to answer, it will not change your benefits
- It should take less than 5 minutes to complete
- All information is confidential as required by law
- This survey follows the rules of the Paperwork Reduction Act
- Our Office of Management and Budget number: 2900-0913, exp. 03/31/23
- Comments about the length of the survey should be sent to HIMS for records management questions

Do you believe you experienced any toxic exposure(s), such as Open Burn Pits/Airborne Hazards, Gulf War related exposures, Agent Orange, Radiation, contaminated water at Camp Lejeune or other such exposures, while serving in the Armed Forces?

Yes:

No

Don't Know

Declines Screening

Clear Clinical Maint Visit Info < Back Next > Finish Cancel

Toxic Exposure Screening:

<No encounter information entered>

\* Indicates a Required Field

**Source:** Department of Veterans Affairs, Toxic Exposure Screening Workflow Updates, Briefing to Congressional Staff, October 14, 2022.

**Notes:** This is a screenshot of the Toxic Exposure Screening clinical reminder window that appears in Computerized Patient Record System (CPRS). Based on a veteran’s exposure concern, several additional screens are triggered to be completed by the provider/Exposure Screening (TES) navigator.

The screening would include three questions, as outlined in the text box below:

**Toxic Exposure Screening (TES) Tool**

Q. Do you believe you experienced any toxic exposures, such as Open Burn Pits/Airborne Hazards, Gulf War-related exposures, Agent Orange, radiation, contaminated water at Camp Lejeune, or other such exposures while serving in the Armed Forces?"

- Yes
- No
- Don't Know
- Declines Screening

Q. If Yes, do you believe you were exposed to any of the following while serving in the Armed Forces?

- Open Burn Pits/Airborne Hazards,
- Gulf War-related exposures

- Agent Orange
  - Radiation
  - Contaminated water at Camp Lejeune
  - Other exposures
- Q. Does the Veteran or caregiver have follow-up questions?
- Health/Medical Questions
  - Benefits/Claims Questions
  - VA Health Care Enrollment and Eligibility Questions
  - Registry Questions
  - No questions at this time

**Source:** Department of Veterans Affairs, Toxic Exposure Screening Workflow Updates, Briefing to Congressional Staff, October 14, 2022, and U.S. Congress, House Committee on Veterans' Affairs, *Hearing on Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation*, statement of Shereef Elnahal, Under Secretary for Health, and Joshua Jacobs, Senior Advisor for Policy, "Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs," 117<sup>th</sup> Cong., December 7, 2022.

As shown in **Figure 4**, if a veteran responds "YES" to potential exposure questions, all "YES" responses will be forwarded to the veteran's primary care provider for follow up within 14 days. If the veteran has not been assigned to a primary care team, the Toxic Exposure Screening Navigators would follow-up by providing additional assistance, such as assigning the veteran to a primary care team (with the veteran's consent) and referring the veteran to additional information, such as exposure-related benefits.

If the screening is performed by a veteran's primary care provider, and the veteran indicates a concern pertaining to the toxic exposure, a suspected toxic exposure diagnosis code would be added to the problem list in the CPRS for future reference, and appropriate clinical assessments will be conducted and documented. Veterans would also be provided with information on exposure-related benefits, such as information on presumptive service-connected conditions related to toxic exposures and health care registries.<sup>98</sup>

If a veteran responds "NO" to potential exposure questions, the veteran would be given a handout with relevant information and told to follow up with their health care team if any health concerns occur before the next toxic exposure screening in five years.<sup>99</sup>

Veterans who respond "I Don't Know" to the environmental exposure questions would be asked if they have any other health care concerns, which would also be documented; however, the toxic exposure diagnosis code would not be added to the CPRS, and those veterans would be screened

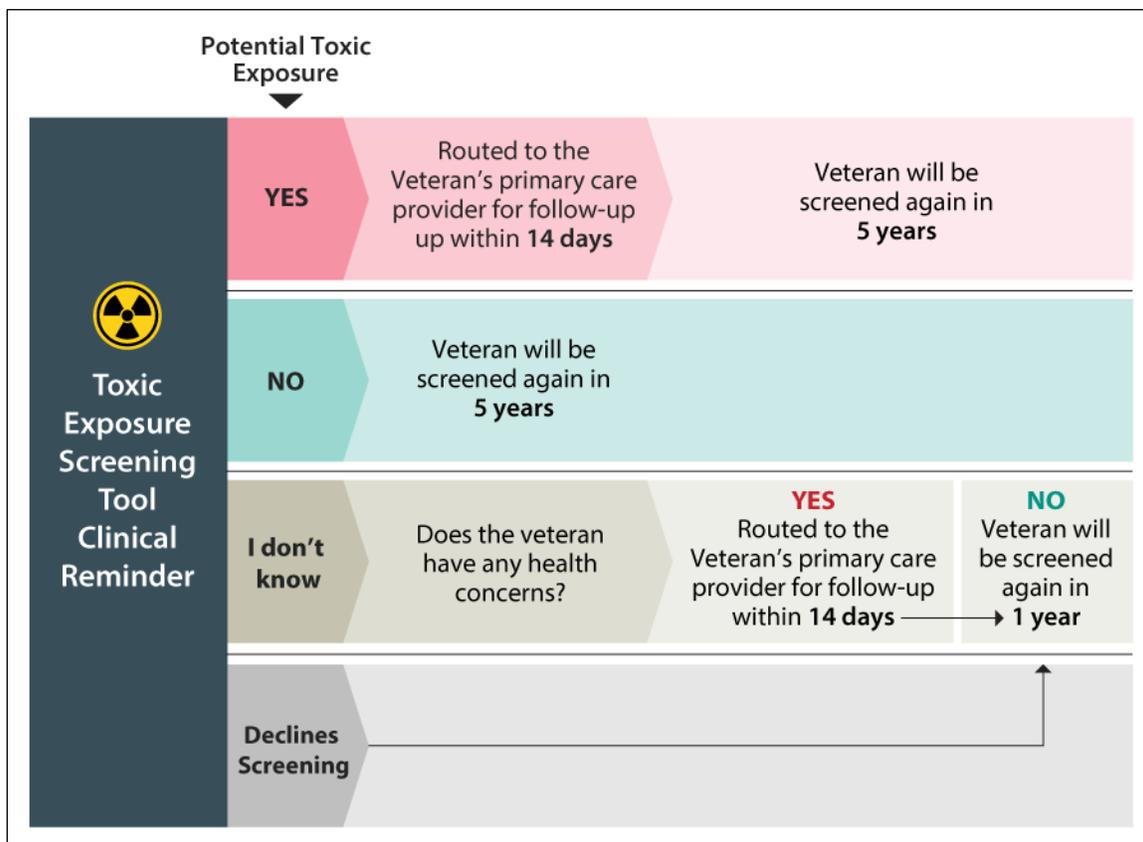
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<sup>98</sup> VA maintains several health registries that provide special health examinations and health-related information to veterans who may have been potentially exposed to environmental hazards during service. The registries include the Airborne Hazards and Open Burn Pit Registry; the Gulf War Registry; the Depleted Uranium Follow-Up Program; the Toxic Embedded Fragment Surveillance Center; the Agent Orange Registry; and the Ionizing Radiation Registry. Certain veterans can participate in a VA health registry and receive free medical examinations, including laboratory and other diagnostic tests deemed necessary by an examining clinician. See <https://www.publichealth.va.gov/exposures/publications/military-exposures/meyh-4/registry.asp>. Additional resources for veterans can be found at <https://news.va.gov/109115/spread-word-pact-act-health-care-eligibility/>.

<sup>99</sup> U.S. Congress, House Committee on Veterans' Affairs, *Hearing on Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation*, Statement of Shereef Elnahal, Under Secretary For Health and Joshua Jacobs, Senior Advisor For Policy, Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs, 117<sup>th</sup> Cong., December 7, 2022.

again within one year.<sup>100</sup> If a veteran declines screening, relevant information would be provided to the veteran, and the veteran would be scheduled for screening again in one year.<sup>101</sup>

**Figure 4. Overview of Toxic Exposure Screening Workflow**



**Source:** Congressional Research Service, based on Department of Veterans Affairs, Toxic Exposure Screening Workflow Updates, Briefing to Congressional Staff, October 14, 2022, and U.S. Congress, House Committee on Veterans' Affairs, Hearing on Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation, Statement of Shereef Elnahal, Under Secretary for Health, and Joshua Jacobs, Senior Advisor for Policy, "Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs," 117<sup>th</sup> Cong., December 7, 2022.

<sup>100</sup> U.S. Congress, House Committee on Veterans' Affairs, *Hearing on Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation*, Statement of Shereef Elnahal, Under Secretary for Health, and Joshua Jacobs, Senior Advisor for Policy, "Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs," 117<sup>th</sup> Cong., December 7, 2022.

<sup>101</sup> U.S. Congress, House Committee on Veterans' Affairs, *Hearing on Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation*, Statement of Shereef Elnahal, Under Secretary for Health, and Joshua Jacobs, Senior Advisor for Policy, "Performing The Delegable Duties of the Under Secretary For Benefits Department of Veterans Affairs," 117<sup>th</sup> Cong., December 7, 2022.

## **Honoring our PACT Act Performance Dashboard**

In March 2023, VA announced that it would be publishing a bi-weekly performance dashboard showing key data indicators related to the Honoring our PACT Act.<sup>102</sup> According to the latest

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<sup>102</sup> Department of Veterans Affairs, “VA releases dashboard to measure the PACT Act’s impact on Veterans and survivors,” press release, March 3, 2023, <https://news.va.gov/116652/va-releases-dashboard-measure-pact-act/>.

issue published on Friday, April 28, 2023, there were 68,945 new Honoring our PACT Act related veteran enrollees in the VA health care system during the period October 1, 2022 through April 17, 2023.<sup>103</sup> Approximately 3.14 million veterans have been screened for toxic exposures during the period September 06, 2022 through April 26, 2023.<sup>104</sup>

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<sup>103</sup> See [https://www.accesstocare.va.gov/pdf/VA\\_PACTActDashboard\\_Issue5\\_042823\\_508.pdf](https://www.accesstocare.va.gov/pdf/VA_PACTActDashboard_Issue5_042823_508.pdf).

<sup>104</sup> VA PACT Act Dashboard is available at <https://www.accesstocare.va.gov/healthcare/pactact>, as well as at the bottom of [va.gov/pact](https://www.va.gov/pact) under "Related Information." Updated information is published bi-weekly on Fridays.