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Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Better Controls Needed to Accurately Determine Decisions for Veterans' Nonpresumptive Conditions Involving Toxic Exposure Under the PACT Act

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Executive Summary

The disability compensation program of the Veterans Benefits Administration (VBA) provides tax-free payments to veterans for the effects of disabilities, diseases, and injuries “incurred or aggravated” during active military service, known as service-connected disabilities.¹ Disability benefits may be awarded when veterans were exposed to toxic substances during their military service; these experiences are collectively categorized as toxic exposure risk activity (TERA). VBA procedure acknowledges the legal definition of a TERA is “extremely broad”—for example, a TERA can include exposure to industrial cleaners or solvents, air pollutants, paint, or fuels—and TERA can be conceded regardless of the level or duration of exposure.²

On August 10, 2022, the PACT Act significantly expanded veterans’ eligibility for benefits and services for conditions related to toxic exposure.³ While the new law offered veterans additional chances to receive benefits, the expansion added further complexity to VBA’s claims determination process, particularly given the voluminous guidance issued for nonpresumptive conditions—those conditions for which service connection cannot be granted on a presumptive basis. Notably, the law also opened a new path for service connection for veterans with nonpresumptive, TERA-related conditions.

VBA staff began processing all types of PACT Act claims for veterans on January 1, 2023, the earliest date VBA had the authority to do so.⁴ Among its many changes, the PACT Act added new requirements that veterans with nonpresumptive, TERA-related conditions who are seeking benefits under the law undergo a medical exam and receive an opinion for their condition. For VBA claims processors, that has meant certain additional work may be needed, such as (1) verifying that a veteran who makes a claim participated in a TERA and (2) requesting a TERA medical exam and opinion to confirm the existence of the veteran’s nonpresumptive

¹ 38 C.F.R. § 3.1(k) (1961). “About VBA” (web page), VBA, accessed June 4, 2024, <https://benefits.va.gov/BENEFITS/about.asp>;

² Public Law (PL) 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022; “Honoring our PACT Act of 2022 (PACT Act) Implementation Standard Operating Procedure (SOP),” ver. 3, April 10, 2023, [https://vbaw.vba.va.gov/bl/21/PACT%20Act%20Implementation%20SOP%20\(v.3\).pdf](https://vbaw.vba.va.gov/bl/21/PACT%20Act%20Implementation%20SOP%20(v.3).pdf), p. 8. (This website is not publicly accessible.) VA, “Expansion of Health Care Eligibility for Toxic-exposed Veterans” Frequently Asked Questions, accessed April 18, 2025, <https://www.mohican.com/wp-content/uploads/2025/07/expansion-of-health-care-eligibility-for-toxic-exposed-veterans-2.pdf>.

³ “Communications Toolkit, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act)” (web page), VBA, accessed May 25, 2024, https://vbaw.vba.va.gov/bl/21/VBA_SE_Internal_Toolkit_PACT_Act.pdf. (This website is not publicly accessible.)

⁴ VA, “VA Will Begin Processing PACT Act Benefits Claims for All Veterans and Survivors on Jan. 1,” news release, December 29, 2022, <https://news.va.gov/press-room/va-will-begin-processing-pact-act-benefits-claims-for-all-veterans-and-survivors-on-jan-1/>.

condition, which could establish a connection between that condition and the veteran's TERA during service.⁵

The VA Office of Inspector General (OIG) conducted this review from October 2023 through May 2025 to determine whether VBA staff processed decisions in compliance with TERA procedures under the PACT Act that denied nonpresumptive conditions.⁶ The OIG focused on denials because of the potential impact of incorrect decisions on benefits received by veterans.

What the Review Found

VBA's oversight has lagged in ensuring accurate processing of nonpresumptive conditions under the PACT Act. While VBA has taken steps to improve PACT Act claims processing, these efforts have not remedied the problem of various inaccuracies related to nonpresumptive conditions. An OIG statistical analysis estimated 61 percent of all nonpresumptive, TERA-related decisions under the PACT Act that VBA denied from May 1 through August 31, 2023, had processing errors—some of which could have affected veterans' benefits. For example, some errors showed that claims processors did not accurately identify toxic exposure claims, research and verify veterans' participation in a TERA, request a medical exam and opinion regarding toxic exposure, or appropriately include key information in decisions for nonpresumptive conditions.⁷

VBA staff must follow extensive PACT Act guidance to accurately process claims related to veterans' toxic exposure during military service, which includes policies and procedures for processing nonpresumptive, TERA-related conditions. Although VBA has continually developed PACT Act guidance, it is difficult for staff to navigate because it is frequently updated and spread among several different sources. VBA's *Adjudication Procedures Manual* is the general guide for processing claims, and it is meant to summarize or restate in plain language the applicable law, to clarify any ambiguities, and to provide a "reasonably complete" picture of the claims determination process that is "easy to understand and apply."⁸ But separate from the manual, VBA has provided claims processors with PACT Act guidance on an internal VA web page. When the OIG began its review in October 2023, this web page had 43 links to various

⁵ The OIG revised this sentence in response to technical comment 3, in which VBA requested that the OIG clarify the purpose of the TERA opinion.

⁶ The focus of this report is on "decisions." A "claim" may include multiple conditions on which several decisions may be made.

⁷ See appendix C for more details and descriptions of the errors identified. The OIG revised this sentence in response to technical comment 4, in which VBA requested that the OIG clarify that errors "were not found on all claims together but found throughout the [OIG's] sample individually."

⁸ VA Manual 21-1, "Prologue," updated August 9, 2022, in *Adjudication Procedures Manual*. Laws and regulations always supersede the manual's procedural guidance. Applicable laws and regulations can be found in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations, the legal authorities governing VA benefits.

types of guidance. In addition to linking to an 82-page standard operating procedure, the web page had eight other policy documents, nine general information documents, 19 PACT Act job aids, a 94-page frequently asked questions document, and more. As of March 2025, the web page had 41 links.

As VA has continued to review and evaluate information about TERA, claims processors must consider *all* guidance that could affect a veteran's claim; this includes guidance that was in effect when a claim was submitted.⁹ A claims processor's failure to properly analyze how governing policies and procedures at the time of the claim apply and work together may result in errors.

During interviews in January 2024, claims processors told the review team that searching for the correct guidance across many locations is time-consuming and difficult to follow. Some claims processors also noted these difficulties in finding the applicable requirements may have contributed to the high error rate (61 percent) the review team identified in its statistical sample of decisions that denied nonpresumptive conditions associated with toxic exposure. VBA managers and staff agreed that placing all guidance in one place—the *Adjudication Procedures Manual*—would be helpful.

In November 2022, the under secretary for benefits acknowledged before Congress that TERA would significantly affect claims processors. Moreover, subsequent analyses by VBA staff identified inaccuracies in the processing of PACT Act claims. While VBA staff have been aware of accuracy problems involving the processing of PACT Act claims, they have missed opportunities to improve control activities to mitigate errors and ensure veterans receive benefits they are entitled to.¹⁰ The errors the OIG identified occurred because staff were not performing key steps in the process as directed and because VBA officials had yet to identify the root causes of errors in denied nonpresumptive conditions.

The OIG determined VBA's efforts have not fully addressed the risk that nonpresumptive conditions may be improperly denied, potentially affecting veterans' benefits. VBA needs to improve its oversight to mitigate and prevent inconsistencies and errors. The OIG's determinations and the recommendations offered are meant to advance VBA's efforts to establish sufficient control activities that ensure veterans receive the benefits they are entitled to and that those benefits are provided in accordance with TERA procedures under the PACT Act.¹¹

⁹ For instance, evolving guidance might alter the standard of entitlement, the burden of proof, the extent of VA's duty to assist, substantive due process requirements, existing understanding of medical or legal concepts, or agency procedures. VA Manual 21-1, "Provisions Applied by the Rating Activity in Evaluating Evidence," August 6, 2020, topic V.ii.1.A.1.h in *Adjudication Procedures Manual*.

¹⁰ Control activities are the policies, procedures, techniques, and other methods that enforce management directives to achieve the organization's objectives and address related risks. Government Accountability Office (GAO), *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

¹¹ PACT Act of 2022.

What the OIG Recommended

The OIG made three recommendations.¹² First, the under secretary for benefits should examine all processing errors on cases the OIG team identified, correct those errors, and report back on the results. Second, the under secretary should collaborate with key stakeholders to prioritize consolidating the guidance for PACT Act claims processing into the *Adjudication Procedures Manual*, as that is the reference guide meant to provide a “reasonably complete” picture of all claims processing and be “easy [for claims processors] to understand and apply.”¹³ Finally, the under secretary should evaluate the effectiveness of control activities specifically for denials of nonpresumptive conditions under TERA procedures and determine where new or stronger controls are needed.

VA Management Comments and OIG Response

VBA concurred with all three recommendations and provided responses indicating it would take the actions the OIG recommended. The acting principal deputy under secretary for benefits, performing the delegable duties of the under secretary for benefits, also provided general and technical comments on this report, which the OIG addressed in its responses and made revisions where indicated. The OIG will monitor VBA’s progress and will close the recommendations when sufficient evidence of implementation is received. The full text of VA’s management comments appears in appendix D.



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¹² The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

¹³ VA Manual 21-1, “Prologue.”

Contents

Executive Summary i

Abbreviations vi

Introduction.....1

Results and Recommendations7

 Finding: VBA’s Oversight Has Lagged in Ensuring Accurate Decision-Making When
 Denying PACT Act Nonpresumptive Conditions.....7

 Recommendations 1–317

Appendix A: Scope and Methodology.....22

Appendix B: Statistical Sampling Methodology24

Appendix C: Error Categories in Sampled Claims28

Appendix D: VA Management Comments.....33

OIG Contact and Staff Acknowledgments39

Report Distribution40

Abbreviations

FY	fiscal year
ILER	Individual Longitudinal Exposure Record
OIG	Office of Inspector General
PACT Act	Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022
TERA	toxic exposure risk activity
VBA	Veterans Benefits Administration
VBMS	Veterans Benefits Management System



Introduction

The Veterans Benefits Administration (VBA) provides benefits and services to veterans, their families, and their survivors to recognize their service to the nation; it endeavors to do this work “in a responsive, timely, and compassionate manner.”¹⁴ VBA’s disability compensation program provides tax-free payments to veterans for the effects of disabilities, diseases, or injuries “incurred or aggravated” during active military service—what is known as service connection.¹⁵

On August 10, 2022, the President signed into law the PACT Act, perhaps the largest expansion of health care and benefits in VA history.¹⁶ The law established new exam and medical opinion requirements for veterans who were exposed to toxic substances during their military service—experiences that are collectively categorized as toxic exposure risk activity (TERA). VBA procedure acknowledges the legal definition of a TERA is “extremely broad”—for example, a TERA can include exposure to industrial cleaners or solvents, air pollutants, paint, or fuels—and TERA can be conceded regardless of the level or duration of exposure.¹⁷ By changing the exam and medical opinion threshold, the PACT Act opened a new path for service connection for veterans when their conditions cannot be granted on a presumptive basis, generally called nonpresumptive conditions.

VBA began processing all types of PACT Act claims on January 1, 2023, the earliest date it had the authority to do so.¹⁸ The law added further complexity to claims processing, which heightens the risk for errors if essential procedures are overlooked by VBA staff. For example, certain additional work may be needed for nonpresumptive conditions related to toxic exposure, and such claims may require

¹⁴ VA Functional Organization Manual, ver. 8.0, vol. 1 (updated 2023), p. 50.

¹⁵ “About VBA” (web page), VBA, accessed June 4, 2024, <https://benefits.va.gov/BENEFITS/about.asp>; 38 C.F.R. § 3.1(k) (1961).

¹⁶ “Communications Toolkit, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act)” (web page), VBA, accessed May 25, 2024, https://vbaw.vba.va.gov/bl/21/VBA_SE_Internal_Toolkit_PACT_Act.pdf (This website is not publicly accessible.); Public Law 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022.

¹⁷ Public Law 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022; “Honoring our PACT Act of 2022 (PACT Act) Implementation Standard Operating Procedure (SOP),” ver. 3, April 10, 2023, [https://vbaw.vba.va.gov/bl/21/PACT%20Act%20Implementation%20SOP%20\(v.3\).pdf](https://vbaw.vba.va.gov/bl/21/PACT%20Act%20Implementation%20SOP%20(v.3).pdf), p. 8. (This website is not publicly accessible.) VA, “Expansion of Health Care Eligibility for Toxic-exposed Veterans” Frequently Asked Questions, accessed April 18, 2025, <https://www.mohican.com/wp-content/uploads/2025/07/expansion-of-health-care-eligibility-for-toxic-exposed-veterans-2.pdf>.

¹⁸ VA, “VA Will Begin Processing PACT Act Benefits Claims for All Veterans and Survivors on Jan. 1,” news release, December 29, 2022, <https://news.va.gov/press-room/va-will-begin-processing-pact-act-benefits-claims-for-all-veterans-and-survivors-on-jan-1/>.

- verification of TERA participation,
- a TERA medical exam to confirm the existence of a veteran's nonpresumptive condition, and
- a medical opinion to confirm a link between that condition and the veteran's toxic exposure in service.

The PACT Act also led to the establishment of new policies and procedures for VBA to process benefits for toxic exposure. The law defines a TERA as “any activity that requires a corresponding entry in an exposure tracking record” or any other activity VA determines qualifies, “when taking into account what is reasonably prudent to protect the health of Veterans.”¹⁹ Consequently, VBA's decisions related to nonpresumptive conditions under the PACT Act's TERA procedures can be more complex to process than other types of service connection. Decisions on nonpresumptive conditions require significant attention to detail. The risk of error increases when VBA staff do not follow essential steps in the TERA claims process—and with the increased risk of error comes a greater potential for veterans not to receive benefits they are entitled to.

The VA Office of Inspector General (OIG) conducted this review to determine whether VBA staff processed decisions in compliance with TERA procedures under the PACT Act that denied nonpresumptive conditions.²⁰ The OIG focused on denials because of the risks for incorrect processing, which could affect veterans' benefits.²¹

Service Connection

VA pays monthly disability compensation to veterans with service-connected disabilities and payment amounts are based on the severity of their condition. Service connection can be established in several ways, including directly and presumptively.

- **Direct service connection** means a veteran's specific condition “was incurred in service.”²² Establishing direct service connection is accomplished by providing evidence of a veteran's current condition related to an event, injury, or disease that

¹⁹ PACT Act Implementation Standard Operating Procedure, ver. 3, pp. 7–8.

²⁰ The focus of this report is “decisions.” A “claim” may include multiple conditions on which several decisions may be made.

²¹ The VA OIG previously examined denials of presumptive conditions associated with the PACT Act in [Staff Incorrectly Processed Claims When Denying Veterans' Benefits for Presumptive Disabilities Under the PACT Act](#), Report No. 24-00118-01, December 3, 2024.

²² 38 C.F.R. § 3.1(k) (1961); VA Manual 21-1, Overview of Direct SC,” updated June 5, 2024, topic V.ii.2.A.1.a in *Adjudication Procedures Manual*. The OIG revised this sentence in response to technical comment 7.

happened during service. This direct link can be proven through evidence of continuous symptoms or by a medical opinion.

- **Presumptive service connection** means VA assumes some specific conditions were “incurred in or aggravated by” a veteran’s time in service, even if there was no evidence of it when the veteran served.²³ This type of service connection requires evidence of an in-service event, such as exposure to a toxic substance, and a diagnosis for a qualifying disease or disability associated with that exposure. Which specific diseases and disabilities qualify as presumptive are laid out in federal law; where and when a veteran served can also be a factor.

Another type of direct service connection covers other conditions that cannot be granted on a presumptive basis under federal law.²⁴ Veterans who participated in a TERA while serving and developed a nonpresumptive condition may also be entitled to receive compensation under the direct service connection provisions if a medical opinion provides a causal link.²⁵ Specific processes—that accord with the PACT Act’s TERA requirements—dictate how VBA staff must process these claimed conditions.

Claims Processing

VA’s *Adjudication Procedures Manual* serves as a general guide for processing and deciding claims for compensation and related benefits for veterans. The manual is meant to summarize or restate in plain language the applicable law, to clarify any ambiguities, and to provide a “reasonably complete” picture of the claims determination process that is “easy to understand and apply.”²⁶ Although the manual is based on federal laws and corresponding regulations, the relevant laws and regulations supersede the manual’s guidance.²⁷

VA also provides PACT Act guidance to claims processors separately from the manual. This guidance includes the PACT Act Information web page, which contains the related standard operating procedure. The standard operating procedure has numerous references and links to the *Adjudication Procedures Manual* but takes precedence when it differs from the manual.²⁸

²³ VA Manual 21-1, “Overview of Presumptive SC,” updated September 27, 2022, topic V.ii.2.B.1.a in *Adjudication Procedures Manual*.

²⁴ Reasons may include that the condition is not on a list of known presumptive disabilities or presumptive exposure is not established.

²⁵ PACT Act Implementation Standard Operating Procedure, p. 9.

²⁶ VA Manual 21-1, “Prologue,” updated August 9, 2022, in *Adjudication Procedures Manual*.

²⁷ Applicable laws and regulations can be found in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations, the legal authorities governing VA benefits.

²⁸ PACT Act Implementation Standard Operating Procedure, p. 2.

VBA's claims processors need to be aware of all the ways a veteran's condition could be service-connected, and they must apply all pertinent guidance as it is updated over time.

Nonpresumptive Conditions Under TERA Procedures

Processing nonpresumptive conditions under the PACT Act's TERA procedures can be complicated, which creates an increased risk for errors if claims processors fail to follow essential steps. VBA's claims processors are required to consider all available evidence when determining whether a veteran participated in a TERA and "regardless of whether the Veteran specifically claims an exposure as the basis of their claim."²⁹

That means claims processors must recognize both *explicit* and *implicit* claims of toxic exposure.³⁰ An explicit claim is one in which a veteran mentions a specific toxic exposure in their claim submission. With an implicit claim, a veteran does not specifically assert their condition was caused by toxic exposure, yet the condition claimed reasonably raises the issue of association with toxic exposure or the veteran's record shows evidence of participation in a TERA. Moreover, claims processors use the Individual Longitudinal Exposure Record (ILER), a joint Department of Defense–VA application, to obtain information on whether a veteran experienced a TERA during their active service.³¹

VBA's guidance for applying TERA procedures to nonpresumptive conditions—and the many instances during which errors might occur based on the OIG's review—covers the following process.³²

1. **Identify TERA claims.** In this stage, claims processors should assess whether a claim might be related to toxic exposure—particularly if a veteran does not explicitly assert it. While reviewing for explicit and implicit claims related to toxic exposure, claims processors also determine whether an exam exception applies. If one does, no TERA exam and medical opinion is needed. At the time of the OIG's review, VA considered the following to be exceptions to the TERA exam requirement:
 - The condition is determined to have no association with toxic exposure.³³

²⁹ PACT Act Implementation Standard Operating Procedure, p. 8.

³⁰ PACT Act Implementation Standard Operating Procedure, p. 10.

³¹ Office of Field Operations et al., "Guidance for using Individual Longitudinal Exposure Record (ILER) when processing certain claims for service connection (SC)," memorandum to the Veterans Benefits Administration et al., October 4, 2024. ILER can link a veteran to their military exposures or deployments to improve efficiency and effectiveness in deciding benefits claims.

³² PACT Act Implementation Standard Operating Procedure, pp. 8–9.

³³ These conditions are determined by the VA Secretary based on cumulative scientific data reported by the National Academies of Science. PACT Act Implementation Standard Operating Procedure, p. 13; 38 U.S.C § 1168(b).

- The condition manifested during military service or has a cause not associated with toxic exposure.³⁴
 - The condition is nonpresumptive and based on physical trauma.³⁵
 - The condition is a mental disorder.³⁶
2. **Research and verify whether a veteran experienced a TERA.** Claims processors should review all available evidence to determine whether the veteran's participation in an activity sufficiently establishes a TERA.³⁷ To do this, claims processors obtain service records and review exposure records. They also must complete a TERA memorandum when required.
- The memo provides a concise summary of exposure information for the medical examiner who will perform the required TERA exam and provide the formal opinion. This additional paperwork also establishes documentation of whether the veteran experienced a TERA while serving.³⁸
3. **Request a TERA exam and medical opinion.** The PACT Act instructs VA to provide an exam and medical opinion when a veteran submits a claim for compensation, has evidence of a condition, and has evidence of participation in a TERA; when such evidence is not sufficient to establish service connection for the condition; and when the condition is not otherwise subject to an exam exception. As discussed, the exam and medical opinion is required to confirm the link between the condition and the veteran's toxic exposure.

³⁴ This exception applies to conditions that manifested during a veteran's military service for which a medical opinion establishing the link would not be needed to decide service connection on a direct basis (for example, evidence shows a chronic or continuous medical condition documented in a veteran's record). It also applies to claims for which evidence indicates the origin of the claimed condition is clearly not associated with toxic exposure (including events that happened after a veteran's service). PACT Act Implementation Standard Operating Procedure, p. 13; 38 U.S.C § 1168(b).

³⁵ Physical trauma includes blunt force trauma, trauma due to repetitive use, and penetrating trauma. PACT Act Implementation Standard Operating Procedure, p. 12; 38 U.S.C § 1168(b).

³⁶ This includes any condition in 38 C.F.R. § 4.130, the mental disorders section of the VA Schedule for Rating Disabilities. PACT Act Implementation Standard Operating Procedure, p. 13; 38 U.S.C § 1168(b).

³⁷ VBA Letter 20-22-10, "Processing Claims Involving Public Law 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 (hereinafter referred to as "PACT Act")", December 22, 2022. The OIG revised this sentence in response to technical comment 9.

³⁸ The TERA memorandum should provide medical examiners with sufficient details about potential exposures to support a well-informed opinion. The memorandum should be documented in the veterans' eFolder to provide justification for ordering or not ordering the exam and medical opinion as required in 38 U.S.C. § 1168.

As part of this action, claims processors must also identify relevant evidence for the medical examiner's review to ensure the exam informs an appropriate opinion.³⁹

4. **Rate the condition.** When completing decisions for conditions under TERA, claims processors must discuss the TERA in the “Reasons for Decision” section and apply the correct effective date for any approved benefits. Claims processors must also apply the appropriate TERA claim indicator in the Veterans Benefits Management System (VBMS) rating application when needed.⁴⁰ VBA claims processors use the VBMS rating application to manage and generate rating decisions.⁴¹ A rating should explain the basis of any determinations related to the PACT Act.⁴² If awarding or denying a claim under the provisions that apply to TERA, VBA must
- cite any relevant law that applies to the claim, such as the PACT Act related to medical exams that show a link to a TERA;⁴³
 - cite the principles related to service connection;
 - list the TERA as a favorable finding, if applicable;⁴⁴ and
 - in cases when an exception applied (and therefore, no exam and medical opinion was required), discuss any evidence that would counter the exception.

³⁹ Claims processors must choose the appropriate disability benefits questionnaires (forms completed by the medical examiner to elicit medical information needed to make decisions on claims and that provide a standardized format for medical exams and opinions) and use template language for the TERA medical opinion.

⁴⁰ Indicators in VBMS are claim attributes. Although there are many, the review team concentrated on “TERA Conceded” and “TERA Not Conceded”—two attributes associated with PACT Act nonpresumptive conditions.

⁴¹ VBMS is a web-based application designed to support end-to-end claims processing through a consolidated portal. Claims processors, specifically rating veterans service representatives, use the VBMS rating application to prepare rating decisions.

⁴² VA Manual 21-1, “Basic Information on Reasons for Decision,” updated June 20, 2024, topic V.iv.1.A.5 in *Adjudication Procedures Manual*.

⁴³ 38 U.S.C. § 1168; PACT Act Implementation Standard Operating Procedure, p. 25. The OIG added this citation in response to technical comment 10.

⁴⁴ A favorable finding is a conclusion either on a question of fact or on an application of law made by an adjudicator concerning the issues under review that are favorable to the claimant. Each notice of a decision affecting benefits must address any findings made by the claims processor.

Results and Recommendations

Finding: VBA's Oversight Has Lagged in Ensuring Accurate Decision-Making When Denying PACT Act Nonpresumptive Conditions

The PACT Act opened new pathways to service connection for veterans with nonpresumptive conditions related to toxic exposure during their military service. While the law offers additional chances for veterans to receive benefits, it introduced further complexity to VBA's claims determination process—particularly given the voluminous and continually changing guidance for nonpresumptive conditions under the PACT Act's TERA procedures.

VBA began processing all types of PACT Act claims as soon as it was able in January 2023—within five months after the act was signed into law. But the guidance is frequently updated for claims processors who review nonpresumptive conditions related to toxic exposure, and the information is dispersed across multiple sources and could be better organized. The difficulties with navigating hard-to-follow guidance have contributed to risks that VBA staff will inaccurately process claims—potentially affecting veterans' benefits. While VBA has taken steps to improve PACT Act claims processing, these efforts have not fully remedied the causes of various inaccuracies.

Based on a statistical sample of decisions from May 1 through August 31, 2023, that denied nonpresumptive conditions associated with toxic exposure, the OIG estimated that 61 percent of those decisions contained at least one error. VA officials have acknowledged the PACT Act made claims processing more complex, which required new guidance after the law passed. VBA's quality assurance division identified PACT Act processing errors during the first half of 2023, and VBA's consistency and oversight staff also uncovered errors during site visits in fiscal year (FY) 2024. Although VBA is aware of the problems, officials have missed opportunities to improve control activities to mitigate errors and ensure all veterans with nonpresumptive conditions related to toxic exposure receive the benefits they are entitled to.⁴⁵

The OIG found that PACT Act claims processing accuracy could improve if VBA made the guidance easier for VBA staff to follow. The determinations and recommendations offered in this report are meant to advance VBA's efforts to establish sufficient control activities that ensure veterans receive the benefits they are entitled to and that those benefits are provided in accordance with TERA procedures under the PACT Act.

The following determinations formed the basis for the OIG finding and recommendations:

⁴⁵ Control activities are the policies, procedures, techniques, and other methods that enforce management directives to achieve the organization's objectives and address related risks.

- Statistical sampling indicates some decisions denying veterans' nonpresumptive conditions associated with toxic exposure were processed incorrectly.⁴⁶
- PACT Act guidance is dispersed and frequently updated, making it difficult for claims processors to follow.
- VBA's efforts have been insufficient and do not ensure all nonpresumptive conditions are processed correctly.

What the OIG Did

The team identified a review population of 185,023 completed decisions that denied nonpresumptive conditions during the review period of May 1 through August 31, 2023. However, the team estimated the actual population (those decisions within the review scope) to be about 122,800.⁴⁷ The difference between the review population size and the estimated actual population size is a result of sampled records that the team found to be outside the review scope (for example, a condition that was granted on a non-TERA basis). For more details, see appendixes A and B.

The team reviewed two distinct statistical samples of veterans' decisions within the estimated actual population: 30 that did not have requests for an exam and medical opinion, and 30 that did have such requests. Based on the methodology used, the team could project the results and estimate an error rate across the entire estimated population of denied nonpresumptive decisions within the review scope.

After assessing the laws, regulations, policies, procedures, and guidelines applicable to nonpresumptive conditions associated with TERA procedures under the PACT Act, the team analyzed each decision in the sample to determine whether VBA staff correctly processed decisions related to nonpresumptive conditions. The team used VBA's electronic systems to review the decisions in the sample and relevant documentation. The team then gave officials in VA's Compensation Service and Office of Administrative Review detailed results of the reviews.

Meanwhile, in January and February 2024, the review team visited the Waco (Texas) Regional Office, the St. Petersburg (Florida) Regional Office, and the Decision Review Operations Center,

⁴⁶ Errors may occur at different steps in the process: identifying TERA claims, researching and verifying TERA participation, requesting TERA exams and medical opinions, and rating the claim. See appendixes A and B for details on the scope, methodology, and statistical sampling. See appendix C for a detailed list and description of errors the OIG team identified in addition to those described in the finding.

⁴⁷ This value is rounded. Each sampled action was a decision that denied a nonpresumptive condition.

also in St. Petersburg. During these visits, the team interviewed VBA managers and staff, as well as representatives from veterans service organizations at these facilities.⁴⁸

Statistical Sampling Indicates Some Decisions Denying Veterans' Nonpresumptive Conditions Associated with Toxic Exposure Were Processed Incorrectly

Among the estimated 122,800 decisions for nonpresumptive conditions that were denied from May 1 through August 31, 2023, the OIG team's review of a statistical sample of 60 decisions revealed that 37 had at least one error. The method of analysis enabled the review team to project how often errors potentially occurred across the entire population. The team estimated 74,400 (about 61 percent) contained at least one error.⁴⁹

Various errors—all of which are the result of incorrect actions by VBA staff—have the potential to affect veterans' benefits. The following bullets and examples describe three types of errors:

- **No request is made for an exam and medical opinion when one is required.**
Under the PACT Act's requirements, VBA staff should provide an exam and medical opinion when there is evidence of a condition, evidence that a veteran experienced a TERA during service, the specific evidence is not satisfactory to establish service connection for the condition, and the condition is not otherwise subject to an exception. If a TERA exam and medical opinion is not requested when required, veterans with nonpresumptive conditions related to toxic exposure could miss out on benefits they are entitled to.

Example 1

VBA received a claim in July 2023 for a prostate gland condition due to Agent Orange exposure. A week later, VBA denied service connection as the veteran's condition was not noted during their service, and it was not considered presumptively service-connected. But because the veteran's claimed nonpresumptive prostate condition met the requirements for obtaining a TERA exam and medical opinion, a VBA claims processor should have requested a TERA exam and medical opinion as required.⁵⁰ Because the claims processor did not, the claim was prematurely denied.

⁴⁸ Veterans service organizations offer a range of services for veterans, including helping them apply for benefits.

⁴⁹ This value is rounded. Each sampled action was a decision that denied a nonpresumptive condition. See appendix C for more information.

⁵⁰ The OIG revised this sentence based on technical comment 13.

- **An exam and medical opinion is requested when *not* needed.** As previously mentioned, under certain situations, an exam and medical opinion is not warranted. Unnecessary exams can burden veterans and materially delay their claims. This also does not represent good stewardship of taxpayer dollars spent on medical exams.

Example 2

On an application for benefits in March 2023, a veteran noted his left shoulder was injured when a pallet fell on him while he was in Afghanistan. In May 2023, VBA requested a TERA exam and medical opinion, and it was completed the following month. But in this case, the exam and medical opinion was not necessary because an exception applied: The veteran's condition was caused by physical trauma.

- **Not all pertinent evidence is identified for medical examiners to review.** When requesting a TERA exam and medical opinion, VBA staff must ensure all evidence supporting the exposure is uploaded to the veteran's eFolder, such as the completed TERA memorandum.⁵¹ The claims processor must also identify all relevant evidence for the medical examiner's review in line with the *Adjudication Procedures Manual*.⁵² Failing to identify relevant records risks the medical examiner arriving at incorrect opinions, which could prevent veterans from receiving all their benefits.

Example 3

Evidence in a veteran's records raised an implicit claim of service connection for sleep apnea based on their TERA participation during military service.⁵³ VBA staff asked for a medical exam and opinion in April 2023, but a claims processor failed to identify the TERA memorandum (to support the veteran's exposure) as relevant evidence for the medical examiner to review. The implicit claim for the condition of sleep apnea was denied in June 2023. Claims processors are required to ensure all evidence supporting toxic exposure is identified for an examiner's review. When a VBA claims processor fails to direct the medical

⁵¹ PACT Act Implementation Standard Operating Procedure, p. 21.

⁵² VA Manual 21-1, "Requirement to Identify Relevant Evidence," updated June 6, 2024, topic IV.i.2.A.8.d in *Adjudication Procedures Manual*. Regional office employees must ensure each piece of relevant evidence in the eFolder is either bookmarked or annotated using the functionality described in the VBMS Core User Guide. All pertinent evidence—including service treatment records when their review is relevant to the underlying request—must be scanned into the eFolder before requesting any exam.

⁵³ With an implicit claim, a veteran does not specifically assert their condition was caused by toxic exposure, but the veteran's record shows evidence of a TERA.

*examiner to all necessary evidence, the examiner may provide an improper opinion and the veteran's benefits could be prematurely denied.*⁵⁴

The OIG recommends VBA review all processing errors on cases the OIG team identified, correct those errors, and report back on the results of these actions.

PACT Act Guidance Is Dispersed and Frequently Updated, Making It Difficult for Claims Processors to Follow

The PACT Act fundamentally changed how VBA staff review and handle veterans' claims. In November 2022, the VA under secretary for benefits (in a joint statement with the under secretary for health) acknowledged before Congress that the definition of a TERA and the implementation of the TERA exam and medical opinion requirement to establish nonpresumptive service connection would significantly affect claims processors, both in volume and complexity.⁵⁵ The under secretary for benefits reiterated this in a May 2023 hearing: "This is a massive new benefit, and it is not only increasing the total number of claims, but it is adding new complexity to the work process. ... There is a new theory of entitlement [with] different effective dates and different conditions that are covered."⁵⁶

As mentioned earlier, extensive guidance was developed for PACT Act claims processing, which included new policies and procedures for processing decisions on nonpresumptive conditions related to veterans' toxic exposure during military service. While VBA developed some PACT Act guidance, the OIG found this guidance was poorly organized as it was scattered among several sources and not easy to follow.

Furthermore, the guidance has changed often as VA has continued to review and evaluate information about TERA. As claims processors make decisions, the recurring updates require them to consider *all* guidance that could affect a veteran's claim; this includes prior guidance that remains applicable depending on when a claim was submitted.⁵⁷ VBA generally considers a

⁵⁴ In this example, despite VBA staff not identifying the TERA memorandum, the medical examiner nevertheless noted the memo was reviewed and did not establish a link. Therefore, there was no resulting effect associated with this error.

⁵⁵ *Hearing on Honoring Our PACT Act Implementation, Before the Senate Committee on Veterans' Affairs*, 117th Cong. (November 16, 2022) (joint statement of Under Secretary for Health Shereef Elnahal and Acting Under Secretary for Benefits Joshua Jacobs).

⁵⁶ *Hearing on Reviewing VA's Implementation of the PACT Act, Before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs*, 118th Cong. (May 16, 2023) (statement of Under Secretary for Benefits Joshua Jacobs).

⁵⁷ For instance, evolving guidance might alter the standard of entitlement, the burden of proof, the extent of VA's duty to assist, substantive due process requirements, existing understanding of medical or legal concepts, or agency procedures. VA Manual 21-1, "Provisions Applied by the Rating Activity in Evaluating Evidence," August 6, 2020, topic V.ii.1.A.1.h in *Adjudication Procedures Manual*.

claims processing error to be any action that violates current regulations or established policies. In this context, a claims processor may have to consider policies and procedures in place at the time a veteran submitted their claim. For instance, a condition claimed in 2023 may have a different outcome than if it was claimed in 2024 solely because VBA's guidance changed over time. As a result, a claims processor's failure to properly analyze and apply each relevant iteration of regulation or policy may result in an error.

During interviews in January 2024, claims processors told the review team that searching for the correct guidance across many locations is time-consuming and difficult to follow. Some claims processors also told the review team that difficulties in finding the applicable requirements may have contributed to the high error rate (61 percent) the review team identified in its statistical sample of denied nonpresumptive conditions associated with toxic exposure.

Dispersion of Guidance

When deciding a claim for benefits, claims processors must apply the provisions of all pertinent laws, regulations, policy statements, and procedures related to the associated claim.⁵⁸ Various references now include extensive guidance related to the PACT Act.

As noted earlier, VA's *Adjudication Procedures Manual* is the general guide for processing claims. The manual is based on federal laws and corresponding regulations, and it is meant to summarize or restate in plain language the applicable law, to clarify any ambiguities, and to provide a "reasonably complete" picture of the claims determination process that is "easy to understand and apply."⁵⁹ However, VBA provides PACT Act guidance to claims processors on a web page—the PACT Act Information page—separately from the manual. Claims processors told the review team that it was necessary to navigate the various sources on the web page to find the relevant guidance and procedures for nonpresumptive conditions that involve a TERA. This risks that staff may overlook relevant information that could affect the outcome of benefits decisions.

When the OIG began its review in October 2023, VBA's internal PACT Act Information web page had 43 links to various types of guidance. The web page's links included

- an 82-page standard operating procedure,
- eight other policy documents,
- nine general information documents,

⁵⁸ VA Manual 21-1, "Provisions Applied by the Rating Activity in Evaluating Evidence."

⁵⁹ VA Manual 21-1, "Prologue." Laws and regulations always supersede the manual's procedural guidance. Applicable laws and regulations can be found in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations, the legal authorities governing VA benefits.

- 19 PACT Act job aids,
- a 94-page frequently asked questions document,
- four sets of different language guidance to use when communicating with PACT Act claimants, and
- guidance related to the expansion of health care for specific categories of toxic-exposed veterans.

The standard operating procedure by itself also had numerous references and links to the *Adjudication Procedures Manual*. As mentioned, however, the standard operating procedure takes precedence when it differs from guidance in the manual.⁶⁰ As of March 2025, the PACT Act Information web page had 41 links.

Frequent Updates of Guidance

In addition to the sheer volume and many dispersed locations of VBA's PACT Act guidance, various pieces of it have undergone multiple updates since the law was enacted in August 2022. For example, guidance was updated to reflect subsequent policy changes published in the Federal Register—prompting VBA to rescind a letter on processing claims involving the PACT Act and replace it with an updated version, effective June 17, 2024.⁶¹ The updated version of the VBA letter revoked previous field guidance that took effect January 1, 2023. This change then created a domino effect that required numerous updates to guidance as reflected on VBA's PACT Act Information Historical Page, which tracks and archives prior versions of PACT Act guidance. As of July 23, 2024, the PACT Act Information Historical Page noted roughly four dozen archived versions of guidance that had been rescinded and replaced with updated information.

As another example of the vigilance needed to keep pace with frequently changing guidance, a detailed flowchart meant to help staff decide TERA-related claims has also been revised frequently to accommodate recurring updates since the PACT Act took effect. In April 2024, VBA provided an updated version of the flowchart, noting it would be reviewed every three months to ensure it remains consistent with PACT Act guidance and any changes to the *Adjudication Procedures Manual*.

The assistant director of VBA's Compensation Service policy staff—who was responsible for developing and writing the initial PACT Act standard operating procedure—told the review team that claims processors should follow all versions of the standard operating procedure to ensure

⁶⁰ PACT Act Implementation Standard Operating Procedure, p. 2.

⁶¹ VBA Letter 20-24-26, "Updated Guidance on Processing Claims Involving the PACT ACT," June 12, 2024.

veterans are afforded all benefits they are entitled to receive.⁶² But some staff members said the changes are difficult to follow and reviewing them takes more time, which adds stress. Claims processors must meet certain metrics as part of their performance, so when they spend extra time processing nonpresumptive conditions involving toxic exposure, they can feel a sense of urgency—which can result in rushing and errors. In an October 2023 email, the Compensation Service confirmed that VBA was receiving reports of stress and anxiety from claims processors related to the “overwhelming” changes brought on by the PACT Act.

The OIG found that the accuracy of claims processing could be improved if VBA’s PACT Act guidance were easier for VBA staff to follow. Accordingly, the second OIG recommendation calls on VBA to collaborate with key stakeholders to prioritize consolidating the guidance for PACT Act claims processing into the *Adjudication Procedures Manual*, as that is the reference guide meant to provide a “reasonably complete” picture of all claims processing and be “easy [for claims processors] to understand and apply.”⁶³ VBA managers and staff agreed that placing all guidance in the manual would be helpful.

VBA’s Efforts Have Been Insufficient to Ensure All Nonpresumptive Conditions Are Processed Correctly

Although VBA has taken steps to improve how staff process PACT Act claims, the OIG determined VBA lacks sufficient control activities to ensure benefits are provided in accordance with established policies and procedures. The errors the OIG identified occurred because staff were not performing key steps in the process as directed and because VBA officials had yet to identify the root causes of errors in decisions related to denied nonpresumptive conditions.

VA defines an internal control as a procedure or process that can help VA “maintain continuous reliability of a practice or system.”⁶⁴ VA under secretaries, assistant secretaries, and other key officials are responsible for

- ensuring internal controls are designed and implemented in the areas under their purview;
- communicating corrective action plans for identified problems at appropriate levels and making certain those plans are consistent with laws, regulations, and agency policy; and

⁶² VBA’s Compensation Service develops rulemaking and policy requirements and conducts advisory reviews in support of the compensation benefits program. VBA’s claims processors must apply all pertinent guidance as it is updated over time.

⁶³ VA Manual 21-1, “Prologue.” Key stakeholders could include the VA Secretary and representatives from the Office of Field Operations, the Office of General Counsel, and as needed the Board of Veterans’ Appeals.

⁶⁴ VA Handbook, *Internal Control Program Handbook*, January 12, 2023.

- completing an internal controls assessment for the area under their purview and ensuring the assessment is accurate and identifies any deficiencies.

Moreover, each VBA executive director or a director from a business line or staff office must submit a signed statement of assurance to the under secretary for benefits ensuring internal controls are adequate.⁶⁵

VA's Compensation Service completed an internal controls assessment for FY 2023 and submitted it to the under secretary for benefits with an annual statement of assurance dated May 26, 2023.⁶⁶ The assessment identified no deficiencies in the design of the Compensation Service's control activities. It reported that the Compensation Service "ensures all claims processors provide benefits in accordance with established policy and procedures" through such activities as national and local quality reviews, monthly quality calls, special-focused reviews, and site visits. These activities are some of the agency's efforts to "identify errors, their root causes, and implement actions to eliminate or minimize errors to the extent possible." For example, special-focused reviews are done as needed to ensure consistency and compliance based on current policies and procedures—with an emphasis on specifically identified areas of interest.⁶⁷

Although the Compensation Service identified no deficiencies, the results of their repeated analyses in FYs 2023 and 2024 noted errors in PACT Act claims processing, and yet the Compensation Service did not use those opportunities to perform a root-cause analysis and explore ways to mitigate ongoing errors—as highlighted in the results of the OIG team's statistical sampling. A root-cause analysis is a structured way to identify the underlying sources of problems and develop corrective action.

In January 2023, the Compensation Service's quality assurance staff did quality reviews as part of a special-focused review of PACT Act claims.⁶⁸ This review identified errors but did not go far enough to analyze the root cause of why these errors happened.

In November 2023, the quality assurance division issued a report on its special-focused review of PACT Act claims completed from January through July 2023. It too identified errors and made a

⁶⁵ VBA Letter 20-23-04, "Fiscal Year 2023 Assessment of Internal Controls and Management's Statement of Assurance," April 18, 2023.

⁶⁶ The Compensation Service coordinates legislative and regulatory changes and updates to VBA business programs used for claims processing. It issues and administers procedural guidance to implement initiatives and laws governing VA benefits through updates to VBA's *Adjudication Procedures Manual*. It also assesses claims-processing accuracy nationwide.

⁶⁷ Special-focused reviews help the Compensation Service's quality assurance team ensure accuracy by identifying inconsistencies so that timely feedback is shared and training needs are met.

⁶⁸ The mission of the Compensation Service's quality assurance division is to drive ongoing improvement of accuracy and consistency in processing benefits for veterans and their families.

number of recommendations. One recommendation requested the Operations Compliance Office to provide Compensation Service staff with a remediation plan to improve the accuracy of PACT Act claims processing.⁶⁹ The plan encouraged associated VA regional offices to identify, monitor, and remediate PACT Act errors—but there was no discussion about why the errors were happening.⁷⁰

In FY 2024 (which began October 1, 2023), another analysis within the Compensation Service identified errors. Consistency and oversight review staff incorporated a review of PACT Act–TERA claims for FY 2024 in the regional office site-visit protocol.⁷¹ Compensation Service staff said in an email to the OIG review team that they completed 40 reviews with error rates of 70 percent for cases marked with the “TERA Conceded” indicator and 40 percent for the “TERA Not Conceded” indicator—two attributes associated with PACT Act nonpresumptive conditions.⁷² In a March 2024 email, a Compensation Service official told the review team this was an ongoing evaluation. Because TERA reviews began in FY 2024 and only four site visits were completed, the Compensation Service staff said it had not yet identified any root causes at the time of this review. But root-cause analyses can be done as part of site-visit results, and not including those analyses presents another missed opportunity for VBA to address ongoing errors.

The OIG’s third recommendation calls on VA to evaluate the effectiveness of control activities specifically for denials of nonpresumptive conditions under TERA procedures and determine where new or stronger controls are needed.

Conclusion

The OIG review team estimated an error rate of 61 percent in a statistical sample of decisions denying service connection for nonpresumptive conditions related to toxic exposure. Although VBA has taken steps to improve PACT Act claims processing, the OIG found its control activities are insufficient and VBA has not investigated the root cause of errors. Therefore, the OIG determined VBA’s efforts have not fully addressed the risk that nonpresumptive conditions may be improperly denied, potentially affecting veterans’ benefits. Meanwhile, VBA’s extensive guidance for processing PACT Act claims remains dispersed and is difficult for staff to follow,

⁶⁹ *Special Focused Review Report: Compensation Service, Quality Assurance—Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022*, November 2023. The Operations Compliance Office is in the Office of Field Operations.

⁷⁰ Although not identified as a cause for the errors, additional training was suggested based on error trends and for certain staff who had high error rates.

⁷¹ Consistency and oversight review staff conduct site visits to review operations; oversee VA Manual 21-4; and provide special assistance to field offices and other partners regarding the disability compensation program. The purpose of site visits is to ensure VBA policies, procedures, and support systems for the disability compensation program are followed consistently nationwide.

⁷² TERA claim attributes, also known as special issues, are claim-specific indicators and can represent a certain claim type, disability, or disease, or other special notation that is relevant only to a particular claim.

further compounding the risk that veterans may not receive benefits they are entitled to receive. The errors the OIG identified, as well as the recommendations offered, can help VBA evaluate its control activities and strengthen them to provide more effective oversight—particularly for denied nonpresumptive conditions related to toxic exposure under the PACT Act.

Recommendations 1–3

The OIG recommended the under secretary for benefits take the following actions:⁷³

1. Review all processing errors on cases the Office of Inspector General team identified, correct those errors, and report back on the results of those actions.
2. Collaborate with key stakeholders—such as the VA Secretary and representatives from the Office of Field Operations, the Office of General Counsel, and as needed the Board of Veterans' Appeals—to prioritize consolidating the guidance for PACT Act claims processing into the *Adjudication Procedures Manual*.
3. Evaluate the effectiveness of control activities specifically for denials of nonpresumptive conditions under toxic exposure risk activity procedures and determine where new or stronger controls are needed.

VA Management Comments

The acting principal deputy under secretary for benefits, performing the delegable duties of the under secretary for benefits, concurred with all three recommendations and provided responses indicating VBA would take the actions the OIG recommended. She also noted, “Although VBA issued subregulatory guidance to aid claims processors, VA is still in the process of fully implementing the provisions of the PACT Act. Certain policy determinations that are necessary to operationalize aspects of the PACT legislation, most notably several provisions related to toxic exposure risk activity (TERA), are still under deliberation.” The comments also say that before revisions can be made to the *Adjudication Procedures Manual*, “[s]ubstantive rules must be promulgated through notice-and-comment procedures, and statements of general policy or interpretations of general applicability must be published in the Federal Register.”

The acting principal deputy under secretary also provided technical comments, which the OIG addresses below. The full text of VA’s response to the recommendations and technical comments are in appendix D.

⁷³ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

OIG Response

The OIG will monitor implementation of all planned actions and will close the recommendations when sufficient evidence is received demonstrating progress in addressing the intent of the recommendations and the issues identified.

The 13 technical comments from the acting principal deputy under secretary for benefits expressed concerns with certain language in the report. The OIG has incorporated clarifying or corrected language in the report where it found sufficient evidence to support the proposed revision.

In technical comment 1, VBA requested changes to the following sentence on page i of the executive summary: “Disability benefits may be awarded when veterans are exposed to toxic substances during their military service; these experiences are collectively categorized as toxic exposure risk activity (TERA).” VBA recommended the following language instead: “Disability benefits may be awarded when Veterans suffer from a current disability that is related to exposures to toxic substances during their military service; toxic exposure risk activities are those activities that require an entry in an exposure tracking record system or that the Secretary determines qualifies.”

The OIG did not make the requested changes based on a lack of support for VBA’s specific wording and redundancy with the detailed explanations that follow in the report. Version 3 of the PACT Act Implementation Standard Operating Procedure does not use the word “suffer” in the section titled “TERA Procedures, for Non-presumptive Claims.”⁷⁴ On the topic of entitlement to compensation for conditions based on TERA, the standard operating procedure notes,

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 OIG’s analysis in the report relates to this section of the standard operating procedure and illustrates that benefits may be awarded when veterans with a related health condition were engaged in a TERA during military service. The guidance for applying TERA procedures to nonpresumptive conditions is further delineated beginning on page 4 of this report. The sentence in question accurately serves as a brief summary of these facts and clarifies that a veteran’s exposure to toxic substances during military service is noted as a TERA. In addition, on page 2 of the report, the OIG cites the standard operating procedure’s more technical details that define

⁷⁴ PACT Act Implementation Standard Operating Procedure, pp. 7–26.

TERA as “any activity that requires a corresponding entry in an exposure tracking record” or any other activity VA determines “is reasonably prudent to protect the health of Veterans.”⁷⁵

The OIG report does acknowledge that exposure alone does not guarantee benefits for a veteran and that toxic exposure risk activities are those activities that require an entry in an exposure tracking record system or that the Secretary determines qualify. The details VBA identified are explained early in the main body of the report.

In technical comment 2, VBA maintained that the OIG’s phrasing of the following sentence on page i of the executive summary misstated the requirements for entitlement to disability compensation for nonpresumptive, TERA-related conditions: “Notably, the law also created a new path for service connection for veterans with nonpresumptive, TERA-related conditions.” VBA recommended the following language: “Notably, the law also created new requirements for when medical exams and opinions must be provided and obtained for claims based on nonpresumptive, TERA-related conditions.”

The OIG replaced the word “created” with “opened” but did not make VBA’s requested change because it related to required medical exams and opinions, which are addressed in the next paragraph of the report where it says: “Among its many changes, the PACT Act added new requirements that veterans with nonpresumptive, TERA-related conditions who are seeking benefits under the law undergo a medical exam and receive an opinion for their condition.”

Technical comment 3 pertains to the following sentence on pages i and ii of the executive summary: “For VBA claims processors, that has meant certain additional work may be needed, such as (1) verifying that a veteran who makes a claim participated in a TERA and (2) requesting a TERA medical exam and opinion to confirm the existence of the veteran’s nonpresumptive condition, which could establish a connection between that condition and the veteran’s toxic exposure during service.” VBA recommended the last clause of the sentence be changed as follows to clarify the purpose of the TERA opinion: “... the veteran’s nonpresumptive condition and provide evidence regarding whether there is a connection between that condition and the Veteran’s participation in TERAs.” In response, the OIG replaced the words “toxic exposure” with “TERA” for consistency with 38 U.S.C. § 1168.

For technical comment 4, VBA requested that the last “and” be replaced with “or” in the following sentence on page ii of the executive summary: “For example, some errors showed that claims processors did not accurately identify toxic exposure claims, research and verify veterans’ participation in a TERA, request a medical exam and opinion regarding toxic exposure, and appropriately include key information in decisions for nonpresumptive conditions.” VBA asked for the change to reflect that errors were not found on all claims together but rather individually throughout the OIG’s sample.

⁷⁵ PACT Act Implementation Standard Operating Procedure, pp. 7–8; 38 U.S.C § 1710(e)(4).

In response, the OIG changed the word “and” to “or” as requested. Notably, each decision reviewed in the OIG sample denied a nonpresumptive condition. The scope and statistical sampling methodology of the OIG’s review are outlined in appendixes A and B, respectively. Moreover, some VBA decisions that denied nonpresumptive conditions contained more than one error. Error categories are discussed in appendix C.

For technical comment 5, VBA requested changes to the following sentence on page 1 of the report related to a current disability being the result of an in-service exposure and the definition of TERA: “The law established new exam and medical opinion requirements for veterans who were exposed to toxic substances during their military service—experiences that are collectively categorized as toxic exposure risk activity (TERA).” As with technical comment 1, VBA recommended this phrasing: “The law established new exam and medical opinion requirements when Veterans suffer from a current disability that is related to exposures to toxic substances during their military service; toxic exposure risk activities are those activities that require an entry in an exposure tracking record system or that the Secretary determines qualifies.” The OIG made no revisions for the same reasons provided in response to technical comment 1. Moreover, the OIG’s analysis illustrates that new exam and medical opinion requirements were created for veterans who were exposed to TERAs during their military service.

For technical comment 6, VBA again asserted that the OIG’s wording misstated the requirements for entitlement to disability compensation for nonpresumptive, TERA-related conditions (as VBA also argued in technical comment 2). The sentence at issue for technical comment 6, on page 1 of the report, reads, “By changing the exam and medical opinion threshold, the PACT Act created a new path for service connection for veterans when their conditions cannot be granted on a presumptive basis, generally called nonpresumptive conditions.” VBA recommended this replacement: “The PACT ACT created new requirements for when medical exams and opinions must be provided and obtained for claims based on nonpresumptive, TERA-related conditions.” The OIG replaced the word “created” with “opened” but did not make the proposed change for the same reasons indicated in regard to technical comment 2.

In technical comment 7, VBA requested that a bulleted item at the bottom of page 2 be changed to say: “Direct service connection means that the evidence establishes that a Veteran’s current disability was directly caused by, or aggravated by, their military service.” The OIG revised the sentence to read, “Direct service connection means that a veteran’s specific condition ‘was incurred in service,’” as defined by 38 C.F.R. § 3.1(k).⁷⁶ A footnote citation was added to support this revision.

In technical comment 8, VBA asked that the words “toxic exposure” in the following sentence on page 4 be changed to “TERA”: “In this stage, claims processors should assess whether a

⁷⁶ 38 C.F.R. § 3.1(k) (1961); VA Manual 21-1, “Overview of Direct SC.”

claim might be related to toxic exposure—particularly if a veteran does not explicitly assert it.” VBA proposed that there is a difference between participation in a TERA and experiencing a toxic exposure. The OIG did not make the requested change because, in this instance, the OIG used the term “toxic exposure” in keeping with guidance in effect at the time of the review, found in VBA’s letter from December 2022.⁷⁷

In technical comment 9, VBA requested that the OIG replace the words “risk of toxic exposure” with “TERA” in the following sentence on page 5: “Claims processors should review all available evidence to determine whether the veteran’s participation in an activity sufficiently establishes a risk of toxic exposure.” The OIG made the revision and added a footnote citation.

In technical comment 10, VBA requested that the first bullet on page 6, “cite any relevant law that applies to the claim, such as medical exams that show a link to a TERA,” be supplemented to specify that medical exams are not laws. To further clarify the relevant law, the OIG referenced the PACT Act and added a footnote citation.

In technical comment 11, VBA again suggested that the OIG’s phrasing misstated the requirements for entitlement to disability compensation for nonpresumptive, TERA-related conditions (as was the case for technical comments 2 and 6). The relevant sentence, on page 7, reads, “The PACT Act opened new pathways to service connection for veterans with nonpresumptive conditions related to toxic exposure during their military service.” VBA recommended this replacement: “Notably, the PACT ACT created new requirements for when medical exams and opinions must be provided and obtained for claims based on nonpresumptive, TERA-related conditions.” As noted in the OIG’s response to technical comment 2, the OIG’s statement in the report relates to the new examination requirements. For the same reasons the OIG did not make VBA’s requested changes based on technical comments 2 and 6, the OIG did not agree to the changes VBA proposed in technical comment 11.

For technical comment 12, VBA noted a missing space after the word “estimated” on page 9, which the OIG corrected.

Finally, for technical comment 13, VBA asked the OIG to change the language in example 1 on page 9, which read, “But because the veteran’s claimed nonpresumptive prostate condition was related to toxic exposure, a VBA claims processor should have requested a TERA exam and medical opinion as required.” VBA recommended this replacement: “Because the claim met the requirements for obtaining a TERA medical exam and opinion, a VBA claims processor should have requested a TERA exam and medical opinion as required.” The OIG revised the language in the example to align with VBA’s request to clarify that the veteran’s claim met the requirements to obtain a TERA medical exam and opinion.

⁷⁷ VBA Letter 20-22-10.

Appendix A: Scope and Methodology

Scope

The review team conducted its work from October 2023 through May 2025. The review focused on an initial population of 185,023 completed decisions for nonpresumptive conditions from May 1 through August 31, 2023, with at least one rating decision complete in the “life cycle status” associated with closed end-product series 010, 020, 030, 040 and 110.⁷⁸ The team estimated the actual population (those decisions within the review scope) to be about 122,800.⁷⁹ The difference was a result of sampled records that the team found were outside the review scope (for example, a condition that was granted on a non-toxic exposure risk activity (TERA) basis). For more details, see appendix B.

Each sampled action was a disability decision that denied benefits for a nonpresumptive condition for veterans who had a TERA during their military service.

Methodology

The team considered applicable laws, regulations, policies, procedures, and guidelines for processing claims for nonpresumptive conditions in accordance with TERA procedures under the PACT Act. The review team conducted site visits at the Waco (Texas) Regional Office, the St. Petersburg (Florida) Regional Office, and the Decision Review Operations Center, also in St. Petersburg, in January and February 2024. The team also interviewed veterans service organization and VA central office staff, including staff from the Compensation Service and the Office of Field Operations.

As stated above, the review analyzed 185,023 completed decisions for nonpresumptive conditions. The sampling plan entailed a stratified random sample of the population. Samples were drawn from two distinct populations of decisions completed from May 1 through August 31, 2023. The team looked at 30 decisions within the review period out of 24,214 denied decisions for nonpresumptive conditions for which no exam and medical opinion was requested and 30 decisions within the review scope out of 160,809 denied decisions that did have such requests. The errors were weighted to create population estimates for stratified samples.

The OIG team used VA’s electronic systems, including the Veterans Benefits Management System (VBMS), to review veterans’ electronic claims records and relevant documentation

⁷⁸ The Veterans Service Center uses the end-product system as its primary workload monitoring and management tool. Correct use of the end-product system supports proper control of pending workloads and appropriate work measurement credit—which is essential to substantiate staffing requirements and determine productive capacity.

⁷⁹ This value is rounded. Each sampled action was a decision that denied a nonpresumptive condition.

required to determine whether staff in the Veterans Benefits Administration correctly processed nonpresumptive conditions in accordance with TERA procedures under the PACT Act. Based on the potential risks for incorrect processing, the OIG focused on denied nonpresumptive conditions. See appendix B for more detail about the team's sample design and estimates.

Internal Controls

The review team assessed the internal controls significant to the review objective. This included an assessment of the five internal control components: control environment, risk assessment, control activities, information and communication, and monitoring.⁸⁰ In addition, the team reviewed the principles of internal controls as associated with the objective. The team identified one component and one principle as significant to the objective. The team identified internal control weaknesses during this review and proposed recommendations to address the deficiencies related to the following principle:

- Component: Control Activities
 - Principle 10: Management should design control activities to achieve objectives and respond to risk.

Data Reliability

The review team used computer-processed data from VA's Corporate Data Warehouse to analyze decisions for nonpresumptive conditions from May 1 through August 31, 2023. To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The team also assessed whether the data contained obvious duplicative records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the team compared the data received (for example, file numbers, rating completion dates, journal dates, and action station) to the records reviewed in the VBMS.

Testing of the datasets disclosed they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the records reviewed from VBMS did not disclose any problems with data reliability.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

⁸⁰ Government Accountability Office (GAO), *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

Appendix B: Statistical Sampling Methodology

Approach

To accomplish the objective, the team reviewed a stratified statistical sample of 60 decisions from May 1 through August 31, 2023, that denied benefits for nonpresumptive conditions under toxic exposure risk activity (TERA) procedures associated with the PACT Act. The strata consisted of denied decisions for nonpresumptive conditions for which no exam and medical opinion was requested and denied decisions that did have such requests. The team used statistical sampling, when applicable, to quantify the number of records documenting that VA staff had denied nonpresumptive conditions.

Population

The review population included 24,214 denied decisions for nonpresumptive conditions that did not have a request for an exam and medical opinion and 160,809 denied decisions that did have such requests—for a combined population of 185,023 during the review period. For the purposes of the review, the team estimated the combined population to be 122,822 conditions. The difference between the review population size and the estimated actual population size is a result of sampled records that the team found were outside the review scope (such as a condition that was granted on a non-TERA basis).

Sampling Design

With the OIG statisticians, the review team developed sampling methodology that required reviewing Veterans Benefits Administration (VBA) decisions that denied nonpresumptive conditions. The sampling plan for this project entailed a stratified random sample of the population. The first stratum consisted of nonpresumptive conditions with exams and medical opinions, and the second without. For each stratum, a simple random sample of 30 conditions (with 30 backups to replace out-of-scope conditions, if needed) was selected. The population strata are illustrated in table B.1.

Table B.1. Strata for Analysis

Strata	Number of cases reviewed
Denied conditions without requests for an exam and medical opinion	30
Denied conditions with requests for an exam and medical opinion	30

Source: VA OIG statistician's stratified population. Data were obtained from VBA's Corporate Data Warehouse.

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations. For example, the team estimated the error rate for all conditions by (1) summing the weights for all sampled conditions with errors and (2) dividing this value by the sum of all in-scope sampled conditions.

Projections and Margins of Error

The projection is an estimate of the population value based on the sample. The associated margin of error and confidence interval show the precision of the estimate. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value about 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate estimates, margins of error, and confidence intervals that account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of the sample review. While precision improves with larger samples, the rate of improvement decreases significantly as more records are added to the sample review.

Figure B.1 shows the effect of progressively larger sample sizes on the margin of error.

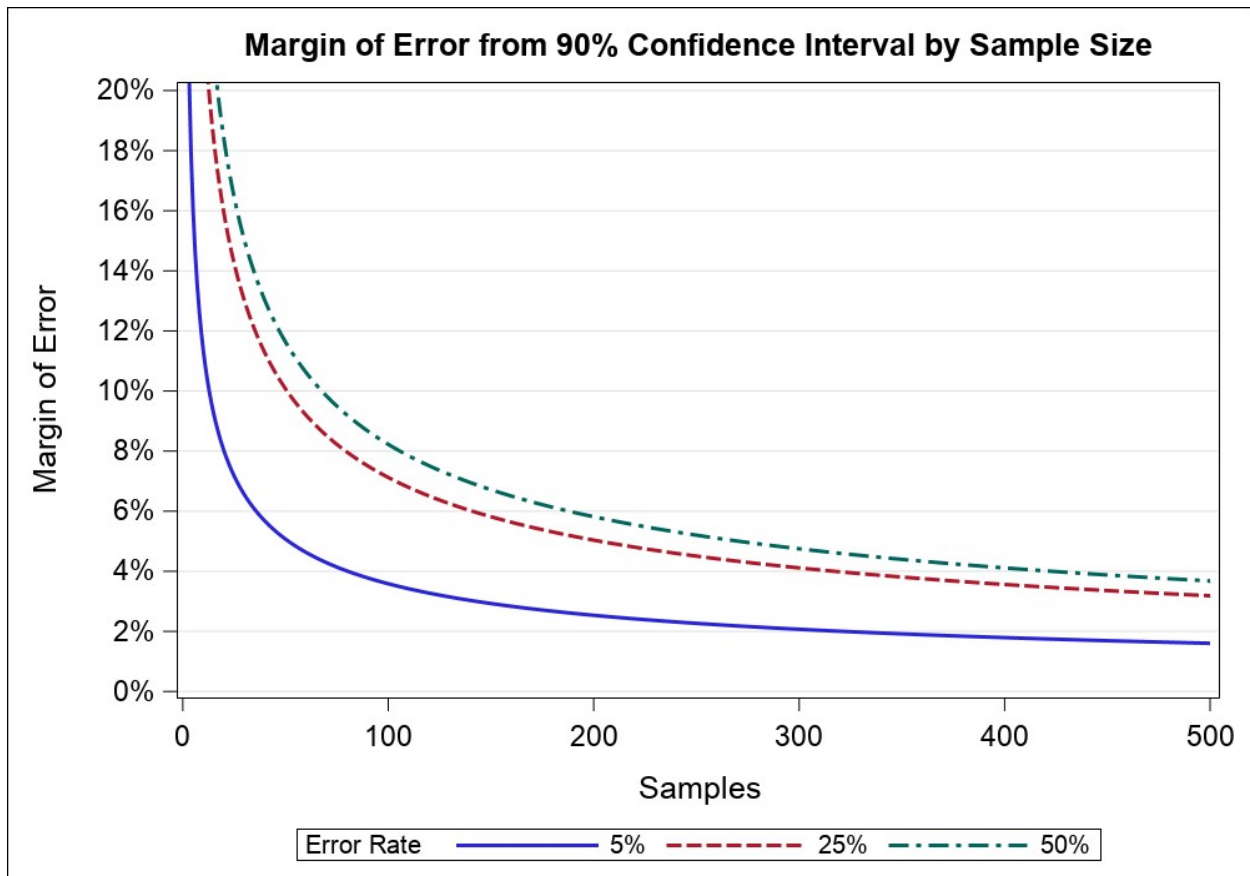


Figure B.1. Effect of sample size on margin of error.

Source: VA OIG statistician's analysis.

Projections

Table B.2 details the review team's analysis and projected results for nonpresumptive conditions under the PACT Act that were denied during the review period.

**Table B.2. Statistical Projections Summary for Review Population
and Combined Errors with a 90 Percent Confidence Interval**

Estimate name	Estimate number	Margin of error	Lower limit	Upper limit	Sample count
Total population	122,822	20,279	101,319	141,876	60 of 83
Count: At least one error	74,366	20,564	54,505	95,634	37 of 83
Error rate	60.5%	13.7%	46.3%	73.6%	37 of 60

Source: VA OIG analysis.

Note: The bolded numbers represent the values used for the estimates in the report's narrative.

The OIG sometimes uses the generalized Clopper–Pearson method for estimating percentages (such as error rates) and totals based on these percentages. The advantage of this method is that the resulting confidence limits are generally very conservative. Based on the method by which Clopper–Pearson intervals are constructed, the margin of error cannot be simply subtracted from or added to the estimate to get the lower and upper limits, respectively.

Appendix C: Error Categories in Sampled Claims

The PACT Act fundamentally changes the claims process by requiring an exam and medical opinion in nonpresumptive disability compensation claims when a veteran participated in a toxic exposure risk activity (TERA). The complexity of the requirements presents multiple opportunities for error if steps are missed or incorrectly performed. In addition to the report's examples of mistakes, the review team's analysis identified the following types of errors.

The Individual Longitudinal Exposure Record (ILER) inquiry was required but not requested. Claims processors must complete a series of training courses before they can access ILER, a joint Department of Defense–VA web-based application that links a veteran to military exposures or deployments.⁸¹ As of October 2024, ILER provided access to over six million veteran records and acts as a single access point to deployment histories—including time, location, military and nonmilitary deployment data, military occupational specialty, occupational hazard data, environmental hazards known or later found, performance, diagnosis, treatment, and laboratory data.⁸²

Effective January 1, 2023, the use of ILER is required when processing certain claims for benefits.⁸³ According to the Veterans Benefits Administration (VBA), documenting the use of ILER in a veteran's eFolder is required for TERA claims. Claims processors should download the complete ILER results to substantiate a claim and then upload these results to the Veterans Benefits Management System (VBMS). If a veteran is not found in ILER—or the individual exposure summary information indicates the veteran does not have an exposure record—claims processors must capture a screenshot to document that there is no toxic exposure–related evidence in ILER.⁸⁴ A claims processor's failure to conduct an ILER search could result in a missed opportunity to identify veterans who are entitled to benefits under TERA.

TERA was not discussed in the rating decision or in favorable findings. A group of specially qualified VBA employees vested with the authority to make formal decisions—called rating

⁸¹ Office of Field Operations et al., "Guidance for using Individual Longitudinal Exposure Record (ILER) when processing certain claims for service connection (SC)," memorandum to the Veterans Benefits Administration et al., October 4, 2024.

⁸² Office of Field Operations et al., "Guidance for using ILER when processing certain claims for SC."

⁸³ Office of Field Operations et al., "Guidance for using ILER when processing certain claims for SC." Claims processors must perform an ILER inquiry to determine whether a veteran participated in a TERA unless it is a claim for an increase, an active-duty predischARGE claim, or a claim that meets one of the exceptions for a TERA exam under the PACT Act standard operating procedure (for example, a knee condition due to blunt force trauma), or it can otherwise be granted a service connection based on the evidence of record (such as presumed service connection).

⁸⁴ Office of Field Operations et al., "Guidance for using ILER when processing certain claims for SC." The screenshot should be converted into an acceptable format that can be uploaded to VBMS.

decisions—are responsible for deciding veterans’ entitlement to benefits.⁸⁵ A rating decision documents a VA regional office’s formal determination regarding one or more issues of benefit entitlement. One of the major decisions relating to entitlement is service connection for veterans’ diseases and injuries. The rating decision states the determinations made and provides an explanation supporting each decision.⁸⁶

If TERA language is missing from a rating decision, a veteran would be unable to know whether the TERA was considered as a theory of service connection for their denied claim. They also would not know about any elements required to grant the claim that were not met or any favorable findings such as a concession of exposure.

A TERA claim attribute is missing. Certain claim types require specific designators to help with appropriate processing, tracking, and movement.⁸⁷ Each regional office has a responsibility to identify any contention that may have a claim attribute—also known as a special issue—associated with it. These claim-specific indicators can represent a certain claim type, disability, disease, or other special notation that is relevant only to a particular claim.

Claim attributes must be identified and noted when applicable. If a claim attribute exists and applies to a claim, it is required.⁸⁸ The “TERA Conceded” or “TERA Not Conceded” attributes should be applied only to explicit claims based on a TERA or implicit TERA claims being decided (whether grants or denials) where TERA participation is relevant to the decision.⁸⁹ A failure to apply claim attributes could affect data integrity related to PACT Act reporting metrics.

A TERA memorandum was required and not completed. The purpose of a TERA memorandum is to establish documentation in the eFolder of whether a veteran experienced a TERA.⁹⁰ It will also serve as a concise summary of exposure information for the medical examiner so they have sufficient details about potential exposures and can arrive at a well-informed opinion. If VBA staff do not complete a TERA memorandum and establish documentation in the eFolder when required for veterans who have toxic exposure, VBA could

⁸⁵ VA Manual 21-1, “Definition of Rating Activity,” June 30, 2020, topic V.i.1.A.1.a in *Adjudication Procedures Manual*; VA Manual 21-1, “Specific Issues Requiring a rating Decision,” June 30, 2020, topic V.i.1.A.1.b in *Adjudication Procedures Manual*.

⁸⁶ VA Manual 21-1, “Definition: Rating Decision,” May 10, 2016, topic V.iv.1.A.1.b in *Adjudication Procedures Manual*.

⁸⁷ VBA, “Priority Claims Frequently Asked Questions (FAQs),” February 22, 2023.

⁸⁸ VBA, “Priority Claims Frequently Asked Questions (FAQs);” VA Manual 21-4, “app. E. Index of Corporate Flashes and Special Issues,” updated October 16, 2024, topic 2.a.

⁸⁹ For implicit TERA claims, “relevant to the decision” means that a veteran’s experience in a TERA (or lack thereof) directly affected the outcome of the decision. That is, the contention was granted based on a TERA or denied based on either no diagnosis in the TERA exam or the medical opinion finding no link to a TERA.

⁹⁰ TERA memoranda should be included in the eFolder to provide justification for ordering or not ordering the exam and medical opinion required under the PACT Act’s examination threshold. 38 U.S.C § 1168.

miss opportunities to identify and develop claims from veterans who are entitled to benefits under the TERA provisions of the PACT Act.

A higher-level review was not returned as a duty-to-assist error. Veterans can elect to have a higher-level review when they disagree with VA’s decision and they want a senior technical expert to reevaluate it with a fresh look at the previous decision.⁹¹ A higher-level review is a closed record; as a result, it is based only on the evidence that was part of the record at the time the previous claim was decided.

The higher-level reviewer may identify deficiencies with the evidence gathered in the previous claim, including missing medical evidence or incomplete medical opinions. Such deficiencies are called “duty-to-assist errors.”⁹² In these cases, the higher-level reviewer issues guidance to VA staff on how to gather the relevant evidence and completes a decision that notifies the veteran that an error was found in the prior decision. Thereafter, the higher-level review is closed. When a higher-level review with an identified error is closed, a new supplemental claim is established to address the error.

Any higher-level reviews affected by the PACT Act that result in returns for the gathering of evidence will be treated as duty-to-assist errors. 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 if PACT Act gathering of evidence was not previously completed or was completed incorrectly, the technical expert must return the higher-level review as a duty-to-assist error. When this process is not followed, it could affect veterans’ disability compensation and other benefits.

Table C.1 details the categories of errors found in the OIG’s sample of denied nonpresumptive conditions that did not include exam and medical opinion requests.

**Table C.1. Denials That Did Not Include a Request
for an Exam and Medical Opinion**

Error category condition	Number of errors in explicit claim*	Number of errors in implicit claim*
A required TERA exam and medical opinion was not requested†	2	3

⁹¹ Higher-level reviews consist of de novo reviews of the issue(s) identified by requesters on a completed prescribed form. De novo review means the reviewer reexamines and readjudicates the claim in question without deference to the prior decision. VA Manual 21-5, “Higher Level Review Procedures,” updated April 20, 2022, chap. 5 in *Appeals and Reviews*, topic 1.a.

⁹² VA has a “duty to assist claimants in obtaining evidence to substantiate all substantially complete initial and supplemental claims.”

Error category condition	Number of errors in explicit claim*	Number of errors in implicit claim*
A TERA medical opinion was requested but not needed because an exception applied [§]	1	0
The Individual Longitudinal Exposure Record (ILER) inquiry was required but not requested	1	3
TERA was not discussed in the rating decision	4	9
TERA was not discussed in favorable findings	1	4
The TERA claim attribute was missing	2	4
A TERA memorandum was required and not completed	1	3
A higher-level review was not returned as a duty-to-assist error [‡]	0	4
Total errors	12	30

Source: VA OIG analysis.

* Some decisions for nonpresumptive conditions had multiple errors. An explicit claim is one in which a veteran mentions a specific toxic exposure. With an implicit claim, a veteran does not specifically claim a condition as caused by toxic exposure, but the veteran's record shows participation in a TERA.

‡ These errors have the potential to affect veterans' benefits.

§ Although a TERA examination was not requested, a TERA medical opinion was requested when an exception applied.

Table C.2 details categories of errors found in the OIG's sample of denied nonpresumptive conditions that included exams and medical opinion requests.

Table C.2. Denials That Did Include a Request for an Exam and Medical Opinion

Error category condition	Number of errors in explicit claim*	Number of errors in implicit claim*
A TERA exam and medical opinion was required but not requested [‡]	2	4
A TERA exam and medical opinion was requested, but the claims processor failed to identify relevant evidence for the medical examiner [§]	1	0
A TERA exam and medical opinion was requested when an exception applied	0	3
The Individual Longitudinal Exposure Record (ILER) inquiry was required but not requested	3	1
TERA was not discussed in the rating decision	4	7
TERA was not discussed in favorable findings	2	4
The TERA claim attribute was missing	5	6
A TERA memorandum was required and not completed	1	1

Better Controls Needed to Accurately Determine Decisions for Veterans'
Nonpresumptive Conditions Involving Toxic Exposure Under the PACT Act

Error category condition	Number of errors in explicit claim*	Number of errors in implicit claim*
A higher-level review was not returned as a duty-to-assist error [§]	0	0
Total errors	18	26

Source: VA OIG analysis.

* Some decisions for nonpresumptive conditions had multiple errors. An explicit claim is one in which a veteran mentions a specific toxic exposure. With an implicit claim, a veteran does not specifically claim a condition as caused by toxic exposure, but the veteran's record shows participation in a TERA.

‡ In these instances, examinations were requested, but the requests did not also include a TERA-specific exam and medical opinion. These errors have the potential to affect veterans' benefits.

§ These errors also have the potential to affect veterans' benefits.

Appendix D: VA Management Comments

Department of Veterans Affairs Memorandum

Date: July 11, 2025

From: Under Secretary for Benefits (20)

Subj: Office of Inspector General (OIG) Draft Report – Better Controls Needed to Accurately Determine Decisions for Veterans' Nonpresumptive Conditions Involving Toxic Exposure Under the PACT Act [Project No. 2023-03357-AE-0135] — [VIEWS 13202874]

To: Assistant Inspector General for Audits and Evaluations (52)

1. Thank you for the opportunity to review and comment on the OIG draft report: Better Controls Needed to Accurately Determine Decisions for Veterans' Nonpresumptive Conditions Involving Toxic Exposure Under the PACT Act. The Veterans Benefits Administration (VBA) provides the attached response to the draft report.

The OIG removed point of contact information prior to publication.

(Original signed by)

J. Margarita Devlin

Acting Principal Deputy Under Secretary for Benefits

Performing the Delegable Duties of the Under Secretary for Benefits

Attachment

Veterans Benefits Administration (VBA)

Comments on OIG Draft Report

**Better Controls Needed to Accurately Determine Decisions for Veterans' Nonpresumptive
Conditions Involving Toxic Exposure Under the PACT Act**

(Project Number (2023-03357-AE-0135))

The Veterans Benefits Administration (VBA) concurs with OIG's draft report findings and provides the following general comments:

The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, which was signed into law on August 10, 2022, marked the largest and most significant expansion of Veterans' care and benefits in decades. VBA took immediate action to ensure claims processors received guidance on processing PACT Act claims and, in December 2022, VBA provided the training needed to begin processing these claims as quickly as possible. This action ensured all front-line claims processors who handle claims for disability compensation benefits based on toxic exposure were ready to process claims on January 1, 2023, and could accurately apply the provisions of the law. To ensure all PACT Act related information was easily accessible to claims processors, VBA established a comprehensive intranet site for storing all guidance documents, frequently asked questions, quality and training information, communications, and other important links.

Although VBA issued subregulatory guidance to aid claims processors, VA is still in the process of fully implementing the provisions of the PACT Act. Certain policy determinations that are necessary to operationalize aspects of the PACT legislation, most notably several provisions related to toxic exposure risk activity (TERA), are still under deliberation. Further, VBA published a proposed rule initiating the process of implementing the PACT Act into regulations; however, the final rule rulemaking package has not been finalized to date. VBA additionally notes that it cannot resolve all issues by simply publishing PACT Act related content into the M21-1, Adjudication Procedures Manual. Pursuant to the Administrative Procedure Act. Substantive rules must be promulgated through notice-and-comment procedures, and statements of general policy or interpretations of general applicability must be published in the Federal Register.

VBA provides the following technical comments:⁹³

[Comment 1] Page i, first paragraph, second sentence:

"Disability benefits may be awarded when veterans are exposed to toxic substances during their military service; these experiences are collectively categorized as toxic exposure risk activity (TERA)."

VBA Comment: Disability compensation is available to Veterans who experience a current disability as a result of in-service exposure. However, exposure by itself does not lead to entitlement to disability compensation. Further, a toxic exposure risk activity is statutorily defined as "any activity (i) that requires a corresponding entry in an exposure tracking record system... for the Veteran who carried out the activity; or (ii) that the Secretary determines qualifies... when taking into account what is reasonably prudent to protect the health of Veterans." VA recommends the following language:

⁹³ Due to changes made in the final editing process, some page numbers referenced in VA's comments have been revised. The OIG team made responsive changes or clarifications throughout the report.

“Disability benefits may be awarded when Veterans suffer from a current disability that is related to exposures to toxic substances during their military service; toxic exposure risk activities are those activities that require an entry in an exposure tracking record system or that the Secretary determines qualifies.”

[Comment 2] Page i, second paragraph, last sentence:

“Notably, the law also created a new path for service connection for veterans with nonpresumptive, TERA-related conditions.”

VBA Comment: This sentence arguably seems to state that the PACT Act altered the requirements for entitlement to disability compensation for nonpresumptive, TERA-related conditions. However, that is incorrect, instead the PACT Act created a new requirement for when medical exams and opinions must be provided and obtained under 38 U.S.C. § 1168. VA recommends the following language:

“Notably, the law also created new requirements for when medical exams and opinions must be provided and obtained for claims based on nonpresumptive, TERA-related conditions.”

[Comment 3] Page i, third paragraph, last sentence:

“For VBA claims processors, that has meant certain additional work may be needed, such as (1) verifying that a veteran who makes a claim had participated in a TERA and (2) requesting a TERA medical exam and opinion to confirm the existence of the veteran’s nonpresumptive condition, which could establish a connection between that condition and the veteran’s toxic exposure during service.”

VBA Comment: Pursuant to 38 U.S.C. § 1168 (a)(1)(b), the purpose of the opinion is to opine on whether there is a nexus between the claimed disability and TERAs. VA recommends the following language

“For VBA claims processors, that has meant certain additional work may be needed, such as (1) verifying that a Veteran who makes a claim had participated in a TERA and (2) requesting a TERA medical exam and opinion to confirm the existence of the Veteran’s nonpresumptive condition and provide evidence regarding whether there is a connection between that condition and the Veteran’s participation in TERAs.”

[Comment 4] Page ii, third paragraph, fourth sentence:

“For example, some errors showed that claims processors did not accurately identify toxic exposure claims, research and verify veterans’ participation in a TERA, request a medical exam and opinion regarding toxic exposure, and appropriately include key information in decisions for nonpresumptive conditions.”

VBA Comment: VBA requests OIG revise this sentence to reflect these error types were not found on all claims together but found throughout the sample individually. VBA recommends the following language:

“For example, some errors showed that claims processors did not accurately identify toxic exposure claims, research and verify Veterans’ participation in a TERA, request a medical exam and opinion regarding toxic exposure, or appropriately include key information in decisions for nonpresumptive conditions.”

[Comment 5] Page 1, second paragraph, second sentence:

“The law established new exam and medical opinion requirements for veterans who were exposed to toxic substances during their military service—experiences that are collectively categorized as toxic exposure risk activity (TERA).”

VBA Comment: Disability compensation is available to Veterans who experience a current disability as a result of in-service exposure. However, exposure by itself does not lead to entitlement to disability

compensation. Further, a toxic exposure risk activity is statutorily defined as “any activity (i) that requires a corresponding entry in an exposure tracking record system... for the Veteran who carried out the activity; or (ii) that the Secretary determines qualifies... when taking into account what is reasonably prudent to protect the health of Veterans.” VBA recommends the following language:

“The law established new exam and medical opinion requirements when Veterans suffer from a current disability that is related to exposures to toxic substances during their military service; toxic exposure risk activities are those activities that require an entry in an exposure tracking record system or that the Secretary determines qualifies.”

[Comment 6] Page 1, second paragraph, last sentence:

“By changing the exam and medical opinion threshold, the PACT Act created a new path for service connection for veterans when their conditions cannot be granted on a presumptive basis, generally called nonpresumptive conditions.”

VBA Comment: This sentence arguably seems to state that the PACT Act altered the requirements for entitlement to disability compensation for nonpresumptive, TERA-related conditions. However, that is incorrect, instead the PACT Act created a new requirement for when medical exams and opinions must be provided and obtained under 38 U.S.C. § 1168. VBA recommends the following language:

“The PACT Act created new requirements for when medical exams and opinions must be provided and obtained for claims based on nonpresumptive, TERA-related conditions.”

[Comment 7] Page 2, second section, first bullet

“Direct service connection means a specific condition began during a veteran’s service.”

VBA Comment: Direct service connection is not tied to the temporal factor of when a condition began. For example, a condition that developed after service could still be granted on a direct basis as long as the evidence directly established the nexus, without the need for a presumption. VBA recommends the following language:

“Direct service connection means that the evidence establishes that a Veteran’s current disability was directly caused by, or aggravated by, their military service.”

[Comment 8] Page 4, second paragraph, first bullet, second sentence:

“In this stage, claims processors should assess whether a claim might be related to toxic exposure—particularly if a veteran does not explicitly assert it.”

VBA Comment: There is a difference between participation in a TERA and experiencing a toxic exposure. VBA recommends the following language:

“In this stage, claims processors should assess whether a claim might be related to TERA—particularly if a Veteran does not explicitly assert it.”

[Comment 9] Page 5, first paragraph, second section, second sentence:

“Claims processors should review all available evidence to determine whether the veteran’s participation in an activity sufficiently establishes a risk of toxic exposure.”

VBA Comment: There is a difference between participation in a TERA and experiencing a toxic exposure. VBA recommends the following language:

“Claims processors should review all available evidence to determine whether the Veteran’s participation in an activity sufficiently establishes a TERA.”

[Comment 10] Page 6, first bullet

“cite any relevant law that applies to the claim, such as medical exams that show a link to a TERA;

VBA Comment: Medical exams are not laws. VBA recommends for this language to be a separate bullet.

[Comment 11] Page 7, first paragraph, first sentence”

“The PACT Act opened new pathways to service connection for veterans with nonpresumptive conditions related to toxic exposure during their military service.”

VBA Comment: This sentence arguably seems to state that the PACT Act altered the requirements for entitlement to disability compensation for nonpresumptive, TERA-related conditions. However, that is incorrect, instead the PACT Act created a new requirement for when medical exams and opinions must be provided and obtained under 38 U.S.C. § 1168. VA recommends the following language:

“Notably, the PACT ACT created new requirements for when medical exams and opinions must be provided and obtained for claims based on nonpresumptive, TERA-related conditions.”

[Comment 12] Page 9, first paragraph, first sentence:

“Among the estimated 122,800 decisions for nonpresumptive conditions that were denied from May 1 through August 31, 2023, the OIG team’s review of a statistical sample of 60 decisions revealed that 37 had at least one error.”

VBA Comment: Space needed after “estimated”; “Among the estimated 122,800 decisions...”.

[Comment 13] Page 9, fourth paragraph, Example 1, third sentence:

“But because the veteran’s claimed nonpresumptive prostate condition was related to toxic exposure, a VBA claims processor should have requested a TERA exam and medical opinion as required.”

VBA Comment: This is presuming the nexus. VBA recommends the following language:

“Because the claim met the requirements for obtaining a TERA medical exam and opinion, a VBA claims processor should have requested a TERA exam and medical opinion as required.”

The following comments are submitted in response to the recommendations in the OIG draft report:

Recommendation 1: Review all processing errors on cases the OIG team identified, correct those errors, and report back on the results of those actions.

VBA Response: Concur. VBA has reviewed and corrected the processing errors. VBA is currently conducting a quality review of these cases to ensure the corrective actions were properly completed.

Target Completion Date: September 30, 2025

Recommendation 2: Collaborate with key stakeholders to prioritize consolidating the guidance for PACT Act claims processing into the Adjudication Procedures Manual.

VBA Response: Concur. VBA will collaborate with key stakeholders and provide OIG with a plan for how VBA will prioritize consolidating the guidance for PACT Act claims processing into the Adjudication Procedures Manual.

Target Completion Date: July 31, 2025

Recommendation 3: Evaluate the effectiveness of control activities specifically for denials of nonpresumptive conditions under toxic exposure risk activity procedures and determine where new or stronger controls are needed.

VBA Response: Concur. VBA will evaluate the effectiveness of control activities specifically for denials of nonpresumptive conditions under toxic exposure risk activity procedures and determine where new or stronger controls are needed.

Target Completion Date: August 31, 2025

*For accessibility, the original format of this appendix has been modified
to comply with Section 508 of the Rehabilitation Act of 1973, as amended.*

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