Public Law (PL) 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (PACT Act) Implementation
Standard Operating Procedure (SOP)

In This SOP

This SOP contains the following topics:

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1	Overview of the PACT Act
2	Toxic Exposure Risk Activity (TERA) Procedures for Non-Presumptive Claims
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4	Presumptive Service Connection of Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses (MUCMIs) for Persian Gulf Veterans
5	Presumptive Service Connection Based on Exposure to Burn Pits and Other Toxins, Including Fine Particulate Matter (BPOT)
6	Service-Connected Death Benefits Under the PACT Act
7	Higher-Level Reviews (HLRs) and Legacy Appeals Under the PACT Act
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Background

On August 10, 2022, the President signed *Public Law (PL) 117-168*, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (hereafter referred to as "PACT Act") establishing substantial legislative changes for the Department of Veterans Affairs (VA). This historic, multifaceted law:

- expands locations associated with radiation exposure
- expands presumptive conditions associated with herbicide exposure
- expands locations associated with herbicide exposure
- amends the statute involving Persian Gulf War Veterans
- establishes presumptive conditions associated with toxic exposures
- triggers changes to examination requirements when there is toxic exposure risk activity, and

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- provides an avenue for a claimant-elected reevaluation of previously denied dependency and indemnity compensation (DIC) claims that can result in retroactive effective dates.

Initial guidance was released to the field on August 10, 2022, followed by interim guidance on September 9, 2022. With the issuance of this standard operating procedure (SOP), both documents were rescinded as of January 1, 2023.

References

For more information on the PACT Act, see

- *PL 117-168*
- Veterans Benefits Administration (VBA) Letter 20-24-06, Updated Guidance on Processing Claims involving PACT Act
- the Compensation Service PACT Act Information Page, and
- the Pension and Fiduciary Service PACT Act Information Page (including FAQs).

Procedural Precedence

Several sections of M21-1, *Adjudication Procedures Manual*, provide procedures for routine handling of toxic exposure cases. Where the procedures in this SOP, for the purposes of administering the processing of toxic exposure claims, differ from those of M21-1, the procedures in this SOP take precedence.

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1. Overview of the PACT Act

Introduction

This topic contains an overview of the PACT Act, including:

- applicability
- requirement to identify
  – PACT Act-related claims, and
  – service-connected death PACT Act-related claims
- PACT Act claim attributes
- claim requirements
- Individual Longitudinal Exposure Record (ILER)
- considering multiple theories of service connection
- effective dates under the PACT Act, and
- decision notice requirements for PACT Act decisions.

Change Date

September 8, 2023

Applicability

The provisions in this SOP apply to claims pending on or after August 10, 2022, the date *PL 117-168* (PACT Act) was signed.

The provisions of this SOP generally apply to both disability compensation and service-connected death benefits. However, for service-connected death benefits, Topic 6, *Service-Connected Death Benefits under PACT Act*, takes precedence over other topics of the SOP.

Reference: For more information on the definition of a pending claim, see 38 CFR 3.160(c).

Requirement to Identify PACT Act-Related Claims

As noted in guidance in M21-1, Part II, Subpart iii, Chapter 1, Section A, Topic 2, Block e (M21-1, Part II, Subpart iii, 1.A.2.e), claims must be liberally construed. A claim under the PACT Act may include claims in which the Veteran

- explicitly states a disability is related to
  – service in a presumptive location established by the PACT Act, or
  – toxic exposure
- does ***not*** explicitly state what has caused a claimed disability, but there is service in a presumptive location established by the PACT Act
- claims a newly recognized presumptive disability, or

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- claims a non-presumptive disability and evidence establishes participation in toxic exposure risk activity (TERA) as discussed in the content titled, *Identifying a TERA Claim*.

Example: A Veteran files a claim for sleep apnea. The Veteran does not claim sleep apnea as due to a toxic exposure (there is no explicit claim of exposure.) There are no symptoms in service.

Result: Sleep apnea is not a presumptive disability. Follow the procedures in Topic 2, *Toxic Exposure Risk Activity (TERA) Procedures for Non-Presumptive Claims* to rule-out implicit TERA.

Note: Active duty pre-discharge claims should not be considered under the PACT Act unless the claimed condition is from a prior period of active duty that could be associated with the provisions of the PACT Act. If a pre-discharge claimant has a prior period of qualifying service or is a non-active duty Integrated Disability Evaluation System (IDES) participant, PACT Act provisions may apply.

Reference: For complete list of PACT Act locations and presumptive conditions, see VBA Letter 20-24-06.

Requirement to Identify Service-Connected Death PACT Act-Related Claims

The guidance below also applies to claims for service-connected death benefits for survivors if:

- the Veteran's service falls into one of the presumptive locations recognized under the PACT Act and there is explicit evidence to indicate the Veteran's death was caused by or is secondary to one of the existing or newly recognized presumptive conditions associated with the toxic exposure in that location
- there is explicit evidence indicating that
  - the principal or contributory cause of the Veteran's death is, or is secondary to, one of the presumptive conditions recognized under the PACT Act, and
  - the Veteran served in a presumptive location either recognized pre-PACT or added by the PACT Act
- there is an explicit specific allegation of eligibility by the claimant under the PACT Act.

Notes:
- Handle implicit claims for service-connected death similarly to a non-service-connected death claim for inferred DIC. See Topic 6, *Processing Non-Service-Connected Death Claims Involving Potential PACT Issues*, for more information.

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- While the PACT Act only specifically addressed DIC benefits, the provisions of the law expanding presumption of service connection will result in additional claimants qualifying for other types of survivor benefits.

PACT Act Claim Attributes

Claims processors must affix the *PACT* special issue on any PACT Act-related contention as defined in the content titled, *Requirement to Identify PACT Act-Related Claims* and *Requirement to Identify Service-Connected Death PACT Act-Related Claims*.

Apply all other claim attributes required based on the nature of the claim or disability per existing guidance and when specifically required by the procedures in this SOP.

Note: See Topic 6, *Service-Connected Death Benefits under PACT Act*, for additional attribute guidance related to death benefits.

Reference: For more information on PACT claim attributes, see the PACT Special Issue Instructions.

Claim Requirements

Every claim for disability compensation must be filed on the correct claim form for the benefit sought. If the claim was previously denied, the Veteran must submit a *Decision Review Request: Supplemental Claim* form to have the claim considered under the new PACT Act provisions.

Important: Consider the new law as new and relevant evidence for the purposes of considering a supplemental claim as being complete. This means a claim based on a new PACT Act provision is a new theory of entitlement, warranting a merits-based decision.

Reference: For more information on supplemental claims, see
- 38 CFR 3.2501
- M21-1, Part X, Subpart ii, 2.A, and
- M21-1, Part II, Subpart iii, 2.B.

ILER

Follow the guidance for use of Individual Longitudinal Exposure Record (ILER) found in the ILER Guidance.

Considering Multiple Theories of Service Connection

Depending on where a Veteran served, multiple provisions of the PACT Act could apply to the claim. For example, a claim from a Veteran who served in Iraq in 2005 could be considered under the Gulf War Veteran provisions in 38 U.S.C. § 1117 (§ 1117) (See Topic 4, *Presumptive Service Connection of Undiagnosed Illnesses and MUCMIs for Persian Gulf Veterans*), the

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presumption of toxic exposure under § 1119 (See Topic 5, *Presumptive Service Connection Based on Exposure to BPOT*), or the modified exam threshold under § 1168 (See Topic 2, *Toxic Exposure Risk Activity (TERA) Procedures for Non-Presumptive Claims*) depending on the nature of the disability claimed. Claims processors must follow the guidance in M21-1, Part II, Subpart iii, 1.A.2.e to determine whether an unclaimed theory of service connection is reasonably raised.

Example 1: A Veteran claims service connection for skin rashes. Military records show she was deployed to Saudi Arabia in 1991. During her Gulf War Registry examination in 1993, she mentioned exposure to burn pits and oil well smoke. With the claim, she submits medical records showing recurrent treatment over several years for the intermittent skin rashes with no definitive diagnosis. Service in Saudi Arabia in 1991 qualifies as an area associated with TERA; consequently, the Veteran is entitled to a medical opinion under § 1168 as skin rashes are not necessarily a presumptive disability. An examination under § 1117 should also be requested as skin rashes are a sign or symptom of potential undiagnosed illness. In this case, both direct service connection (38 CFR 3.303) based on TERA and presumptive service connection for an undiagnosed illness (38 CFR 3.317) are reasonably raised.

Example 2: A Veteran claims service connection for respiratory problems. Military records and ILER confirm he was deployed to Iraq and Afghanistan in 2010 and 2012, respectively. VA records show a post-service diagnosis of chronic bronchitis since 2015, but are not sufficient to establish the current level of severity. Since the Veteran has qualifying service in a presumptive exposure location under § 1119 and a known presumptive disability under § 1120, a medical examination to determine severity must be obtained. The rating considers service connection based on presumption of toxic exposure under § 1119 only. No other theories of service connection are reasonably raised.

Effective Dates Under the PACT Act

In some cases when a claim was pending on the date the PACT Act became law, August 10, 2022, both a pre-PACT Act and a PACT Act provision will apply to a Veteran's claim. It is important that claims processors recognize these situations and assign effective dates in accordance with the provisions noted in each of the topics below.

If awarding a claim based on a newly added or expanded authority under the PACT Act, apply the provisions of 38 CFR 3.114(a) to the effective date assigned.

Exception: Claims regarding service-connected death benefits may have an effective date earlier than August 10, 2022. Refer to Topic 6, *Service-Connected Death Benefits Under the PACT Act* , for more information.

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Reference: For more information on assigning an effective date based on a change in law, see M21-1, Part V, Subpart ii, 4.A.

Decision Notice Requirements for PACT Act Decisions

All decision notices issued under the PACT Act must follow existing guidance in M21-1, Part VI, Subpart i, 1.B to generate a decision notice that complies with the requirements outlined in 38 CFR 3.103(f).

When system-generated language does not provide adequate explanation or cite the correct regulatory or statutory authority, claims processors must use free text or glossary text to ensure the decision notice is adequate.

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2. TERA Procedures for Non-Presumptive Claims

Introduction

This topic contains information on TERA procedures for non-presumptive claims, including:

- definition of TERA
- provisions of the PACT Act relevant to TERA
- when to apply TERA procedures
- TERA claim attributes
- entitlement to compensation for conditions based on TERA
- identifying a TERA claim
- definition of non-presumptive disability for TERA purposes
- exceptions to ordering TERA examinations
- applying TERA examination exceptions
- TERA and other theories of service connection
- requirement to document all TERA
- procedures for establishing TERA
- determining if location-based TERA applies
- determining the circumstances of the Veteran's service are consistent with TERA
- documenting a Veteran's participation in TERA
- completing the *Toxic Exposure Risk Activity Memorandum*
- modified examination threshold for TERA claims
- when to request a TERA examination
- TERA opinions and herbicide exceptions
- definition of physical trauma
- evaluating competent medical or scientific evidence for TERA examination exceptions
- TERA examination
  – request procedures, and
  – sufficiency
- deciding service connection for disabilities due to TERA
- TERA
  – rating decision requirements
  – favorable findings, and
- establishing an effective date for TERA claims.

Change Date

July 17, 2024

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Definition of TERA

The PACT Act defines ***toxic exposure risk activity*** (***TERA***) as any activity that:

- requires a corresponding entry in an exposure tracking record system, such as ILER (as defined in § 1119(c)); or
- the Secretary determines qualifies for purposes of this subsection when taking into account what is reasonably prudent to protect the health of Veterans.

Notes:

- The definition of TERA is important for the implementation of the modified threshold examination requirements as discussed in content titled, *Modified Examination Threshold for TERA Claims*. The statutory definition is extremely broad and requires claims processors to consider all evidence of record when determining if a Veteran was subject to a TERA and regardless of whether the Veteran specifically claims an exposure(s) as the basis of their claim.
- There is no required minimum level of exposure or duration of participation in a TERA to trigger a TERA examination under § 1168.
- Name-only entries and records from contractor or civilian service periods should not be accepted as participation in a TERA as detailed in the ILER Guidance.

References: For more information on

- establishing whether an exposure is consistent with the circumstances of a Veteran's service, see M21-1, Part VIII, Subpart iii, 9.A and B, and
- what constitutes a non-presumptive disability for TERA purposes, see the content titled, *Definition: Non-Presumptive Disability for TERA Purposes*.

Provisions of the PACT Act Relevant to TERA

- *New definition*: ***toxic exposure risk activity*** (***TERA***) is defined in § 1710(e)(4). See content titled, *Definition of TERA*.
- *New required use of an exposure tracking database when verifying toxic exposure*. Section 302 added a requirement to use an exposure tracking system, such as ILER during the claim adjudication process.
- *Required examinations and medical opinions in non-presumptive exposure claims*. Section 303 creates new § 1168 requiring VA to obtain examinations and nexus opinions for Veterans who participated in a TERA.

When to Apply TERA Procedures

The procedures of this topic apply to any Veteran from any era who

- claims or died from a non-presumptive disability, and
- participated in a TERA as defined in the content titled, *Definition of TERA*.

The table below describes the high-level TERA claims process.

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Note: When the Veteran is shown to have a recognized presumptive disability based on an established presumptive toxic exposure and service connection can be awarded, do not apply TERA procedures, to include requesting a TERA nexus opinion. ***Example***: Sinusitis with established fine particulate matter exposure.

Stage	Description
1	Identifying TERA claims. • Reviewing for explicit and implicit claims. • Determining when an exception to TERA process applies.
2	Researching and verifying TERA participation. • Obtaining service records and reviewing ILER. • Completing the *Toxic Exposure Risk Activity Memorandum*. • Applying appropriate claim attributes.
3	Requesting TERA examinations *and* medical opinions. • Applying new modified examination threshold. • Identifying relevant evidence for the examiner. • Selecting appropriate disability benefits questionnaires (DBQs). • Using TERA medical opinion template language. • Ensuring examination provides the appropriate opinion.
4	Rating under direct service connection provisions. • Discussing TERA and/or a TERA exception in the reasons for decision. • Applying the correct effective date. • Citing TERA as a favorable finding, if applicable. • Applying relevant TERA special issues in the Veterans Benefits Management System-Rating (VBMS-R).

TERA Claim Attributes

In addition to the *PACT* special issue noted in Topic 1, *Overview of the PACT Act*, claims processors must apply

- the *PACT Exam Exclusion – Sec.1168 Circumstance TERA* corporate flash, and
- VBMS-R TERA claim attributes as described in the *Utilizing VBMS-R TERA Special Issues (SIs) Job Aid*.

Note: The *PACT Exam Exclusion – Sec.1168 Circumstance TERA* corporate flash must be applied when the *Toxic Exposure Risk Activity Memorandum* concedes TERA but determines a circumstance-based exception applies. If during the processing of a subsequent claim, the exception is found to no longer apply, for example, new TERA participation is documented in ILER, remove the flash from the Veteran's corporate record.

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Entitlement to Compensation for Conditions Based on TERA

In addition to adding a variety of new presumptive conditions and expanding applicable locations for some already existing presumptives, Congress included provisions in the PACT Act to allow Veterans to be considered for service connection for non-presumptive conditions in certain situations. Veterans who participated in a TERA while in service and developed a non-presumptive disease related to that activity may be entitled to receive compensation benefits under the direct service connection provisions if a medical opinion provides a nexus of causal link. The PACT Act modifies the threshold for requesting a disability examination with medical opinion related to non-presumptive claims for Veterans who participated in a TERA.

Important:

- By introducing the concept of TERA, the PACT Act fundamentally changes how disability compensation claims processors review and handle claims primarily by requiring an assessment of the evidence of record regarding whether the claimant participated in a TERA.
- The PACT Act also fundamentally changes the examination with medical opinion threshold in non-presumptive disability compensation claims when the Veteran participated in a TERA. PACT requires a medical opinion examination when service connection for a condition ***cannot be granted***, rather than when a decision cannot be made (which could be a grant or denial).

Note: Unless another theory of service connection applies, such as presumption, consider claims based on a TERA under the direct service connection provisions of 38 CFR 3.303 and 3.304.

References: For more information on

- direct service connection, see
  - 38 CFR 3.303
  - 38 CFR 3.304, and
  - M21-1, Part V, Subpart ii, 2.A, and
- service connection for disabilities due to exposure to specific hazards, see M21-1, Part VIII, Subpart iii, 9.A and B.

Identifying a TERA Claim

The PACT Act requires VA to consider both explicit claims as well as implicit claims of exposure, unless an exception to the TERA examination requirements apply as noted below. Therefore, claims processors must review claims for non-presumptive disabilities, or non-presumptive cause(s) of death, to determine whether an explicit or implicit TERA claim applies. This includes reviewing for

- explicit claims of toxic exposure

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  - the Veteran lists a specific toxic exposure on *VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits*
  - the survivor claims the Veteran's cause of death is due to a toxic exposure on, or with, a *VA Form 21P-534EZ, Application for DIC, Death Pension, and/or Accrued Benefits* (version dated July 2022 or later), or
  - lay statements submitted with the claim, and
- implicit claims of exposure where liberally construing the claim raises the issue even when not specifically claimed, such as
  - the Veteran's service in a location associated with toxic exposure (See Topic 9 Exhibits and M21-1, Part VIII, Subpart iii, 9)
  - the Veteran's military occupation is associated with a toxic exposure
  - ILER or other miliary records show participation in a TERA
  - a documented concession of exposure in a prior claim or the Veteran's corporate record contains a claim attribute for toxic exposure, such as the *Toxic Exposure - Sec. 1119 Covered Veteran* flash
  - medical records contain an allegation of exposure to a toxic substance, chemical, or airborne hazard, such as a Veterans Health Administration (VHA) exposure screening
  - a survivor submitting a death certificate that lists a primary, or contributing, cause of death for which a TERA exception does not apply, and there is reasonable probability that the death may be related to service, or
  - any other relevant evidence of record.

Important:
- Non-presumptive claims must be liberally construed under PACT Act provisions. The law does not require a Veteran to claim participation in a TERA for the procedures in this topic to apply.
- These procedures do not apply if another theory of service connection clearly applies to the claim, such as direct service connection for pre-discharge claimants, or when an exception for ordering an examination with medical opinion applies as discussed in the content titled, *Exceptions to Ordering TERA Examinations*.

Example 1: A Veteran claims sleep apnea, which is not a recognized presumptive disability. A post-service sleep study in the Veteran's VAMC records notes a clinical diagnosis of sleep apnea. Military records confirm service in Iraq in 1991. Because the Veteran served in an area recognized for toxic exposure because of presumptive exposure to burn pits and other toxins to include fine particulate matter (BPOT), the claim should be liberally construed to include an implicit claim of TERA. The claim would be processed under the TERA direct service connection provisions in this topic.

Example 2: A Veteran claims asthma. Service records show she was deployed to Afghanistan in 2010. Since asthma is a recognized presumptive disability

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under § 1120, *and* the Veteran served in an area of presumptive BPOT exposure, assessing whether the Veteran participated in a TERA is not necessary. The claim would be processed under the presumptive service connection provisions in Topic 5, *Presumptive Service Connection Based on Exposure to BPOT*.

Definition: Non-Presumptive Disability for TERA Purposes

Non-presumptive disability for the purposes of TERA refers to conditions for which service connection cannot be granted on a presumptive basis.

Reasons may include:

- the condition is not listed on any presumptive list
- presumptive exposure is not established
- the condition is not compensable, when required, or
- the condition did not manifest within the required time frame.

Example: A Veteran claims service connection for migraines, a presumptive disability under 38 CFR 3.309(a) (other organic diseases of the nervous system). There is evidence of a current disability, but the migraines did not manifest to a compensable level within one year of separation from active service, so presumptive service connection under 38 CFR 3.309(a) cannot be established. The service treatment records are silent for signs or symptoms of the condition during active duty. Given that there is evidence of a current disability, and the evidence is not sufficient to grant (rather than decide) the claim, TERA procedures apply. If research shows participation in a TERA and no TERA exception applies, then an exam and TERA opinion would be warranted for the claimed migraines.

Exceptions to Ordering TERA Examinations

§ 1168(b) provides that these examination requirements do not apply if the Secretary determines there is no indication of an association between the disability claimed by the Veteran and participation in the TERA.

Claims processors should *not* order a TERA medical opinion based upon a TERA if one of the following exceptions applies:

Condition-based Exceptions:

1. Non-presumptive claims based on physical trauma.
2. Mental disorders.
3. The only participation in a TERA that is established is related to herbicide exposure and the Veteran claims a condition determined to have no positive association with herbicide exposure.
4. Claims for disabilities that manifested during military service or with an etiology not associated with toxic exposure.

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Circumstance-based Exceptions:

5. The only participation in a TERA that is established is based on an entry in an exposure tracking record system, such as ILER, that does not corroborate or correspond to an activity carried out by the Veteran during active military service that could result in potential exposure to toxic substances, chemicals, and airborne hazards.
6. The only participation in a TERA that is established is based on an entry in an exposure tracking record system, such as ILER, that is based on the Veteran's report of exposure to toxic substances, chemicals, and airborne hazards that cannot be substantiated.

Important:

- When applying one of the above exceptions, follow the guidance in the content titled, *Applying TERA Examination Exceptions*.
- When a TERA exception applies, ensure the rating decision follows the guidelines outlined in *TERA Rating Decision Requirements*.

References: For more information on

- TERA exceptions, see the *TERA Exception Job Aid*, and
- when to complete the Toxic Exposure Risk Activity Memorandum, see the *Toxic Exposure Risk Activity Memorandum Job Aid*.

Applying TERA Examination Exceptions

Use the table below to determine the appropriate development actions when a TERA exception applies.

Important: In all claims where a TERA examination exception applies, add the following VBMS note prior to sending the claim to the rating activity: *Met 1168 Exclusion Criteria*.

If applying ...	**Then ...**
a condition-based exception based on • physical trauma, or • mental disorders	***do not*** • conduct a full review for TERA based on the condition claimed, or • order a disability examination based upon a TERA *unless* the Veteran submits competent medical or scientific evidence of an association between their disability and the in-service TERA.
condition-based exception based on no positive association with herbicide exposure	• ***do*** conduct a full review for non-herbicide TERA • ***do*** complete the *Toxic Exposure Risk Activity Memorandum*, and • ***do not*** order a disability examination based upon a TERA *unless*

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	– a non-herbicide TERA is shown, *or* – the Veteran submits competent medical or scientific evidence of an association between their disability and the in-service TERA
condition-based exception for disabilities that manifested during military service or with an etiology not associated with toxic exposure	***do not*** • conduct a full review for TERA based on the condition claimed • complete the *Toxic Exposure Risk Activity Memorandum*, or • order a disability examination based upon a TERA.
a circumstance-based exception	• ***do*** conduct a full review of the record for TERA • ***do*** complete the *Toxic Exposure Risk Activity Memorandum* • ***do*** concede participation in a TERA • ***do*** apply the *PACT Exam Exclusion – Sec.1168 Circumstance TERA* corporate flash, and • ***do not*** order a TERA-related examination and medical opinion *unless* the Veteran submits competent medical or scientific evidence of an association between their disability and the in-service TERA.

TERA and Other Theories of Service Connection

In cases where a non-TERA direct medical opinion came back negative and a TERA opinion had not been requested concurrently, whether or not a TERA opinion is needed is dependent on the facts of the case and the reason behind the negative opinion. For example, the opinion may have been negative due to no diagnosis; if so, TERA procedures would not be applicable since there is no evidence of a current disability. In a case where the Veteran has a chronic disability which the examiner opined is less likely than not associated with an in-service event, disease, or injury, TERA procedures may apply.

Use the table below to determine if a TERA medical opinion is needed when another theory of service connection is being considered.

If the ...	And ...	Then a TERA opinion is ...
direct or secondary medical opinion is negative	there is no diagnosis	not needed.
	the rationale attributes the disability to a non-	not needed.

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	TERA etiology unrelated to service	
	the rationale • concludes the disability is not due to the non-TERA in-service event or secondary to the SC disability, but • does *not* attribute the condition to a specific etiology	needed, if TERA participation is shown. ***Important***: Identify the prior negative medical opinion as evidence for the examiner's review.
claim does not meet presumptive service connection provisions ***Reference***: See content titled, *Definition: Non-Presumptive Disability for TERA Purposes*.	no TERA participation is shown ***Note***: This finding must be documented on the *Toxic Exposure Risk Activity Memorandum*.	not needed.
	TERA participation is shown	needed.

Note: When examination results were previously received by VBA and it's subsequently determined that a TERA medical opinion is needed, ensure the new examination request is routed to the same vendor that completed the original. If the correct vendor is not populated in the VBMS Examination Management System (EMS) when submitting the examination request, the claims processor should use the "View Alternate Destinations" option and select the original vendor. In the REASON block, include "TERA Language Required." These requests should not be submitted as Rework.

Requirement to Document All TERA

Under § 1168, VA is required to provide the Veteran a nexus examination with medical opinion when the Veteran claims a non-presumptive disability and records show participation in TERA. The law also requires when providing this opinion that the examiner address

- the total potential exposure through all applicable military deployments of the Veteran, and
- the synergistic, combined effect of all toxic exposure risk activities of the Veteran.

To aid the examiner in reviewing the claims file and providing the opinion, claims processors must document all TERAs in accordance with the procedures below.

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Procedures for Establishing TERA

If the Veteran submits a substantially complete claim for a non-presumptive disability that cannot be granted on some other basis, follow the procedures in the table below to establish and document the Veteran's participation in TERA.

Important: During the TERA claims process, all claims processors are responsible for ensuring relevant claim attributes are assigned or removed in accordance with PACT and TERA claim attributes guidance.

Step	Action
1	Review the claim in accordance with the *Toxic Exposure Risk Activity Memorandum Job Aid*. Is a Toxic Exposure Risk Activity Memorandum necessary? • If *yes*, – ensure all military records, to include personnel records if they are not already of record, have been requested and obtained, and – go to the next step. • If *no*, refer the claim for a decision and take no further action in this table.
2	Follow the steps outlined in the *Toxic Exposure Risk Activity Memorandum Job Aid* to complete the Toxic Exposure Risk Activity Memorandum. Is there evidence of TERA participation warranting an opinion under 38 U.S.C. § 1168? • If *yes*, – ensure all evidence used to support TERA is uploaded to the eFolder and documented in accordance with the guidance in the content titled, *Documenting a Veteran's Participation in TERA*, and – go to the next step.. • If *no*, – complete all applicable fields on the *Toxic Exposure Risk Activity Memorandum* – upload the memorandum – disregard the remaining step in this table, and – refer the claim for a decision. ***Important***: • If a circumstance-based TERA exception applies, claims processors must affix the *PACT Exam Exclusion – Sec.1168 Circumstance TERA* corporate flash. • Do not submit research requests of this nature to the Military Records Research Center (MRRC) unless the M21-1 or other authoritative source requires it for the specific exposure type (e.g., herbicide exposure).

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3	Follow the procedures in the content titled, *TERA Examination Request Procedures*.

Determining If Location-Based TERA Applies

Whether explicitly claimed or not, TERA participation should be recognized if the Veteran served in a location associated with

- presumption of exposure to a toxic substance (See Topic 9, *Exhibits*)
- mustard gas locations as listed in M21-1, Part VIII, Subpart iii, 3.A.1.b, or
- a toxic exposure event as noted in M21-1, Part VIII, Subpart iii, 9.A.1.b.

Exceptions:

- The expanded presumption of exposure to toxins, including BPOT replaces all M21-1 guidance regarding procedural concessions of exposure to burn pits noted in M21-1, Part VIII, Subpart iii, 9.A. This means claims processors should not follow the M21-1 procedural guidance for establishing exposure to burn pits. Instead, claims processors must follow the guidance in Topic 5, *Presumptive Service Connection Based on Exposure to BPOT*, when determining if the Veteran was in an area associated with burn pit/fine particulate matter exposure.
- As noted in M21-1, Part VIII, Subpart iii, 8.A.3.b, if the only service at Camp Lejeune was with the National Guard or the Reserve while on active duty for training or inactive duty for training, the service does not qualify as active service. In these cases, do not consider the Camp Lejeune service as evidence of TERA participation.

Follow the steps in the table below to determine if location-based TERA applies.

Step	Action
1	Review Veteran's file for evidence of established service in a location associated with toxic exposure.
2	Review current service records and ILER for an indication of service in a qualifying location.
3	Ensure entire personnel file is obtained and added to claims folder or unavailability of records is appropriately documented.
4	Once all service records are obtained, determine if service in a qualifying location is shown. • If *yes*, complete the remaining steps in the content titled, *Procedures for Establishing TERA*. • If *no*, go to next step.
5	Is potential service in a qualifying location explicitly raised by the Veteran or reasonably raised by the evidence of record?

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	• If *yes*, complete remaining development steps specific to that location, to include referral to a centralized processing site, if required. • If *no*, complete the remaining steps in the content titled, *Procedures for Establishing TERA*. ***Example 1***: Veteran's personnel records show he served on a ship during the Vietnam era, but there is no evidence of land-based service in a herbicide location. Potential nautical service in a herbicide location is reasonably raised. The claim should be referred to centralized processing for research of nautical service. ***Example 2***: Veteran's personnel file shows duty stations in Germany and United States only. Potential location-based exposure is not reasonably raised.

Note: If the Veteran had qualifying active duty service at Camp Lejeune during the presumptive period, follow the guidance in M21-1, Part VIII, Subpart iii, 8.A to complete all required development procedures prior to routing the claim for centralized processing.

Determining the Circumstances of the Veteran's Service Are Consistent With TERA

When determining if the circumstances of a Veteran's service are consistent with participation in TERA, follow the guidance in M21-1, Part VIII, Subpart iii, 9.B.2. This includes researching military records, ILER, and alternative sources of evidence, to include military exposure information available on VHA's Military Exposures site.

In addition, follow existing M21-1 guidance regarding military occupational specialty (MOS)-related toxic exposure, such as

- military occupational hazards in M21-1, Part VIII, Subpart iii, 9.B.2.g, and
- asbestos exposure and MOS in M21-1, Part VIII, Subpart iii, 7.C.1.b.

Recognize participation in TERA if it is consistent with the places, types, and circumstances of the Veteran's service consistent with 38 CFR 3.303(a).

Important: Vaccines and medications in general are not considered participation in a TERA because there is no scientific or medical evidence that supports the conclusion that vaccines and medications administered to Service Members have resulted in long-term adverse health effects. In cases where the Veteran claims a disability specifically due to a vaccine or medication received in service, consider the claim based on the facts and circumstances of the case to include any acute health effects experienced by the Service Member. However, an examination under the provisions of § 1168 (TERA) should not be invoked.

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Example 1: A Veteran files a claim for a non-presumptive cancer. There is not a record for the Veteran in ILER. The Veteran's *Post-Deployment Health Assessment* in his STRs show reports of exposure to Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) in drinking water during his deployment to Germany. Exposure to PFAS is TERA consistent with the circumstances of the Veteran's service.

Example 2: Veteran files a claim for a non-presumptive skin disability but does not explicitly claim toxic exposure. Medical records contain results of a toxic exposure screening at a VHA facility and note the Veteran reports being exposed to industrial solvents. The Veteran's records in ILER lists industrial solvents in the *Exposures Pathway* tab. Exposure to industrial solvents is TERA consistent with the circumstances of the Veteran's service.

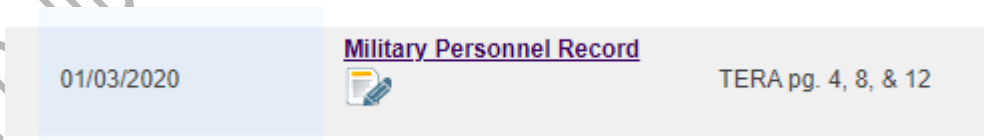
Documenting a Veteran's Participation in TERA

Veterans may qualify for TERA participation on more than one basis, such as location-based presumptive exposure and exposure via military occupation-related activities. Claims processors must document all qualifying TERA in order to ensure the examiner can provide the required medical opinion.

Document the Veteran's participation in all TERAs by

- completing a *Toxic Exposure Risk Activity Memorandum*
- ensuring the evidence used to support the determination of TERA participation is uploaded to the Veteran's eFolder, and
- editing the subject line of the relevant document(s) used to verify participation using the following format: *TERA*, pg. [number(s)].

Example:



Notes:

- While the TERA process applies at the contention level, only one *Toxic Exposure Risk Activity Memorandum* is required for a claim.
- The provisions of this SOP generally apply to both disability compensation and service-connected death benefits. However, for service-connected death benefits, see Topic 6, *Service-Connected Death Benefits Under the PACT Act*.

Reference: For more information on editing document properties, see

- the *VBMS User Guide*, and

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- M21-1, Part II, Subpart ii, 2.A.1.e.

Completing the Toxic Exposure Risk Activity Memorandum

The *Toxic Exposure Risk Activity Memorandum* will be included in the eFolder and will provide the justification for ordering or not ordering the examination/medical opinion required in § 1168. It will also serve as a concise summary of exposure information for the medical examiner.

When completing the *Toxic Exposure Risk Activity Memorandum*, follow the guidance in the *Toxic Exposure Risk Activity Memorandum Job Aid*.

In some cases where a memorandum has already been completed, TERA participation must be researched, and a new *Toxic Exposure Risk Activity Memorandum* completed. Complete a new updated *Toxic Exposure Risk Activity Memorandum* when required by the *Toxic Exposure Risk Activity Memorandum Job Aid* ***and***:

- new evidence shows TERA participation that is not documented on an existing *Toxic Exposure Risk Activity Memorandum*
- the Veteran explicitly alleges TERA participation that was not previously researched
- the only TERA participation is documented on a *Modified TERA Memorandum for Health Care Purposes*
- one of the following §1168 exceptions applied in a prior claim:
  – a herbicide exposure exception, or
  – a circumstance-based exception.

Note: The herbicide and circumstance-based examination exceptions are related to evidence as it existed in ILER at the time the claim was processed. ILER is subject to continual updates and evidentiary additions. While ILER would not generally include herbicide exposure information, it could establish other TERA participation. Therefore, if a Veteran files a subsequent claim with evidence of a disability, and a *condition-based* exception does not apply, the TERA procedures must be followed, and a new *Toxic Exposure Risk Activity Memorandum* completed, to determine if the previous exception still applies.

Use the following attributes when uploading the completed *Toxic Exposure Risk Activity Memorandum* to the Veteran's eFolder:

In the document field ...	**Enter ...**
SUBJECT	*TERA Memorandum*.
CATEGORY - TYPE	*Determinations: TERA Memo*.
CONTENT SOURCE	*VBMS*.
DATE OF RECEIPT	the date of the memorandum.

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Modified Examination Threshold for TERA Claims

§ 1168(a) directs that VA will provide an examination *and* medical opinion when

- the Veteran
  – submits a claim for compensation *and*
  – has evidence of a disability, *and*
  – has evidence of participation in a TERA, *and*
- such evidence is not sufficient to establish service connection for the disability, *and*
- a TERA exception does not apply.

Note: The statutory language in § 1168 modifies the existing § 5103A threshold in the above situations. As such, in scenarios where claims processors previously would not have requested an examination based on insufficient evidence and such claim would result in a denial, if such claim is related to a TERA, VA now is required to request an examination and medical opinion before deciding the claim.

When to Request a TERA Examination

After establishing that the Veteran participated in a *TERA* and there is *evidence of a disability*, then claims processors must determine whether the Veteran's claim meets the minimal threshold for ordering the examination and medical opinion as discussed in the content titled, *Modified Examination Threshold for TERA Claims*.

Notes:

- Request a medical opinion for a survivor claim when
  – processing a service-connected death claim based on a non-presumptive disability, and
  – the evidence shows the Veteran participated in a TERA.
- The language of new § 1168(a) requires VA to obtain an examination and opinion "if a veteran submits to the Secretary a claim for compensation." A survivor submitting a claim for DIC is distinct from a Veteran submitting a claim for compensation, and thus would not fall under the purview of the new section. See Delarosa v. Peake, 515 F.3d 1319, 1321-22 (Fed. Cir. 2008) (noting that the requirement to provide medical examinations for compensation claims in § 5103A(d) does not apply to DIC claims). However, VA may still be required to provide an opinion in relation to a DIC claim pursuant to § 5103A(a). For more information regarding requesting an opinion in relation to a DIC claim, please see M21-1 Part XII, Subpart i, 1.B.1.h.

Reference: For more information on evidence of a current disability or symptom, see M21-1, Part IV, Subpart i, 1.B.1.b.

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TERA Opinions and Herbicide Exceptions

If the herbicide TERA exception applies for a claimed disability, claims processors must still fully research whether the Veteran also participated in another TERA. In these cases, if the *Toxic Exposure Risk Activity Memorandum* reveals there is evidence of a different TERA (other than herbicides), a TERA medical opinion is required. Enter the following language when requesting the TERA medical opinions for conditions determined to have no positive association with herbicide exposure based on TERAs other than herbicides:

> *Although the Veteran served in [herbicide location] and exposure to herbicides is conceded, only consider the TERA(s) of [non-herbicide TERAs] as [disability] has been determined by the Secretary to have no positive association with herbicide exposure.*

Definition: Physical Trauma

VBA defines ***physical trauma*** as a serious injury to the body. Three main types of physical trauma are as follows:

- ***Blunt force trauma***—when an object or force strikes the body, often causing concussions, deep cuts, or broken bones
- ***Trauma due to repetitive use***—when repeated stress to the body's soft tissue structures, including muscles, tendons, and nerves, results in repetitive strain injuries, and
- ***Penetrating trauma***—when an object pierces the skin or body, usually creating an open wound

Exceptions:

- Hearing loss is **not** considered a physical trauma under this exception.
- Penetrating traumas with toxic embedded fragments do **not** fall under this exception. An embedded fragment is a piece of metal or other material (also referred to as shrapnel) that stays in the body after injury.

Example: The Veteran served from 1994 to 2014. Service included tours of duty in Kuwait, Israel, Iraq, and Bahrain. He is diagnosed with mild hearing loss in 2020. Pure tone threshold loss of 50 decibels is shown at the 4000 hertz level bilaterally. Service records show normal hearing upon entering and separating from service. The Veteran files a claim for service connection for hearing loss in November 2022. He claims that his hearing loss is the result of exposure to toxic substances in service. Should the Veteran receive an examination/opinion?

Result: Yes. Participation in a TERA is established so toxic exposure is presumed pursuant to § 1119. Although acoustic trauma and noise exposure are the common etiologies of hearing loss, the disability does not fall under a physical trauma as it is not consistent with blunt force or penetrating trauma,

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or trauma due to repetitive use. Therefore, since participation in a TERA is demonstrated and the hearing loss, which is rated under diagnostic code (DC) 6100, does not fall within the physical trauma exception under § 1168(b), an examination/opinion should be provided as there is a potential indication of an association between the disability and toxic exposure.

Evaluating Competent Medical or Scientific Evidence for TERA Examination Exceptions

When determining if there is competent medical or scientific evidence to overcome an exception to the TERA examination, follow the guidelines in M21-1, Part V, Subpart ii, 1.A to evaluate the credibility and competence of the evidence. If after weighing the evidence, it is determined to have sufficient probative value, the claims processor should follow the procedures in the content titled, *TERA Examination Request Procedures* to order an examination with medical opinion for the claimed disability.

Reference: For more information on determining if an examination is necessary, see M21-1, Part IV, Subpart i, 1.A.1.c.

TERA Examination Request Procedures

Follow the procedures below when requesting an examination with medical opinion based on TERA as required by Step 10 in the content titled, *Procedures for Establishing TERA*.

Step	Action
1	• Ensure all evidence supporting exposures is uploaded to the eFolder, including the completed *Toxic Exposure Risk Activity Memorandum* and ILER *Individual Exposure Summary*, if applicable, and • identify the relevant evidence for the examiner's review per M21-1 Part IV, Subpart i, 2.A.8.d.
2	Select all appropriate DBQs based on the nature of the disability(ies) claimed, and the medical opinion DBQ for each applicable contention.
3	In the "Is there a Medical Opinion Needed?" drop down menu in the VBMS EMS, select TOXIC EXPOSURE.
4	Input the required fields. ***Notes***: • The contention will be system generated. • Input the toxic exposure risk activity(ies) as documented on the *Toxic Exposure Risk Activity Memorandum*.
5	In the examination request in the ADDITIONAL INFORMATION field, provide the examiner with the following: • established TERA(s)

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	• whether the information is documented in ILER/personnel pages/*DD Form 214, Certificate of Uniformed Service* (DD 214)/Veteran statement, and • free text/other, if needed.

TERA Examination Sufficiency

Under § 1168, examinations based on TERA require the examiner to provide an opinion that considers the total potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities of the Veteran.

If an examination fails to provide or to sufficiently explain and support the required opinion, follow the procedures in M21-1, Part IV, Subpart i, 3.C to obtain clarification of the examination.

Deciding Service Connection for Disabilities Due to TERA

When deciding a claim for service connection for a disability due to TERA during service, the rating activity should

- determine whether or not service records demonstrate the Veteran participated in a TERA during service, and
- determine whether
  – a condition-based or circumstance-based TERA examination exception applied, or
  – the evidence establishes a nexus between the TERA and the claimed disease.

Notes:
- Apply the direct service connection provisions when deciding claims based on this provision of the PACT Act.
- As always, resolve reasonable doubt under 38 CFR 3.102 in the claimant's favor.

Reference: For more information on direct service connection, see
- 38 CFR 3.303
- 38 CFR 3.304, and
- M21-1, Part V, Subpart ii, 2.A.

TERA Rating Decision Requirements

Follow existing guidance in M21-1, Part V, Subpart iv, 1.A to generate a rating decision that explains the basis of any decision under the PACT Act. In addition to system-generated text, decision makers should use glossary fragments created based on the new law, when applicable.

If awarding or denying a claim under the provisions of TERA, apply the following guidelines:

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- cite the relevant statute(s) that applies to the claim, such as, but not limited to, § 1168, 38 CFR 3.303, etc.
- list the TERA as a favorable finding, if applicable
- in all denials (for explicit and implicit claims) where a TERA examination exception applied, the rating narrative must discuss
  – the specific condition-based or circumstance-based exception, and
  – whether there was evidence rebutting the exception, and
- affix the appropriate TERA special issue(s) as discussed in the *Utilizing VBMS-R TERA Special Issues (SIs) Job Aid*.

Important: When a TERA examination exception applies and the *PACT Exam Exclusion – Sec.1168* is selected, VBMS-R will generate narrative text discussing the exception as well as the absence of competent medical or scientific evidence.

- When a new circumstance-based exception applies, decisionmakers must replace the system-generated narrative text with the *TERA_exceptions_ILER* fragment.
- If the claim includes medical or scientific evidence attempting to rebut the exception, but the examination threshold is still not met, the system-generated text must be edited to explain why the evidence was not sufficient to overcome the exception.

References: For more information on

- available VBMS-R glossary fragments, see *TERA Glossary Text for VBMS-R*, and
- implicit TERA claims, see the content titled *Identifying a TERA Claim*.

TERA Favorable Findings

When denying service connection, the rating decision must include the TERA favorable finding when TERA participation is shown.

Important: If TERA participation is shown on a *Toxic Exposure Risk Activity Memorandum*, include the favorable finding even when a condition-based or a circumstance-based TERA exception applies.

Example: Participation in a toxic exposure risk activity is conceded. TERA was conceded based on an entry in an exposure tracking record system.

Reference: For more information on documenting favorable findings, see M21-1, Part V, Subpart iv, 1.A.5.h.

Establishing an Effective Date

The PACT Act was signed into law on August 10, 2022, so any grant based on the new examination threshold under § 1168 cannot precede this date. The effective date provisions under § 5110 and 38 CFR 3.400 should be

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for TERA Claims

followed. Effective date provisions due to a change of law under 38 CFR 3.114 also apply.

Important: If granting service connection for a disability due to a toxic exposure under authority that predates the PACT Act, such as direct service connection in M21-1, Part VIII, Subpart iii, 9.A and B, then do not apply the effective date provisions of the PACT Act. If any element of the claim was awarded under a PACT Act authority, such as presumptive exposure in a newly recognized location, then the effective date provisions of the PACT Act apply.

Example 1: A Veteran filed a claim for a disability due to jet fuel exposure on July 25, 2022. His military records show occupational exposure to jet fuels, and he submitted private medical evidence linking his claimed disability to jet fuel. Under examination threshold guidance prior to the PACT Act (38 CFR 3.159), a direct service connection opinion is warranted, and any resulting award of benefits would be effective the date of claim.

Example 2: A Veteran filed a claim for jet fuel exposure on July 25, 2022. His military records show occupational exposure to jet fuels. He did not submit evidence linking his claimed disability to jet fuel. Under the new modified examination threshold in the PACT Act, a direct service connection opinion is warranted based on the Veteran's participation in a TERA (jet fuel exposure). The Veteran's claim relies on new § 1168 authority created by the PACT Act, and for that reason, any resulting award of benefits cannot be granted prior to the effective date of the PACT Act, August 10, 2022.

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3.1 Overview of Changes Affecting Presumptive Herbicide Exposure Claims

Introduction

This topic contains an overview of herbicide exposure claims, including:

- provisions of the PACT Act relevant to herbicide claims
- when to apply herbicide procedures
- centralized processing changes for herbicide claims
- expansion of presumptive herbicide exposure
- changes specific to
  – Thailand, and
  – Johnston Atoll, and
- newly recognized herbicide presumptive disabilities.

Change Date

November 4, 2024

Provisions of the PACT Act Relevant to Herbicide Claims

- *New herbicide exposure locations*. Section 403 of the PACT Act expanded presumptive herbicide exposure to additional locations by amending § 1116.
- *New herbicide presumptive disabilities*. Section 404 amended § 1116 to add a presumption of service connection for hypertension and monoclonal gammopathy of undetermined significance (MGUS) related to exposure to certain herbicide agents.

The table below represents how the PACT Act impacts the current herbicide exposure claims process.

Provision	Before the PACT Act	After the PACT Act
Qualifying Service	• Limited to locations and conditions of service listed in 38 CFR 3.307(a)(6) and qualifying Vietnam offshore service under § 1116A. • Procedural concessions for Thailand.	Expands presumption of exposure to new locations as listed below in content titled *Expansion of Presumptive Herbicide Exposure*.
Recognized Disabilities	Limited to disabilities listed in 38 CFR 3.309(e) as well as parkinsonism, bladder cancer, and hypothyroidism.	Adds MGUS and hypertension to the list of recognized presumptive herbicide disabilities effective August 10, 2022.

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Degree of Disability	Except for parkinsonism, bladder cancer, hypothyroidism, disabilities must manifest to a degree of 10 percent or more.	Statute does not require newly recognized disabilities (MGUS or hypertension) to manifest to a degree of disability of 10 percent or more to qualify as presumptive disease.
Nehmer	Applies to currently recognized presumptive herbicide disabilities.	Does not apply to MGUS or hypertension.

When to Apply Herbicide Procedures

The procedures of this topic apply to any Veteran who

- claims a presumptive herbicide disability, and
- served in an area associated with a presumption of exposure to herbicides.

Note: The procedures of this topic also apply to survivor claims when the Veteran

- died from a presumptive herbicide cause of death, and
- served in an area associated with a presumption of exposure to herbicides.

Centralized Processing Changes for Herbicide Claims

Under the PACT Act implementation, the following changes apply to the centralized processing model of herbicide claims:

- development, research, and documentation of herbicide exposure in all land-based locations will be conducted by any RO
- development, research, and documentation of herbicide exposure in the Republic of Vietnam (RVN) nautical locations or nautical-based service in the new PACT Act locations will continue to be the sole responsibility of the centralized processing sites; however, only certain claims will require this step, as described below, and
- ROs will screen claims for hypothyroidism, bladder cancer, and parkinsonism for potential *Nehmer* stipulation applicability and only route certain claims to a centralized processing site, when required as described below.

The table below represents the claim types which require centralized processing for concessions of herbicide exposure, as well as rating and authorization activity.

If there is ...	**Then concession of exposure is ...**	**And rating and authorization are …**
• in-country service at any recognized location, and	not centralized	not centralized.

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• none of the below exceptions apply		
• no qualifying in-country service, and • an explicit or implicit claim of RVN-based nautical service as described in the content titled, *Evidence of Nautical Service*	centralized	centralized.
• no qualifying in-country service, and • an explicit or implicit claim of nautical service as described in the content titled, *Evidence of Nautical Service*, in one of the following locations – American Samoa – Guam – Thailand, or – Johnston Atoll	centralized	***not*** centralized.
• a previously denied claim based on no qualifying service, and • an explicit or implicit claim of RVN-based nautical service as described in the content titled, *Evidence of Nautical Service* ***Important***: This applies even in cases where there is evidence of other land-based qualifying service in any of the recognized herbicide locations.	centralized	centralized.
potential *Nehmer* applicability as described in Step 4 of the table in the content titled, *Herbicide Exposure Development Procedures* ***Exception***: The *Nehmer* consent decree only applies to RVN service. Do not route claims for *Nehmer* processing if the Veteran's only herbicide exposure is outside of the RVN.	not centralized if land-based service is established centralized if the only potentially qualifying service is nautical	centralized.

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Expansion of Presumptive Herbicide Exposure

Currently, VA recognizes a presumption of exposure to herbicides in specific locations as listed in 38 CFR 3.307(a)(6) as well as § 1116A. Under the PACT Act, the locations associated with presumptive exposure are expanded as shown in the table below.

In addition to the currently recognized locations and conditions of service associated with presumptive herbicide exposure, the PACT Act added the following locations:

Location	Dates
Thailand at any United States or Royal Thai base, without regard to where on the base the Veteran was located or what MOS the Veteran performed	January 9, 1962, to June 30, 1976.
Laos	December 1, 1965, to September 30, 1969.
Cambodia at Mimot or Krek, Kampong Cham Province	April 16, 1969, to April 30, 1969.
Guam or American Samoa, or in the territorial waters thereof	January 9, 1962, to July 31, 1980.
Served on Johnston Atoll or on a ship that called at Johnston Atoll	January 1, 1972, to September 30, 1977.

Note: Prior to the PACT Act, claims processors recognized exposure on a facts found basis for Veterans who served at certain locations such as Royal Thai Air Force Bases in Thailand and Johnston Island. The expanded presumption of exposure to herbicides under the PACT Act supersedes all M21-1 guidance regarding procedural concessions of exposure in other locations, such as Thailand and Johnston Island; therefore, follow the guidance in this topic when determining if the Veteran was in an existing or newly recognized area associated with herbicide exposure. For all other locations, continue to follow the procedures outlined in M21-1, Part VIII, Subpart i, 1.A.6.

Changes Specific to Thailand

Under the PACT Act, there is now a presumption of herbicide exposure for Veterans who served in Thailand at any United States or Royal Thai base during the specified time frame. Apply the following when processing a claim based on service in Thailand:

- Presumption of exposure does *not* require evidence of a specific MOS or duties on the perimeter of the base. Do not apply procedures in M21-1, Part VIII, Subpart i, 1.A.4 for claims involving Thailand service.
- While the presumption of herbicide exposure in Thailand does ***not*** extend into the territorial waters, it *does* apply to ships that called at the port of Sattahip. See the *Nautical Herbicide Exposure SOP*.

Important:

- Establishing qualifying nautical service at the port of Sattahip is the sole responsibility of the Records Research Team.
- For purposes of determining whether a Veteran had covered service in Thailand for entitlement to spina bifida benefits, covered service in Thailand means service in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on May 7, 1975,

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without regard to where on the base the Veteran was located or what military job specialty the Veteran performed.
  - This applies to benefits under § 1822 and will be implemented in 38 CFR 3.814.
  - This only applies to spina bifida. It does not apply to other birth defects under § 1812.

Changes Specific to Johnston Atoll

Under the PACT Act, there is now a presumption of herbicide exposure for Veterans who served on Johnston Atoll or on a ship that called at Johnston Atoll during the specified time frame. Concessions of qualifying Johnston Atoll nautical service are centralized. See the *Nautical Herbicide Exposure SOP*.

Newly Recognized Herbicide Presumptive Disabilities

The PACT Act expanded the presumptive disabilities listed in § 1116. Presumptive service connection can now be awarded for Veterans with qualifying service who are later diagnosed with:

- MGUS, and
- hypertension.

Notes:
- There is no requirement for these disabilities to manifest to a compensable degree.
- Variants of hypertension, such as pulmonary hypertension or portal hypertension, are excluded from consideration as a presumptive herbicide disease.
- Claims processors must ensure that any diagnosis of hypertension due to herbicide exposure meets the regulatory diagnostic threshold outlined in 38 CFR 4.104, DC 7101, Note 1. If the evidence is unclear, medical clarification and/or a medical examination may be warranted per M21-1, Part V, Subpart iii, 5.3.c.

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3.2 Processing Presumptive Herbicide Exposure Claims

Introduction	This topic contains guidance on processing herbicide exposure claims, including: • entitlement to compensation for conditions due to herbicide exposure • establishing presumptive exposure to herbicides • automated herbicide flash • herbicide exposure development procedures • reviewing service records for proof of service in a presumptive herbicide location • evidence of nautical service • documenting herbicide exposure • when to request additional evidence from the claimant in herbicide claims • informing the Veteran about the Agent Orange Registry Program • examination guidelines for herbicide claims • deciding presumptive service connection for herbicide disabilities • rating MGUS claims • herbicide rating decision requirements, and • establishing an effective date for herbicide claims.
Change Date	July 17, 2024
Entitlement to Compensation for Conditions Due to Herbicide Exposure	Veterans who served in a location associated with a presumption of herbicide exposure and developed a disease related to that exposure may receive compensation benefits. In order to decide claims under the expanded herbicide provisions of the PACT Act, claims processors must • identify when herbicide exposure applies • research the Veteran's locations of service • request examinations, when required, and • ensure decisions fully explain the basis of the decision. ***Reference***: For more information on processing herbicide exposure claims, see • the *Nautical Herbicide Exposure SOP*, and • M21-1, Part VIII, Subpart i, 1.A and B.
Establishing Presumptive	When processing a claim for service connection based on herbicide exposure, claims processors must follow existing procedures to obtain necessary military records to establish service in a qualifying location. Recognize

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Exposure to Herbicides

presumptive exposure to herbicides if a Veteran served during the applicable time period in a qualifying location associated with presumptive herbicide exposure as listed in the table below.

Location/Circumstance	Dates	Authority(ies)
Service in the RVN, which includes: • on land in the RVN • on its inland waterways, or • in the eligible offshore waters of the RVN, including specific bays and harbors	The period beginning on January 9, 1962, and ending on May 7, 1975	• 38 CFR 3.307(a)(6), and • § 1116A
In a unit determined by VA or the Department of Defense (DoD) to have operated in the Korean demilitarized zone (DMZ)	Between September 1, 1967, and August 31, 1971	• 38 CFR 3.307(a)(6), and • M21-1, Part VIII, Subpart i, 1.A.3
Thailand at any United States or Royal Thai base, without regard to where on the base the Veteran was located or what MOS the Veteran performed	January 9, 1962, to June 30, 1976	§ 1116
Laos	December 1, 1965, to September 30, 1969	§ 1116
Cambodia at Mimot or Krek, Kampong Cham Province	April 16, 1969, to April 30, 1969	§ 1116
Guam or in the territorial waters thereof	January 9, 1962, to July 31, 1980	§ 1116
American Samoa or in the territorial waters thereof	January 9, 1962, to July 31, 1980	§ 1116
Served on Johnston Atoll or on a ship that called at Johnston Atoll	January 1, 1972, to September 30, 1977	§ 1116

Notes:

- Concessions of qualifying nautical service are centralized as described in the content titled, *Centralized Processing Changes for Herbicide Claims*.
- There is a presumption of herbicide exposure associated with certain C-123 aircraft activities, but these claims generally fall under the jurisdiction of the St. Paul RO as discussed in M21-1, Part VIII, Subpart i, 1.A.2.

Automated Herbicide Flash

VBA systems will automatically assign the *Agent Orange Exposure Verified* corporate flash based on corporate rating data promulgated in 2003 or later. The *Agent Orange Exposure Verified* flash is applied to Veteran records with one or more promulgated rating decision(s) granting service connection for a condition with an associated Agent Orange special issue.

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The *Agent Orange Exposure Verified* flash should not be considered verification of herbicide exposure if not supported by the evidence of record.

Example: The Veteran was granted service connection based on historical policies no longer in effect. In these cases, do not use the flash as verification of exposure and review the claim under current policies to determine if exposure can be established.

Note: If a Veteran was previously awarded service connection for a herbicide-related condition(s), but the *Agent Orange Exposure Verified* corporate flash is not present, ensure an Agent Orange special issue(s) is assigned to the contention in VBMS-R. If needed, generate an updated rating, and promulgate a record purpose award to trigger the corporate flash. Conversely, if the Agent Orange special issue is erroneously assigned, it must be removed in VBMS-R to delete the corporate flash. This does not include cases as noted above where the special issue is correctly assigned based on historical policies in place at the time the decision was made.

Reference: For more information on claims decided under historical herbicide policies, see M21-1, Part VIII, Subpart i, 1.B.3.

Herbicide Exposure Development Procedures

The table below describes the general development procedures for verifying service in a qualifying location not associated with nautical service.

Important: If presumptive herbicide exposure was previously established based on current policies, claims processors must still perform Steps 4-6 to screen for potential *Nehmer* applicability for any newly claimed herbicide presumptive disability.

Reference: For more information on historical herbicide exposure policies, see M21-1, Part VIII, Subpart i, 1.B.3.

Step	Action
1	Do current military records establish Veteran served in a location associated with a presumption of herbicide exposure? • If *yes*, – document the qualifying service by following the procedures in the content titled *Documenting Herbicide Exposure*, and – go to Step 4. • If *no*, – ensure all military records (*DD 214*, STRs, and entire military personnel file (OMPF)) have been obtained or unavailability documented, and once obtained, – go to the next step.

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2	Review procedures in this topic and take one of the following actions.	

If ...	Then ...
military records establish land-based service in the RVN or one of the new presumptive herbicide locations	• document the qualifying service by following the procedures in the content titled *Documenting Herbicide Exposure*, and • go to Step 4.
• the claimant provides specific dates and locations of exposure (unrelated to temporary duty (TDY)), but • military records do *not* establish service in an area associated with herbicide exposure	go to Step 3.
• the claimant provides specific dates of TDY service in an area associated with herbicide exposure, and • service records do not confirm the TDY service ***Exception***: If the claimant has *not* provided specific dates of TDY service, follow the development procedures outlined in the content titled *When to Request Additional Evidence From the Claimant in Herbicide Claims*.	
• the claimant alleges service in a qualifying location, but • neither the claim nor the service records detail specific dates of service in an area associated with herbicide exposure	send a subsequent development letter as specified in in the content titled *When to Request Additional Evidence From the Claimant in Herbicide Claims*.
• military records do not establish service in a location where herbicide exposure can be established, and • the claimant has not provided specifics about how or when exposure occurred	

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	the only evidence of potential qualifying service involves nautical service in the RVN or other PACT Act location	• add a VBMS note that the claim requires verification of qualifying nautical service • affix the *Blue Water Agent Orange* special issue to route the claim to a centralized processing team, and • disregard the remaining steps in this table.
3	Review the claim in accordance with the content titled, *Evidence of Nautical Service*. Is an explicit or implicit claim involving nautical service the only evidence of potential herbicide exposure? • If *yes*, – add a VBMS note that the claim requires verification of qualifying nautical service – affix the *Blue Water Agent Orange* special issue to route the claim to a centralized processing team, and – disregard the remaining step in this table. • If *no*, – submit a request through VBMS to the VA MRRC, and – disregard the remaining step in this table. ***Reference***: For more information on submitting an MRRC request, see the *VBMS User Guide*.	
4	Is herbicide exposure established based on service in the RVN, to include qualifying RVN nautical service documented by the centralized processing team? • If *yes*, go to the next step. • If *no*, go to Step 7.	
5	Review the claims folder. Is there a claim meeting the eligibility requirements of *Nehmer*? • If *yes*, go to the next step. • If *no*, continue processing the claim. ***Reference***: For more information on what constitutes a claim under *Nehmer*, see • M21-1, Part VIII, Subpart i, 2.B.1.d, and • the *Nehmer Training Guide*.	
6	Use the table below to establish proper control of the *Nehmer* claim.	

If the *Nehmer* claim involves ...	**Then ...**
• hypothyroidism • bladder cancer, or • parkinsonism	affix the *FY21 NDAA AO Presumptive* special issue indicator to the contention.
any other Nehmer eligible contention	follow procedures outlined in M21-1, Part VIII, Subpart, i, 2.A.1.b.

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	Exception: The *Nehmer* consent decree only applies to RVN service. Do not route claims for *Nehmer* processing if the Veteran's only herbicide exposure is outside of the RVN.
7	Was the claim previously denied based on no qualifying service? • If *yes*, – ensure all military records (*DD 214*, STRs, and entire OMPF) have been obtained or unavailability documented, and once obtained, – go to next step. • If *no*, continue processing the claim.
8	Review all military records. Is there potential RVN blue water Navy (BWN) service as described in the content titled, *Evidence of Nautical Service*? • If *yes*, – add a VBMS note that the claim requires verification of qualifying nautical service, and – affix the *Blue Water Agent Orange* special issue to route the claim to a centralized processing team. • If *no*, continue processing the claim.

Reviewing Service Records for Proof of Service in a Presumptive Herbicide Location

Certain documents within the claims folder may show proof of duty or visitation in a qualifying location.

See the table below for guidance on reviewing documents that may show qualifying service or TDY service in a presumptive herbicide location.

Important: If the only potentially qualifying service is nautical service, follow the procedures in Step 4 of the table in the content titled, *Herbicide Exposure Verification Development Procedures* to refer the claim to a centralized processing team.

Review …	**For …**
all certified *DD Forms 214*	• entries such as Foreign Service in the qualifying location, or • a separating station/last duty assignment in the qualifying location.
military personnel records, including the *DA Form 20, Enlisted Qualification Record*	• verification of service locations • any travel or flight orders • any statements in performance evaluations related to travel or flights, and • any TDY orders.
STRs and dental records	treatment in the qualifying location with particular attention to Army Post Office (APO) or Fleet Post Office (FPO) numbers,

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	which may be associated with a location in which the presumption of herbicide exposure applies. ***Reference***: For a list of APO-FPO address numbers for the Asian Pacific Theater during the Vietnam era, see the document titled *General 1942-2002 APO-FPO Files* (within the *General Information* folder) on Compensation Service's Stressor Verification website. ***Note***: The listing of APO-FPO addresses begins on page 4998.

Important: There are no recognized medals whose receipt alone connotes service in a recognized herbicide presumptive location. If a Veteran was awarded a medal, such as the Vietnam Service Medal, carefully review the records for documentation of travel or TDY orders to a qualifying herbicide exposure location.

Evidence of Nautical Service

The Veteran may explicitly claim, or evidence might imply potential nautical service. As described in the content titled, *Centralized Processing Changes for Herbicide Claims*, qualifying nautical service must be researched by a centralized processing team in certain situations before sending the claim for a decision.

Screen all cases for both explicit and implicit claims of nautical service. Evidence that may imply nautical service includes

- service records noting service
  – on a ship
  – with a Naval Air Squadron, or
  – in a Marine Corps battalion assigned to a ship, or
- statements submitted in support of previous claims.

Important: Not all claims involving nautical service require centralized processing. Follow the guidelines in the content titled, *Centralized Processing Changes for Herbicide Claims*, to determine if the claim requires centralized processing for concession of qualifying nautical service.

Documenting Herbicide Exposure

The claims processor must ensure the evidence used to support the determination of herbicide exposure is uploaded to the Veteran's eFolder and

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edit the subject line of the relevant document(s) used to verify herbicide exposure using the following format: [location of exposure], pg. [number].

Example:

Reference: For more information on editing document properties, see the *VBMS User Guide*.

When to Request Additional Evidence From the Claimant in Herbicide Claims

It is unnecessary to issue § 5103 notice when a Veteran or survivor files a claim related to exposure to herbicides on a form that provides or otherwise indicates he/she received the notice, such as

- *VA Form 21-526EZ*, or
- *VA Form 21P-534EZ*.

Send a subsequent VBMS development letter using the *AO–Exposure General Notice* paragraph in the following situations:

- claimant fails to provide specifics of how or where exposure occurred, or
- claimant states they served in a qualifying location, but fails to provide specific dates, and service records do not show service in a qualifying presumptive location.

Exception: If the claimant has already provided specific dates of TDY or other service in a presumptive herbicide location, do not send a subsequent development letter.

Reference: For more information about the circumstances under which it is necessary to issue § 5103 notice, see

- M21-1, Part III, Subpart i, 2.B, and
- M21-1, Part X, Subpart ii, 2.A.

Informing the Veteran About the Agent Orange Registry Program

If it is necessary to send the Veteran a subsequent development letter as described in the content titled *When to Request Additional Evidence From the Claimant in Herbicide Claims*, the development activity should also

- inform the Veteran of the availability of hospital examinations and treatment as part of the Agent Orange Registry program, and

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- if the Veteran has already had the herbicide examination or been treated for herbicide exposure, request that the Veteran submit
  – a copy of the examination or treatment report, or
  – the name of the VA facility performing the examination or treatment so that a copy of the report may be associated with the claims folder.

Examination Guidelines for Herbicide Claims

For claims based on herbicide exposure, follow the general presumptive service connection examination guidelines noted in M21-1, Part IV, Subpart i, 1.B.1.g. In addition, apply the following guidelines:

- MGUS is a form of asymptomatic multiple myeloma, and therefore, claims processors should request the *Hematologic and Lymphatic Conditions, Including Leukemia Disability Benefits Questionnaire*, when an examination is needed. Until the DBQ is updated to distinguish smoldering myeloma from MGUS, examiners will generally use the "Other" diagnosis field in question 1.A to clarify the Veteran's MGUS diagnosis. If an examination does not contain the necessary diagnosis in this field or otherwise in the remarks and clarification of the diagnosis is needed, follow the procedures in M21-1, Part IV, Subpart i, 3.C.1.f.
- Apply the principles outlined in M21-1, Part IV, Subpart i, 2.A.1.d regarding scope of VA examination practice.

Deciding Presumptive Service Connection for Herbicide Disabilities

When deciding service connection for a disability due to herbicide exposure, consider if the evidence establishes

- service in a qualifying location, and
- the Veteran has a qualifying disability.

Important: When deciding these claims, it is important that claims processors note which authority (pre-PACT Act or PACT Act) applies to the claim and explain the basis of the decision, citing the relevant regulation(s) or statute(s), as required.

Rating MGUS Claims

Monoclonal Gammopathy of Undetermined Significance (MGUS) is an asymptomatic, pre-malignant disorder characterized by monoclonal plasma cell proliferation in the bone marrow and absence of end-organ damage.

People with MGUS generally have no symptoms, although they sometimes have tingling or numbness in their hands or feet. Blood tests at routine checkups can lead to MGUS detection.

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Evaluate MGUS under 38 CFR 4.117, DC 7712 – multiple myeloma. MGUS does not have to be compensable to qualify for presumptive service connection due to herbicide exposure.

Herbicide Rating Decision Requirements

Follow existing guidance in M21-1, Part V, Subpart iv, 1.A to generate a rating decision that explains the basis of any decision under the PACT Act. In addition to system-generated text, decision makers should use glossary fragments created based on the new law, when applicable.

If awarding or denying a claim based on one of the newly recognized presumptive herbicide locations or presumptive disabilities, apply the following guidelines:

- cite § 1116 as the authority for the decision, and
- list the herbicide exposure or qualifying diagnosis as a favorable finding, if applicable.

Establishing an Effective Date for Herbicide Claims

The PACT Act was signed into law on August 10, 2022, so any grant based on one of the new herbicide locations or new herbicide presumptives cannot precede this date. The effective date provisions under § 5110 and 38 CFR 3.400 should be followed. Effective date provisions due to a change of law under 38 CFR 3.114 also apply.

Important: Do not apply 38 CFR 3.816 (the *Nehmer* stipulation) to herbicide claims that are awarded based on a new PACT provision.

If the award involves a ...	Then ...
• existing 38 CFR 3.309(e) condition, ***and*** • pre-PACT Act presumptive location	• normal effective date rules apply, including, but not limited to, the *Nehmer* stipulation under 38 CFR 3.816 or liberalizing law under 38 CFR. 3.114, when applicable. • Cite relevant effective date regulation and regulatory or statutory authority for service connection.
• new presumptive condition, and/or • new PACT Act location	• the effective date cannot be prior to August 10, 2022. • Apply 38 CFR 3.114(a) (date of law or one year retro to date of claim). • Cite § 1116.

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Reference: For more information on assigning effective dates, to include liberalizing law, see M21-1, Part V, Subpart ii, 4.A.

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4. Presumptive Service Connection of Undiagnosed Illnesses and MUCMIs for Persian Gulf Veterans

Introduction

This topic contains an overview of service connection of undiagnosed illnesses and MUCMIs, including:

- provisions of the PACT Act relevant to undiagnosed illnesses and MUCMIs
- when to apply undiagnosed illness and MUCMI procedures
- entitlement to compensation for undiagnosed illnesses and MUCMIs
- definition of Persian Gulf Veteran
- establishing Persian Gulf Veteran status
- documenting Persian Gulf Veteran status
- undiagnosed illness and MUCMI examinations and TERA
- deciding service connection for undiagnosed illnesses and MUCMIs for Persian Gulf Veterans
- undiagnosed illness and MUCMI rating decision requirements, and
- establishing an effective date for undiagnosed illness and MUCMI claims.

Change Date

July 17, 2024

Provisions of the Pact Act Relevant to Undiagnosed Illnesses and MUCMIs

- *Discontinuance of presumptive period and compensability requirements.* Section 405 of the PACT Act removed the manifestation period for Persian Gulf Veterans, allowing for a qualifying chronic disability to manifest to any degree of disability at any time.
- *Updated definition of Persian Gulf Veteran*. Section 405 of the PACT Act added additional locations associated with undiagnosed illness and medically unexplained chronic multi-symptom illness (MUCMI). The new locations include Afghanistan, Israel, Egypt, Turkey, Syria, and Jordan.

The table below represents how the PACT Act impacts the current 38 CFR 3.317 claims process.

Exception: These changes do not impact the 38 CFR 3.317 infectious disease claims process.

Presumptive Provision	Before the PACT Act	After the PACT Act (effective August 10, 2022)
Qualifying Service/Updated Definition of Persian Gulf Veteran	Limited to Southwest Asia theater of operations	Also includes Afghanistan, Israel, Egypt, Turkey, Syria, and Jordan.

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Manifestation Period	Manifest no later than December 31, 2026	Manifest at any time
Degree of Disability	Manifest to a degree of 10 percent or more	Manifest to any degree (including noncompensable)
Authority	38 CFR 3.317 effective November 2, 1994 (undiagnosed illnesses), and March 1, 2002 (MUCMIs)	§ 1117 effective August 10, 2022

When to Apply Undiagnosed Illness and MUCMI Procedures

The procedures of this topic apply to any Gulf War era Veteran who

- presents with a sign or symptom of an undiagnosed illness or MUCMI as noted in 38 CFR 3.317(b), and
- served in a location currently recognized as Southwest Asia Theater of Operations under 38 CFR 3.317(e)(2) or a new Persian Gulf Veteran location in § 1117.

Important:
- The PACT Act did not change qualifying service or the other regulatory requirements for infectious diseases.
- While several locations in 38 CFR 3.317 and § 1117 overlap with § 1119 locations, not all locations qualify under both statutes. See *Gulf War Era Service Areas Job Aid*.

Reference: For more information on claims that fall under more than one legal authority, see content titled *Considering Multiple Theories of Service Connection*.

Entitlement to Compensation for Undiagnosed Illnesses and MUCMIs

Veterans suffering from a chronic disability resulting from an undiagnosed illness or MUCMI may receive compensation benefits.

In order to decide claims based on these disabilities under the new provisions of the PACT Act, claims processors must

- identify when a sign or symptom of an undiagnosed illness or MUCMI is claimed or present
- research the Veteran's service locations
- identify any other presumptions that apply based on where the Veteran served
- request medical examinations, when required, and
- ensure decisions fully explain the basis of the decision.

Reference: For more information on processing claims for undiagnosed illnesses and MUCMIs, see M21-1, Part VIII, Subpart ii, 1.A-C.

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Definition: Persian Gulf Veteran

A ***Persian Gulf Veteran*** under the PACT Act (§ 1117) is a Veteran who served on active duty in the Southwest Asia theater of operations as defined in 38 CFR 3.317(e)(2), Afghanistan, Israel, Egypt, Turkey, Syria, or Jordan during the Gulf War period.

Per 38 U.S.C. 101(33), the Gulf War period extends from August 2, 1990, through a date yet to be determined by law or Presidential proclamation.

If a Veteran served in one of the locations listed in the table below on or after August 2, 1990, recognize Persian Gulf Veteran status.

Locations	Authority
In or the airspace above: • Iraq • Oman • Kuwait • Gulf of Aden • Saudi Arabia • Gulf of Oman • the neutral zone between Iraq and Saudi Arabia • Red Sea • Bahrain • Arabian Sea • Qatar • Persian Gulf, or • United Arab Emirates.	38 CFR 3.317(e)(2)
In: • Afghanistan • Turkey • Israel • Syria • Egypt, or • Jordan.	§ 1117

Establishing Persian Gulf Veteran Status

VBA systems will automatically establish a corporate flash, *Persian Gulf Veteran – Sec. 1117* flash when VA/DoD Identity Repository (VADIR) data can establish service in a qualifying location.

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Additionally, the PACT ACT DEPLOYMENTS tab (on the MILITARY SERVICE screen) in VBMS-Core will reflect details provided by VADIR that were used to verify the Veteran's § 1117-qualifying service.

Important: The information shown under PACT ACT DEPLOYMENTS is provided solely to establish the fact that Veteran has at least one qualifying deployment that satisfies the criteria for presumptive toxic exposure per 38 U.S.C. § 1117, and may not necessarily reflect a complete listing of the Veteran's § 1117-qualifying service history.

While the information provided from VADIR is considered authoritative, it should not be considered exhaustive, in that the data made available via VADIR may not always reflect all potential §1117-qualifying service. As such, the absence of the §1117 flash should never be construed to mean that no qualifying service exists. When the *Persian Gulf Veteran – Sec. 1117* flash was not applied by automation, claims processors must review all available evidence, such as ILER, personnel records and/or the *DD Form 214* to determine whether the Veteran served in any location covered by § 1117.

Notes:

- If a Veteran served in an existing location recognized under 38 CFR 3.317 or one of the locations added by § 1117 during the applicable time period, their service qualifies for presumptive undiagnosed illnesses and MUCMI purposes. (See the *Gulf War Era Service Areas Job Aid*.)
- If there is evidence that the flash should be removed from a Veteran's record, the claims processor who identified the discrepancy should report the instance using the Erroneous 1117 and 1119 Data Reporting Tool.
- When a Veteran's record confirms eligible service under § 1117, but there is no flash present, employees should
  – enter *1117 Service* in the SUBJECT field of the document that contains evidence of qualifying service.
  – leave a note in VBMS indicating that qualifying §1117 service has been verified, and
  – continue processing the claim as appropriate. The flash does not need to be on the corporate record prior to finalization of the rating decision, and it is not necessary to report these instances using the Erroneous 1117 and 1119 Data Reporting Tool.

Documenting Persian Gulf Veteran Status

Document a Veteran's service in a Persian Gulf location by either

- uploading the *Individual Deployment History* from ILER, or
- annotating other service records that establish service in a qualifying location.

References: For more information on

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- ILER, see ILER Guidance, and
- annotating a record in the eFolder, see the *VBMS User Guide*.

Undiagnosed Illness and MUCMI Examinations and TERA

With the PACT Act, if an undiagnosed illness or MUCMI claim from a Persian Gulf Veteran cannot be awarded because the condition is a diagnosable chronic multi-symptom illness with a partially explained etiology, or a disease with a clear and specific etiology, then a TERA medical opinion is required prior to deciding the claim.

Previously, the historical *Gulf War General Medical Examination (Including Burn Pits) Disability Benefits Questionnaire*, asked the examiner if the Veteran's disability was at least likely as not related to a specific exposure event experienced by the Veteran during service in Southwest Asia. With the PACT Act, if the disability does not fall into the undiagnosed illness or MUCMI category, the examiner must provide a TERA opinion.

To aid the examiner in reviewing the claims file and providing the opinion, claims processors must follow the procedures in Topic 2, *TERA Procedures for Non-Presumptive Claims* to research and document the Veteran's participation in all TERAs prior to requesting an undiagnosed illness or MUCMI examination. In addition, claims processors must follow the examination request procedures outlined in M21-1, Part VIII, Subpart ii, 1.B.2.

Deciding Service Connection for Undiagnosed Illnesses and MUCMIs for Persian Gulf Veterans

When deciding service connection for undiagnosed illnesses and MUCMIs under § 1117, consider if the evidence establishes

- service in a qualifying location, and
- the Veteran has a qualifying chronic disability which became manifest *to any degree at any time*.

Important:
- While a chronic disability is still required to establish service connection, the PACT Act removed the requirement for disabilities that have onset after service to become manifest to a compensable degree. Under the PACT Act, an undiagnosed illness or MUCMI could manifest to a 0-percent disability level and still qualify for presumptive service connection.
- When deciding these claims, it is important that claims processors note which authority (pre-PACT Act or PACT Act) applies to the claim and explain the basis of the decision, citing relevant favorable findings, regulations, and statutes, as required.

References: For more information on

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- the definition of qualifying chronic disability, see M21-1, Part VIII, Subpart ii, 1.A.1.e, and
- determining chronicity, see M21-1, Part VIII, Subpart ii, 1.C.1.b.

Undiagnosed Illness and MUCMI Rating Decision Requirements

Follow existing guidance in M21-1, Part V, Subpart iv, 1.A to generate a rating decision that explains the basis of any decision under the PACT Act. In addition to system-generated text, decision makers should use glossary fragments created based on the new law, when applicable.

If awarding or denying a claim based on one of the provisions under the PACT Act for undiagnosed illnesses and MUCMIs, apply the following guidelines:

- cite § 1117 as the authority for the decision, and
- list favorable findings, if applicable, specific to the facts of the case.

Establishing an Effective Date for Undiagnosed Illness and MUCMI Claims

The PACT Act was signed into law on August 10, 2022, so any grant based on the expanded definition of Persian Gulf Veteran cannot precede this date. The effective date provisions under § 5110 and 38 CFR 3.400 should be followed. Effective date provisions due to a change of law under 38 CFR 3.114 also apply.

Important: If granting service connection for an undiagnosed illness or MUCMI under authority that predates the PACT Act, such as service in a location recognized as Southwest Theater of Operations in 38 CFR 3.317(e)(2), then do not apply the effective date provisions of the PACT Act. If the claim was awarded under a PACT Act authority based on a newly recognized location in § 1117, then the effective date provisions of the PACT Act apply.

Example 1: A Veteran filed a claim for gastrointestinal symptoms on June 2, 2022. Her military records show service in a Southwest Asia theater of operations location under 38 CFR 3.317(e)(2). Medical records show a chronic functional gastrointestinal disorder. As the claim could be processed prior to the PACT Act under existing 38 CFR 3.317 authority, the effective date would be the date of claim.

Example 2: A Veteran had a previously denied claim for chronic fatigue syndrome in 2019, because even though he had chronic symptoms, they did not meet the minimum compensable criteria under 38 CFR 4.88b, DC 6354. His military records show service in a Southwest Asia theater of operations location under 38 CFR 3.317(e)(2). He files a supplemental claim on October 2, 2022. Medical records and VA examination continue to show chronic symptoms that would only qualify for a 0-percent evaluation. The claim now

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qualifies for non-compensable service connection because of the new authority in the PACT Act, i.e., removal of the compensability requirement. The effective date cannot be earlier than the date of the law, August 10, 2022.

Reference: For more information on impact of the PACT Act on qualifying service for undiagnosed illnesses and MUCMIs, see Topic 9, *Exhibits*.

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5. Presumptive Service Connection Based on Exposure to Burn Pits and Other Toxins, Including Fine Particulate Matter (BPOT)

Introduction

This topic contains an overview of presumptive service connection based on BPOT exposure, including:

- provisions of the PACT Act relevant to BPOT claims
- when to apply BPOT procedures
- entitlement to compensation for presumptive disabilities due to BPOT exposure
- definition of covered Veteran
- identifying a BPOT claim
- presumption of exposure to fine particulate matter
- presumption of exposure to burn pits
- establishing exposure to BPOT
- documenting BPOT exposure
- recognized presumptive BPOT disabilities
- examinations guidelines for BPOT claims
- deciding service connection for presumptive disabilities due to BPOT exposure
- presumptive service connection for asthma
- BPOT
  – DCs, and
  – rating decision requirements, and
- establishing an effective date for BPOT claims.

Change Date

July 17, 2024

Provisions of the PACT Act Relevant to BPOT Claims

- *Presumption of toxic exposure*: § 1119 creates a presumption that any covered Veteran was exposed to substances, chemicals, and airborne hazards identified in a list created by the Secretary of VA.
- *New definition of covered Veteran*: Under new § 1119, a ***covered Veteran*** is any Veteran who served during the applicable timeframe in one of the locations as listed in the statute.
- *New presumptive service connection for specific disabilities due to toxic exposure*. § 1120 allows for presumptive service connection for specific disabilities that become manifest at any time after service.

The PACT Act creates a presumption of exposure to substances, chemicals, and airborne hazards in locations listed in § 1119. To implement this PACT Act provision, VA will update 38 CFR 3.320, *Claims based on exposure to fine particulate matter*. Rather than solely covering presumptions based upon

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exposure to fine, particulate matter, updated 38 CFR 3.320 will cover presumptive service connection for various toxic substances, chemicals, and airborne hazards, to include particulate matter and burn pit exposure.

VA will extend the presumption of exposure to fine, particulate matter in current 38 CFR 3.320 to all § 1119 covered Veterans. In addition to the current 38 CFR 3.320 locations, presumptive exposure to fine particulate matter will now apply to Somalia, Egypt, Jordan, Lebanon and Yemen. The table below represents how the PACT Act impacts the current claims process. As noted in the content titled, *Procedural Precedence*, when procedures in this SOP differ from those of M21-1, the procedures in this SOP are controlling.

Presumptive Provision	Before the PACT Act	After the PACT Act
Qualifying Service	Southwest Asia theater of operations, as defined in 38 CFR 3.317(e)(2)	Adds service on or after August 2, 1990, in, including airspace above, Somalia. ***Important***: While the PACT Act did not include all Southwest Asia theater of operations locations as currently recognized under 38 CFR 3.320, VA will recognize a presumption of BPOT exposure for all 38 CFR 3.317(e)(2) locations. See the *Gulf War Era Service Areas Job Aid*.
	Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001	• Extends beginning date for covered service in Afghanistan, Syria, Djibouti, and Uzbekistan to September 11, 2001. • Adds service on or after September 11, 2001, in or airspace above: – Egypt – Lebanon – Yemen, and – Jordan.
Recognized Exposures	• Presumptive exposure to fine particulate matter as listed in 38 CFR 3.320. • Procedural concessions of burn pit exposure.	Updated 38 CFR 3.320 will cover presumptive service connection for exposure to BPOT.
Recognized Disabilities	• Asthma, rhinitis, or sinusitis, to include rhinosinusitis, effective August 5, 2021.	Added new presumptive disabilities in § 1120 effective August 10, 2022.

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	• Specific rare respiratory cancers effective April 26, 2022.	
Manifestation Period	• Manifest within 10 years of Veteran's service (asthma, rhinitis, or sinusitis only). • No manifestation period for rare respiratory cancers.	Manifest at any time. ***Important***: Effective August 10, 2022, do not apply the manifestation period to asthma, rhinitis, or sinusitis based on BPOT exposure.
Authority	38 CFR 3.320	§ 1119 and § 1120

When to Apply BPOT Procedures

The procedures of this topic apply to any Gulf War era Veteran who

- claims a presumptive disability or a symptom of a presumptive disability or has a cause of death as listed in § 1120 or current 38 CFR 3.320, and
- is a covered Veteran as defined in § 1119 or served in a location currently recognized under 38 CFR 3.320.

Important: While several locations in § 1119 overlap with 38 CFR 3.317 and § 1117 locations, not all locations qualify under both statutes. See the *Gulf War Era Service Areas Job Aid*.

Reference: For more information on claims that fall under more than one legal authority, see content titled *Considering Multiple Theories of Service Connection*.

Entitlement to Compensation for Presumptive Disabilities Due to BPOT Exposure

Veterans who served in a § 1119(c) or 38 CFR 3.320 location and are suffering from a presumptive § 1120 disability may receive compensation benefits.

In order to decide claims based on these disabilities under the new provisions of the PACT Act, claims processors must

- identify when a presumptive disability is claimed or present
- research the Veteran's service locations
- identify any other presumptions that apply based on where the Veteran served
- request medical examinations, when required, and
- ensure decisions fully explain the basis of the decision.

Reference: For more information on processing claims based on fine particulate matter exposure, see M21-1, Part VIII, Subpart ii, 2.A-C.

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Definition: Covered Veteran

A ***covered Veteran*** means any Veteran who performed active military, naval, air or space service while assigned to a duty station as shown in the table below.

In addition to the locations currently recognized under 38 CFR 3.320(a)(5), VA will presume exposure to BPOT for qualifying service in all of the below locations recognized by the PACT Act.

Time period	Recognized Locations
Active service on or after August 2, 1990	Duty station in, including airspace above: • Bahrain, • Iraq, • Kuwait, • Oman, • Qatar, • Saudi Arabia, • Somalia, or • United Arab Emirates.
Active service on or after September 11, 2001	Duty station in, including airspace above: • Afghanistan, • Djibouti, • Egypt, • Jordan, • Lebanon, • Syria, • Yemen, or • Uzbekistan.

Important: The definition of covered Veteran under the PACT Act includes all countries in the Southwest Asia theater of operation as defined in 38 CFR 3.317(e)(2), except for the neutral zone between Iraq and Saudi Arabia, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea and the Red Sea. Since the covered Veteran definition does not include these locations, VA will resolve this issue by adding these locations to the definition of covered Veteran in future rulemaking for the purpose of eligibility for the presumptions of service connection in § 1120. Claims processors should include these additional locations when considering presumptive claims under the PACT Act.

Identifying a BPOT Claim

The PACT Act requires VA to consider both explicit claims as well as implicit claims of exposure. Therefore, claims processors must review claims from Gulf War era Veterans to determine whether BPOT presumptive exposure applies. This includes reviewing for

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- explicit claims of fine particulate matter or burn pit exposure, such as
  – the Veteran lists exposure on *VA Form 21-526EZ* (version dated November 2022)
  – the survivor lists exposure on or with *VA Form 21P-534EZ* (version dated July 2022 or later), or
  – lay statements submitted with the claim, and
- implicit claims of exposure where liberally construing the claim raises the issue, such as
  – *Toxic Exposure – Sec.1119 Covered Veteran* flash on the Veteran's corporate record
  – the Veteran's service in a location associated with BPOT exposure (See content titled *Definition of Covered Veteran*), or
  – a claim without allegation of exposure, but with evidence of one of the presumptive disabilities listed in § 1120.

Presumption of Exposure to Fine Particulate Matter

Currently, VA recognizes a presumption of exposure to fine particulate matter in specific locations as listed in 38 CFR 3.320. In order to implement the new BPOT presumptive exposure created by the PACT Act, VA will merge the new § 1119 locations associated with toxic exposure with those currently associated with fine particulate matter exposure in 38 CFR 3.320.

Note: As of August 10, 2022, presumptive BPOT exposure includes exposure to burn pits and other toxins, including fine particulate matter.

Reference: For a definition of fine particulate matter, see M21-1, Part VIII, Subpart ii, 2.A.1.b.

Presumption of Exposure to Burn Pits

As of August 10, 2022, the presumption of exposure under the PACT Act to BPOT includes exposure to burn pits. This presumption of exposure under the PACT Act supersedes all M21-1 guidance regarding procedural concessions of exposure to burn pits; therefore, follow the guidance in this topic when determining if the Veteran was in an area associated with burn pit exposure. If evidence establishes qualifying service, recognize presumptive exposure to BPOT.

Establishing Exposure to BPOT

VBA systems will automatically establish a corporate flash, *Toxic Exposure – Sec.1119 Covered Veteran* flash when VADIR data can establish service in a qualifying location.

Additionally, the PACT ACT DEPLOYMENTS tab (on the MILITARY SERVICE screen) in VBMS-Core will reflect details provided by VADIR that were used to verify the Veteran's § 1119-qualifying service.

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Important: The information shown under PACT ACT DEPLOYMENTS is provided solely to establish the fact that Veteran has at least one qualifying deployment that satisfies the criteria for presumptive toxic exposure per 38 U.S.C. § 1119, and may not necessarily reflect a complete listing of the Veteran's § 1119-qualifying service history.

While the information provided from VADIR is considered authoritative, it should not be considered exhaustive, in that the data made available via VADIR may not always reflect all potential §1119-qualifying service. As such, the absence of the *Toxic Exposure – Sec.1119 Covered Veteran* flash should never be construed to mean that no qualifying service exists. When the §1119 flash was not applied by automation, claims processors must review all available evidence, such as ILER, personnel records and/or the *DD Form 214* to determine whether the Veteran served in any location covered by § 1119.

Notes:

- If a Veteran served in an existing location recognized under 38 CFR 3.320 or one of the locations added by § 1119 during the applicable time period, recognize exposure to BPOT. (See the *Gulf War Era Service Areas Job Aid*.)
- If there is evidence that the flash should be removed from a Veteran's record, the claims processor who identified the discrepancy should report the instance using the Erroneous 1117 and 1119 Data Reporting Tool.
- When a Veteran's record confirms eligible service under § 1119, but there is no flash present, employees should
  - enter *1119 Service* in the SUBJECT field of the document that contains evidence of qualifying service
  - leave a note in VBMS indicating that qualifying §1119 service had been verified, and
  - continue processing the claim as appropriate. The flash does not need to be on the corporate record prior to finalization of the rating decision, and it is not necessary to report these instances using the Erroneous 1117 and 1119 Data Reporting Tool.

Documenting BPOT Exposure

Document exposure in a qualifying BPOT location by:

- identifying relevant evidence in service records, including any contained in ILER, and
- ensuring the *Toxic Exposure – Sec.1119 Covered Veteran* flash is affixed to the Veteran's corporate record.

Recognized Presumptive

Under § 1120, the recognized presumptive conditions are:

- head cancer of any type

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BPOT Disabilities

- neck cancer of any type
- respiratory cancer of any type
- gastrointestinal cancer of any type
- reproductive cancer of any type
- lymphoma cancer of any type
- kidney cancer
- brain cancer
- melanoma
- pancreatic cancer
- chronic bronchitis
- chronic obstructive pulmonary disease
- constrictive bronchiolitis or obliterative bronchiolitis
- emphysema
- granulomatous disease
- interstitial lung disease
- pleuritis
- pulmonary fibrosis
- sarcoidosis
- glioblastoma
- asthma diagnosed after service
- chronic sinusitis, or
- chronic rhinitis.

Important: For claims pending on August 10, 2022, continue to award presumptive service connection for any presumptive disability recognized under 38 CFR 3.320, if the regulatory criteria are met. See content titled *Deciding Service Connection for Presumptive Disabilities Due to BPOT Exposure*.

Reference: For a list of diagnoses that qualify as one of the above covered diseases, see VBA Letter 20-24-06.

Examinations Guidelines for BPOT Claims

For claims based on BPOT exposure, follow the general presumptive service-connected examination guidelines noted in M21-1, Part IV, Subpart i, 1.B.1.g.

For the newly recognized cancers, follow the guidelines in M21-1, VIII, Subpart ii, 2.B.2.c.

Bronchiolitis is extremely difficult to diagnose and generally requires a lung biopsy. Any condition that requires an invasive diagnostic procedure, such as a biopsy, is considered outside of the scope of VA examination practice. In these cases, follow guidance in M21-1, Part IV, Subpart i, 2.A.1.d regarding scope of practice relative to examinations.

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Deciding Service Connection for Presumptive Disabilities Due to BPOT Exposure

When deciding service connection for a disability due to BPOT exposure, consider if the evidence establishes

- service in a qualifying 38 CFR 3.320 or § 1119(c) location, (see the *Gulf War Era Service Areas Job Aid*), and
- the Veteran has a condition listed in 38 CFR 3.320 or § 1120, manifest to any degree at any time after service.

Important:

- Effective August 10, 2022,
  - do not deny any claim based on any of the more restrictive provisions within 38 CFR 3.320 such as the required manifestation period for asthma, rhinitis, and sinusitis
  - continue to use the current 38 CFR 3.320 authority to grant when the regulatory criteria are met, and
  - use any new provision of the PACT Act to award service connection when the statutory requirements are met.
- When deciding these claims, it is important that claims processors note which authority (pre-PACT Act or PACT Act) applies to the claim and explain the basis of the decision, citing the relevant regulation(s) or statute(s), as required.
- The exceptions to presumptive service connection under 38 CFR 3.320(b) still apply.

Reference: For more information on

- establishing presumptive service connection, see M21-1, Part V, Subpart ii, 2.B, and
- effective dates, see content titled, *Establishing an Effective Date for BPOT Claims*.

Presumptive Service Connection for Asthma

The PACT Act specifies, "asthma that was diagnosed after service of the covered Veteran as specified in § 1119(c)." This means the presumption only applies when asthma is diagnosed after service. Asthma is also a presumptive condition presumed to be associated with exposure to fine particulate matter per 38 CFR 3.320. The presumption in 38 CFR 3.320 currently requires that asthma must manifest within 10 years from the date of separation from a qualifying period of service. In future rulemaking, VA intends to remove the manifestation requirement from 38 CFR 3.320. Based on these forthcoming changes, VA will implement the PACT Act presumption for asthma as shown in the table below for all decisions made.

If asthma was first diagnosed …	Then …

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• prior to, or • during service	service connection must be considered under other theories of entitlement (i.e., direct, aggravation).
after service	the presumption of service connection under § 1119 and § 1120 applies.

BPOT DCs

For more information on which diagnoses qualify as a presumptive under § 1120 and which DCs to use, see VBA Letter 20-24-06.

BPOT Rating Decision Requirements

Follow existing guidance in M21-1, Part V, Subpart iv, 1.A to generate a rating decision that explains the basis of any decision under the PACT Act. In addition to system-generated text, decision makers should use glossary fragments created based on the new law, when applicable.

If awarding or denying a claim based on one of the provisions under the PACT Act for presumptive service connection based on BPOT exposure, apply the following guidelines:

- cite § 1119 and § 1120 as the authority for the decision, when applicable, and
- list favorable findings, if applicable, specific to the facts of the case.

Establishing an Effective Date for BPOT Claims

The PACT Act was signed into law on August 10, 2022, so any grant based on one of the new BPOT locations or new BPOT presumptives cannot precede this date. Additionally, any grant of a current 38 CFR 3.320(a)(2) condition awarded specifically under the PACT Act provision that removes the required manifestation period cannot precede the date the PACT Act was effectuated. The effective date provisions under § 5110 and 38 CFR 3.400 should be followed. Effective date provisions due to a change of law under 38 CFR 3.114 also apply.

Use the table below when assigning an effective date for a BPOT claim.

If the award involves a …	And the condition …	Then …
• current 3.320(a)(2) condition (sinusitis, rhinitis, or asthma), and • current 3.320 location	manifest >10 years (greater than)	• the effective date cannot be prior to August 10, 2022. • Apply 38 CFR 3.114(a) (date of law or one year retro to date of claim) • Cite § 1120.
	manifest <10 years (less than)	• the effective date cannot be prior to August 5, 2021.

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		• Apply 38 CFR 3.114(a) (date of law or one year retro to date of claim). • Cite 38 CFR 3.320.
• current 3.320(a)(3) condition (rare respiratory cancers), and • current 3.320 location	N/A	• the effective date cannot be prior to April 26, 2022. • Apply 38 CFR 3.114(a) (date of law or one year retro to date of claim). • Cite 38 CFR 3.320.
new PACT Act location (Somalia, Egypt, Lebanon, Jordan, and Yemen)/condition	N/A	• the effective date cannot be prior to August 10, 2022. • Apply 38 CFR 3.114(a) (date of law or one year retro to date of claim). • Cite § 1119/§ 1120.

Reference: For more information on assigning effective dates, to include liberalizing law, see M21-1, Part V, Subpart ii, 4.A.

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6. Service-Connected Death Benefits Under the PACT Act

Introduction

This topic contains guidance on service-connected death benefits under the PACT Act, including:

- manual claims establishment
- automatic claims establishment (auto-establish)
- request for applications (RFAs)
- processing
  - new DIC claims received related to the PACT Act
  - DIC claims for reevaluation of a previously denied DIC claim related to the PACT Act
  - service-connected burial claims received related to the PACT Act
  - accrued claims and requests for substitution received related to the PACT Act, and
  - supplemental claims requesting DIC
- processing non-service-connected death claims potentially related to the PACT Act
- requests for HLR of a DIC decision
- development guidance for service-connected death claims
- rating guidance for service-connected death claims, and
- service-connected death benefit effective dates.

Change Date

July 17, 2024

Manual Claims Establishment

To identify a PACT Act-related claim, see Topic 1, *Overview of the PACT Act*.

Unless otherwise specified below, claim establishment for PACT Act-related survivor claims should align with end product (EP) controls per M21-4, Appendix B and C.

There are no new claim labels available for manual establishment that are related to the PACT Act. Follow the below table when establishing a claim.

EP	Use this EP for a PACT Act-related claim for …	The applied special issue should be …
140	original DIC where no prior claim for survivors' benefits has been adjudicated.	the *PACT* special issue. • Applied to the DIC contention in VBMS when evidence shows it is related to the PACT Act.

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		• This special issue should be applied upon claims establishment or when otherwise identified.
020	DIC after an initial eligibility decision has been made.	• the *PACT* special issue, applied to the DIC contention in VBMS, when there is no claim for reevaluation of a previously denied claim for DIC under the PACT Act and there is evidence that the contention is PACT-related, OR • the *PACT ACT DIC Reevaluation* special issue, applied to the DIC contention in VBMS, when a valid claim for reevaluation is elected and received by the claimant. ***Important***: • A valid claim for reevaluation consists of an election by the claimant *and* the existence of a previously denied claim for DIC. • An election for a reevaluation of a previously denied DIC claim is accepted if correspondence requesting such a reevaluation is received with, or following receipt of, a prescribed form for survivor benefits. See also M21-1, Part II, Subpart iii, 1.A.2.c and M21-1, Part II, Subpart i, 2.B.4.a.
040	Supplemental claim	• the *PACT* special issue, applied to the DIC contention in VBMS, when there is no claim for reevaluation of a previously denied claim for DIC under the PACT Act and evidence shows it is related to PACT, OR • the *PACT ACT DIC Reevaluation* special issue, applied to the DIC contention in VBMS, when a valid claim for reevaluation is elected and received by the claimant.

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		Important: When a supplemental claim is submitted on the prescribed supplemental claim form, VA Form 20-0995, *Decision Review Request,* use EP 040 (established in Caseflow).
130	DIC claims from other beneficiaries subsequent to initial claims adjudicated under EP 140	the *PACT* special issue. • For claims that are PACT Act-related, this special issue must be applied to the DIC contention in VBMS. • This special issue should be applied upon claims establishment or when otherwise identified.
160	service-connected burial allowance.	• the *PACT* special issue, applied to the appropriate contention, OR • in instances where service-connected burial is being addressed as a result of a grant of DIC benefits by reevaluation, the *PACT Act DIC Reevaluation* special issue should be used in lieu of the *PACT* special issue. ***Important***: If service connection can be granted under existing procedures and existing authorities (direct, secondary, aggravation, or established presumptions other than those specified by the PACT Act), do not apply any PACT Act-related special issues. Follow current procedures to review for service connection entitlement.
165	accrued, including when substitution is at issue.	either the *PACT* special issue, when evidence shows it is related to the PACT Act, or the *PACT ACT DIC Reevaluation* special issue, applied to the appropriate contention.
290	request for substitution, without an accompanying accrued claim, is received.	either the *PACT* special issue, when evidence shows it is related to the PACT Act, or the *PACT ACT DIC Reevaluation* special issue, applied to the appropriate contention.

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		Reference: For more information on EP control for substitution and accrued claims, see M21-1, Part XI, Subpart ii, 3.E.17.c.

Important: Apply all applicable special issues or flashes in addition to any *PACT Act* special issues or flashes under normal guidance, as applicable, found in M21-4, Appendix E.

Notes:

- The *PACT ACT DIC Reevaluation* and *PACT* special issue should not both be applied to the same EP. Therefore, when the *PACT ACT DIC Reevaluation* special issue is applicable, then the *PACT* special issue should *not* be added and, if it was already added, then it should be removed prior to applying the *PACT ACT DIC Reevaluation* special issue to the EP.
- The *VACO Special Issue 6* was used as an interim special issue to track and control these claims. If any PACT Act-related EPs have this special issue applied, it should be removed and replaced with one of the special issues noted above.
- If present, the *NWQ Review Project #4* special issue should be removed from the contention when reviewing a PACT Act-related claim.

Reference: For more information on utilizing contentions and special issue indicators associated with claimed issues, see M21-1, Part III, Subpart i, 2.F.2.

Automatic Claims Establishment (Auto-Establish)

To properly identify which claims, have PACT Act applicability, VBA's Mail Automation Service (MAS) will conduct a review of *VA Form 21P-534EZ* during the claims intake process and at the time of claims establishment. This capability by MAS will be expanded to include *VA Form 21P-535*, *Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation when Applicable)* in the future.

Automation will establish claims in accordance with the guidance identified in the content titled *Manual Claims Establishment*.

Note: If MAS assigns a *PACT* special issue erroneously to a non-PACT Act claim based on service, contention type, etc., claims processors must remove the special issue from the non-eligible contention and/or claim.

RFAs

Existing procedural guidance for request for applications (RFAs) should be followed, as outlined in M21-1, Part II, Subpart iii, 2.G.1.

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Processing New DIC Claims Received Related to the PACT Act

Claims processors should follow the below guidance when processing new PACT Act-related claims for DIC.

Stage	Description
1	Review the submitted claim to confirm the • application was received on the appropriate prescribed form, and • claim is a PACT Act-related claim as specified in Topic 1, *Overview of the PACT Act* of this document.
2	• Establish claims as described within the content titled *Manual Claims Establishment* , and • add the *PACT* special issue to the DIC contention in VBMS. ***Important***: Special issues must be applied upon claims establishment or when the claim is first determined to be a PACT Act-related claim.
3	Initiate any necessary development for entitlement issues, to include gathering STRs, OMPF, CAPRI records, and documenting ILER in the eFolder for TERA-related claims. See also, Topics 2 – 5 for exposure specific guidance on how to verify service and identify exposure, to include exposure documentation if required. ***References***: For more information on • obtaining STRs, see M21-1, Part III, Subpart ii, 2.B • common DIC processing issues, see M21-1, Part XII, Subpart i, 1.B, and • general claims development, see M21-1, Part III, Subpart i, 2.A-F.
4	• Follow TERA procedures, to include completion of a *Toxic Exposure Risk Activity Memorandum* and requesting a medical opinion, when indicated, if – TERA is either explicitly claimed or implicitly raised – the Veteran died of a non-presumptive condition – the condition is not listed under *Exceptions to Ordering TERA Examinations*, and – the rating decision cannot be granted under existing procedures and existing authorities (direct, secondary, aggravation, or established presumptions other than those specified by the PACT Act), and once complete, or if TERA procedures do not apply,

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	• go to the next step.
5	Continue processing the claim under existing DIC processing guidance unless otherwise specified. ***References***: For more information on, • development guidance, see content titled *Development Guidance for Service-Connected Death Claims* • rating guidance, see content titled *Rating Guidance for Service-Connected Death Claims*, and • effective dates, see content titled *Service-Connected Death Benefit Effective Dates*.
6	At the authorization stage, if a deferral is necessary, defer all PACT Act-impacted contentions using the appropriate deferral reason. ***Reference***: For more information on DIC authorization, see M21-1, Part XII, Subpart i, 3.A-F.

Important:
- If potential entitlement to DIC retroactivity is shown, but a proper reevaluation election has not been received, solicit for a *VA Form 21P-534EZ or VA Form 21P-535* in the notification letter and inform the claimant they could be entitled to retroactivity.
- PL 114-315 allows VBA to grant service-connected burial allowance to a surviving spouse without a claim when DIC benefits are granted upon reevaluation, and the Veteran's date of death occurred on or after December 16, 2016. The DIC award establishes entitlement and dependency. For more information, see M21-1, Part XII, Subpart i, 4.B.1.h.

Processing DIC Claims for Reevaluation of a Previously Denied DIC Claim Related to the PACT Act

Claims processors should follow the below guidance when processing DIC claims for reevaluation of a previously denied PACT Act-related claim for DIC.

Step	Action
1	Review the submitted claim to confirm that a request for a reevaluation of a previously denied DIC claim, has been received by the original claimant or valid substitute claimant.
2	• Establish claims as described within the content titled, *Manual Claims Establishment* section of this document, and

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<table>
<tr><td></td><td>
• add the PACT ACT DIC Reevaluation special issue to the DIC contention in VBMS.

Important: Special issues must be applied upon claims establishment or when the claim is first determined to be a PACT Act-related claim.

Note: Requirements for submission of a valid claim for DIC have changed over time. Prior to March 24, 2015, a standardized claim form was not a requirement for a substantially complete application (M21-1, Part II, Subpart iii, 2.A.1.a and M21-1, Part I, Subpart i, 1.A.4.f.)
</td></tr>
<tr><td>3</td><td>
Claims processors should utilize the corporate record in Share, and/or VBMS, to identify the date of claim of a previously established EP 140, or the dates of claim of any subsequent EP 020, and use these dates as a basis to review documents in the claims folder.

Note: If the corporate record does not indicate a claim for DIC has been previously filed, claims processors must exhaust all methods to determine if a claim has been previously filed, such as completing a full review of the claims folder to identify any documentation showing a previous claim for DIC (eFolder and physical claims folder if necessary), prior to moving to the next step.
</td></tr>
<tr><td>4</td><td>
Follow the steps in the table below once a complete review of all VA systems and resources has been completed.

<table>
<tr><th>If ...</th><th>Then ...</th></tr>
<tr><td>a valid claim for reevaluation is shown based on the preceding steps</td><td>go to Step 5.</td></tr>
<tr><td>• the corporate record indicates no original claim for survivor benefits was ever previously filed
• the claims folder is void of any source documents related to a previously filed claim for survivors benefits, and
• the current claim for survivor benefits is filed on a prescribed form with the reevaluation request</td><td>• the EP should be changed to an EP 140
• the PACT special issue must replace the PACT ACT DIC Reevaluation special issue
• an initial claim for DIC should be adjudicated, and
• the claimed reevaluation should be denied in the final notification letter.</td></tr>
<tr><td>• the corporate record indicates no original claim for survivor benefits was ever previously filed, and
• the claims folder is void of any source documents related to a previously filed claim for survivors benefits</td><td>• the special issue should be removed
• the EP should be changed to an EP 400
• a request for application should be provided to the claimant, and
• the EP should be closed.</td></tr>
</table>
</td></tr>
</table>

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5	Initiate any necessary development for entitlement issues, to include gathering STRs, OMPF, CAPRI records, and documenting ILER in the eFolder for TERA-related claims. See also, Topics 2 – 5 for exposure specific guidance on how to verify service and identify exposure, to include exposure documentation if required. ***References***: For more information on • obtaining STRs, see M21-1, Part III, Subpart ii, 2.B • common DIC processing issues, see M21-1, Part XII, Subpart i, 1.B, and • general claims development, see M21-1, Part III, Subpart i, 2.A-F.
6	• Follow TERA procedures, to include completion of a *Toxic Exposure Risk Activity Memorandum* and requesting a medical opinion, when indicated, if – TERA is either explicitly claimed or implicitly raised – the Veteran died of a non-presumptive condition – the condition is not listed under *Exceptions to Ordering TERA Examinations*, and – the rating decision cannot be granted under existing procedures and existing authorities (direct, secondary, aggravation, or established presumptions other than those specified by the PACT Act), and once complete, or if TERA procedures do not apply, • go to the next step.
7	Continue processing the claim under existing DIC processing guidance unless otherwise specified within this document. ***References***: For more information on, • development guidance, see the content titled *Development Guidance for Service-Connected Death Claims* • rating guidance, see the content titled *Rating Guidance for Service-Connected Death Claims*, and • effective dates, see the content titled *Service-Connected Death Benefit Effective Dates*.

Notes:

- A *Toxic Exposure Risk Activity Memorandum* is required when a medical opinion involving TERA is needed.
- To avoid overpayments, claims processors should verify if there are benefits paid through the Survivor Benefit Plan (SBP), since it is necessary when awarding DIC retroactively. Claims processors should follow M21-1, Part XII, Subpart i, 4.C if there is indication of entitlement to SBP.
- PL 114-315 allows VBA to grant service-connected burial allowance to a surviving spouse without a claim when DIC benefits are granted upon reevaluation, and the Veteran's date of death occurred on or after December 16, 2016. The DIC award establishes entitlement and dependency. For more information, see M21-1, Part XII, Subpart i, 4.B.1.h.
- When processing a DIC award to a *surviving spouse* in which a Veteran dies before January 1, 1993, an input of the Veteran's pay grade code is required

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per M21-1, Part XII, Subpart i, 1.A.1.b. The surviving spouse's rate of DIC is based on the Veteran's pay grade.
- If a claimant submits *VA Form 20-0995, Decision Review Request: Supplemental Claim* to claim a reevaluation, there is no need for claimants to specifically indicate that they are requesting a reevaluation under the PACT Act. VA only requires that the claimant indicate that they are electing the reevaluation of a previously denied DIC claim.

Processing Service-Connected Burial Claims Received Related to the PACT Act

The PACT Act did not establish statutory changes specific to the processing rules of burial benefits.

When a claim is received for service-connected burial benefits based on newly recognized presumptive eligibility under the PACT Act, claims processors should:

- confirm a PACT Act-related claim has been received by referencing Topic1, *Overview of the PACT Act*, and
- establish claims as described within content titled, *Manual Claims Establishment* . Special issues should be applied upon claims establishment or when otherwise identified.

Important: Eligibility for standalone service-connected burial claims involving expanded presumptions within PACT Act is *not* dependent upon the Veteran's date of death occurring on or after August 10, 2022. Therefore, a claim for SC burial benefits may be granted based on any of the expanded provisions within the PACT Act, regardless of date of death of the Veteran. This includes situations where the claimant is not currently in receipt of DIC, a claim for DIC has not been previously filed, or is not currently at issue.

Processing Accrued Claims and Requests for Substitution Received Related to the PACT Act

The PACT Act did not establish statutory changes specific to the processing of accrued benefits and substitution eligibility.

When a claim is received for accrued benefits or a request for substitution based on expanded presumptive eligibility under the PACT Act, claims processors should:

- confirm a PACT Act-related claim has been received by referencing Topic1, *Overview of the PACT Act* and that the prescribed application (where applicable) has been submitted
- establish claims as described within the content titled, *Manual Claims Establishment* of this document. Special issues should be applied upon claims establishment or when otherwise identified, and
- utilize current accrued/substitution procedures found in M21-1, Part XI, Subpart ii.3 while applying policy letter benefit-specific guidance associated

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with the claim pending at death to address potential entitlement under the PACT Act.

Important: There is no language in the PACT Act that supersedes 38 CFR 3.1010(g), so a substitute claimant can only pursue claims and appeals that were pending, and such an individual could not pursue a new claim that was not filed by the deceased DIC claimant. Further, a substitute claimant would not be precluded from raising a new theory of entitlement as indicated within 38 CFR 3.1010(f)(2) in support of a DIC claim that was pending at the time of the original claimant's death. For example, this could allow for a reconsideration of the claim based on the expanded presumptive eligibility as raised by the claimant.

An individual seeking accrued benefits or substitution could continue a claim for reevaluation as long as an election for reevaluation of a previously denied DIC claim was pending at the time of the original claimant's death. However, a potential substitute cannot elect a reevaluation under the PACT Act of a previously denied DIC claim if the original claimant had not made such an election prior to their death.

Processing Supplemental Claims Requesting DIC

The PACT Act did not establish statutory changes specific to the processing of supplemental claims, as they relate to DIC claims.

When a supplemental claim is received and is associated with a PACT Act-related claim for DIC, claims processors should follow the table below.

Step	Action
1	Review the submitted claim to confirm the • application was received on the appropriate prescribed form, and • claim is a PACT Act-related claim as specified in Topic 1, *Overview of the PACT Act*.
2	• Establish an EP 040, and • add the *PACT* special issue to the DIC contention in VBMS. ***Important***: Special issues must be applied upon claims establishment or when the claim is first determined to be a PACT Act-related claim.
3	Initiate any necessary development for entitlement issues, to include gathering STRs, OMPF, CAPRI records, and documenting ILER in the eFolder for TERA-related claims. See also, Topics 2 – 5 for exposure specific guidance on how to verify

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	service and identify exposure, to include exposure documentation if required. ***References***: For more information on • obtaining STRs, see M21-1, Part III, Subpart ii, 2.B • common DIC processing issues, see M21-1, Part XII, Subpart i, 1.B, and • general claims development, see M21-1, Part III, Subpart i, 2.A-F.
4	• Follow TERA procedures, to include completion of a *Toxic Exposure Risk Activity Memorandum* and requesting a medical opinion, when indicated, if – TERA is either explicitly claimed or implicitly raised – the Veteran died of a non-presumptive condition – the condition is not listed under *Exceptions to Ordering TERA Examinations*, and – the rating decision cannot be granted under existing procedures and existing authorities (direct, secondary, aggravation, or established presumptions other than those specified by the PACT Act), and once complete, or if TERA procedures do not apply, • go to the next step.
5	Continue processing the claim under existing DIC processing guidance unless otherwise specified. ***References***: For more information on • development guidance, see the content titled *Development Guidance for Service-Connected Death Claims* • rating guidance, see the content titled *Rating Guidance for Service-Connected Death Claims*, and • effective dates, see the content titled *Service-Connected Death Benefit Effective Dates*.

Processing Non-Service-Connected Death Claims Potentially Related to the PACT Act

Pursuing service-connected death further (as an implicit claim) may involve additional development steps to verify exposure or to rule out possible PACT Act-related service-connected death. Undertake additional development when a non-service-connected death claim (i.e., Survivors Pension or non-service-connected burial) has been identified with PACT Act-related issues such as

- presumptive cause(s) of death with indication of possible service in a presumptive location established by PACT Act, or
- non-presumptive cause(s) of death with verified, or possible, participation in a TERA.

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If service-connected death is being pursued further based on the evidence of record showing reasonable probability that the death may be related to service, as described under M21-1, Part XI, Subpart ii, 1.1.c, then claims processors should

- add the *PACT* special issue to the DIC contention in VBMS (if the cause of death is presumptive), and
- initiate development that includes reviewing and documenting the use of ILER, and, if necessary, requesting STRs, the OMPF, and checking CAPRI records.

If development yields evidence that requires rating activity review, undertake TERA procedures, if applicable, and make the claim *Ready for Decision*.

Notes:

- If a decision on Survivors Pension, non-service-connected burial, and/or accrued can be made, do not delay authorization of those issues while waiting for the additional development for the service-connected PACT issues. Continue the EP upon authorization of the remaining survivor benefit(s) and notify the claimant they will receive a separate letter regarding a decision on their claim for DIC.
- If the cause(s) of death is/are not presumptive, and evidence otherwise indicates reasonable probability of service-connected death, development must be initiated for scientific, medical, or other evidence showing a reasonable association between the Veteran's cause(s) of death and event(s) in service. If evidence is received from the claimant, then undertake TERA procedures.
  - If a TERA is then identified,
    - complete a *Toxic Exposure Risk Activity Memorandum*
    - apply the *PACT* special issue, and
    - forward the claim to the rating activity.
  - If no additional evidence is received from the claimant, process the non-service-connected death claim accordingly.
- Either add a VBMS note to
  - indicate that development is being issued on a non-service-connected death claim due to an implicit PACT Act-related issue, or
  - justify reasoning for *not* pursuing a claim for service-connected death further when some evidence may indicate the possibility of a PACT Act-related issue but the totality of the evidence of record suggests additional development is not likely to result in a service-connected death grant.
- If at any time the evidence definitively rules out service-connected death,
  - remove any applied *PACT* special issue (*unless* a cause of death medical opinion has been conducted), and
  - process the non-service-connected death claim accordingly.

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Important: In the absence of specific guidance, if a claims processor applies discretion that has been rightly afforded within the procedural guidance, an error would not be called. Generally, actions that claims processors must take and actions they may not take are specified in procedural guidance such as the M21-1 or this SOP.

Reference: For more information on guidelines for Rating Veteran Service Representative and Veteran Service Representative quality reviews, see M21-4, Chapter 6.

Requests for HLR of a DIC Decision

The PACT Act did not establish statutory changes specific to the processing of HLRs for reevaluation of previously denied DIC claims.

Since HLRs have a closed evidentiary record, reevaluation must have been previously elected within one year of the decision. To be considered for a reevaluation that was not previously claimed, the claimant must select the supplemental claim lane, appeal to the Board of Veterans' Appeals (Board) or file a new claim altogether.

Development Guidance for Service-Connected Death Claims

VA's current notice provided in accordance with § 5103 is sufficient to provide the general information to substantiate the basic elements of DIC claims for the PACT Act, including what evidence is necessary.

It is unnecessary to issue § 5103 notice when a claimant submits a claim on a form that provides or otherwise indicates they received the notice. However, should specific development for the new presumptive conditions be necessary, ensure that any free text development actions properly address the new presumptive condition(s).

Claims adjudicators should utilize the language in VBMS for all PACT Act-related development action as it pertains to service-connected death.

However, if VBMS development letters are not possible, and Modern Awards Processing – Development (MAP-D) must be utilized, claims processors should not include *AO–not a recognized condition* paragraph or the MAP-D *AO – SC Death, Nexus, Vietnam Service* paragraph simply because the conditions are not currently listed under 38 CFR 3.309(e). VBA intends to publish updates to its regulations to add the new conditions to any applicable regulation (e.g., 38 CFR 3.309(e)).

References: For more information on

- guidance on developing claims for disabilities resulting from exposure to herbicides, see
  – Topic 3, *Processing Presumptive Herbicide Exposure Claims*, and

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– M21-1, Part VIII, Subpart i, 1.A
- guidance on developing claims associated with service during the Gulf War, see
  – Topic 5, *Presumptive Service Connection Based on Exposure to BPOT*
  – M21-1, Part VIII, Subpart ii, 1.B, and
  – M21-1, Part VIII, Subpart ii, 2.B
- guidance on developing claims associated with radiation exposure, see M21-1, Part VIII, Subpart iii, 4.A and B, and
- guidance on developing claims for accrued or substitution, and the potential need for a § 5103 notice letter, see M21-1, Part VIII, Subpart iii, 4.A and B.

Rating Guidance for Service-Connected Death Claims

Claims adjudicators should apply regular rating principles when evaluating the new presumptive conditions.

The designated rating glossary and analysis fragments in VBMS-R will be updated to contain proper language inclusive of the new presumptive conditions and reevaluation decisions. In the interim, rating personnel must ensure proper edits are made to include the new presumptive conditions when needed.

The *PACT SC Death* rating special issue must be applied in VBMS-R to all PACT DIC grants on original and reevaluation claims.

Note: The existing requirement to add *PACT* or *PACT ACT DIC Reevaluation* special issues to the DIC contention in VBMS-Core still applies, along with the *TERA* special issue and other rating special issues, when applicable.

References: For more information on
- rating TERA claims, see the content titled *TERA Rating Decision Requirements, TERA Claim Attributes*
- rating radiation claims, see M21-1, Part VIII, Subpart iii, 4.C
- rating MGUS claims, see the content titled *Rating MGUS Claims*
- herbicide rating decision requirements, see *Herbicide Rating Decision Requirements*
- undiagnosed illness and MUCMI rating decision requirements, see the content titled *Undiagnosed Illness and MUCMI Rating Decision Requirements*, and
- rating claims based on BPOT exposure, see the content titled *BPOT Rating Decision Requirements*.

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Service-Connected Death Benefit Effective Dates

Under Section 204 of the PACT Act, the effective date retroactivity provisions for DIC reevaluations apply "with respect to presumptions of service connection established or modified on or after the date of enactment of the Act, including pursuant to amendments made by this Act." This would include, for example, new presumptions created in Sections 401, 402, 403, 404, and 406.

When elected by the claimant, VA is required to reevaluate such claims. § 1305 provides for reevaluation of previously denied DIC claims and the award of effective dates "as if the establishment or modification of the presumption of service connection had been in effect on the date of the submission of the original claim" without regard to § 5110. When VA grants a DIC claimant's request to reevaluate a previously denied claim, it must assign an effective date as if the newly established or modified presumption was in effect at the time of the original DIC claim.

The effective date for these new presumptive conditions is August 10, 2022, the same day that the law went into effect. This is considered a liberalizing law. Therefore, for new claims (claimant did not elect VA to reevaluate the previously denied claim), consideration of the effective date provisions under § 5110(g) (38 CFR 3.114) and § 5110(d) (38 CFR 3.400(c)) should be applied, allowing for consideration, in some cases, for an effective date earlier than the date of claim or date of enactment. See also, M21-1, Part XII, Subpart i, 3.A.2.a and b.

For initial DIC claims and any claim that continuously pursues an initial claim (i.e., a supplemental claim filed on *VA Form 20-0995*, *Decision Review Request: Supplemental Claim*), the potential to grant an earlier effective date prior to the enactment of the PACT Act is limited only to the newly added presumptive conditions listed under Section 404 of the law; hypertension and MGUS. This is the only section which authorizes VA to pay "retroactive" benefits to the extent authorized by § 5110(a) and § 5110(d) without regard to the liberalizing law limitation in § 5110(g).

Important:

- PACT does not change effective dates applicable to Survivors Pension. When reviewing a claim received on a *VA Form 21-534EZ*, it is possible that Survivors Pension may be granted prior to the date of the new law, and benefits may be switched to the greater benefit of DIC on a later date. Follow guidance in M21-1, Part XII, Subpart i, 1.B.1.c to determine when to develop for income and net worth in DIC cases.
- Section 204 does not contain a time limit on when a claimant can request reevaluation of a previously denied DIC claim.
- The Secretary has determined that all the presumptions in the PACT Act will be effective on the date of enactment, August 10, 2022, the date the

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President signed the PACT Act into law. For purposes of the adjudication of the PACT Act presumptions, there are no tiered enactment or effective dates.

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7. HLR and Legacy Appeals Under PACT

Introduction	This topic contains information about overview of HLRs and legacy appeals, including: • claim attributes • HLRs • Appeals Modernization Act (AMA) Board grants and remands, and • legacy Board grants and remands.
Change Date	July 17, 2024
Claim Attributes	Unless otherwise specified below, the special issue identified in the content titled *Pact Act Claim Attributes* must be added to all Pact Act-related claims in HLR or legacy appeal status.
HLRs	Review all HLRs to ensure processing in accordance with procedures referenced in this SOP. If, based on the evidence of record, the higher-level reviewer cannot grant service connection on a direct basis, return the HLR as a duty to assist (DTA) error. Any HLRs impacted by PACT Act, which result in returns for development, are treated as DTA errors. If service connection for the claimed issue(s) cannot be granted on a non-PACT Act basis and at the maximum benefit, the issue(s) will be returned for corrective action. This guidance also applies if the prior rating decision was issued before the change in law and the decision maker was acting on appropriate guidance in place at that time. If, based on the evidence of record, the higher-level reviewer cannot grant service connection for a PACT Act condition on a non-PACT Act basis (such as direct service connection), and PACT Act development was not previously completed, or was completed incorrectly, return the PACT Act condition as a duty to assist (DTA) error. ***Example 1***: A Veteran filed a claim for seizures due to jet fuel exposure on April 4, 2022. Military records show occupational exposure to jet fuels. The claim was denied on July 22, 2022. The Veteran filed an HLR on February 3, 2023. Military records show occupational exposure to jet fuels and private treatment records confirm diagnosis of seizures. Since this claim falls under PACT Act modified examination thresholds, and no PACT Act development was conducted, the decision review officer (DRO) must return the issue for development under TERA procedures.

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Example 2: A Veteran who served in Iraq in 2010 claimed sleep apnea. Medical records confirm a post-service sleep study and clinical diagnosis of sleep apnea. The claim was denied on January 20, 2023, without any PACT Act development. The Veteran timely filed an HLR for the sleep apnea. The DRO must return the sleep apnea issue for development under TERA procedures.

If PACT Act development was previously completed for a contention, and the same contention is now under HLR, the DRO should not return the contention as a DTA error unless the previous development was incomplete or insufficient and should instead render a decision on the merits.

Example 3: A Gulf War Era Veteran claimed migraines. The claim was denied on January 2, 2023, following TERA development, which properly places the Veteran in a location in which a TERA may be conceded and offered a medical opinion that is complete with adequate reasons and bases.. The Veteran timely filed an HLR for the migraines. Because the TERA development is sufficient to address the issue of migraines, the DRO should not return the migraines for PACT Act development, but may need to return the issue for non-PACT development.

Use the table below to determine HLR action for a PACT Act issue.

If ...	**Then ...**
the HLR does not have an issue affected by PACT Act	render a decision to grant, deny, confirm, or continue an evaluation, or return the contention based on the evidence available at the time of the previous decision.
the HLR has an issue affected by PACT Act, but PACT Act development was not previously undertaken, or was completed incorrectly	return the issues affected by PACT Act for development (e.g., TERA memorandum) as a DTA error.
the HLR has an issue affected by PACT Act, and all development, to include PACT Act related development, was previously *sufficiently* completed	render a decision to grant or deny on the PACT Act issue as there is no need to return for additional PACT Act development.

AMA Board Grants and Remands

If the Board of Veterans' Appeals (the Board) grants and/or remands an issue(s), the office processing that decision should take action based on the specifications of the grant and/or remand.

In some circumstances, the Board may separate the issue of entitlement to presumptive service connection under the PACT Act from service connection

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on a direct basis in its decision. In this situation, the Board decision will grant service connection under the PACT Act on a presumptive basis and simultaneously remand the issue of entitlement to service connection on a direct basis for that same issue.

When a Board decision is received that separates the issue of entitlement to service connection, Caseflow Intake will automatically establish the appropriate EPs and corresponding claim labels to control the identified issue under the two distinct theories of entitlement. Follow the table below for processing an Appeals Modernization Act (AMA) Board decision that simultaneously grants and remands the issue of entitlement to service connection.

<table>
<tr><th>Board Decision</th><th>Action</th></tr>
<tr><td>Grant</td><td>An 030 EP will be established to control the grant of service connection on a presumptive basis under the PACT Act.

Note: If development is required before a Board grant can be effectuated, defer the affected issue. For multiple issue grants, a partial decision should be rendered to award benefits for issues that do not require development prior to deferring any remaining issues.

Confirm and continue the EP 030 at authorization and develop the deferred issue(s) as necessary.

Clear the EP 030 once development has been completed and a decision has been issued on all issues granted by the Board.</td></tr>
<tr><td>Remand</td><td>An 040 EP will be established to control the remand of service connection on a direct basis.

Complete all development actions based on review of the eFolder and any Board remand instructions and in accordance with the guidance provided in this SOP and existing M21-1 and M21-5 procedures.

<table>
<tr><th>If …</th><th>Then …</th></tr>
<tr><td>service connection on a direct basis is being denied</td><td>• use the “free text” option in VBMS-R to subsequently generate a decision denying the issue of entitlement to service connection on a direct basis.</td></tr>
</table>
</td></tr>
</table>

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		• Add the following language to the "Introduction" paragraph in the decision to help explain why the issue of service connection is being addressed again: *Please note that this decision does not affect the prior grant of service connection on a presumptive basis for <list issue>* • In the "Issue" field, add the following language: *Service connection on a direct basis for <list issue>.* • In the "Decision" field, add the following language: *Service connection on a direct basis for <list issue> is denied. However, please note that this decision does not affect the prior grant of service connection for <list issue> on a presumptive basis.* ***Note***: Decision makers must "free text" all applicable laws and regulations as well as favorable findings for inclusion in the decision.
	service connection is being granted on any basis other than presumptive	• use the VBMS-R "Disability Decision Information" screen to change the basis of entitlement from "Presumptive" to the applicable decision basis. • Follow existing VBMS-R procedures to grant an earlier effective date as determined appropriate. • Remove any PACT Act special issue from the contention as the grant of service connection under the new theory of entitlement is no longer associated with the PACT Act.

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		• To the VBMS-R generated text in the "Issue" field, add the following language: *Service connection on a <list theory of entitlement, e.g., direct, secondary, etc.> basis for <list issue>.* • In the "Decision" field, add the language: *Service connection on a <list theory of entitlement, e.g., direct, secondary, etc.> for <list issue> is granted.* ***Note***: Decision makers must include all applicable laws and regulations in the decision. Additionally, sufficient reasons and basis must be provided to adequately explain the basis of the effective date is other than date of claim.

Legacy Board Grants and Remands

If the Board grants and/or remands an issue(s), the office processing that decision should take action based on the specifications of the grant and/or remand.

All contentions, including PACT Act-related issues, for the appeal record should remain under the EP 070. This includes legacy Board decisions that separate the issue of entitlement to service connection by granting service connection under the PACT Act on a presumptive basis and simultaneously remanding the issue of entitlement to service connection on a direct basis for that same issue.

All remanded issues in the Veterans Appeals Control and Locator System that are not granted must be decided concurrently so that recertification to the Board may occur.

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8. TERA Healthcare Eligibility Requests

Introduction	This topic contains information about TERA healthcare eligibility requests from VHA, including: • background • applicability • claims establishment • unidentified mail, and • subsequent claims.
Change Date	July 17, 2024
Background	Section 103(a) of the PACT Act amended 38 U.S.C. § 1710(e)(1) to establish eligibility for hospital care, medical services, and nursing home care for toxic-exposed Veterans. If VHA cannot confirm the Veteran participated in a TERA through VBMS system indicators or through an ILER search, VHA will request VBA assistance. VHA uses *VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action*, to request VBA perform TERA research and provide a formal TERA determination. The TERA finding may qualify the Veteran for hospital care, medical services, and nursing home care or for higher priority group enrollment through VHA. A positive TERA finding for healthcare eligibility will be documented on a new form, the *Modified TERA Memorandum for Health Care Purposes*. Only **one** documented TERA finding is needed for healthcare eligibility under Section 103. This differs from the *Toxic Exposure Risk Activity Memorandum* used during the disability benefits claims process, which requires the claims processor to review and document all qualifying TERA participation.
Applicability	The PACT provisions for healthcare eligibility requests apply to *VA Forms 10-7131* worked by VBA on or after March 5, 2024.
Claims Establishment	VHA healthcare eligibility determinations for TERA are processed under EP 290 using the claim label *Healthcare Eligibility - 7131 Review (290HE7131R)* to ensure that the cases are routed to the Benefits Eligibility Support Teams (BEST) locations. When a *VA Form 10-7131* is received from VHA in the mail portal, there may be instances when the appropriate EP and claim label will need to be

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established. If the *10-7131* is requesting any healthcare eligibility request, follow the actions below.

Step	Action
1	Create an EP 290 and assign the *290HE7131R - Healthcare Eligibility - 7131 Review* claim label.
2	In the SEGMENTED LANE field, assign to *Non-Rating (National)*.
3	Select the SUPPRESS ACKNOWLEDGEMENT LETTER checkbox.
4	• Enter a contention of *7131 healthcare eligibility review* • select *Administrative Issue* in the CLASSIFICATION field, and • add all applicable special issue(s)

Important: Any *10-7131* referencing *TERA* should have the *PACT* special issue applied. Continue to follow current guidance and apply all appropriate corporate flash(es) and special issues.

References: For more information on
- processing TERA healthcare requests, see the *PACT Act Section 103 SOP Addendum*, and
- flashes and special issues, see
  – M21-4, Appendix E
- M21-1 Part II, Subpart ii, 3.

Unidentified Mail

When processing mail, continue to follow guidance in M21-1, Part II, Subpart i, 1.A.1.c and M21-1 Part II, Subpart i, 2.C.5 when processing unidentifiable mail.

Note: During the TERA healthcare determination process, to include unidentifiable mail, VBA will not perform development to the Veteran. All communication to the Veteran is conducted by VHA.

Subsequent Claims

TERA participation that is only documented on a completed *Modified TERA Memorandum for Health Care Purposes* is not sufficient for disabilities compensation claims processing, as only one documented TERA is needed to support the TERA finding for VHA healthcare eligibility purposes. Consequently, if a subsequent claim for benefits is filed and that claim raises the issue of TERA participation, claims processors must follow the TERA procedures, to include completion of the *Toxic Exposure Risk Activity Memorandum*, when warranted, as detailed in the *Toxic Exposure Risk Activity Memorandum Job Aid*.

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9. Exhibits

Change Date February 6, 2023

Locations Associated With Presumptive Exposure

The table below lists the locations currently associated with a presumptive exposure to a specific toxic substance, chemical, or airborne hazard.

Location-Based Exposures	Reference for Presumption of Exposure
Service in locations associated with exposure to certain herbicide agents	• 38 CFR 3.307(a)(6) – Vietnam in-country – C-123 • § 1116 – Thailand – Laos – Cambodia at Mimot or Krek, Kampong Cham Province – Guam – American Samoa – Johnston Atoll • § 1116A (BWN RVN), and • § 1116B (Korean DMZ)
Service in locations associated with exposure to contaminants in the water supply at Camp Lejeune	38 CFR 3.307(a)(7)
Service in locations associated with radiation-risk activity ***Note***: DoD is the source of information concerning the Veteran's participation in radiation-risk activity.	38 CFR 3.309(d) § 1112
Service in Southwest Asia theater of operations or other § 1117 location	§ 1117
Service in locations associated with exposure to fine particulate matter/burn pits	• 38 CFR 3.320 (current) • § 1119 (new PACT Act locations)

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Version History

Version History The table below outlines changes to SOP content.

Note: Simple updates and additions of general references will not be itemized.

Version History			
Version	**Date**	**Page(s)**	**Purpose**
TP	12/05/2022	--	Training Purposes Only
1	01/01/2023	4 and 13	Added a note regarding pre-discharge claims.
1	01/01/2023	5, 8, 18, 19, and 23	Updated language regarding the TERA examination threshold to improve clarity and readability.
1	01/01/2023	8-9	Corrected numbering of the table steps.
1	01/01/2023	19	Replaced discussion of TERA examination threshold with cross reference to relevant content within SOP.
1	01/01/2023	56	Added a note that the exceptions to presumptive service connection under 38 CFR 3.320(b) still apply.
2	02/06/2023	11	Clarified TERA example to include post-service evidence of the claimed disability.
2	02/06/2023	11-12	Added a definition of non-presumptive disability for TERA purposes.
2	02/06/2023	12-14	Clarified the TERA exceptions guidance.
2	02/06/2023	14-15	Added guidance on TERA and other theories of service connection.
2	02/06/2023	15-17	Added a new step to the TERA procedures to review for competent lay or medical evidence of the claimed disability and to document use of ILER.
2	02/06/2023	20	Added guidance on vaccinations/medications and TERA.
2	02/06/2023	23	Updated TERA examination procedures to account for new EMS functionality.
2	02/06/2023	37	Updated guidance on the automated herbicide flash.
2	02/06/2023	37 and 40	Updated guidance for when additional military records should be requested in herbicide claims.
2	02/06/2023	49	Updated guidance on the automated § 1117 flash.
2	02/06/2023	58	Updated guidance on the automated § 1119 flash.
2	02/06/2023	59	Removed reference to the Rare Respiratory Cancer Fact Sheet as all Fact Sheets have been discontinued.
2	02/06/2023	70	Updated procedures for standalone service-connected burials regardless of the date of the Veteran's death.
2	02/06/2023	71	Clarified that substitute claimants are not precluded from raising a new theory of entitlement in support of a DIC claim that was pending at the time of the original claimant's death. Additionally, updated that a substitute claimant cannot elect a DIC reevaluation of a previously

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			denied DIC claim, if the original claimant had not made such an election prior to their death.
2	02/06/2023	76	Added guidance to the 'Service-Connected Death Benefit Effective Dates' to clarify that any retroactivity prior to 8-10-22, on initial DIC claims and any claim that continuously pursues an initial claim (i.e., a supplemental claim filed on VA Form 0995), has limitations only to the hypertension and MGUS conditions as provided within section 404.
2	02/06/2023	--	Removed Gulf War Service Areas table and updated all hyperlinks to direct to the *Gulf War Service Areas Job Aid* on the PACT page.
3	04/10/2023	3	Clarity edit regarding how to identify a PACT claim.
3	04/10/2023	10	Removed reference to the specific field on *VA Form 21-526EZ* where toxic exposure can be claimed, as the Veteran's statement of toxic exposure should be accepted anywhere it appears on the form.
3	04/10/2023	15 and 19	Clarified the requirement to obtain personnel records in TERA claims.
3	04/10/2023	16	Added a note regarding TERA rating requirements when a TERA exception applies.
3	04/10/2023	21-22	Added VBMS attribute guidelines to be used when uploading the *Toxic Exposure Risk Activity Memorandum*.
3	04/10/2023	23	Added TERA medical opinion language to be used when a TERA exception for herbicide exposure applies.
3	04/10/2023	24	Updated TERA examination procedures to account for new EMS functionality.
3	04/10/2023	26	Clarified that the requirement to discuss TERA examination requirements applies to both implicit and explicit claims.
3	04/10/2023	--	Removed guidance on PACT radiation claims provisions as this guidance is now available in the M21-1.
3	04/10/2023	31	Added a reminder to apply the regulatory diagnostic threshold for hypertension when considering presumptive service connection.
3	04/10/2023	34	Updated guidance on how to add or remove the automated Agent Orange corporate flash.
3	04/10/2023	46	Corrected an erroneous reference to presumptive BPOT exposure and updated guidance on correcting the automated 1117 flash.
3	04/10/2023	47	Updated undiagnosed illness and MUCMI examination procedures to account for new EMS functionality.

3	04/10/2023	55	Updated guidance on correcting the automated 1119 flash.
3	04/10/2023	74-75	Updated guidance on when HLRs must be returned and when they can be granted/denied.
4	09/08/2023	3-5	Clarified instructions for identifying PACT-related claims and applying the *PACT* special issue.
4	09/08/2023	10-11	Clarified instructions for applying TERA claim attributes.
4	09/08/2023	12	Updated guidelines for identifying TERA-related death claims.
4	09/08/2023	21-22	Added guidance regarding Camp Lejeune and TERA participation.
4	09/08/2023	23	Updated VBMS attributes used for the *Toxic Exposure Risk Activity Memorandum*.
4	09/08/2023	24	Updated guidelines for requesting TERA-related death opinions.
4	09/08/2023	28	Clarified when a rating decision must include discussion of a TERA examination exception.
4	09/08/2023	31	Added a note that herbicide procedures apply to certain death claims.
4	09/08/2023	33	Updated guidance regarding Thailand nautical service.
4	09/08/2023	49	Updated automated §1117 flash information.
4	09/08/2023	56 and 58	Added guidelines for considering BPOT exposure in death claims.
4	09/08/2023	58-59	Updated automated §1119 flash information.
4	09/08/2023	64-67	Updated death claims establishment guidance.
4	09/08/2023	68-76	Updated procedures for processing death claims.
4	09/08/2023	77-78	Added new guidance on processing non-service-connected death claims potentially related to the PACT Act.
4	09/08/2023	80-81	Added a note regarding Survivors Pension effective dates.
5	07/17/2024	9	Added a note about when TERA applies.
5	07/17/2024	10	Updated TERA claim procedures overview, including a new note about when not to apply TERA procedures.
5	07/17/2024	10	Updated claim attribute guidance.
5	07/17/2024	13-14	Updated TERA exceptions guidance.
5	07/17/2024	14-15	Added new guidance on development actions to take when a TERA examination exception applies.
5	07/17/2024	17	Aligned TERA procedures with updated TERA exceptions and TERA memorandum job aids.
5	07/17/2024	21	Added guidance about when to complete a new TERA memorandum.
5	07/17/2024	22	Added TERA exceptions to the examination threshold guidance.

5	07/17/2024	25	Added TERA exceptions to the factors to consider when deciding TERA claims.
5	07/17/2024	26	Updated TERA rating decision requirements.
5	07/17/2024	26	Added guidance on TERA favorable findings.
5	07/17/2024	35-38	Updated herbicide claim procedures to integrate *Nehmer* review of all claims, which was previously addressed in a note after the table.
5	07/17/2024	42	Updated herbicide effective date guidance.
5	07/17/2024	46	Updated guidance on correcting the automated 1117 flash.
5	07/17/2024	--	Removed Gulf War examination procedures, which are now in the M21-1.
5	07/17/2024	55	Updated guidance on correcting the automated 1119 flash.
5	07/17/2024	56	Removed lymphomatic cancer from the list of recognized BPOT presumptive disabilities.
5	07/17/2024	--	Deleted duplicative note about potential DIC retroactivity.
5	07/17/2024	68	Replaced *Processing Supplemental Claims Requesting a Reevaluation of a Previously Denied DIC Claim* content with a note added to *Processing DIC Claims for Reevaluation of a Previously Denied DIC Claim Related to the PACT Act*. The new note clarifies procedures for accepting *VA Form 20-0995* as an election under the PACT Act for reevaluations of a previously denied DIC claim.
5	07/17/2024	73	Added special issue guidance for death ratings.
5	07/17/2024	76-78	Clarified HLR examples and guidance regarding TERA development requirements and HLR returns.
5	07/17/2024	81-82	Added new Topic 8 with all new guidance on TERA healthcare eligibility requests.
6	11/04/2024	31-32	Update covered service in Thailand for entitlement to spina bifida benefits under 38 U.S.C. § 1822.

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