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Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Staff Incorrectly Processed Claims When Denying Veterans' Benefits for Presumptive Disabilities Under the PACT Act

Review

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Executive Summary

The Veterans Benefits Administration (VBA) provides benefits and services to veterans, their families, and their survivors in recognition of their service to the nation.¹ VBA's disability compensation program provides tax-free monetary payments to veterans for the effects of service-connected disabilities—meaning those caused by diseases or injuries incurred or aggravated during active military service.²

Service connection for a claimed disability can be established in several ways, both directly and through a presumption. A particular disease or disability incurred in military service is considered direct service connection. Establishing direct service connection is accomplished by providing evidence of a veteran's current disability related to an event, injury, or disease that happened during their service.³ This link may be established through evidence of continuous symptoms or a medical opinion. VBA also presumes that some diseases or disabilities were incurred in or aggravated by service, even without evidence of such disease or disability during that service.⁴ This type of service connection, which is established on a presumptive basis, requires evidence of an in-service event, such as exposure to a toxic substance, as well as a diagnosis for a presumptive disease or disability that has been associated with that event.

VBA may require an examination or medical opinion as part of the claims process. Generally, the examination is intended to provide evidence of the diagnosis and the level of impairment caused by the claimed disability, and the medical opinion is intended to link a claimed disability with military service.⁵

On August 10, 2022, the PACT Act became law, significantly expanding veterans' eligibility for disabilities that VA presumes are related to exposure to toxic substances.⁶ If the veteran's disability is considered presumptive—such as service in a location during a time when exposure to toxic substances is presumed—the link to service is satisfied and no medical opinion is

¹ VA Functional Organization Manual, October 8, 2013, ver. 8 (updated 2023), page 50.

² "About VBA" (web page), VBA, accessed June 4, 2024, <https://benefits.va.gov/BENEFITS/about.asp>; 38 C.F.R. § 3.1(k) (1961).

³ VA Manual 21-1, "Overview of Direct SC," updated September 15, 2021, topic V.ii.2.A.1.a in *Adjudication Procedures Manual*.

⁴ VA Manual 21-1, "Overview of Presumptive SC," updated September 27, 2022, topic V.ii.2.B.1.a in *Adjudication Procedures Manual*.

⁵ 38 C.F.R. § 3.159(c)(4) (2022); VA Manual 21-1, "Scope of Practice Relative to Examination," updated May 31, 2022, topic IV.i.2.A.1.d in *Adjudication Procedures Manual*; VA Manual 21-1, "Evidentiary Standards for Findings an Examination or Opinion Necessary," updated December 28, 2022, sec. IV.i.1.B.

⁶ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759.

needed.⁷ VBA was faced with implementing the PACT Act legislation in a matter of months and started fully processing PACT Act claims on January 1, 2023.⁸

The VA Office of Inspector General (OIG) conducted this review to determine whether VBA staff processed PACT Act claims for presumptive disabilities in accordance with applicable laws and procedures before denying them—recognizing the potential impact on eligible veterans if claims were improperly denied.⁹

What the Review Found

The OIG found that claims processors did not consistently follow VBA procedures on when to request examinations or medical opinions and made errors in processing claims related to presumptive disabilities under the PACT Act that were ultimately denied.¹⁰ The OIG review team found errors resulting in unnecessary payments for examinations and medical opinions, as well as underpayments to veterans. In addition to actual monetary impacts like underpayments, veterans were subject to avoidable examinations, and some errors had the *potential* to affect veterans' benefits, such as when claims processors did not obtain clarification of examination results as required before denying veterans' claims.¹¹ Further, though errors in processing may still yield a claim that correctly denied service connection, it may also lead to veterans being incorrectly denied service connection.

In total, the review team identified errors that resulted in an estimated \$1.4 million in unnecessary costs associated with unwarranted examinations and medical opinions from April 1, 2023, through September 30, 2023 (the review period), for claims that were correctly denied service connection.¹² However, the team identified underpayments totaling about \$56,700 to two veterans during this period who were improperly denied service connection. The team

⁷ VA Manual 21-1, "Presumptive SC Claims," updated December 28, 2022, topic IV.i.1.B.1.f in *Adjudication Procedures Manual*. See appendix A for a discussion of "expanded military service" that qualifies for presumptive toxic exposure and presumptive diseases.

⁸ VA News, "VA to Begin Processing PACT Act Benefits Claims Immediately for Terminally Ill Veterans," news release, December 12, 2022, <https://news.va.gov/press-room/va-to-begin-processing-pact-act-benefits-claims-immediately-for-terminally-ill-veterans/>; VA News, "VA Will Begin Processing PACT Act Benefits Claims for All Veteran 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/>.

⁹ For this report, "staff" may include managers, quality review personnel, or claims processors stationed at a regional office.

¹⁰ This report uses the term "claims processors" to refer to both veterans service representatives and rating veterans service representatives.

¹¹ VA Manual 21-1, "Insufficient Examinations," updated September 15, 2021, sec. IV.i.3.C.a-d in *Adjudication Procedures Manual*.

¹² For this review, the term "claim" refers to individually claimed PACT Act presumptive disabilities that were denied. See appendix B for the team's scope and methodology. For the statistical projections, see appendix C, table C.5 in which the estimated unwarranted expenditure of about \$1.4 million has been projected over the six-month review period.

also found an estimated minimum of 870 potential impact errors that could affect veterans' benefits.

During the review period, based on a statistical sample, the team estimated 8,600 of 19,200 of denied claims (approximately 45 percent) contained one or more of these three types of errors: overdevelopment, monetary impact, or potential impact.¹³

An **overdevelopment error** is made when a claims processor requests an unwarranted examination or medical opinion before making a decision regarding service connection for a presumptive disability under the PACT Act. As stated above, these errors result in unnecessary spending. They may also lead to incorrect decisions, delay claims processing, and are a burden on veterans who must attend unwarranted examinations. Using results from the sample analysis, the OIG team determined that examination and medical opinion overdevelopment errors occurred in an estimated 6,900 denials (36 percent) resulting in an estimated \$1.4 million in unnecessary expenditures during the review period.

A **monetary impact error** occurs when a claims processor improperly denies service connection for a presumptive disability associated with the PACT Act. Using results from the sample analysis, the OIG team identified underpayments totaling about \$56,700 to two veteran's claims decided during the review period who were improperly denied service connection.

A **potential impact error** occurs when a claims processor fails to gather all evidence before denying a claim for service connection, such as not returning an examination report to the examiner if it conflicts with or is unsupported by available evidence. Because these claims decisions are made on conflicting or incomplete information, the effect on a veteran's benefits is unknown. Using results from the sample analysis, the OIG team estimated that at least 870 denials had potential impact errors.

The OIG team also determined that VBA employees were not consistently applying guidance regarding examination requests and medical opinions for presumptive disabilities under the PACT Act. Claims processors were not always interpreting similarly what constitutes "competent medical evidence of a current diagnosis or recurrent symptoms of a disability," which are required to obtain an examination.¹⁴ This led to the claims processors sometimes requesting unwarranted examinations and contributed to overdevelopment errors. Additionally, they were not consistently recognizing that presumptive disabilities do not require a medical opinion to establish a link to military service when the service is verified in an exposure location, which also resulted in requests for unwarranted medical opinions. Staff stated the focus on PACT Act claims was more on procedures for processing disabilities that could not be established on a presumptive basis.

¹³ See appendix C for more on the team's statistical analysis.

¹⁴ 38 C.F.R. §§ 3.159(a)(1)–(a)(2), (c)(4) (2022).

VBA has been taking steps to address overdevelopment in particular. The Office of Policy and Oversight created an overdevelopment reduction task force in November 2021 to address known issues: Phase 1, which ended in May 2022, included medical examinations in its focus.¹⁵ Phase 2, which ran from February 2024 through July 2024, sustained attention on examinations. The Medical Disability Examination Office developed resources to assist claims processors in requesting examinations and is currently working to integrate those resources into the Veterans Benefits Management System.¹⁶

What the OIG Recommended

The OIG made two recommendations to the under secretary for benefits to help VBA process PACT Act claims for presumptive disabilities. These recommendations address updating VA's *Adjudication Procedures Manual* and continuing efforts to reduce overdevelopment, including evaluating the effectiveness of those efforts.

VA Management Comments and OIG Response

The under secretary for benefits concurred with both recommendations and provided responsive action plans, which included publishing updates to VA's *Adjudication Procedures Manual* on when claims processors should request medical disability examinations and opinions and additional guidance in the form of a job aid to claims processors on presumptive disabilities under the PACT Act. The under secretary requested closure of recommendation 1 based on these actions. However, the additional guidance does not define what is considered a "current" disability or "persistent or recurrent" symptoms of a disability, which the OIG considers essential guidance that will help ensure a consistent understanding among claims processors. The OIG will assess closure of recommendation 1 after guidance is updated to reflect those changes.

¹⁵ Phase 1 resulted in VBA making updates to manual guidance, a claim form, and training to address identified issues with overdevelopment related to examinations. It also addressed overdevelopment related to unwarranted requests for federal records, such as requests for personnel files, which was not relevant to this review.

¹⁶ The Veterans Benefits Management System is a web-based application used for claims processing.

As to recommendation 2, VBA will also develop and implement a plan to enhance examination request tools and measure their effectiveness in reducing overdevelopment, with a target completion date of March 31, 2025. The OIG will monitor VBA's progress and implementation of both recommendations until all proposed actions are completed. The full text of the under secretary's comments is in appendix E.



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Abbreviations

OIG	Office of Inspector General
PACT Act	Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022
VBA	Veterans Benefits Administration



Introduction

The mission of the Veterans Benefits Administration (VBA) is to provide benefits and services to veterans, their families, and their survivors in a responsive, timely, and compassionate manner in recognition of their service to the nation.¹⁷ VBA's disability compensation program provides tax-free monetary payments to veterans for the effects of disabilities caused by diseases or injuries incurred or aggravated during active military service—referred to as service connection.¹⁸

Service connection for a claimed disability can be established in several ways, including directly and presumptively. Direct service connection means a particular disease or disability was incurred in service. Establishing direct service connection is accomplished by providing evidence of a veteran's current disability, an event, injury, or disease that occurred while in service, and a link between the two. This link may be established through evidence of continuous symptoms or a medical opinion.¹⁹ VBA also presumes some diseases or disabilities to have been incurred in or aggravated by service, even if there is no evidence of such disease or disability during that service.²⁰ This type of service connection requires evidence of an in-service event, such as exposure to a toxic substance, and a diagnosis for a presumptive disease or disability that has been associated with that exposure. The link between the disease or disability and service is then established on a presumptive basis.

On August 10, 2022, the President signed the PACT Act into law, which significantly expanded veterans' eligibility to disabilities that VA presumes are related to exposure to toxic substances.²¹ The law added more than 20 categories of presumptive disabilities related to burn pits, herbicides (such as Agent Orange), and other toxic exposures and added more presumptive exposure locations for herbicide and radiation.²² For example, the PACT Act added hypertension as a

¹⁷ VA Functional Organization Manual, October 8, 2013, ver. 8 (updated 2023), page 50.

¹⁸ "About VBA" (web page), VBA, accessed June 4, 2024, <https://benefits.va.gov/BENEFITS/about.asp>; 38 C.F.R. § 3.1(k) (1961).

¹⁹ VA Manual 21-1, "Overview of Direct SC," updated September 15, 2021, topic V.ii.2.A.1.a in *Adjudication Procedures Manual*. The *Adjudication Procedures Manual* serves as a general guide for processing claims for veterans. It is based on the statutes and regulations set forth in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations, the legal authority governing Department of Veterans Affairs benefits.

²⁰ VA Manual 21-1, "Overview of Presumptive SC," updated September 27, 2022, topic V.ii.2.B.1.a in *Adjudication Procedures Manual*.

²¹ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759.

²² See appendix E for VA management comments in which the undersecretary for benefits requested that "categories" be added here to clarify that the law added more than 20 disabilities.

presumptive disability associated with herbicide exposure and added service in Laos from December 1, 1965, through September 30, 1969, as a presumptive herbicide exposure location.²³

The day after the PACT Act was signed into law, veterans set a record for online disability compensation claims filed.²⁴ VBA rolled out the majority of PACT Act claims processor training on December 5 and 19, 2022, with a completion deadline of January 6, 2023.²⁵ VBA began processing PACT Act claims for terminally ill veterans on December 12, 2022, and fully processing all PACT Act claims on January 1, 2023.²⁶ Figure 1 provides a timeline from the signing of the law through the training deadline, which came after all processing had already begun.

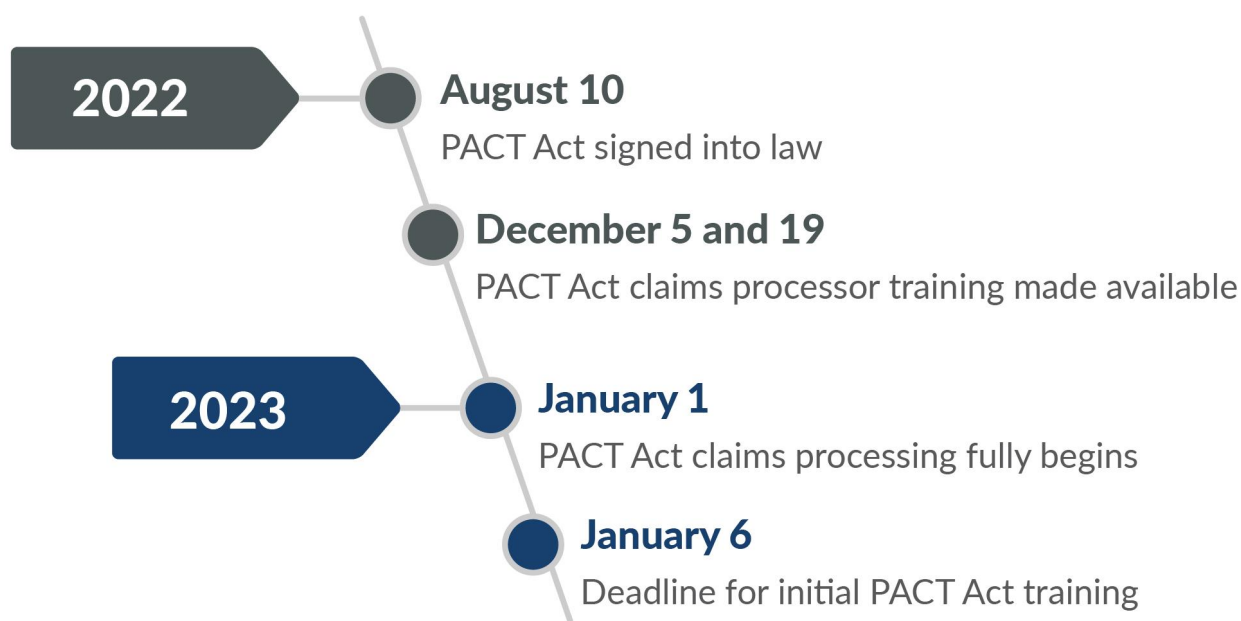


Figure 1. Summary of PACT Act initial training and claims-processing timeline.

Source: OIG analysis of “Fact Sheet: How the PACT Act Is Already Helping Veterans,” PACT Act information page, and “Compensation Service PACT Act Training and Release Dates.”

²³ For a list of these disabilities as well as locations where exposure to toxic substances is presumed, see appendix A.

²⁴ VBA, “Fact Sheet: How the PACT Act Is Already Helping Veterans” (web page), accessed October 20, 2023, <https://vbaw.vba.va.gov/bl/21/PACT%20Act%20General%20Fact%20Sheet.pdf>.

²⁵ Compensation Service FY23 RVSF Directed Curriculum spreadsheet (not publicly accessible). For this report, the term “claims processors” refers to veterans service representatives and rating veterans service representatives.

²⁶ VA News, “VA to Begin Processing PACT Act Benefits Claims Immediately for Terminally Ill Veterans,” news release, December 12, 2022, <https://news.va.gov/press-room/va-to-begin-processing-pact-act-benefits-claims-immediately-for-terminally-ill-veterans/>; VA News, “VA Will Begin Processing PACT Act Benefits Claims for All Veteran 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>.

As of July 1, 2023, the type of claim filed most frequently under the PACT Act was for presumptive disabilities.²⁷ VBA staff, particularly the surge of new hires, face increased risk of making errors when processing these claims due to the speed at which the PACT Act was implemented and the size of the program (the number of claims and veterans served).²⁸

The VA Office of Inspector General (OIG) conducted this review to determine whether VBA staff processed PACT Act claims for presumptive disabilities in accordance with applicable laws and procedures before denying them—recognizing the potential impact on eligible veterans if claims were improperly denied.

VBA Rating Process

When a veteran submits a claim for compensation, VBA has a legal duty to assist the veteran in gathering evidence.²⁹ Two types of VBA claims processors review veterans' claims: veterans service representatives gather the evidence for the claim and rating veterans service representatives use this evidence to make decisions on the claims. Once a veterans service representative finishes gathering all evidence needed to decide the claim, a rating veterans service representative must evaluate the evidence and prepare a rating decision either granting or denying benefits.³⁰ Claims processors complete and manage these decisions within a web-based electronic system called the Veterans Benefits Management System.

Guidance on Obtaining Examinations or Medical Opinions

The purpose of a medical examination or opinion is to obtain evidence, when needed, for establishing entitlement to benefits such as information about a diagnosis, onset, or etiology of a veteran's disability.³¹ Generally, the examination provides evidence of the diagnosis and the level of impairment caused by the claimed disability, and the medical opinion establishes the

²⁷ The most frequently claimed disabilities at that time were the presumptive disabilities for hypertensive vascular disease, allergic rhinitis, maxillary sinusitis, bronchial asthma, and malignant growths of the genitourinary system. PACT Act Dashboard data (not publicly accessible).

²⁸ For this report, the term "staff" refers to managers, quality review personnel, or claims processors stationed at the regional office. The PACT Act was enacted in August 2022. As of July 1, 2023, veterans and their survivors had filed more than 1.7 million claims. VBA experienced nearly a 23 percent growth in onboard employees from January 2022 through June 2023.

²⁹ 38 C.F.R. § 3.159(c) (2022).

³⁰ A rating decision details the formal determination made regarding one or more issues of benefit entitlement, stating the decision made and an explanation to support each decision. VA Manual 21-1, "Definition: Rating Decision," updated May 10, 2016, topic V.iv.1.A.1.b in *Adjudication Procedures Manual*.

³¹ VA Manual 21-1, "Purpose of Obtaining Medical Examinations and Opinions," updated September 30, 2022, topic IV.i.1.A.1.a in *Adjudication Procedures Manual*.

connection between a claimed disability and military service.³² An examination or medical opinion is necessary *unless there is already sufficient, competent medical evidence* to decide the claim. For example, a veteran may take the Disability Benefits Questionnaire (a VA form) to a private physician, who can fill out the form and confirm a diagnosis. A claims processor may accept this form as confirmation of the disability and therefore not require a separate VA examination.³³ At the other end of the continuum, an examination is also not warranted if *no evidence at all has been submitted* to support a statement that there is a disability, as some documentation is required at the time the claim is submitted.³⁴

For disability claims, the following three elements are considered when determining the need for an examination in which there is not sufficient competent medical evidence provided with the claim to support the diagnosis or symptoms the veteran has asserted or a connection to military service. In order for an examination to be requested, all three elements must be present.³⁵

Element 1: Competent medical evidence of a current diagnosed disability or recurrent symptoms of a disability—that is, there is *some* evidence of a diagnosed disability or ongoing related symptoms that would support the diagnosis provided in the veteran's claim.³⁶

Element 1 determines whether a disability may be present. This can be done in two ways. First, claims personnel check the veteran's record to see if it contains medical evidence of a diagnosed disability associated with the claim. Second, the claims processor determines whether the claim provides adequate evidence of recurrent symptoms of the disability. If either of these two scenarios exist, element 1 is present and element 2 should then be considered. By contrast, if neither of these two situations exist, an examination is not warranted and should not be ordered.

Elements 2 and 3 are satisfied differently if a veteran files a claim for a presumptive disability under the PACT Act and meets the requirements for presumptive service connection—such as service in a location during a time when exposure to toxic substances is presumed.³⁷ For

³² VA Manual 21-1, "Scope of Practice Relative to Examination," updated May 31, 2022, topic IV.i.2.A.1.d in *Adjudication Procedures Manual*; VA Manual 21-1, "Evidentiary Standards for Finding an Examination or Opinion Necessary," updated December 28, 2022, sec. IV.i.1.B; Decision Assessment Document, updated Sept. 15, 2016, For Charles v. Principi, 16 Ct. Vet. App. 370 (2002).

³³ VA Manual 21-1, "Definition of DBQs," updated March 1, 2002, topic IV.i.2.A.3.a in *Adjudication Procedures Manual*; VA Manual 21-1, "Use and Acceptance of DBQs for VA Examination and Opinion Purposes", updated March 1, 2021, topic IV.i.2.A.3.b.

³⁴ VA Manual 21-1, "Indication of Association," updated December 28, 2022, topic IV.i.1.B.1.c.

³⁵ VA Manual 21-1 "Regulatory Standard for Finding an Examination or Medical Opinion Necessary," updated September 30, 2022, topic IV.i.1.A.1.b in *Adjudication Procedures Manual*.

³⁶ 38 C.F.R. §§ 3.159(a)(1), 3.159(a)(2), and 3.159(c)(4) (2022).

³⁷ VA Manual 21-1, "Overview of Presumptive SC."

presumptive disabilities, elements 2 and 3 are assumed to be present and no medical opinion is required. The presumptive relationship establishes the connection.

Element 2: A disease, injury, or event occurred during military service, or a disease or symptoms of a disease are identified that were exhibited during a period that the regulation presumes the harm occurred.

Element 2 determines whether something happened *during service* that contributed to the veteran's claimed condition. The following are examples in which element 2 is present:

- A veteran claims a knee condition that has been present since military service, and the evidence of record shows medical treatment for knee pain while in service.
- A veteran claims a medical condition and provides evidence that the injury was sustained in service and has persisted since leaving the military.
- A veteran submits a claim for a presumptive condition, such as asthma, and the record proves that the veteran served in a toxic exposure area.

If the veteran's claim or record establishes that something occurred during military service that contributed to the claimed condition, element 2 is present and element 3 should then be considered. If this is not the case, element 2 is not met, and an exam is not warranted.

Element 3: A possible link between the *current* disability and the disease, injury, or event during military service.³⁸

Element 3 determines whether the event from element 2 is linked to the claimed condition from element 1. For example, element 3 is present if a veteran does the following:

- Files a claim for a diagnosed knee disability (element 1 present)
- Provides evidence that an event in service contributed to the knee disability (element 2 present)
- Includes a statement of persistent knee pain since military service (element 3 present)

When all three elements are present, an examination or medical opinion is warranted and should be ordered. If any of the three elements are not present, an exam should not be requested, and the veteran's claim can be denied. VA's *Adjudication Procedures Manual*, which generally explains the situations in which an examination or medical opinion is needed to determine service

³⁸ VA Manual 21-1, "Regulatory Standard for Finding an Examination or Medical Opinion Necessary," updated September 30, 2022, topic IV.i.1.A.1.b in *Adjudication Procedures Manual*; 38 C.F.R. § 3.159(c)(4).

connection, states, “[a]s all three elements must be satisfied before examination is warranted, the claim can be denied without an examination/opinion.”³⁹

VBA claims processors should thoroughly review all evidence and only request an examination or medical opinion when necessary, as these require a significant investment in time and financial resources and may impose a burden on veterans. Claims processors use the Veterans Benefits Management System to request all examinations and medical opinions for claimed disabilities. If an examination report or medical opinion is not properly supported by the evidence, or conflicts with other evidence, it must be discussed with or returned to the examiner for clarification before a decision is made on the claim.⁴⁰

Oversight of Claims Processing

The VBA offices shown in figure 2 share oversight responsibilities for claims processing, including for PACT Act claims.

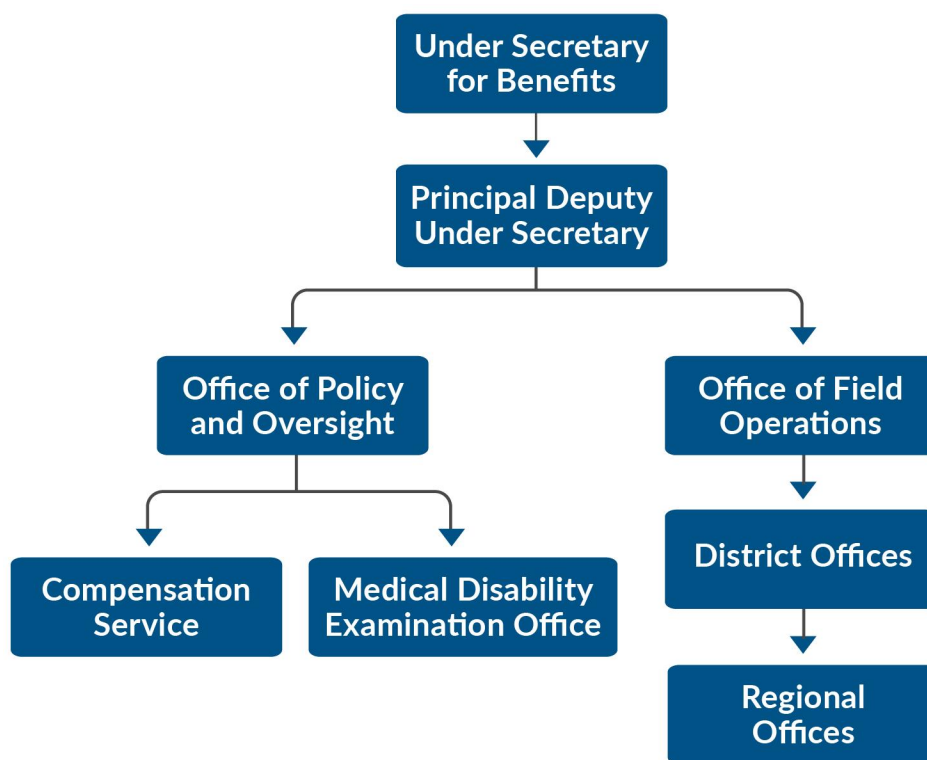


Figure 2. Overview of VBA offices with oversight responsibilities for PACT Act presumptive claims.

Source: VA OIG analysis of VBA’s organizational chart.

³⁹ VA Manual 21-1, “Indication of Association.”

⁴⁰ VA Manual 21-1, “Insufficient Examinations,” updated September 15, 2021, sec. IV.i.3.C.a-d in *Adjudication Procedures Manual*.

Although the offices of the under secretary for benefits and the principal deputy under secretary have responsibility for approving the direction of VBA policy and processes, and have ultimate accountability, the offices under their leadership are engaged in much of the routine oversight functions. The Office of Field Operations, led by a deputy under secretary, oversees operations and individuals at VBA's district offices and regional offices, which include claims processors responsible for assisting service members, veterans, and their families with VA benefits and services.

The Office of Policy and Oversight, also led by a deputy under secretary, guides and monitors the administration of benefits and services. This office aligns policies and strategic priorities and develops partnerships and interagency agreements to promote economic opportunities for veterans by providing access to disability compensation and other benefits.

The Compensation Service, which falls under the Office of Policy and Oversight, guides and supports VBA's claims-processing offices in delivering monthly payments to veterans. The Compensation Service creates rulemaking, policy requirements, and training; develops and maintains business line software applications, systems, enhancements, and data; conducts advisory reviews in support of the compensation benefits program; and performs national quality reviews of compensation claims.

The Medical Disability Examination Office, also under the Office of Policy and Oversight, monitors multibillion-dollar contracts to provide disability examinations.

Results and Recommendations

Finding: VBA Staff Did Not Always Follow Policies and Procedures Before Denying Presumptive Disabilities Under the PACT Act

The OIG team determined claims processors did not consistently follow VBA policies and procedures on when to request examinations or medical opinions and made errors in processing claims related to presumptive disabilities under the PACT Act. These errors occurred for several key reasons:

- Claims processors sometimes requested examinations when the required elements were not present, delaying claims processing and creating a burden on the veteran filing the claim, or did not return examinations for clarification when the examination was not supported by or conflicted with available evidence.
- Claims processors sometimes requested a medical opinion when one was not needed or denied service connection for a presumptive disability based on a negative medical opinion.

The OIG team found errors that resulted in unnecessary payments for examinations and medical opinions, as well as underpayments to veterans. In addition to actual monetary impacts like underpayments, some errors had the potential to affect veterans' benefits, such as when claims processors did not clarify insufficient or conflicting examination results before denying veterans' claims.

Errors in processing do not necessarily lead to incorrect denials of service connection. The team, in fact, identified errors in claims processing that still correctly denied service connection, but resulted in an estimated \$1.4 million in unnecessary costs associated with unwarranted examinations and medical opinions from April 1, 2023, through September 30, 2023. The team did identify underpayments totaling about \$56,700 to two veterans' claims decided during this period who were improperly denied service connection due to errors in claims processing.⁴¹ The team also found an estimated minimum of 870 potential impact errors that could affect veterans' benefits.

The OIG team found VBA has taken steps to address overdevelopment errors for examinations, but that work is ongoing.⁴² In doing so, VBA must continue to monitor the claims process to ensure its staff follow policies and procedures for presumptive disabilities to decrease the risk of

⁴¹ Due to the low error count in the sample, the OIG team did not project underpayments.

⁴² For this report, "overdevelopment" refers to claims processors not following established procedures and requesting unwarranted examinations or medical opinions.

unnecessary spending and make sure veterans receive correct claims decisions and monetary benefits without being subject to needless examinations or medical opinions.

The following determinations formed the basis for this finding and led to the OIG's recommendations:

- VBA staff requested unwarranted examinations and medical opinions resulting in unnecessary spending and improper denials.⁴³
- Claims processors did not consistently apply procedures regarding examinations and medical opinions.
- VBA is addressing overdevelopment for disability benefit claims.

What the OIG Did

From a population of 23,717 denied claims, an estimated 19,200 were considered within the scope of this review (excluding, for example, claims for disabilities not considered presumptive under the PACT Act).⁴⁴ The OIG team reviewed a statistical sample of 60 in-scope claims with PACT Act presumptive disabilities denied from April 1, 2023, through September 30, 2023 (the review period).⁴⁵ After considering laws, regulations, policies, procedures, and guidelines applicable to PACT Act presumptive disabilities, the team reviewed the sample to determine whether VBA staff correctly processed claims prior to denying them. The team provided the sample review results to VBA staff, who concurred with the team's findings.

VBA Staff Requested Unwarranted Examinations and Medical Opinions Resulting in Unnecessary Spending and Improper Denials

Drawing from the results of its statistical sample, the OIG team estimated that about 8,600 of approximately 19,200 denied claims in the scope of this review (45 percent) contained one or more of the following three types of errors.⁴⁶

- **Overdevelopment errors**, such as requests for unwarranted examinations and medical opinions, result in unnecessary expenditure of funds; may lead to incorrect

⁴³ Improper denials include monetary impact errors and potential impact errors.

⁴⁴ For this review, the term "claim" refers to individually claimed PACT Act presumptive disabilities that were denied. See appendix C for more information on claims determined to be out of scope.

⁴⁵ Some claims reviewed may have had multiple disabilities; however, the team only reviewed the specific presumptive disability selected as part of the team's statistical sample. See appendix B for scope and methodology.

⁴⁶ See appendix C for more on the team's statistical analysis.

claims decisions, underpayments of benefits, or delays in claims processing; and pose a burden to veterans who must attend an unwarranted examination.⁴⁷

- **Monetary impact errors**, such as an improper denial of entitlement to service connection for a disability, result in underpayments to veterans.
- **Potential impact errors**, such as a premature denial of entitlement to service connection, could affect veteran's benefits. Because decisions were made on incomplete or conflicting evidence, these could result in an improper denial of service connection or underpayment to the veteran.

Examples of errors in each of these categories are provided in the subsections that follow.

Overdevelopment Errors

As stated previously, an overdevelopment error involves a claims processor requesting an unwarranted examination or medical opinion before deciding a claim for service connection for a presumptive disability under the PACT Act. For an examination request to be necessary, the veteran must have medical evidence of a current diagnosis or recurrent symptoms of a disability.⁴⁸ Moreover, a medical opinion is not needed for a claimed presumptive disability if a veteran has verified military service in an exposure location.

Using results from the sample analysis, the OIG team found that examination and medical opinion overdevelopment errors occurred in an estimated 6,900 denials (36 percent) resulting in an estimated \$1.4 million in unnecessary expenditures during the review period.⁴⁹

Figure 3 provides an example of an overdevelopment error when neither the examination nor the medical opinion should have been requested because element 1 (evidence of a current disability) was not present and element 2 was fulfilled by the toxic exposure presumption (the event in service). Because element 1 was not present, the claim should have been denied.

⁴⁷ Unnecessary expenditures may include costs for the examination, testing, patient record review, medical opinion, and travel reimbursement.

⁴⁸ 38 C.F.R. § 3.159(c)(4) (2022).

⁴⁹ The team identified unwarranted costs for 16 sampled claims. These sample results are consistent with an estimated 4,625 claims in the population with unwarranted costs during the six-month review period. The estimated \$1.4 million in unwarranted costs is obtained by multiplying these 4,625 claims by an estimated mean cost of about \$295 per claim. see appendix C for more on the team's statistical analysis.

CLAIM FACTS

On March 16, 2023, a veteran filed a claim for multiple myeloma due to herbicide exposure in service. Evidence confirmed service in the Republic of Vietnam, a toxic exposure location. However, evidence in the veteran's claims folder did not show treatment for, or a diagnosis of, multiple myeloma. On May 4, 2023, a claims processor requested a multiple myeloma examination along with a toxic exposure medical opinion. The examination and medical opinion were completed on May 12, 2023, and the examiner noted a finding of no diagnosis of multiple myeloma. A rating decision dated June 28, 2023, denied the claim based on no diagnosis of multiple myeloma.

DEFICIENT ACTION TAKEN BY CLAIMS PROCESSOR

The claims processor should not have requested an examination because element 1 was not present: there was no evidence at all of treatment for, or a diagnosis of, multiple myeloma. Additionally, a toxic exposure medical opinion was unwarranted because exposure was presumed based on service in the Republic of Vietnam, which met the requirement for element 2.

EFFECT OF INCORRECT ACTION

The unwarranted examination and medical opinion resulted in an unnecessary expenditure of about \$615.

Figure 3. Unwarranted examination and medical opinion due to overdevelopment, resulting in unnecessary expenditure of funds.

Source: VA OIG claim review analysis.

Monetary Impact Errors

Remember that a monetary impact error occurs when a claims processor improperly denies service connection for a presumptive disability under the PACT Act. Using results from the sample analysis, the OIG team identified underpayments totaling about \$56,700 to two veterans' claims denied during the review period.

Figure 4 provides an example of a monetary impact error due to an incorrect denial of service connection. The denial was based on the results of a medical opinion that the claims processor should not have requested and led to the veteran being underpaid.

CLAIM FACTS

On January 24, 2023, a veteran filed a claim for prostate cancer due to toxic exposure while serving in Kuwait. Evidence confirmed service in the Southwest Asia theater of operations sufficient to presume toxic exposure (which met the requirement for element 2). A claims processor correctly requested a prostate cancer examination on March 13, 2023, because there was some evidence of a current disability that met the requirement for element 1. The examination completed on April 3, 2023, diagnosed active prostate cancer with erectile dysfunction. A claims processor requested a prostate cancer toxic exposure medical opinion on July 6, 2023. That medical opinion, completed on July 12, 2023, noted the prostate cancer was not related to toxic exposure during service.

DEFICIENT ACTION TAKEN BY CLAIMS PROCESSOR

The claims processor should not have requested a medical opinion for prostate cancer because the disability is presumptive based on toxic exposure, and service connection should have been granted at 100 percent effective August 10, 2022 (the date the PACT Act became law). However, because the medical opinion was ordered and determined the veteran's cancer was not service-connected, the claims processor denied the claim on July 25, 2023. Furthermore, because the veteran had additional disabilities that combined to 60 percent or more, and experienced erectile dysfunction, the veteran was entitled to additional compensation effective as of December 1, 2022.

EFFECT OF INCORRECT ACTION

The incorrect denial of service connection and failure to grant additional compensation resulted in 19 months of underpayments to the veteran, totaling nearly \$47,000. Requesting an unwarranted medical opinion resulted in an unnecessary expenditure of \$388.

Figure 4. *Incorrect denial based on negative medical opinion that was unwarranted, resulting in monetary impact.*

Source: VA OIG claim review analysis.

Potential Impact Errors

A potential impact error takes place when a claims processor fails to gather all evidence before denying service connection, such as not returning an examination to the examiner for clarification if it conflicts with available evidence or provides insufficient support. Because these decisions are made on incomplete or inconsistent information, the effect on a veteran's benefits

is unknown. Using results from the sample analysis, the OIG team estimated at least 870 denials had potential impact errors.

Figure 5 provides an example of a potential impact error due to an unwarranted medical opinion, and failure to obtain clarification on an examination that conflicted with the available evidence or lacked sufficient support before denying service connection.

CLAIM FACTS

On May 16, 2023, a veteran filed a claim for hypertension due to Agent Orange exposure while in service. Evidence confirmed service in the Republic of Vietnam, which met the requirement for element 2. On June 23, 2023, the claims processor requested a hypertension examination along with a toxic exposure medical opinion. The examination and medical opinion were completed on July 10, 2023. The examiner reported blood pressure readings consistent with a diagnosis of hypertension but noted they were unable to confirm a hypertension diagnosis because there was insufficient evidence of record. On July 14, 2023, a claims processor searched and uploaded VA treatment records to the claims folder showing hypertension diagnosed prior to the examination. Yet a rating decision dated July 28, 2023, denied service connection for hypertension based on no diagnosis.

DEFICIENT ACTION TAKEN BY CLAIMS PROCESSOR

The claims processor should have returned the examination to the examiner to obtain clarification on the lack of diagnosis given the additional medical evidence showing a diagnosis of hypertension obtained after the examination and medical opinion were completed. Additionally, the claims processor should not have requested the medical opinion for hypertension because the disability is presumptive based on exposure to herbicides during service in Vietnam.

EFFECT OF INCORRECT ACTION

VBA denied service connection for hypertension prematurely because the examination used to make the decision required clarification. Had the examiner reviewed the veteran's medical evidence, the benefit could have been granted, which may in turn have led to payments to an eligible veteran. Requesting an unwarranted medical opinion also resulted in an unnecessary expenditure of funds totaling about \$200.

Figure 5. Premature denial based on an examination that was not returned for clarification before deciding the claim and on a medical opinion request that was unwarranted, resulting in potential impact.

Source: VA OIG claim review analysis.

Claims Processors Did Not Consistently Apply Procedures Regarding Examinations and Medical Opinions

Following the signing of the law, VBA acted quickly to facilitate timely processing of PACT Act claims. VBA was faced with implementing the PACT Act legislation in a matter of months. Given the extent of the initial guidance and subsequent revisions, processing guidelines for presumptive disabilities may have confused some claims processors, who did not always understand, interpret, and apply them in the same way. This included employees not consistently following VBA guidance on when to request examinations and medical opinions for presumptive disabilities under the PACT Act. Specifically, claims processors were not similarly interpreting what constitutes the requirement for “competent medical evidence of a current diagnosis or recurrent symptoms of a disability,” sometimes resulting in requests for unwarranted examinations because sufficient competent medical evidence had not been provided, so therefore, element 1 was not met. Additionally, claims processors were not always recognizing that presumptive disabilities do not require a medical opinion to establish a link to service when there is verified military service in an exposure location, which also led to requests for unwarranted medical opinions.

VA’s *Adjudication Procedures Manual* (the VA manual) provides guidance for processing compensation claims. However, VBA provided PACT Act processing guidance to claims processors on a web page—the PACT Act information page—separately from the VA manual. The assistant director of the Compensation Service on the military exposure team stated that guidance would be finalized and incorporated into the adjudication manual by late 2025.

The consensus among regional office staff interviewed was that the PACT Act standard operating procedure implementation guide was lengthy with frequent updates. Staff felt the focus for PACT Act claims was more on claims processing procedures related to disabilities that could not be established on a presumptive basis. Staff also stated there were many documents and job aids on the PACT Act information page, but they did not feel they had enough time to review or use all the information or tools available when processing claims.

The deputy under secretary for policy and oversight told the OIG team that some claims processors said that information came at them quickly and there were too many changes. The deputy under secretary further stated the implementation of PACT Act legislation was very challenging, but VBA did the best it could given the circumstances. In an interview, the former Compensation Service quality assurance rating review chief stated PACT Act guidance changed repeatedly after the initial rollout. Further, the chief stated VBA hired many new employees to process the most complex claims, which, combined with the changing guidance, may have caused confusion when regional office staff were working these claims and resulted in errors.

Figure 6 provides an example of the multiple versions of guidance and the frequency of changes as it appeared on the information page on September 12, 2023. The OIG re-created the figure

from a historical screenshot to show the presentation of information and all revisions, exactly how claims processors would have seen it.

[TERA Glossary Text for VBMS-R - Version 1](#) (Rescinded 4/19/23)
[TERA Rating Decision Narrative Examples Version 1](#) (Rescinded 4/19/23)
[PACT Act Implementation SOP Version 3](#) (Rescinded 9/08/23)
[PACT Act Implementation SOP Version 2](#) (Rescinded 4/10/23)
[PACT Act Implementation SOP Version 1](#) (Rescinded 2/6/23)
[ILER Guidance Version 2.0](#) (Rescinded 5/3/23)
[ILER Guidance Version 1.0](#) (Rescinded 2/6/23)
[PACT Act Implementation SOP for Training Purposes](#) (Rescinded 1/1/23)
[PACT Act Interim Guidance](#) (Rescinded 1/1/23)
[PACT Act Interim Guidance Attachment](#) (Rescinded 1/1/23)
[PACT Act Immediate Guidance](#) (Rescinded 9/9, see Interim Guidance above)
[PACT Act FAQs Version 3.0](#) (Rescinded 9/8/23)
[PACT Act FAQs Version 2.0](#) (Rescinded 5/3/23)
[PACT Act FAQs Version 1.0](#) (Rescinded 2/6/23)
[Interim Guidance FAQs](#) (Rescinded 1/1/23)
[TERA Memorandum and TERA Memorandum Tool Version History](#)
[TERA Memorandum Job Aid version 1](#) (Rescinded 2/6/23)
[TERA Memorandum Job Aid version 2](#) (Rescinded 2/13/23)
[TERA Memorandum Job Aid version 3](#) (Rescinded 2/16/23)
[TERA Memorandum Job Aid version 4](#) (Rescinded 5/03/23)
[TERA Exception Job Aid version 1](#) (Rescinded 2/6/23)
[TERA Exception Job Aid version 2](#) (Rescinded 2/13/23)
[Herbicide Presumptive Job Aid](#) (Rescinded 2/6/23)

Figure 6. VBA's changing PACT Act guidance from January 1, 2023 (before the OIG review period), to September 12, 2023.

Source: Compensation Service PACT Act information page (not publicly accessible).

VBA regional office staff stated that separating or otherwise simplifying procedures for processing presumptive disabilities would be helpful in achieving greater understanding and consistency. The Compensation Service military exposure team assistant director stated it would not be difficult to separate PACT Act processing guidance for presumptive disabilities from those that could not be established on a presumptive basis. However, the feedback the assistant director had received from staff indicated there was too much on the PACT Act information page and too many places to look for guidance. The assistant director stated the military exposure team may have to consider how to simplify guidance.

Procedural Issues

The review of sample claims and interviews with claims processors confirmed that the inconsistencies stemming from staff confusion resulted in noncompliance with guidance. This is reflected in the sample analysis that showed unwarranted examination and medical opinion overdevelopment occurred in an estimated 6,900 denials (36 percent). When interviewed by the OIG team, regional office staff demonstrated that their understanding differed as to what evidence was needed to request examinations. For example, some staff stated medical evidence of a current diagnosis or recurrent symptoms of a disability needed to be shown in treatment records or noted in a written statement provided by a veteran, while others stated that if a veteran merely lists the condition on the claim form it was sufficient evidence to meet element 1 to request an examination. As the prior discussion on overdevelopment indicates, the confusion regarding when to seek medical opinions for service connection also led to unwarranted requests because claims processors did not consistently recognize that presumptive disabilities do not require a medical opinion to establish a link to service.

The deputy under secretary for policy and oversight recognized in an interview that the VA manual can be confusing, which may be the cause for the problems staff were having in understanding what is needed to establish element 1. He further stated that additional steps were being taken on proposed manual changes through the overdevelopment-reduction task force, as discussed in the next section. To make sure the needed clarifications or simplifications are implemented, the OIG recommended that VBA update its current guidance on requesting examinations and medical opinions to promote consistency and reduce overdevelopment.

VBA Is Addressing Overdevelopment for Disability Benefit Claims

Even before passage of the PACT Act, VBA had taken steps to address overdevelopment of disability claims by creating a task force in November 2021. After the passage of the PACT Act, VBA also developed exam scheduling tools. The OIG, through its second recommendation to this report, will be monitoring those efforts to help ensure there is sufficient development of the exam scheduling tools and an evaluation of the corrective actions.

Overdevelopment-Reduction Task Force

In February 2024, while at the Boise VA Regional Office for a site visit related to this review, the OIG team learned of the overdevelopment-reduction task force created by the Office of Policy and Oversight. The deputy under secretary for policy and oversight stated that overdevelopment is expensive and time-consuming and has been a known problem for years. The task force was created to address this. Although not focused solely on PACT Act claims, any improvements made through the task force should benefit claims processed under the act as well.

Phase 1 of the task force, which started in November 2021 and ended in May 2022, included a focus on overdevelopment of medical examinations.⁵⁰ The task force issued action items to address problems identified during this phase. The deputy under secretary for policy and oversight stated that his office monitors the action items for effectiveness. According to VBA, the task force “implemented over 30 action items” that included “initiation of several different quality reviews with targeted feedback to field employees” that improved claims processing and quality.⁵¹

Phase 2 of the task force, which ran from February 2024 through July 2024, continued its focus on medical examinations. The task force has been identifying recommendations for changes related to contract vendor examinations, the use of disability benefits questionnaires, and the accuracy of the automated examination scheduling process. It also has been assessing the usage rate and usefulness of an examination request tool developed by the Medical Disability Examination Office.

When questioned at a congressional hearing, the VBA deputy under secretary for policy and oversight told members of the House Subcommittee on Disability Assistance and Memorial Affairs that he committed to additional phases (or “versions”) of the overdevelopment-reduction task force to address identified issues.⁵²

Exam Scheduling Resource Development

The Medical Disability Examination Office developed two resources to assist claims processors in requesting VA disability examinations. The goal of these resources is to provide claims processors with the tools necessary to determine whether examinations or opinions are warranted in all disability claims and ensure the examination and medical opinion requests are accurate and complete. Like the task force, these tools will benefit PACT Act claims processing as well.

The first resource, introduced in May 2023, is the Exam Scheduling Request Reference Job Aid, which is designed to help claims processors determine when an examination is warranted or necessary. It also provides an overview of presumptive disabilities and exposure events, which claims processors must consider when developing claims.

⁵⁰ Phase 1 resulted in VBA making updates to manual guidance, a claim form, and training to address identified issues with overdevelopment related to examinations. Phase 1 also focused on overdevelopment for requests for federal records, such as requests for personnel files, which was not relevant to this review.

⁵¹ *Hearing on “Is the Veterans Benefits Administration Properly Processing and Deciding Veterans Claims?” Before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans’ Affairs, 118th Cong. (July 23, 2024) (written statement of Ronald S. Burke, Jr., Deputy Under Secretary for Policy and Oversight, Veterans Benefits Administration, Department of Veterans Affairs).*

⁵² Ronald S. Burke, Jr., statement before the House Subcommittee on Disability Assistance and Memorial Affairs. The full hearing can be viewed on the subcommittee website at <https://veterans.house.gov/calendar/eventsingle.aspx?EventID=6514>.

The second resource, introduced in November 2023, is the Exam Scheduling Request Contention Determination Tool, which provides claims processors with a series of questions for each claimed disability and helps determine whether an examination or medical opinion is warranted. The Medical Disability Examination Office data and operations chief stated the goal is to complete integration of the contention determination tool into the Veterans Benefits Management System during fiscal year 2025.

As reflected in this report's recommendations, VBA should continue the development of examination request tools and evaluate the effectiveness in reducing unwarranted examinations and medical opinions.

Conclusion

VBA employees are not consistently applying claims-processing guidance, which is causing overdevelopment through unwarranted examinations and medical opinions for presumptive disabilities. Claims may be properly denied even if processed incorrectly, but doing so results in avoidable spending, delayed claims processing, and undue burdens on veterans seeking benefits. Processing errors may also cause VBA to improperly deny service connection to veterans who should have been granted it. VBA has taken steps to generally address overdevelopment of claims through the creation of a task force and by providing additional resources. There is still more work to be done, however, for VBA to update its policies and procedures, continue efforts to reduce overdevelopment regarding PACT Act presumptive disabilities, and to monitor the effectiveness of these efforts.

Recommendations 1 and 2

The OIG made the following recommendations to the under secretary for benefits:

1. Update VA's *Adjudication Procedures Manual* on when personnel should request medical disability examinations and opinions.
2. Reduce examination and medical opinion overdevelopment by establishing a plan to continue the development of examination request tools and evaluate the effectiveness of these efforts for any future enhancements.

VA Management Comments

The undersecretary for benefits concurred with both recommendations and provided responsive action plans. For recommendation 1, the under secretary reported that VBA published updates to VA's *Adjudication Procedures Manual* on when claims processors should request medical disability examinations and opinions, as well as publication of additional guidance in the form of a job aid to claims processors on presumptive disabilities under the PACT Act. The under secretary also reported that these changes were based on findings of its Overdevelopment Reduction Task Force. Claims processors were notified in June 2024 of changes that included

“clarification on Element 1 and how it must be met before an examination is necessary and should be requested”; an example scenario of insufficient evidence to establish element 1 for determining if an examination is needed; and clarification of “the circumstances in which a new medical opinion request is necessary to resolve a conflicting opinion or diagnosis.” The under secretary requested closure of recommendation 1 based on those actions. For recommendation 2, VBA will create and implement a plan to strengthen examination request tools and measure the effectiveness of those enhancements to assist in reducing overdevelopment, with an estimated completion date of March 31, 2025. The under secretary also provided a technical comment requesting the OIG to adjust the report to say there were more than 20 “categories” of presumptive disabilities instead of more than 20 presumptive disabilities. See appendix E for the full text of the under secretary’s comments.

OIG Response

The under secretary for benefits provided action plans for both recommendations. For recommendation 1, VBA indicated that it created a task force in November 2021 to address the overdevelopment of disability claims. Based on findings from the task force, VBA has published updates to its manual to assist claims processors on when to request medical disability examinations and opinions as well as an additional effective date job aid for claims processors on presumptive disabilities under the PACT Act. VBA requested closure of this recommendation. The actions taken to date reflect steps in addressing overdevelopment concerns. However, the additional guidance does not define what is considered a “current” disability or “persistent or recurrent” symptoms of a disability, which the OIG considers essential guidance that will help ensure a consistent understanding among claims processors. The OIG will assess closure of this recommendation when the guidance has been updated to address those changes. For recommendation 2, VBA reported it will develop and “implement a plan to enhance examination request tools and measure the effectiveness of those enhancements to assist in reducing examination and medical opinion overdevelopment.” The targeted completion date is March 31, 2025. The OIG will monitor VBA’s plan and will close the recommendations when sufficient progress and monitoring has been made to address them.

The under secretary requested the OIG change the report to say there were more than 20 categories of presumptive disabilities. The OIG made this change and provided a responsive footnote where applicable.

Appendix A: Expanded Military Service That Qualifies for Presumptive Toxic Exposure and Presumptive Diseases

The presumption of exposure to certain herbicide agents for Vietnam-era veterans expanded under the PACT Act to include veterans who performed active duty in the locations in table A.1.⁵³

Table A.1. Exposure to Herbicides

Location	Dates
Republic of Vietnam	January 9, 1962, to May 7, 1975
Thailand at any United States or Royal Thai base, without regard to where on the base the veteran was located or what military job the veteran performed	January 9, 1962, to June 30, 1976
Laos	December 1, 1965, to September 30, 1969
Cambodia at Mimot or Krek, Kampong Cham Province	April 16, 1969, to April 30, 1969
Guam or American Samoa, or their territorial waters	January 9, 1962, to July 31, 1980
Johnston Atoll or on a ship that called at Johnston Atoll	January 1, 1972, to September 30, 1977

Source: VA OIG analysis of PACT Act § 403.

Veterans who participated in the actions at locations listed in table A.2 are presumed to have been exposed to radiation.

Table A.2. Exposure to Radiation

Location	Dates
Enewetak Atoll radioactive cleanup	January 1, 1977, to December 31, 1980
Palomares, Spain, nuclear response	January 17, 1966, to March 31, 1967
Thule, Greenland, nuclear response	January 21, 1968, to September 25, 1968

Source: VA OIG analysis of PACT Act §§ 401 and 402.

⁵³ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759.

VA has presumed that veterans have been exposed to burn pits or other toxins if they served in or in the airspace above any of the locations on the dates in table A.3.

Table A.3. Exposure to Burn Pits or Other Toxins

Location	Dates
Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, United Arab Emirates	On or after August 2, 1990
Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Uzbekistan, Yemen	On or after September 11, 2001

Source: VA OIG analysis of PACT Act § 302.

The PACT Act expanded the definition of a Persian Gulf veteran as listed in table A.4 by adding additional locations.

Table A.4. Expansion of Persian Gulf Veteran

Location	Dates
Afghanistan, Israel, Egypt, Turkey, Syria, Jordan	On or after August 2, 1990

Source: VA OIG analysis of PACT Act § 405.

The PACT Act established two disabilities as presumptive to exposure to herbicides:⁵⁴

- hypertension
- monoclonal gammopathy of undetermined significance

The PACT Act established these diseases as presumptive to exposure to burn pits and other toxic exposures:⁵⁵

- asthma diagnosed after service
- brain cancer
- chronic bronchitis
- chronic obstructive pulmonary disease (COPD)
- chronic rhinitis
- chronic sinusitis
- constrictive or obliterative bronchiolitis

⁵⁴ VA OIG analysis of PACT Act § 404.

⁵⁵ VA OIG analysis of PACT Act § 406.

- emphysema
- gastrointestinal cancer of any type
- glioblastoma
- granulomatous disease
- head cancer of any type
- interstitial lung disease
- kidney cancer
- lymphoma cancer of any type
- lymphomatic cancer of any type
- melanoma
- neck cancer of any type
- pancreatic cancer
- pleuritis
- pulmonary fibrosis
- reproductive cancer of any type
- respiratory cancer of any type
- sarcoidosis
- any other disease for which the VA Secretary determines, pursuant to regulation, a presumptive service connection is warranted based on a positive association with a substance, chemical, or airborne hazard identified under 38 U.S.C. § 1119(b)(2).

Appendix B: Scope and Methodology

Scope

The review team conducted its work from November 2023 through September 2024. The review included a stratified statistical sample of 60 PACT Act claims for presumptive disabilities that were denied from April 1 through September 30, 2023.⁵⁶

Methodology

To accomplish the review objectives, the team considered applicable laws, regulations, policies, procedures, and guidelines related to the processing of PACT Act claims for presumptive disabilities. The team also conducted interviews with VBA central office and Boise, Idaho; Montgomery, Alabama; and Houston, Texas regional office employees.

Internal Controls

The team assessed VBA's internal controls significant to the review objective. This included an assessment of the five internal control components: (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring.⁵⁷ In addition, the team reviewed the principles of internal controls as associated with the objective. The team identified the two components and two principles relevant to this review. For internal control weaknesses identified during this review, the VA Office of Inspector General (OIG) proposed recommendations to address the following control deficiencies in table B.1.

⁵⁶ As of July 1, 2023, respiratory disabilities made up three of the five most frequently claimed PACT Act–associated presumptive disabilities. The statistical sample of 60 claims had two equal strata: the first strata contained 30 presumptive respiratory disability denials, and the second strata included 30 presumptive nonrespiratory disability denials. The OIG team initially reviewed the two strata (respiratory and nonrespiratory presumptive disabilities under the PACT Act) to determine any statistical difference in the accuracy of claims processing of each of these samples before denial. However, the team found no significant difference in claims-processing accuracy between the two strata.

⁵⁷ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

**Table B.1. OIG Analysis of Internal Control Components
and Principles Identified as Significant**

Component	Principle	Deficiency identified by this report
Risk Assessment	9. Management should identify, analyze, and respond to significant changes that could impact the internal control system.	VBA staff confronted risks when processing claims for presumptive disabilities under the PACT Act due to the speed in which the act was implemented, the increase in new staff because of hiring efforts, and the extent of new claims-processing guidance that changed frequently.
Control Activities	12. Management should implement control activities through policies.	Regional office staff expressed that personnel did not all share the same understanding of guidance regarding the elements required to request an exam or when a medical opinion was needed for a presumptive disability under the PACT Act, which resulted in overdevelopment.

Source: VA OIG analysis. The principles listed are consistent with the Government Accountability Office's Standards for Internal Control in the Federal Government.

Data Reliability

The team relied on computer-processed data from VBA's Corporate Database, which the team validated by comparing sample data to VBA claim ID numbers, beneficiary names, claim dates, and rating dates. These comparisons were used to identify any discrepancies. Data testing disclosed that they were sufficiently reliable for the review objective. Comparison of the data with information contained in the Veterans Benefits Management System claims folders did not raise any problems with data reliability, and the team did not find any discrepancies in the fields in any of the data sets.

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*.

Appendix C: Statistical Sampling Methodology

Approach

To accomplish the objective, the team reviewed a statistical sample of 60 PACT Act claims for presumptive disabilities that were denied from April 1, 2023, through September 30, 2023 (the review period).⁵⁸ The team used statistical sampling to quantify the extent of claims for which VA employees did not follow applicable laws and procedures before denying them.

Population

The review population included 23,717 veterans' PACT Act claims for presumptive disabilities that were denied during the review period. For the purposes of the review, the team estimated the population to be 19,229 claims. The difference between the review population and the estimated population is the team's exclusion of 4,488 claims because they did not fall within the project scope requirements, such as disabilities not in fact considered presumptive under the PACT Act. Since the excluded sample claims represent others in the original review population that may also be outside the review scope, the team estimates the population eligible for this review is about 19,229.

Sampling Design

The review team initially selected a statistical sample of 78 claims. Of those, 18 were deemed out of scope, resulting in a sample of 60 PACT Act claims for presumptive disabilities that were denied during the review period. The population was stratified and categorized into two strata as seen in table C.1.

Table C.1: Strata

Stratum	Number of claims estimated in population	Sample size
Presumptive respiratory disabilities	17,692	30
Presumptive nonrespiratory disabilities	6,025	30
Totals	23,717	60

Source: VA OIG statistician's stratified population. Data were obtained from the Veterans Benefits Management System.

⁵⁸ For this review, the term "claim" refers to individually claimed PACT Act presumptive disabilities that were denied.

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations.

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 review with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value approximately 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 claims are added to the sample review.

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

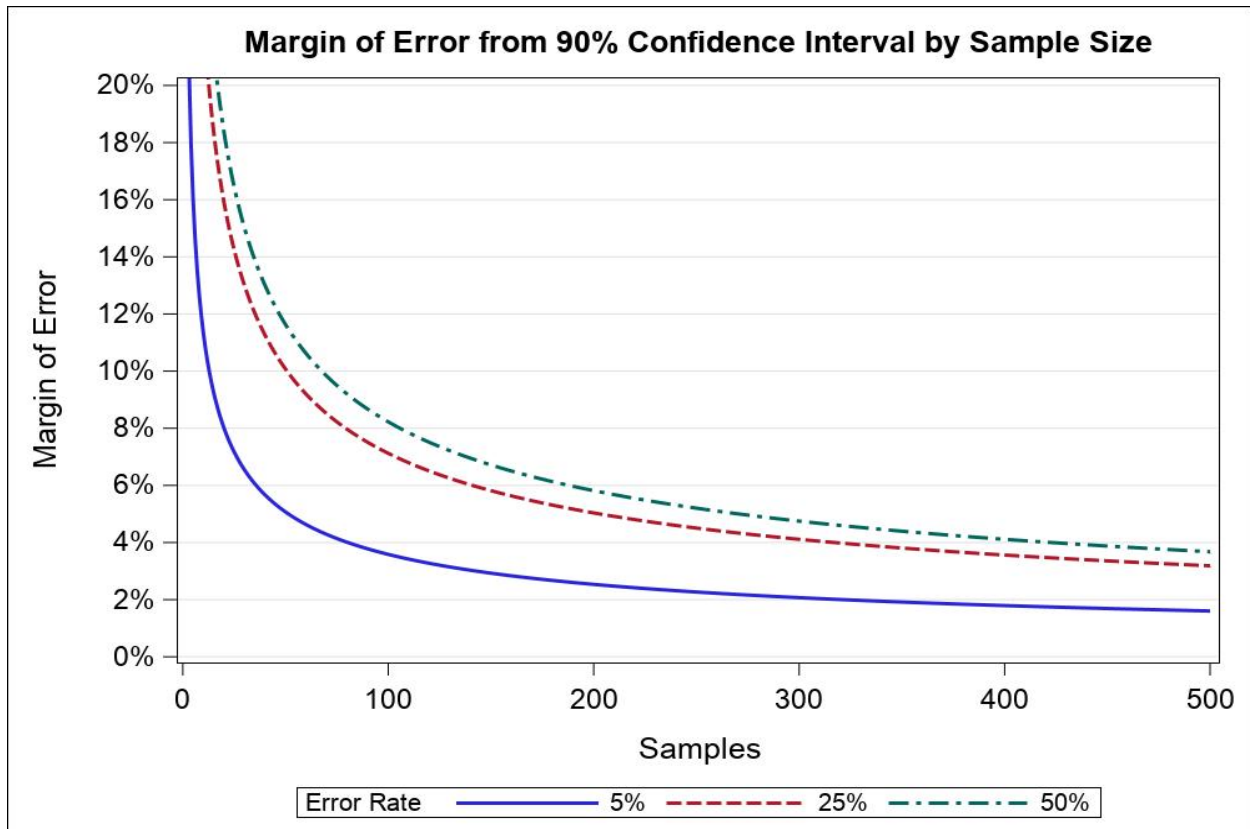


Figure C.1. Effect of sample size on margin of error.

Source: VA OIG statistician's analysis.

Projections

Tables C.2 through C.5 detail the review team's analysis and projected results for presumptive disabilities under the PACT Act denied during the review period. The shaded boxes represent the values used for the estimates in the report's narrative.⁵⁹

Table C.2. Statistical Projections Summary for Complete Population

Estimate name	Estimate number	90 percent confidence interval			Sample count
		Margin of error	Lower limit	Upper limit	
Complete population size	19,229	2,107	16,843	21,056	60 of 78

Source: VA OIG analysis.

**Table C.3. Statistical Projections Summary for Complete Population:
Claims Error Projections and Overdevelopment Errors**

Estimate name	Estimate number	90 percent confidence interval			Sample count
		Margin of error	Lower limit	Upper limit	
Claims with errors	8,626 (44.9%)	2,717 (12.7%)	6,047 (32.4%)	11,481 (57.8%)	26 of 78
Overdevelopment errors	6,935 (36.1%)	2,559 (12.2%)	4,583 (24.5%)	9,701 (49%)	22 of 78

Source: VA OIG analysis.

**Table C.4. Statistical Projections Summary for Complete Population:
Error Projections Using One-Sided Confidence Interval for
Potential Impact and Monetary Impact Errors**

Estimate name	Estimate number	One-sided confidence interval			Sample count
		Margin of error	Lower limit	Upper limit	
Potential impact errors	1,915 (10%)	1,044 (5.4%)	871 (4.5%)	n/a	5 of 78 (5 of 60)

Source: VA OIG analysis.

⁵⁹ The OIG used 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 (as shown in tables C.2. and C.3).

**Table C.5. Statistical Projections Summary for Complete Population:
Monetary Projections for Unwarranted Exam and Opinion Expenditures**

Estimate name	Estimate number	90 percent confidence interval			Sample count
		Margin of error	Lower limit	Upper limit	
Total unwarranted examination or medical opinion expenditure	\$1,364,078	\$649,618	\$714,460	\$2,013,696	16 of 78
Mean cost of unwarranted examination or medical opinion	\$294.90	\$89.00	\$205.90	\$383.90	16 of 16

Source: VA OIG analysis.

Appendix D: Monetary Benefits in Accordance with Inspector General Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs ⁶⁰
1 and 2	Cost of unwarranted examinations and medical opinions projected for the review period	\$0	\$1,364,078
1 and 2	Underpayment of compensation benefits due to denials based on unwarranted medical opinions*	\$0	\$56,726
	Total	\$0	\$1,420,804

* Due to the low error count in the sample, the OIG team did not project underpayments.

⁶⁰ The OIG questions costs when VA action or inaction (such as spending or failure to fully compensate eligible beneficiaries) is determined by the OIG to violate a provision of law, regulation, contract, grant, cooperative agreement, or other agreement; when costs are not supported by adequate documentation; or when they are expended for purposes that are unnecessary or unreasonable under governing authorities. Within questioned costs, the OIG must, as required by section 405 of the IG Act, report unsupported costs. Unsupported costs are those determined by the OIG to lack adequate documentation at the time of the review. Of the \$1,420,804 in questioned costs, \$0 were unsupported costs.

Appendix E: VA Management Comments from the Under Secretary for Benefits

Department of Veterans Affairs Memorandum

Date: September 24, 2024

From: Under Secretary for Benefits (20)

Subj: Office of Inspector General (OIG) Draft Report - Staff Incorrectly Processed Claims When Denying Veterans' Benefits for Presumptive Disabilities under the PACT Act [Project No. 2024-00118-AE-002] — [VIEWS 12147679]

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

1. Thank you for the opportunity to review and comment on the OIG draft report: Staff Incorrectly Processed Claims When Denying Veterans' Benefits for Presumptive Disabilities 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)

Joshua Jacobs

Attachments

Attachment

**Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
Staff Incorrectly Processed Claims When Denying Veterans' Benefits for
Presumptive Disabilities under the PACT Act**

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

Page 1, third paragraph, 2nd sentence

VBA Comment: VBA requests OIG add that the law added more than 20 "categories of" presumptive disabilities, because more than 20 total disabilities were added under the PACT Act.

VBA provides the following comments in response to the recommendations in the OIG draft report:

Recommendation 1: Update VA's Adjudication Procedures Manual on when personnel should request medical disability examinations and opinions.

VBA Response: Concur. In November 2021, VBA created a Task Force to address overdevelopment of disability claims. Based on findings from the Overdevelopment Reduction Task Force (ODRTF) related to exams and medical opinions, as of September 11, 2024, VBA's Compensation Service has published nine updates to the Adjudication Procedures Manual (M21-1) (See Attachment A for a consolidated list of updates).

Based on the findings of the ODRTF, VBA has made multiple updates which assist personnel on when to request medical disability examinations and opinions. VBA updated M21-1, IV.i.1.B.1.b to include clarification on Element 1 and how it must be met before an examination is necessary and should be requested. The update also included the addition of an example scenario where evidence is insufficient to establish Element 1 to determine whether an examination is necessary (See Attachment B). M21-1, IV.i.3.C.1.e was updated to clarify the circumstances in which a new medical opinion request is necessary to resolve a conflicting opinion or diagnosis (See Attachment C). Compensation Service provided claim processors notification of the changes on June 7, 2024 (See Attachment D).

In addition to making updates to the M21-1, VBA also created and published the Effective Date Job Aid for Presumptives (See Attachment E). This job aid provides a list of presumptive conditions, the effective date of the law and/or regulation (hyperlinked in the Effective Date of Change column), and the service requirements for eligibility. The job aid also highlights changes created by the PACT Act effective August 10, 2022. On July 19, 2024, VBA notified claim processors of the release of this job aid (See Attachment F).

With VBA's published updates to the M21-1, on when personnel should request medical disability examinations and opinions, as well as the publication of additional guidance to claims processors on presumptive disabilities under the PACT Act, VBA is requesting closure of this recommendation.

Recommendation 2: Reduce examination and medical opinion overdevelopment by establishing a plan to continue development of examination request tools and evaluating the effectiveness of these efforts for any future enhancements.

VBA Response: Concur. VBA will draft and implement a plan to enhance examination request tools and measure the effectiveness of those enhancements to assist in reducing examination and medical opinion overdevelopment.

Targeted completion date: March 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.*

OIG Contact and Staff Acknowledgments

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