

United States Senate

August 2, 2022

Dear Colleague:

Through conversations with many of you regarding the PACT Act over the last six days, it has become clear that some basic facts on how we got to where we are today and what we are debating need to be plainly laid out so we can move forward together with a common understanding of what is at stake. I appreciate all of you taking the time to read this overview.

At the start of this Congress, the top legislative priority for all major military and veterans' advocacy organizations was fixing the broken system for how toxic-exposed veterans receive health care and benefits from the Department of Veterans Affairs (VA). Republicans and Democrats introduced legislation to fix this ongoing issue. President Joe Biden spoke forcefully about the need to act during his State of the Union address to the nation. Leadership for the House and Senate committees of jurisdiction held multiple hearings and legislative markups on the topic. It was clear there was broad agreement because we all recognized the need for urgency.

On March 3rd of this year, our colleagues in the House of Representatives passed H.R. 3967, the Honoring our Promise to Address Comprehensive Toxics (PACT) Act. After several conversations with my Republican colleagues on the Senate Committee on Veterans' Affairs, it was clear that piece of legislation would not garner the bipartisan support it needed. Against the wishes of many, I did not force a vote on that legislation in my Committee. Instead, I worked with Republicans, Democrats and the Administration to forge a compromise that would work for our veterans and their families while garnering the broad bipartisan support needed for passage.

Alongside Jerry Moran, Martin Heinrich and John Boozman, the top Republican authorizer and appropriators in this body, we worked closely to solicit ideas and address concerns with all of our Senate colleagues. And we ultimately came to an agreement.

On June 16th of this year, the U.S. Senate took an historic step by passing the Sergeant First Class Heath Robinson Honoring Our PACT Act by a 84-14 vote margin. The majority of members from both caucuses supported this legislation. It was the most comprehensive toxic exposure legislation ever considered by this body, and it was decades in the making. Unfortunately, upon passage, the House determined that a single sentence included to bolster VA's recruitment of medical providers in rural areas created a blue slip issue.

Now, I want to address the few points of concern I have heard from colleagues in recent conversations. Some critics of this bipartisan legislation have made a number of claims that are either false or misleading.

The charge that the bill we passed on June 16th was materially changed is false. The offending provision creating the blue slip issue was struck. Nothing more. Not one word was added to the bill that garnered 84 votes six weeks ago.

The charge that the Toxic Exposures Fund was slipped into the bill at the last-minute is false. It is not a new concept added at the 11th hour. In fact, the House-passed PACT Act – which passed almost five months ago – included a Toxic Exposures Fund for this very purpose. The Toxic Exposures Fund language included in the Senate bill today – which is the exact same language included in the bill that passed with 84 votes on June 16th – took the House language, narrowed the scope of spending for the fund and increased transparency over the process.

The charge that this bipartisan legislation creates a ‘slush fund’ that will be spent on unrelated things is false. The Toxic Exposures Fund covers the direct costs of toxic exposure-related health care under the bill’s expansion of eligibility. In doing so, it designates these costs as separate from VA’s discretionary budget – thereby ensuring care for newly eligible veterans is not provided at the expense of veterans seeking care for non-toxic related conditions.

There are strict descriptions outlined in the legislation on what this money can be spent on. Each year, as part of the President’s Budget, VA will be required to provide to Congress detailed estimates of the amounts needed for the Fund. That request will be reviewed as part of the standard appropriations process, and Members will be able to weigh in on amounts appropriated to the account, as they do with every VA account each and every year.

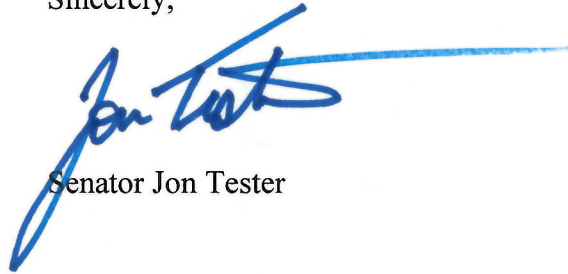
This legislation does not include any spending on unrelated activity beyond supporting our toxic-exposed veterans. Diverting any dollars away from toxic-exposed veterans – much less \$400 billion – would run contrary to the law, would require future administrations to include such a shift in their budget request, and would require filibuster-proof majorities in both chambers of Congress to support such a move in its annual VA appropriations bill. Not only is there no intent to spend beyond the limitations of the fund, there is a bipartisan Congressional consensus to strictly enforce the law’s requirements on how the money can be spent. And VA Secretary Denis McDonough has publicly stated the Department will strictly adhere to the parameters established by the Fund.

Finally, the proposed amendment from my friend Senator Pat Toomey – despite the author’s intentions – would potentially harm veterans and tie the hands of Congress. This amendment would place a limit on the amount of funding Congress could provide to cover the care and benefits to veterans made eligible in the legislation. It would arbitrarily cap the number of toxic-exposed veterans that would benefit from the legislation and create a scenario where VA runs out of funds to support these veterans year after year. These caps - based on CBO estimates - have no way of anticipating the number of veterans, or servicemembers currently in uniform, who may be eligible for toxic exposure-related care and benefits due to health issues in the next ten years or beyond. The underlying bill establishes a far more effective approach where VA uses evolving data on utilization and veteran needs to provide detailed spending estimates to Congress each and every year, and Congress considers those estimates through its annual appropriations process.

So for those expressing newfound concerns with the future use of the Toxic Exposures Fund, I respectfully urge you to read the text of the legislation. And I urge you to join me in scrutinizing these funds each and every year during the budget and appropriations process. After all, if we simply do our jobs, Senator Toomey's concerns will be addressed.

The fact is, veterans do not have time for us to continue debating mistruths or overcoming procedural hurdles that have delayed the passage of this critical legislation for months. For many veterans – like Heath Robinson – we have already waited too long. And for their families and the veterans suffering the impacts of toxic exposure today and into the future, we need to act now. Let's set politics aside, and do what is right without further delay.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Tester", with a long horizontal flourish extending to the right.

Senator Jon Tester