

# Veterans Benefits Administration

## PACT Act Briefing

### Veteran Service Organizations/Military Service Organizations

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# PACT Act Overview

- On August 10, 2022, President Biden signed the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, also known as the PACT Act, into law.
- Outlines specific responsibilities placed on the Secretary of Veterans Affairs to improve health care and benefits for Veterans exposed to burn pits and other toxic substances during their military service.
- Provides generations of Veterans and their survivors with the care and benefits they've earned and deserve.

# What VBA is Doing

VA is already working to implement the PACT Act, including (but not limited to):

- Expanding hiring and training of claims processors to accommodate a significant increase in claims;
- Issued interim guidance to regional offices on September 9, 2022
- Automating processing of new claims related to toxic exposure conditions
  - For example, auto-flash will be added to verify service in 38 U.S.C. § 1119(c) countries
- Improving and expediting our processes to ensure all toxic-exposed Veterans can fully access VA health care and benefits.
- Established a new Military Exposures Team (MET) that will provide dedicated focus and resources to issues related to military environmental exposures.

# Titles of the PACT Act

**Title I:** Expansion of Health Care Eligibility

**Title II:** Toxic Exposure Presumption Process

**Title III:** Improving the Establishment of Service Connection Process for Toxic Process for Toxic-Exposed Veterans

**Title IV:** Presumptions of Service Connection

**Title V:** Research Matters

**Title VI:** Improvement of Resources and Training Regarding Toxic-Exposed Veterans

**Title VII:** Resourcing

**Title VIII:** Records and Other Matters

**Title IX:** Improvement of Workforce of Department of Veterans Affairs

Focus of Briefing today will be areas highlighted in yellow.



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# Title II

## Toxic Exposure Presumption Process

**Section 202** establishes a new framework in Chapter 11 of Title 38 U.S.C. to establish, modify or remove presumptions of service connection based on toxic exposure.

VA must establish a process regarding the review of recommendations for presumptive disabilities associated with toxic exposure.

## Outreach Requirements Disability Compensation

### Section 203

- Obligates VBA to identify previously denied claims for service-connected compensation for a condition(s) that VA establishes or modifies as a presumptive condition.
- VBA must then notify the identified claimants that they may submit a supplemental claim for the condition under new 38 U.S.C. § 1167.
- VA will also publish this notice on the Department's website.
- VBA must conduct similar outreach for any future presumption.

# Title II (cont'd)

## Outreach and Readjudication Requirements for Dependency and Indemnity Compensation (DIC)

### Section 204

- This section requires VBA to conduct outreach to DIC claimants with previously denied DIC claims whenever a law, regulation, or Federal court decision establishes or modifies a presumption of service connection.
- A readjudication of such claims, at the election of the claimant, would be needed to re-evaluate the original claim.
- Claims may be granted as if eligibility existed at the time of original application (Nehmer-like provision).

# Title III

## Improving the Establishment of Service Connection Process for Toxic-Exposed Veterans

### Section 302

- This section adds new 38 U.S.C. § 1119, which requires use of the Individual Longitudinal Exposure Record (ILER), ILER-like tool or similar database during claim adjudication.
- Claims processors may use ILER, or similar exposure tracking system, when determining in-service exposure.
- VA will establish a list of chemicals, substances and airborne hazards and presumes that a covered Veteran was exposed to the identified substances, chemicals, and airborne hazards during the qualifying service.

# Title III

## Medical nexus examinations for toxic exposure risk activities

### Section 303

- New 38 U.S.C. § 1168 requires that when a claim for service-connected disability is submitted, with evidence of a disability and evidence of participation in a toxic exposure risk activity during service, unless the evidence of record is sufficient to establish service connection for the disability, VBA shall request an examination, along with a medical opinion, to ascertain total potential exposure and the combined effect of toxic exposure risk activities.
- The C&P Examiner shall consider the potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities.
- There is an exception for cases where there is no indication of an association between the disability claimed and the toxic exposure risk activity.

# Title IV – Presumption of Service Connection

## Specifically, the PACT Act will:

Empower VBA to deliver benefits to Veterans suffering from more than 20 toxic exposure-related conditions, and to their survivors

**ONE GOAL ABOVE ALL ELSE – GETTING VETERANS THE BENEFITS AND CARE THEY’VE EARNED AND DESERVE**



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# Gulf War Era and Post-9/11 Eligibility

More than 20 burn pit and other toxic exposure presumptive conditions were added. These presumptive conditions expand benefits for Gulf War era and post-9/11 Veterans.

| CANCERS:                |                     | OTHER CONDITIONS:                       |                                              |
|-------------------------|---------------------|-----------------------------------------|----------------------------------------------|
| Brain Cancer            | Lymphatic Cancer    | Asthma (post-discharge diagnosis)       | Interstitial Lung Disease (ILD)              |
| Glioblastoma            | Neck Cancer         | Chronic Rhinitis                        | Pleuritis                                    |
| Respiratory Cancer      | Pancreatic Cancer   | Chronic Sinusitis                       | Pulmonary Fibrosis                           |
| Gastrointestinal Cancer | Reproductive Cancer | Constructive/Obliterative Bronchiolitis | Sarcoidosis                                  |
| Head Cancer             | Kidney Cancer       | Emphysema                               | Chronic Bronchitis                           |
| Lymphoma                | Melanoma            | Granulomatous Disease                   | Chronic Obstructive Pulmonary Disease (COPD) |

# Reproductive Cancers

VA considers the following cancers consistent with “Reproductive Cancers”

➤ Female

- Cervical cancer
- Ovarian cancer
- Uterine cancer
- Vaginal cancer
- Vulvar cancer
- Breast cancer

➤ Male

- Testicular cancer
- Penile cancer
- Prostate cancer

# Gulf War Era and Post-9/11 Eligibility

If a Veteran served in any of these locations and time periods, they are eligible for the new Gulf War-related presumptions. This includes the airspace above any of these locations.

| On or After September 11, 2001 | On or After August 2, 1990     |
|--------------------------------|--------------------------------|
| Afghanistan                    | Bahrain                        |
| Djibouti                       | Iraq                           |
| Egypt                          | Kuwait                         |
| Jordan                         | Oman                           |
| Lebanon                        | Qatar                          |
| Syria                          | Saudi Arabia                   |
| Uzbekistan                     | Somalia                        |
| Yemen                          | The United Arab Emirates (UAE) |



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# Vietnam Era

The PACT ACT added:

Two new Agent Orange presumptive conditions:

- Monoclonal gammopathy of undetermined significance (MGUS)
- High blood pressure (also called hypertension)

Five new Agent Orange presumptive exposure locations:

- Any U.S. or Royal Thai military base in **Thailand** from January 9, 1962, through June 30, 1976
- **Laos** from December 1, 1965, through September 30, 1969
- **Cambodia at Mimot or Krek, Kampong Cham Province** from April 16, 1969, through April 30, 1969
- **Guam or American Samoa**, or in the territorial waters of each, from January 9, 1962, through July 31, 1980
- **Johnston Atoll**, or on a ship that called at that location, from January 1, 1972, through September 30, 1977

# Radiation

The PACT ACT added three new response efforts to the list of radiation exposure presumptive locations:

| Response Effort                                                                                                              | Dates                                 |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| Cleanup of <b>Enewetak Atoll</b>                                                                                             | January 1, 1977 – December 31, 1980   |
| Cleanup of the Air Force B-52 bomber carrying nuclear weapons off the coast of <b>Palomares, Spain</b>                       | January 17, 1966 – March 31, 1967     |
| Response to the fire onboard an Air Force B-52 bomber carrying nuclear weapons near <b>Thule Air Force Base in Greenland</b> | January 21, 1968 – September 25, 1968 |

# Notable VHA Provision

## Section 603

- The Veterans Health Administration (VHA) is required to screen all enrolled Veterans to help address potential toxic exposures they may have experienced during military service.
- The screening will occur at least once every 5 years and will include questions such as whether the Veteran was exposed to open burn pits during service.
- ***The completion of the VHA Toxic Exposure Screen does not constitute a claim for VA disability compensation.***
- However, claims processors are aware of this information and will utilize the report when adjudicating claims that may be related to a toxic exposure.

# Getting Benefits

- Veterans can file a claim for the new presumptive conditions (VSOs can assist).
  - **New Claim** – Veteran has never filed a claim for the presumptive condition
  - **Supplemental Claim** – the presumptive condition was previously denied but is now considered to be presumptive
- If VA denied one of the new presumptive conditions in the past but the Veteran may now be eligible for benefits, VA will try to contact them. However, there is no need to wait to file a Supplemental Claim.
- VA is prioritizing the claims of Veterans with cancer to make sure that they get timely access to the care and benefits they need.
- **Pending Claims** – if a Veteran's condition was added to the list of presumptive conditions after the claim was filed, VA will consider it on a presumptive basis.
- Presumptive conditions do not require proof that military service caused the condition. Veterans only need to meet the service requirements and have a current diagnosis of the presumptive condition. Veterans should submit any supporting documentation to assist with their claim.
- Survivors may be eligible for VA benefits under the PACT ACT. They will need to meet certain requirements to qualify.

# Reminder – VA Representation

- All claimants have the right to representation before the Department in claims affecting the payment of benefits.
- Claimants before VA may choose representation by Veterans Service Organizations (VSOs), attorneys, agents, and other accredited individuals to ensure that such claimants have responsible, qualified representation to assist in the preparation, presentation, and prosecution of claims for Veterans' benefits.
- Requirements for declaration of representation
  - Accredited representative of a VSO – Complete VA Form 21-22
  - Accredited agent or attorney – Complete VA Form 21-22a
  - Non-licensed individual (one-time, one-claim basis) – Comply with 38 CFR § 14.630 and complete VA Form 21-22a
- **Important:** If the claimant's attorney is not listed on [OGC's accreditation search page](https://www.va.gov/ogc/apps/accreditation/) at <https://www.va.gov/ogc/apps/accreditation/>, the regional office's Agent and Attorney Fee Coordinator will advise the attorney that VA will not recognize them until accredited, and advise claimant that they may seek other representation, or proceed without representation until the attorney is accredited.

# Timelines/Next Steps

## Timelines:

- VA is considering all presumptive conditions established by the PACT Act as of the date the bill was signed into law (8/10/22).
- On August 10, 2022, VBA provided immediate guidance to claims processors to hold claims under the PACT Act pending issuance of additional guidance.
- VBA provided more comprehensive interim guidance on September 9, 2022
- Potentially eligible Veterans and survivors are encouraged to apply now.

## Next Steps:

- VA expects to start processing claims for compensation under the PACT Act in January 2023.
- VBA is currently developing regulations to implement the PACT Act, which is a lengthy process.
- Prior to rulemaking, VBA will issue sub-regulatory guidance to allow claims processors to begin processing these claims on January 1, 2023.

# PACT Act Resources

[About the PACT Act - VA INSIDER](#)

[FACT SHEET: PACT Act Delivers on President Biden's Promise to America's Veterans - The White House](#)

[The PACT Act And Your VA Benefits | Veterans Affairs](#)

[S.3373 - 117th Congress \(2021-2022\): Honoring our PACT Act of 2022 | Congress.gov | Library of Congress](#)



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