



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Veterans Prematurely
Denied Compensation for
Conditions That Could Be
Associated with Burn Pit
Exposure

REVIEW

REPORT #21-02704-135

JULY 21, 2022



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Executive Summary

Since about 2001, the US military has used large burn pits to dispose of waste from its bases in Iraq, Afghanistan, and Djibouti.¹ The Department of Defense reported burn pits were used when there were no feasible alternatives for waste disposal. An open burn pit is an area of land used for disposing solid waste by burning it in the outdoor air without a commercially manufactured incinerator or other equipment designed and manufactured for burning solid waste. The burned waste products included various chemicals and were mixed with jet fuel to ignite them.

However, the pits did not completely incinerate the waste generated, and smoke blew over the bases and into living areas. It was estimated that some burn pits were nearly 20 acres wide.

According to data from the Veterans Benefits Administration (VBA), from June 2007 through September 2021, its staff processed more than 21,100 burn pit-related issues. Given the potential impact on many eligible veterans, the VA Office of Inspector General (OIG) conducted this review to determine whether VBA staff followed regulations and procedures when addressing conditions that could be associated with burn pit exposure.

VA recognizes burn pit exposure as a potential cause of disabilities but does not have a specific list of disabilities presumed to be associated with exposure as is the case with some other conditions.² VBA treats burn pit-related claims like most other claims for disability compensation, with the particular duty to consider exposure to environmental hazards based on a veteran's service location. An additional development step to assist with veterans' burn pit claims requires VBA staff to provide medical examiners a fact sheet to ensure any opinion potentially linking the exposure to a disability is fully informed based on all known objective facts.³ The focus of this review was to determine whether VBA staff were accurately processing claimed conditions associated with burn pit exposure, as established by VBA policies and procedures during the review period.

¹ See appendix A for VBA's fact sheet that describes burn pits. Appendix B includes more information on other Gulf War-era environmental hazards.

² In August 2021, VA recognized particulate matter as an environmental hazard and established some disabilities presumed to be associated with it pursuant to 38 C.F.R. § 3.320. However, VA's recognition of particulate matter as an environmental hazard did not affect this review because it involves different considerations than burn pit exposure, and the new regulation went into effect following the review period, so it did not affect the assessment of errors.

³ See appendix A for VBA's fact sheet on burn pits.

What the Review Found

The OIG review team examined three distinct samples of claimed medical conditions that could be related to burn pit exposure and were completed from May 1, 2020, to May 1, 2021 (the review period).⁴ Overall, the OIG found that VBA could improve its processing and oversight. Though VBA staff nearly always made the correct decision in *granting* compensation for conditions identified as burn pit-related, the OIG found most *denials* were premature—that is, veterans may not have received the benefits for which they could be eligible because a determination of whether a condition was due to burn pit exposure was not fully developed. Incomplete development included failing to request opinions from medical examiners if conditions were as likely as not due to burn pit exposure.

In the review's first sample, where compensation was granted for conditions based on burn pit exposure, the OIG found that 56 of the 60 reviewed conditions were processed correctly. The four remaining conditions had errors that potentially led to nearly \$78,300 in overpayments as of July 1, 2021, and nearly \$3,800 in ongoing monthly overpayments. See appendix E for a summary of questioned costs. VBA concurred with the OIG that these conditions were improperly processed. Although less than 7 percent of the sample was found to have errors, and the OIG determined no systemic issue existed, the OIG recommended that VBA take any needed corrective actions on the four errors identified.

The team reviewed a second sample of 51 claimed conditions for which compensation was denied and estimated that VBA staff incorrectly processed 870 of 1,000 conditions they identified as related to burn pit exposure. Of those 870, nearly 630 had the potential to affect veterans' benefits because VBA failed to obtain additional evidence, such as a medical opinion, before making a determination. The premature denials were due in part to confusing guidance for processing conditions potentially related to burn pit exposure, the VBA application used to request medical examinations not including burn pit exposure in its list of options, and a lack of oversight.

The OIG's third sample of 71 conditions was drawn from denials of compensation for conditions that VBA staff did not identify as related to burn pits. The sample consisted of VBA's reported five most frequently claimed conditions related to burn pit exposure: bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease. The OIG estimated that more than 4,200 of these conditions were denied during the review period. The team's review estimated that VBA staff improperly processed 4,100 of these conditions (97 percent), with over 3,900 having the potential to affect veterans' benefits.

⁴ Conditions are contentions or diagnoses of medical problems that veterans claim for compensation benefits. A claim can include one or more conditions. The OIG's review focused on, and this report refers to, the processing of the part of the claim related to the condition potentially linked to burn pit exposure, rather than the entire claim. See appendixes C and D for more information about the review's methodology.

VBA staff made errors by not considering burn pit exposure in these cases. VBA policy noted, “Because Veterans generally will not possess knowledge of all relevant environmental hazards, Veterans Benefits Administration personnel should be aware of the environmental hazards that may apply for claimants who served in Iraq, Afghanistan, or Djibouti, even if the claimants did not allege such exposure.”⁵ VBA staff and managers at multiple regional offices noted staff may forget to consider exposure when it is not explicitly claimed by the veteran. In addition, the review team determined training materials for VBA staff contradicted other guidance on how to process burn pit exposure claims, and guidance should be clarified.

Following this OIG review, VBA updated its guidance on June 8, 2022, to note burn pit emissions exposure was now recognized in the Southwest Asia theater of operations from August 2, 1990, as well as in Afghanistan, Syria, Egypt, Jordan, Yemen, Lebanon, and Djibouti on the Horn of Africa from approximately 2001. However, VBA removed guidance noting its staff had a duty to consider exposure to environmental hazards when claimants do not allege such exposure.

What the OIG Recommended

The OIG made seven recommendations to the under secretary for benefits, including VBA taking any needed corrective actions on the four errors involving the improperly granted conditions based on burn pit exposure.⁶ The OIG also recommended that VBA review all cases for which veterans were denied compensation for conditions that reflected OIG’s review populations, correcting errors they identify, and providing certification of completion of the corrective actions to the OIG. VBA should also update its adjudication procedures manual to provide separate and specific guidance for when claims should be considered based on burn pit exposure and proper development of these claims. The OIG further recommended modifying VBA’s examination request application to add specialty language to medical opinion requests for burn pit exposure claims, to include the contents from the fact sheet for burn pit claims. Finally, VBA should update training materials and ensure they are consistent with the adjudication procedures manual guidance for developing burn pit exposure claims.

VA Comments and OIG Response

The director, Northeast District, performing the delegable duties of the under secretary for benefits, concurred with OIG recommendations 1, 2, 3, 5, and 7, and concurred in principle with

⁵ VA Manual 21-1, part IV, sub. ii, chap. 2, sec. C, “Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN),” March 14, 2017. Note: the VA Adjudication Procedures Manual was revised in fiscal year 2021, which included reorganizing and relocating content. However, the references cited were still applicable.

⁶ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

recommendations 4 and 6. Corrective action plans for each recommendation were provided, and recommendation 4 was requested to be closed.

However, the action plan for recommendation 4 was not fully responsive. The OIG recommended VBA update the adjudication procedures manual so that separate and specific guidance will be considered based on the current process to determine service connection. VBA is correct that there is no current presumption of a service connection for burn pit-related health conditions at the time of this writing, but that does not preclude the OIG-recommended updates to the manual. VBA's response noted it had addressed the presumption of service connection for "the most common conditions" associated with exposure to particulate matter under the provisions of 38 C.F.R. § 3.320. Moreover, some nonpresumptive steps such as ordering a medical disability examination or opinion are covered under several provisions of the U.S. Code. References to these actions are not fully responsive to this recommendation because establishment for presumptive conditions due to particulate matter exposure involves separate considerations from burn pit exposure, such as location of service and effective dates (see appendix B for more details). Therefore, the OIG will keep recommendation 4 open until VA demonstrates progress toward ensuring the manual is updated accordingly.

As for recommendation 6, despite VBA's statement that it concurs with the intent of the recommendation but not the totality of the recommendation, its planned actions are responsive to the recommendation.

The OIG will monitor implementation of all planned actions and will close recommendations when VBA provides sufficient evidence demonstrating progress addressing the intent of the recommendations and the issues identified. Appendix F contains the full text of VA management's comments.



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Introduction

An open burn pit is an area of land used for disposing of solid waste by burning it in the outdoor air without a commercially manufactured incinerator or other equipment designed and manufactured for burning solid waste.⁷ From about 2001 to the present, the US military has used large burn pits to dispose of waste from its bases in Iraq, Afghanistan, and Djibouti when there was no feasible alternative.⁸ The waste products included various chemicals and were burned with jet fuel. According to the Veterans Benefits Administration (VBA), the pits did not effectively burn the volume of waste generated, and smoke blew over bases and into living areas.⁹ Some burn pits were estimated to be nearly 20 acres wide.

A presumptive disability relieves veterans of the burden to prove that a disability or illness was caused by exposure that occurred during military service. There is no specific list of disabilities presumed to be associated with exposure to burn pits, such as the lists of disabilities for veterans exposed to other forms of toxic substances like Agent Orange and radiation. In August 2021, VA recognized particulate matter as an environmental hazard and established some disabilities presumed to be associated with it pursuant to federal regulations: asthma, rhinitis, and sinusitis, to include rhinosinusitis.¹⁰ However, this recognition of particulate matter as an environmental hazard with presumptive disabilities did not affect this review because it involves different considerations than burn pit exposure, to include different locations of exposure and effective dates (see appendix B for more details). Moreover, the new regulation went into effect following the review period and therefore did not affect the assessment of errors.

Based on chemicals detected in Department of Defense air samples at military bases that used burn pits, VBA determined, for medical examination purposes, exposure to burn pits can affect the following organs and body systems:¹¹

- Respiratory system
- Eyes
- Kidneys
- Cardiovascular system
- Peripheral nervous system
- Skin
- Liver
- Central nervous system
- Reproductive system
- Gastrointestinal tract

⁷ VHA Directive 1307, Airborne Hazards and Open Burn Pit Registry (AHOBPR), August 19, 2019.

⁸ VA Manual 21-1, part iv, sub. ii, chap. 2, sec. C, "Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)," March 14, 2017. Note: the VA Adjudication Procedures Manual was revised in fiscal year 2021, which included reorganizing and relocating content. However, the references cited were still applicable.

⁹ Appendix A provides the information found in VBA's Burn Pit Fact Sheet.

¹⁰ 38 C.F.R. § 3.320.

¹¹ See appendix A, VBA's Burn Pit Fact Sheet.

The Department of Defense has identified other environmental hazards at military installations in Iraq, Afghanistan, and elsewhere that could also present health risks. Claims for exposure to these hazards have the potential to overlap with burn pit claims. In addition, monetary benefits are granted to Gulf War veterans based on certain illnesses due to their service in Southwest Asia. Appendix B discusses these other types of claims and how they compare to burn pit claims in more detail.

Because there are no presumptive disabilities associated with burn pit exposure, VBA processes these claims like most other disability compensation claims—requiring evidence of a current disability; an event, injury, or disease that occurred during military service; and a link establishing that the current disability had its onset or inception during military service.¹² VBA training materials do instruct staff to treat service in burn pit locations and timeframes as the service-related event of exposure. According to VBA data, from June 2007 through September 2021, its staff processed more than 21,100 burn pit-related issues. Given the potential impact on many eligible veterans, the OIG reviewed conditions associated with burn pit exposure to determine if VBA staff correctly followed regulations and procedures.

VBA policy at the time of the review noted that staff had a duty to consider exposure to environmental hazards based on location of service, specifically: “Because Veterans generally will not possess knowledge of all relevant environmental hazards, VBA personnel should be aware of the environmental hazards that may apply for claimants who served in Iraq, Afghanistan, or Djibouti, even if the claimants did not allege such exposure.”¹³ This meant that VBA personnel should have inferred burn pit exposure for veterans who served in Iraq, Afghanistan, or Djibouti, even if claimants did not explicitly claim exposure. This was consistent with VA’s core values, codified in regulation, requiring that VA employees will be “truly Veteran-centric by identifying, fully considering, and appropriately advancing the interests of Veterans and other beneficiaries.”¹⁴ Most VBA employees and managers interviewed by the review team acknowledged they had a duty to assist veterans by seeking medical opinions for eligible claims, even if veterans did not explicitly state their condition was due to an environmental hazard. The focus of this review was to determine whether VBA staff were accurately processing claimed conditions associated with burn pit exposure based on established VBA policies and procedures.

Following this OIG review, VBA updated its guidance on June 8, 2022, to note burn pit emissions exposure would be recognized for the Southwest Asia theater of operations from August 2, 1990, as well as for Afghanistan, Syria, Egypt, Jordan, Yemen, Lebanon, and Djibouti

¹² VA Manual 21-1, part IV, sub. ii, chap. 2, sec. B, “Determining Service Connection (SC),” March 2, 2017.

¹³ VA Manual 21-1, part IV, sub. ii, chap. 2, sec. C, “Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN),” March 14, 2017.

¹⁴ 38 C.F.R. § 0.601.

on the Horn of Africa from approximately 2001.¹⁵ However, VBA removed guidance noting its staff had a duty to consider exposure to environmental hazards when claimants do not allege such exposure.

Disability Compensation Claims Process

VA pays monthly disability compensation to veterans with service-connected disabilities according to the severity of the disability. As shown in the development step in figure 1, after a veteran submits a claim to VA, veterans service representatives review the claim and assist the veteran in gathering evidence needed to evaluate it. Rating veterans service representatives analyze the evidence and make decisions on the claim. Then veterans service representatives implement the decision, notify the veteran, and authorize payment.

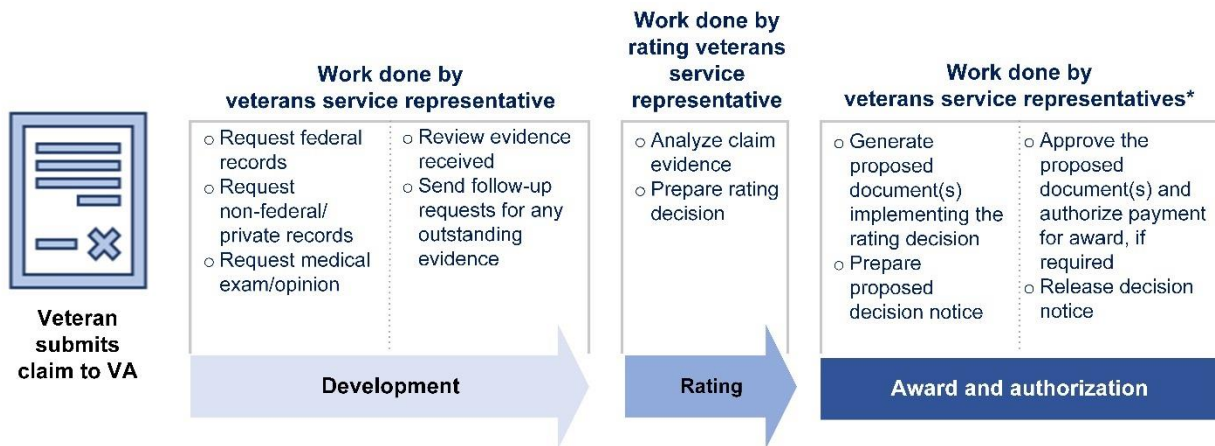


Figure 1. VA benefits claims process.

Source: VA OIG’s analysis of VA Manual 21-1 and VBA training materials.

*Decisions cannot be generated (awarded) and authorized by the same veterans service representative.

VA Medical Examination and Opinion Process

The submission of a substantially complete claim requires VA staff to assist a claimant in obtaining a medical examination or opinion when necessary to substantiate the claim. For a claim associated with burn pit exposure, a medical examination and opinion are required if

- there is competent lay or medical evidence of a current diagnosed disability or there are persistent or recurrent symptoms of disability;¹⁶

¹⁵ VA Manual 21-1, part viii, sub. ii, chap. 9, sec. A, “General Information on Exposure to Specific Environmental or Military Occupational Hazards,” June 8, 2022.

¹⁶ Competent lay evidence means any evidence not requiring specialized education, training, or experience. Lay evidence is competent if it is provided by a person with knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person. An example of lay evidence would be a veteran describing their own symptoms of a claimed disability.

- the evidence establishes that the veteran served in Iraq, Afghanistan, or Djibouti from approximately 2001 to the present; and
- the evidence indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease that occurred during military service.¹⁷

When requesting a medical examination or a medical opinion to determine if a claimed condition is due to an environmental hazard, VBA employees are required to inform the examiner of the nature of any applicable hazard and the location and time frame of exposure. In an additional development step to assist with veterans' burn pit claims, employees are required to provide examiners with a fact sheet to ensure an opinion is fully informed based on all known objective facts.¹⁸ VBA has a specific fact sheet concerning burn pits.¹⁹ The fact sheet informs examiners that VA considers the veteran exposed to burn pit toxins and notes the organs and body systems that can be affected by the exposure. VBA staff must forward the claims folder with the fact sheet to the examiner and ask for a review of the medical and other evidence. Examiners must review the fact sheet and provide an opinion and rationale for whether the veteran's claimed disability is related to the hazardous environmental exposure.²⁰ VBA staff use a web-based application when ordering examinations and opinions. The application prompts users to input the necessary information for the claim from a list of options to generate a request for the examiner.

¹⁷ VBA training material for claims processors titled, "Claims Based on Exposure to Environmental Hazards in Iraq, Afghanistan, and Djibouti," October 2020 and February 2016.

¹⁸ VA Manual 21-1, part IV, sub. ii, chap. 1, sec. I, "Developing Claims for Service Connection (SC) Based on Other Exposure Types," May 11, 2020, and April 12, 2019.

¹⁹ Appendix A provides the information found in VBA's Burn Pit Fact Sheet.

²⁰ VA Manual 21-1, part IV, sub. ii, chap. 1, sec. I, "Developing Claims for Service Connection (SC) Based on Other Exposure Types," May 11, 2020, and April 12, 2019.

Results and Recommendations

Finding: VBA Staff Prematurely Denied Compensation for Conditions That Could Be Associated with Burn Pit Exposure

Though VBA staff generally granted compensation for conditions related to burn pit exposure correctly, the OIG found most denials were premature, meaning veterans may not have received the benefits they deserved.

The review team looked at three distinct samples of medical conditions that could be related to burn pit exposure that were part of claims completed from May 1, 2020, to May 1, 2021 (the review period).²¹ The first two samples included conditions from claims VBA identified as burn pit-related (granted and denied, respectively). The third sample included conditions from claims VBA did not identify as related to burn pit exposure.

In the first sample, the team found that VBA processed correctly 56 of 60 reviewed conditions where veterans were granted compensation based on burn pit exposure. The four that were not processed correctly involved decisions to grant compensation for conditions claimed to be due to burn pit exposure without requesting evidence needed to determine if the conditions could be linked to the exposure. These four decisions led to veterans being potentially overpaid nearly \$78,300 as of July 1, 2021, and nearly \$3,800 in ongoing monthly overpayments.²²

Based on the second sample of 51 claimed conditions denied compensation for conditions associated with VBA-identified burn pit-related claims, the OIG estimated 870 of 1,000 conditions were incorrectly processed during the review period. Errors consisted of staff failing to request medical opinions about whether conditions were due to burn pit exposure or failing to provide or direct the examiner to review the burn pit fact sheets. Based on interviews with managers and staff at VA regional offices and review of procedures, the OIG team concluded factors contributing to premature denials were (1) confusing guidance about how to process claims related to exposure to burn pits, (2) the VBA medical examination request application not including burn pit exposure in its list of options, and (3) lack of oversight. Of the estimated 870 incorrectly processed conditions, nearly 630 had the potential to affect the amount of veterans' benefits granted.

The third sample the team reviewed included 71 denied conditions VBA did not identify as burn pit-related. The team estimated that VBA staff improperly processed 4,100 of 4,200 of these

²¹ Conditions are contentions or diagnoses of medical problems that veterans claim for compensation benefits. A claim can include one or more condition. The OIG's review focused on, and this report refers to, the processing of the part of the claim related to the condition potentially linked to burn pit exposure, rather than to the entire claim.

²² As the OIG did not find a systemic issue with granted conditions based on burn pit exposure, projections were not generated for the number of potential errors or improper payments.

conditions (97 percent), with more than 3,900 having the potential to affect veterans' benefits. Errors consisted of VBA staff failing to take development actions to determine if claimed conditions were due to burn pit exposure. VBA staff and managers at multiple regional offices noted guidance needed to be clarified, and the review team confirmed and determined training materials were contradictory.

This finding is based on the following determinations:

- For claimed conditions VBA identified as related to burn pit exposure, VBA staff correctly granted compensation in nearly all instances.
- For most denied conditions VBA identified as claims related to burn pit exposure, VBA staff prematurely denied compensation.
- For claimed respiratory conditions VBA did not identify as burn pit-related, VBA staff prematurely denied compensation.

What the OIG Did

The review team conducted statistically random reviews of veterans' claimed conditions that could be associated with burn pit exposure. Samples were drawn from three distinct populations of veterans' claims completed during the review period. The first two samples were generated from an estimated population of 1,200 conditions identified by VBA as part of completed burn pit exposure claims.²³ The OIG considered conditions identified by VBA as burn pit-related when claims had "special issue" indicators noting they were considered burn pit conditions, or the rating decisions associated with the conditions included text that identified them as burn pit conditions.²⁴ Specifically, the OIG reviewed

- 60 conditions for which veterans were granted service-connected compensation based on burn pit exposure, and
- 51 conditions for which veterans were denied service-connected compensation from a pool identified as related to burn pits.

The third sample was generated from an estimated population of 4,200 denials of conditions not identified by VBA as related to burn pit exposure that were part of completed claims. The OIG team reviewed 71 of these denials.

²³ This estimate was based on excluding records that the OIG determined to be outside the scope of the review. It included, however, three cases that shifted from the third sample population based on meeting this population criteria instead. See Appendix D for further discussion of statistical sampling methodology.

²⁴ Special issues are claim-specific indicators and can represent a certain claim type, disability or disease, or another special notation that is only relevant to a particular claim. The special issue for burn pit exposure is used to track claims where exposure to burn pits was raised as an issue.

The team interviewed staff at the VA central office in Washington, DC, and staff and managers at the following VA regional offices: Detroit, Michigan; Montgomery, Alabama; Seattle, Washington; and St. Paul, Minnesota. In addition, the team interviewed representatives from the following veterans service organizations: American Legion, Disabled American Veterans, Paralyzed Veterans of America, and Veterans of Foreign Wars. Appendixes C and D provide additional details on the team's actions and methodology.

VBA Staff Properly Granted Compensation for Conditions Identified as Related to Burn Pit Exposure in Nearly All Instances

The review team assessed a statistically random sample of 60 of an estimated 160 conditions from claims that were completed during the review period and met the following criteria for veterans who

- were granted compensation for any disability based on burn pit exposure, and
- had claimed conditions identified by VBA as related to burn pit exposure.

The team determined 56 of the 60 conditions reviewed were correctly processed. The four that were not processed correctly involved decisions that prematurely granted compensation for conditions claimed to be due to burn pit exposure, without additional evidence needed to determine if the conditions could be linked to the exposure. Example 1 illustrates one of the four decisions that prematurely granted compensation based on burn pit exposure.

Example 1

A veteran submitted a service-connected compensation claim for shortness of breath due to burn pit exposure. A rating veterans service representative granted compensation for chronic obstructive pulmonary disorder with asthma due to burn pit exposure. However, the veteran's service records did not show he served in Iraq, Afghanistan, or Djibouti from 2001 to present, but rather had service in Saudi Arabia and Kuwait prior to 2001. As VBA policy only notes that burn pits were used in Iraq, Afghanistan, and Djibouti from approximately 2001 to the present, additional evidence should have been gathered to determine if there was burn pit exposure.²⁵ As a result, the veteran was potentially overpaid approximately \$12,500 as of July 1, 2021, and continued to receive ongoing monthly overpayments of nearly \$380.

²⁵ VA Manual 21-1, part IV, sub. ii, chap. 2, sec. C, "Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)," March 14, 2017.

Collectively, the four errors in the team's sample resulted in potential overpayments of nearly \$78,300 as of July 1, 2021, and nearly \$3,800 in ongoing monthly overpayments.²⁶ A VBA management and program analyst, as well as a senior principal adviser, both concurred with the OIG that these cases were improperly processed. Although less than 7 percent of the sample was found to have errors, and the OIG determined no systemic issue existed, the OIG's first recommendation addresses the need for VBA to take any needed corrective actions on the four errors identified.

VBA Staff Prematurely Denied Compensation for Most Conditions Identified as Burn Pit Exposure Claims

The review team assessed a statistically random sample of 51 of an estimated 1,000 conditions that VBA identified as related to burn pit exposure and were from veterans who

- claimed any condition due to burn pit exposure,
- were denied compensation for the condition, and
- had military service at locations and times where and when burn pits were used.

The OIG estimated, based on the review team's results, that VBA staff improperly processed approximately 870 of these conditions. Of those 870, nearly 630 had the potential to affect veterans' benefits because VBA should have obtained additional evidence to determine if compensation was warranted before denying it. Example 2 illustrates a decision where VBA prematurely denied compensation based on a condition identified as being from burn pit exposure and the effect this decision could have for this veteran and others in the same category.

Example 2

A veteran submitted a service-connected compensation claim for asthma due to burn pit exposure while serving in Iraq and Afghanistan. Staff requested a medical examination but did not ask for a medical opinion about whether the asthma was due to the burn pit exposure, as required.²⁷ On the request, staff did not include the necessary fact sheet for burn pit claims, which explains how toxins the veteran was exposed to can affect the respiratory system.²⁸ The veteran was denied service connection without the medical opinion. As a result, the veteran could be missing out on service-connected compensation benefits.

²⁶ See appendix E for a summary of questioned costs.

²⁷ VA Manual 21-1, part I, chap. 1, sec. C, "Duty to Assist with Obtaining Records and a Medical Examination or Opinion," July 23, 2020.

²⁸ VA Manual 21-1, part IV, sub. ii, chap. 1, sec. I, "Developing Claims for Service Connection (SC) Based on Other Exposure Types," May 11, 2020.

For the estimated 1,000 denials associated with claims completed during the review period, the team estimated that VBA ordered medical examinations 89 percent of the time when required. Failure to obtain examinations potentially affects veterans, because a lack of evidence needed to see if the claimed condition could be linked to burn pit exposure might lead to denial. Table 1 illustrates the types of processing errors the OIG identified for denied compensation even when medical examinations were requested.

Table 1. Types of Processing Errors for Denied Compensation Conditions VBA Identified as Burn Pit-Related

Type of processing error	Estimated number of claimed conditions improperly processed
Failure to request opinion from medical examiner to determine if condition was due to burn pit exposure	650
Failure to provide Burn Pit Fact Sheet for medical examiner to review	610

Source: VA OIG analysis of denied serviced-connected compensation conditions VBA identified as burn pit-related, completed from May 1, 2020, to May 1, 2021.

Note: The estimates in this table total more than 1,000 because the types of processing errors overlapped and applied to more than one claimed condition.

The OIG’s second recommendation addresses the need for VBA to review all denials of compensation claims identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions claimed by eligible veterans to be due to burn pit exposure; correct any errors identified; and provide certification of completion of the review to the OIG.

VBA Staff Said Procedures for Processing Burn Pit Exposure Conditions Were Confusing

The review team interviewed 44 VBA managers and employees at multiple regional offices. All 44 said processing burn pit exposure claims can be confusing because there are so many environmental hazards and special considerations to be aware of regarding Gulf War-era claims, and those factors could overlap. See table B.1 in appendix B regarding other Gulf War-era environmental hazards VBA staff must consider. Veterans who served in certain areas during the Gulf War era could potentially be entitled to benefits due to different types of exposures based on what countries they served in, when they served, and what type of disability they had. In some instances, compensation for certain hazards could be granted on a presumptive basis, and in other instances, medical opinions would still be needed to determine if the condition was related to an environmental hazard.

As of March 11, 2022, VBA’s procedures manual guidance for processing claims related to environmental hazards during the Gulf War era did not include details distinguishing burn pit exposure claims from other environmental hazards and considerations. For example, the manual

did not note what to do specifically to develop a burn pit claim, but rather discussed development actions collectively for all Gulf War-era environmental hazards. The manual discussed burn pits individually in one section that defines them but did not include the development actions needed for those claims in that section. A supervisor who provided training to staff at a VA regional office indicated during a training session that the manual was limited regarding burn pit claim development guidance.

Multiple employees and managers said updated guidance that specifies what to do for each individual environmental hazard would ease their confusion. They said guidance that differentiated the development requirements for each Gulf War-era type of claim would be helpful. A VBA management and program analyst and a consultant with Compensation Service both said burn pit exposure and other Gulf War-era hazards should be discussed together because they overlap. They both noted revising and updating the guidance could be explored.

The OIG’s fourth recommendation addresses the need for VBA to update the adjudication procedures manual to provide separate and specific guidance for when claims should be considered based on burn pit exposure and proper development of these claims.

The VBA Medical Examination Request Application Did Not Include Burn Pit Exposure as an Option

VBA staff use a web-based application to generate language for medical examination and opinion requests. From a list of options, the application prompts users to input claim information to generate a request for the examiner. However, the application’s list does not include burn pit exposure as an option for specialty language to include in the examination request.

Figure 2 illustrates the options available when requesting examinations with the application.

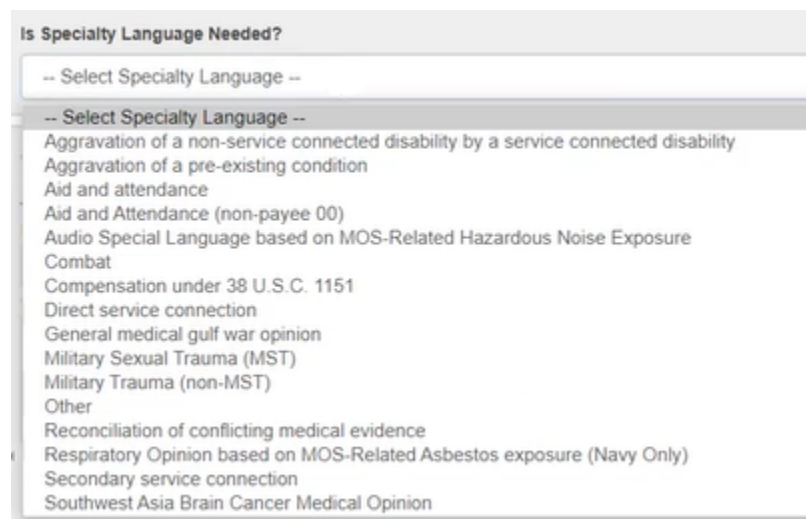


Figure 2. Specialty language options for the Exam Management System (EMS).
Source: VBA training video, “EMS Enhancement Training,” October 26, 2021.

A VBA business systems analyst informed the review team that an option for burn pit exposure was not included because there was a reference staff could use as a guide to manually input the necessary language. Nevertheless, the reference does not include guidance specific to burn pit exposure but instead directs the user to the procedures manual that discusses processing environmental hazard examination requests in general.

In addition, the application does not insert the information from the fact sheet for burn pit claims into an examination request. Consequently, employees need to remember to associate a fact sheet with a veteran's electronic claims folder and direct the examiner to review it. Employees who process claims stated the addition of a burn pit exposure option in the examination request application could help prevent the failure to include required opinion requests or necessary information for medical examiners. Employees also said the modification could serve as a prompt to remind staff to include information from the fact sheets for burn pit claims and ensure proper opinions were requested from medical examiners. A VA technology liaison and transformation specialist noted the information could be included as specialty language for the examination request application.

The OIG's fifth recommendation addresses the need for VBA to modify the examination request web-based application to add specialty language into medical opinion requests for burn pit exposure claims, to include the contents from the fact sheet for burn pit claims.

VBA Had No Specific Controls to Ensure the Accuracy of Claims Related to Burn Pit Exposure

VBA's quality assurance staff did not have specific control measures in place to ensure the accuracy of burn pit exposure claims in their assessments, special focused reviews, or oversight visits of field offices. VBA site visits at regional offices in fiscal years 2020 and 2021 reviewed the accuracy of Gulf War rating decisions, which could overlap with burn pit exposure claims. However, burn pits as a specific issue was not yet an area of review for the site visits. VBA's quality assurance director for Compensation Service noted the agency was considering looking at those claims in the future. The quality assurance director also noted that the assessment of compensation claims had not produced any error trends related to misapplication of criteria for processing burn pit exposure claims. However, based on the high number of errors found in the OIG's review, VBA can ensure better accuracy by incorporating its own reviews that focus on the accuracy of burn pit-related claims and making recommendations to regional offices.

The OIG's sixth recommendation addresses the need for VBA to implement a plan to develop controls that review the accuracy of rating decisions going forward to minimize improper denials for burn pit claims, correct any errors identified, and address error trends.

VBA Staff Prematurely Denied Compensation for Respiratory Conditions They Did Not Identify as Burn Pit Exposure Claims

The team reviewed a statistically random sample of 71 of an estimated 4,200 denied conditions that VBA did not identify as being burn pit-related and were part of claims completed during the review period for veterans who

- had military service at locations and times where and when burn pits were used, and
- sought compensation for one of the five most frequently claimed issues related to burn pit exposure according to VBA: bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease.

The team's review estimated that VBA staff erroneously processed 4,100 of these conditions (97 percent), of which more than 3,900 had the potential to affect veterans' benefits. The error was in denying them before obtaining additional evidence needed to determine if compensation was warranted.

Example 3 illustrates a premature denial of compensation based on a claimed respiratory condition that was not identified by VBA as resulting from burn pit exposure and the effect this decision could have for the veteran and others with similar claims.

Example 3

A veteran who served in Afghanistan submitted a service-connected compensation claim for sleep apnea and did not provide a statement indicating the condition was due to burn pit exposure. A VA rating decision denied compensation for the disability, noting there was no evidence it was directly related to the veteran's military service. However, VBA criteria noted, "Because Veterans generally will not possess knowledge of all relevant environmental hazards, Veterans Benefits Administration personnel should be aware of the environmental hazards that may apply for claimants who served in Iraq, Afghanistan, or Djibouti, even if the claimants did not allege such exposure."²⁹ As the veteran had evidence of a respiratory condition, served in a burn pit location, and VA's fact sheet for burn pits notes the respiratory system can be affected by burn pit exposure, VA had a duty to assist the veteran by obtaining a medical opinion about whether the condition was due to burn pit exposure. This request for an opinion should be sought regardless of whether the veteran provided a statement claiming the

²⁹ VA Adjudication Procedures Manual 21-1, part IV, sub. ii, chap. 2, sec. C, "Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)," March 14, 2017.

condition was due to an environmental hazard. As a result, the veteran could be missing service-connected compensation benefits.

The team found 99 percent of the errors for this sampled group involved VBA staff failing to develop the claimed conditions as possibly being due to burn pit exposure. Specifically, because staff did not recognize the claimed respiratory conditions as being possibly associated with burn pit exposure, they did not request determinative medical examinations or opinions. The OIG review focused on the five most frequently claimed burn pit conditions as identified by VBA. Given the high error rate with these conditions, the OIG concluded it is likely other VBA-identified respiratory conditions and disabilities related to other body systems and organs were at similar risk of being prematurely denied when claims did not explicitly associate the condition to burn pit exposure.

The OIG's third recommendation addresses the need for VBA to review all denials of compensation claims not identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions of bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease submitted by veterans who served where and when burn pits were used even if not specifically cited in the claim; correct any errors identified; and provide certification of completion of the review to the OIG.

VBA Staff May Overlook Consideration of Burn Pit Exposure When Not Explicitly Claimed

Most of the employees and managers interviewed acknowledged they had a duty to assist veterans by seeking medical opinions for eligible claims, even if veterans did not explicitly state their condition was due to an environmental hazard. However, employees and managers also said staff may forget to consider burn pit exposure if a veteran or representative does not explicitly claim exposure as a cause. Guidance in the VBA manual acknowledged that veterans "generally will not possess knowledge of all relevant environmental hazards," and therefore veterans may not always claim their condition was due to an exposure event.³⁰ The guidance then further noted VBA personnel "should be aware of the environmental hazards that may apply for claimants who served in Iraq, Afghanistan, or Djibouti, even if the claimants did not allege such exposure." The review team estimated veterans did not specify burn pit exposure in 89 percent of the conditions not identified by VBA as burn pit-related. As mentioned earlier, on June 8, 2022, following this review by the OIG, VBA removed guidance noting its staff had a duty to consider exposure to environmental hazards when claimants do not allege such exposure.

³⁰ VA Adjudication Procedures Manual 21-1, part IV, sub. ii, chap. 2, sec. C, "Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)," March 14, 2017.

Employees at multiple offices said they might also forget to consider burn pit exposure because they did not often process these claims. Not frequently processing these claims could contribute to staff's inability to remember when to consider burn pit exposure, as they would not routinely reference guidance on eligibility criteria for burn pit exposure consideration. Employees at multiple offices also noted they would benefit from additional training on processing burn pit claims.

Although the fact sheet for burn pit claims provided to medical examiners lists the body systems and organs that can be affected by burn pit exposure, the list is not replicated for claims processors in their procedures manual. The absence of this information from the manual could also contribute to staff not considering claimed issues as possibly being related to burn pit exposure. A consultant with VBA's Compensation Service and a management and program analyst both noted the information was not included in the manual because they considered it more important for medical examiners than for claims processors.

In addition, the Code of Federal Regulations, which in part governs VA benefits, does not discuss burn pits, to include their use in Iraq, Afghanistan, and Djibouti from approximately 2001. A VBA public affairs specialist said in October 2021, that VA was developing a new approach for developing presumption of service connection. An update to the regulations could be part of that process similar to other environmental hazards.

The OIG's fourth recommendation addresses the need for VBA to update the adjudication procedures manual to provide separate and specific guidance for when claims should be considered based on burn pit exposure and proper development of these claims.

VBA Training Materials Contradicted Guidance on Developing Burn Pit Exposure Claims

Training materials provided to VBA staff contradicted the manual, which states that employees have a duty to consider environmental hazards and should be aware of them even if the claimants did not allege such exposure.³¹ The training material instead instructed staff that a statement of environmental exposure was an eligibility requirement for burn pit claims.

A training facility instructor for VBA, who was identified as a point of contact for this training course, agreed the material contradicted the manual reference and that staff did have a duty to develop claims for burn pit exposure even when there was not a statement of exposure. The instructor further noted that the training material should be updated. Staff interviewed at multiple regional offices also noted the guidance was contradictory. Feedback from a course participant remarked that the guidance conflicted with the manual regarding the duty to consider exposure to

³¹ VA Adjudication Procedures Manual 21-1, part IV, sub. ii, chap. 2, sec. C, "Service Connection (SC) for Disabilities Resulting from Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)," March 14, 2017.

environmental hazards based on locations of service. This unclear guidance can lead to premature denials.

The OIG's seventh recommendation addresses the need for VBA to update training materials and ensure they are consistent with the adjudication procedures manual guidance for developing burn pit exposure claims.

VBA Staff Noted Clarification Is Needed for When to Take Development Actions for Burn Pit Exposure Not Specifically Claimed

Although most staff and managers acknowledged their duty to develop whether burn pit exposure could be linked to conditions claimed by eligible veterans even when not explicitly claimed to be due to burn pit exposure, they did note the guidance could still be clarified. To ensure development actions are taken and staff do not overlook a veteran's burn pit exposure, VA's manual could emphasize staff's requirement to take development actions for eligible veterans even when exposure was not claimed. The confusion regarding the manual and VA's duty to consider environmental hazards was further illustrated by VBA policy staff's interpretation of the manual directing staff to be aware of and consider environmental hazards even if the claimants did not allege such exposure. VBA policy staff informed the review team they would not require staff to develop and determine if a disability was due to burn pit exposure without a statement claiming a condition was due to burn pit exposure, or statements reasonably raising the issue, even though it still needed to be considered.

The OIG contends that VA regulations and policy do require VBA staff to assist veterans in developing their claims by, among other actions, considering whether veterans were exposed to environmental hazards based on the places and timing of their service. VA regulations state veterans who meet the required elements warrant an examination to determine if their conditions are related to an in-service event (in this case burn pit exposure).³² This requirement holds regardless of whether the veteran explicitly claimed such exposure. Additional regulations require VBA employees to be veteran-centric and provide the best customer experience when delivering benefits.³³ VA's approach to processing burn pit claims during the OIG's review did not meet these regulatory and policy requirements, which include VA's core values.³⁴

The review team notified VBA of errors identified when staff denied claims without further development and burn pit exposure was not explicitly claimed. VBA's senior Compensation Service staff agreed that claims development should have been conducted based on the errors the

³² 38 C.F.R. § 3.159(c)(4).

³³ 38 C.F.R. § 0.601, 0.602, and 0.603.

³⁴ VA's Core Values include the principle that VA employees will be "truly Veteran-centric by identifying, fully considering, and appropriately advancing the interests of Veterans and other beneficiaries."

OIG provided to them for comment. Because of VBA's varied interpretations of the manual, managers should clearly state in staff guidance the duty to develop eligible veterans' claims for the potential effects of burn pit exposure regardless of whether a statement of such exposure was provided with the claims.

The OIG's fourth recommendation addresses the need for VBA to update the adjudication procedures manual to provide separate and specific guidance for when claims should be considered based on burn pit exposure and proper development of these claims.

Conclusion

The OIG found that conflicting and unclear guidance for the processing of conditions related to burn pit exposure led to a high rate of premature denials. VBA staff expressed confusion over the rules for processing burn pit exposure claims compared to those for conditions linked to other Gulf War-era environmental hazards, and there were no specific controls to ensure accuracy. Because VBA has an obligation to ensure veterans receive the benefits for which they are eligible, VBA should take steps to ensure burn pit exposure is considered in relevant circumstances and to correct errors in completed claims.

Recommendations 1–7

The OIG made the following recommendation to the under secretary for benefits:³⁵

1. Take any needed corrective actions on the four errors involving the improperly granted conditions based on burn pit exposure.
2. Review all denials of compensation claims identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions claimed by eligible veterans to be due to burn pit exposure; correct any errors identified; and provide certification of completion of the review to the Office of Inspector General.
3. Review all denials of compensation claims not identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions of bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease submitted by veterans who served where and when burn pits were used even if not specifically cited in the claim; correct any errors identified; and provide certification of completion of the review to the Office of Inspector General.
4. Update the Adjudications Procedures Manual to provide separate and specific guidance for when claims should be considered based on burn pit exposure and proper development for these claims.

³⁵ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

5. Modify the examination request web-based application to add specialty language into medical opinion requests for burn pit exposure claims, to include the contents from the fact sheet for burn pit claims.
6. Implement a plan to develop controls that review the accuracy of rating decisions going forward to minimize improper denials for burn pit claims, correct any errors identified, and address error trends.
7. Update training materials and ensure they are consistent with the adjudication procedures manual guidance for developing burn pit exposure claims.

VA Management Comments

The director, Northeast District, performing the delegable duties of the under secretary for benefits, concurred with recommendations 1, 2, 3, 5, and 7, and concurred in principle with recommendations 4 and 6. Appendix F provides the full text of VA management comments.

To address recommendation 1, VBA will review and take corrective action on the errors identified by the OIG.

To address recommendation 2, VBA will review all denials of compensation claims identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions claimed by eligible veterans to be due to burn pit exposure; correct any errors identified; and provide certification of completion of the review to the OIG.

To address recommendation 3, VBA will review all denials of compensation claims not identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions of bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease submitted by veterans who served where and when burn pits were used even if not specifically cited in the claim; correct any errors identified; and provide certification of completion of the review to the OIG.

To address recommendation 4, VBA reported it created guidance regarding environmental exposures to the adjudication procedures manual with the intent to raise awareness of the issue to establish possible exposure during military service.

To address recommendation 5, VBA will add the burn pit fact sheet language to the Examination Management System. However, until VBA can add a drop-down option for burn-pit specialty language, the Medical Disability Examination Office will provide procedural guidance to examination requestors to paste this language into the examination scheduling request.

To address recommendation 6, VBA will run a quarterly report through the end of fiscal year 2022 to review claims related to burn pit exposure, and, based upon the findings, will determine if additional reviews are warranted. Further, if errors and or trends are identified, Quality Assurance will prepare reports and quality calls to ensure claims processors are aware of the

identified trends. Finally, claims processors will make corrections to identified errors through the Systematic Technical Accuracy Review error process.

To address recommendation 7, VBA will ensure procedural guidance changes based upon the above recommendations are communicated to the appropriate regional office staff. The changes may consist of a notification to the field using various forms of communication, including updates to the adjudication procedures manual, communication from the Office of Field Operations, or a notice in the Veterans Service Center Manager Call bulletin.

OIG Response

The director, Northeast District, performing the delegable duties of the under secretary for benefits, provided acceptable action plans for six of the seven recommendations. However, the action plan for recommendation 4 was not fully responsive.

The OIG recommended VBA update the adjudication procedures manual so that separate and specific guidance will be considered based on the current process to determine service connection. VBA's response noted it had addressed the presumption of service connection for certain disabilities associated with exposure to particulate matter under the provisions of 38 C.F.R. § 3.320. VA's notice of establishment for presumptive conditions due to particulate matter exposure is not responsive to this recommendation because particulate matter exposure involves different considerations from burn pit exposure, such as location of service and effective dates (see appendix B for more details). Thus, the OIG will keep recommendation 4 open until VA provides sufficient evidence of advancing recommended updates to the manual.

As for recommendation 6, despite VBA's statement that they concur with the intent of the recommendation but not the totality of the recommendation, their planned actions are responsive to the recommendation.

The OIG will monitor implementation of all seven planned actions and will close recommendations when VBA provides sufficient evidence demonstrating progress addressing the intent of the recommendations and the issues identified.

Appendix A: Burn Pit Fact Sheet

FACT sheet³⁶

Burn Pits in Iraq, Afghanistan, and the Horn of Africa

NOTICE TO VA EXAMINERS

VA Considers this Veteran Exposed to Burn Pit Toxins

Large burn pits have been used throughout the operations in Iraq and Afghanistan to dispose of nearly all forms of waste. It is estimated that such pits, some nearly as large as 20 acres, are or have been located at every military forward operating base (FOB). The pit at Joint Base Balad, also known as Logistic Support Area (LSA) Anaconda, has received the most attention. The burned waste products include, but are not limited to: plastics, metal/aluminum cans, rubber, chemicals (such as, paints, solvents), petroleum and lubricant products, munitions and other unexploded ordnance, wood waste, medical and human waste, and incomplete combustion by-products. Jet fuel (JP-8) is used as the accelerant. The pits do not effectively burn the volume of waste generated, and smoke from the burn pit blows over bases and into living areas.

DoD has performed air sampling at Joint Base Balad, Iraq and Camp Lemonier, Djibouti. Subsequently, DoD has indicated that most of the air samples have not shown individual chemicals that exceed military exposure guidelines (MEG). Nonetheless, DoD further concluded that the confidence level in their risk estimates is low to medium due to lack of specific exposure information, other routes/sources of environmental hazards not identified; and uncertainty regarding the synergistic impact of multiple chemicals present, particularly those affecting the same body organs/systems.

The air sampling performed at Balad and discussed in an unclassified 2008 assessment tested and detected all of the following: (1) Particulate matter (PM-10) (and PM 2.5); (2) Polycyclic Aromatic Hydrocarbons (PAHs); (3) Volatile Organic Compounds (VOCs); and (4) Toxic Organic Halogenated Dioxins and Furans (dioxins). Each of the foregoing is discussed below.

³⁶ “Disability Benefits Questionnaires Switchboard,” VA intranet, accessed November 17, 2021, <http://vbacoweb03.dva.va.gov/bl/21/DBQ/default.asp>. (This is an internal VA website not publicly accessible.) The fact sheet is reproduced as it appears in the source.

Some of the PAHs that were tested for and detected are listed below. These results are from DoD testing from January through April 2007.

Acenaphthene	Acenaphthylene
Anthracene	Benzo(a)anthracene
Benzo(a)pyrene	Benzo(b)fluoroanthene
Benzo(b)fluoroanthene	Benzo(g,h,i)perylene
Benzo(k)fluoroanthene	Chrysene
Dibenz(a,h)anthracene	Fluoranthene
Fluorene	Indeno(1,2,3-cd)pyrene
Naphthalene	Phenanthrene
Pyrene	

The following list reveals some of the VOCs that were tested for and detected at Balad. These results are from DoD testing from January through April 2007.

Acetone	Acrolein*
Benzene	Carbon Disulfide
Chlorodifluoromethane	Chloromethane
Ethylbenzene	Hexane
Hexachlorobutadiene*	m/p-Xylene
Methylene Chloride	Pentane
Propylene	Styrene
Toluene	

*Acrolein and Hexachlorobutadiene were, although seldomly, detected far above the MEG ratio-once over 1800 percent above the MEG for Acrolein and over 500 percent above the MEG for Hexachlorobutadiene.

Below is a list of the dioxins and furans detected, all reportedly at low doses.

1,2,3,4,6,7,8 HPCDD	1,2,3,4,6,7,8 HPCDF
1,2,3,4,7,8,9 HPCDF	1,2,3,4,7,8 HXCDD
1,2,3,4,7,8 HXCDF	1,2,3,6,7,8 HXCDD
1,2,3,6,7,8 HXCDF	1,2,3,7,8,9 HXCDD
1,2,3,7,8,9 HXCDF	1,2,3,7,8 PECDD
1,2,3,7,8 PECDF	2,3,4,6,7,8 HXCDF
2,3,4,7,8 PECDF	2,3,7,8 TCDD
2,3,7,8 TCDF	octachlorodibenzodiox
octachlorodibenzofuran	

For examination purposes, 22 of the VORs and PAHs, affect the respiratory system; 20 affect the skin; at least 12 affect the eyes; and others affect the liver, kidneys, central nervous system, cardiovascular system, reproductive system, peripheral nervous system, and GI tract. In at least seven, dermal exposure can greatly contribute to overall dosage. Therefore, when considering total potential exposure, please consider the synergistic affect of all combined toxins, primarily through inhalation and dermal exposure, but also through ingestion.

This information is not meant to influence examiners rendering opinions concerning the etiology of any particular disability; but rather to ensure that such opinions are fully informed based on all known objective facts. Therefore, when rendering opinions requested by rating authorities for a disability potentially related to such exposure, please utilize this information objectively and together with the remaining evidence, including lay evidence, in the Veteran's record.

Adjudication Authority

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

Appendix B: Other Gulf War-Era Environmental Hazards and Considerations

Several environmental hazards at military installations in Iraq, Afghanistan, and elsewhere could present health risks that have the potential to overlap with burn pit claims. In addition, compensation is awarded for Gulf War veterans for certain illnesses based on their service in Southwest Asia.

More than one environmental hazard may apply when Gulf War-era veterans submit claims. For example, if veterans submitted claims for disabilities due to exposure at the Qarmat Ali Water Treatment Plant, they could also have been exposed to burn pit emissions and particulate matter while in Iraq. VBA personnel have a duty to consider these environmental exposures as potential pathways for service connection. Further, VBA personnel should also consider whether Southwest Asia Service presumptive conditions apply to the claims.

Table B.1 provides details on some of the Gulf War environmental hazards and their health effects or presumptive disabilities associated with those exposures.

Table B.1. Comparison of Gulf War-Era Environmental Hazards and Considerations

Type of consideration	Potential health effects or presumptive conditions
<p>Burn Pit Exposure Iraq, Afghanistan, and Djibouti from approximately 2001 to present³⁷</p>	<p>Potential Health Effects Conditions involving the respiratory system, skin, eyes, liver, kidneys, central nervous system, cardiovascular system, reproductive system, peripheral nervous system, and gastrointestinal tract</p>
<p>Southwest Asia Service Active military, naval, or air service in the Southwest Asia theater, beginning on or after August 2, 1990 The Southwest Asia theater includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, United Arab Emirates, Bahrain, Qatar, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, and the Red Sea</p>	<p>Presumptive Conditions A chronic disability resulting from (or any combination of the following) an undiagnosed illness or a medically unexplained chronic multisymptomatic illness that is defined by a cluster of signs or symptoms, including chronic fatigue syndrome, fibromyalgia, or functional gastrointestinal disorders</p> <p>Additional Presumptive Conditions³⁸ Infectious diseases including brucellosis, campylobacter jejuni, Coxiella burnetii, malaria, mycobacterium tuberculosis, nontyphoid salmonella, shigella, visceral leishmaniasis, and West Nile virus</p>
<p>Qarmat Ali Water Treatment Plant Service with the Indiana, West Virginia, South Carolina, or Oregon National Guard in Iraq from April through September 2003</p>	<p>Potential Health Effects Irritation of eyes, lungs, nose, sinuses, skin, or throat; abnormal pulmonary function, kidney, or liver tests</p>
<p>Particulate Matter Exposure</p>	
<p>Iraq, Afghanistan, and Djibouti Effective date: prior to August 5, 2021</p>	<p>Potential Health Effects Respiratory and cardiopulmonary conditions</p>
<p>Service in either the Southwest Asia theater of operations (beginning on or after August 2, 1990); or Afghanistan, Djibouti, Syria, or Uzbekistan (beginning on or after September 19, 2001) Effective date: as of August 5, 2021</p>	<p>Presumptive Conditions Asthma, rhinitis, and sinusitis</p>

Source: 38 C.F.R. 3.317, 38 C.F.R. 3.320, 38 C.F.R. 3.2, and VBA training document "Claims Based on Exposure to Environmental Hazards in Iraq, Afghanistan, and Djibouti."

Note: During review, VA added regulation that granted presumptive conditions for particulate matter exposure.

³⁷ After this review was completed, VBA updated its guidance on June 8, 2022, to note burn pit emissions exposure was now recognized in the Southwest Asia theater of operations from August 2, 1990, as well as Afghanistan, Syria, Egypt, Jordan, Yemen, Lebanon, and Djibouti on the Horn of Africa from approximately 2001.

³⁸ Presumption of infectious disease also includes service in Afghanistan on or after September 19, 2001, and the disease becomes manifest to a compensable degree within specified time limits.

Appendix C: Scope and Methodology

Scope

The OIG conducted its review work from June 2021 through March 2022. The team reviewed a sample of claimed conditions involving entitlement to service connection based on burn pit exposure that were completed from May 1, 2020, to May 1, 2021, to ensure the accuracy of the disability decisions.

The team reviewed three populations comprising claimed conditions for veterans who were

1. granted service-connected compensation based on burn pit exposure,
2. denied service-connected compensation for conditions claimed to be due to burn pit exposure and had military service at locations where and during times when burn pits were used, and
3. denied service-connected compensation for bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease and had military service at locations and times burn pits were used.³⁹

Methodology

To accomplish the objective, the OIG completed these actions:

- Reviewed applicable laws, policies, and procedures related to burn pit claims processing
- Assessed the three populations of statistical samples, which consisted of
 - 60 conditions that were granted service-connected compensation based on burn pit exposure,
 - 51 conditions that were denied service-connected compensation and identified by VBA as burn pit claims, and
 - 71 conditions that were denied service-connected compensation and were not identified by VBA as burn pit claims and were one of the five most frequently claimed issues related to burn pit exposure according to VBA.
- Interviewed and obtained information from managers and staff from VA's central office and the personnel in the following VA regional offices: Detroit, Michigan; Montgomery, Alabama; Seattle, Washington; and St. Paul, Minnesota. In addition, the team interviewed representatives from the following veterans service organizations: American Legion,

³⁹ According to VBA's Burn Pit Exposure Tableau report, these were the top five commonly claimed burn pit exposure conditions.

Disabled American Veterans, Paralyzed Veterans of America, and Veterans of Foreign Wars.

Fraud Assessment

The review team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant within the context of the review objectives, could occur during this review. The team exercised due diligence in staying alert to any fraud indicators by

- identifying laws, regulations, and procedures related to the review subject matter to help detect noncompliance or misconduct,
- completing the OIG Fraud Indicators and Assessment Checklist, and
- reviewing relevant OIG hotline complaints for related reports of fraud.

The OIG did not identify any clear instances of fraud during this review. During the team's work, the OIG referred two instances of potential fraud to the OIG's Office of Investigations. The Office of Investigations subsequently determined that neither referral represented fraudulent activity.

Data Reliability

The review team used computer-processed data from VBA's Corporate Database. To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The team also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. The team compared veterans' names, file numbers, claim closed date, end product, special issue, claimant text, diagnostic type code, and diagnostic text as provided in the data received for the three populations of samples, which included a total of 182 conditions reviewed, with information from electronic claims folders. Testing of the data disclosed that they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the veterans' electronic claims folders reviewed did not disclose any problems with data reliability.

Government Standards

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

Appendix D: Statistical Sampling Methodology

Approach

To accomplish the objective of determining whether VBA staff correctly followed regulations and procedures when deciding claimed conditions associated with burn pit exposure, the team reviewed a statistical sample of veterans' records from three datasets:

1. Conditions granted compensation for veterans based on burn pit exposure
2. Conditions denied compensation for veterans who
 - claimed issues to be related to burn pit exposure,
 - had military service at locations and times burn pits were used, and
 - were identified by VBA as burn pit exposure claims.
3. Conditions denied compensation for veterans who
 - had military service where and when burn pits were used,
 - had not been identified by VBA as burn pit claims, and
 - sought compensation for one of the five most frequently claimed issues related to burn pit exposure according to VBA (bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease).

The claims associated with all datasets were completed from May 1, 2020, to May 1, 2021. The end-product codes for the claims associated with the conditions from all datasets were 010, 020, 030, 040, and 110.⁴⁰ The team used statistical sampling to quantify the extent of records where VA employees inaccurately processed the claimed conditions.

Population

The review population for the first two datasets noted above consisted of 2,157 conditions. This population was then stratified into two datasets, one that included granted conditions (dataset 1) and the other that included denied conditions (dataset 2). After excluding samples that the OIG determined to be outside the scope of the review and including samples that shifted from the third dataset based on meeting this population criteria instead, the population for these two datasets was estimated to be 1,186 conditions identified by VBA as part of burn pit exposure claims that were completed during the review period. For dataset 2, samples were determined to be out of the review's scope for reasons that included veterans not serving at a burn pit location

⁴⁰ The end-product system is the primary workload monitoring and management tool for VBA.

or time frame. Samples shifted from dataset 3, as they were later identified as burn pit-related claims by VBA and therefore belonged in dataset 2.

The review population for the third dataset consisted of 11,887 conditions. After excluding samples that the OIG determined to be outside the scope of the review, the remaining population was estimated to be 4,220 denied conditions not identified by VBA as burn pit exposure claims that were completed during the review period.

Sampling Design

The team coordinated with an OIG statistician to review a statistical sample from each dataset. The first dataset consisted of 60 samples, the second 51 samples, and the third 71 samples, for a total of 182 in-scope samples reviewed. During the review, three samples shifted from dataset 3 to dataset 2, as those samples met the dataset 2 criteria. The statistical samples are based on a 90 percent confidence level with the following design precisions and expected error rates:

- **Dataset 1.** Design precision of 6.8 percent and an expected error rate of 15 percent
- **Dataset 2.** Design precision of 9.9 percent and an expected error rate of 25 percent
- **Dataset 3.** Design precision of 10.0 percent and an expected error rate of 40 percent

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations. For example, the team calculated the error rate estimates by first summing the sampling weights for all sample records that contained the given error, then dividing that value by the sum of the weights for all sample records.

Projections and Margins of Error

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

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

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

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

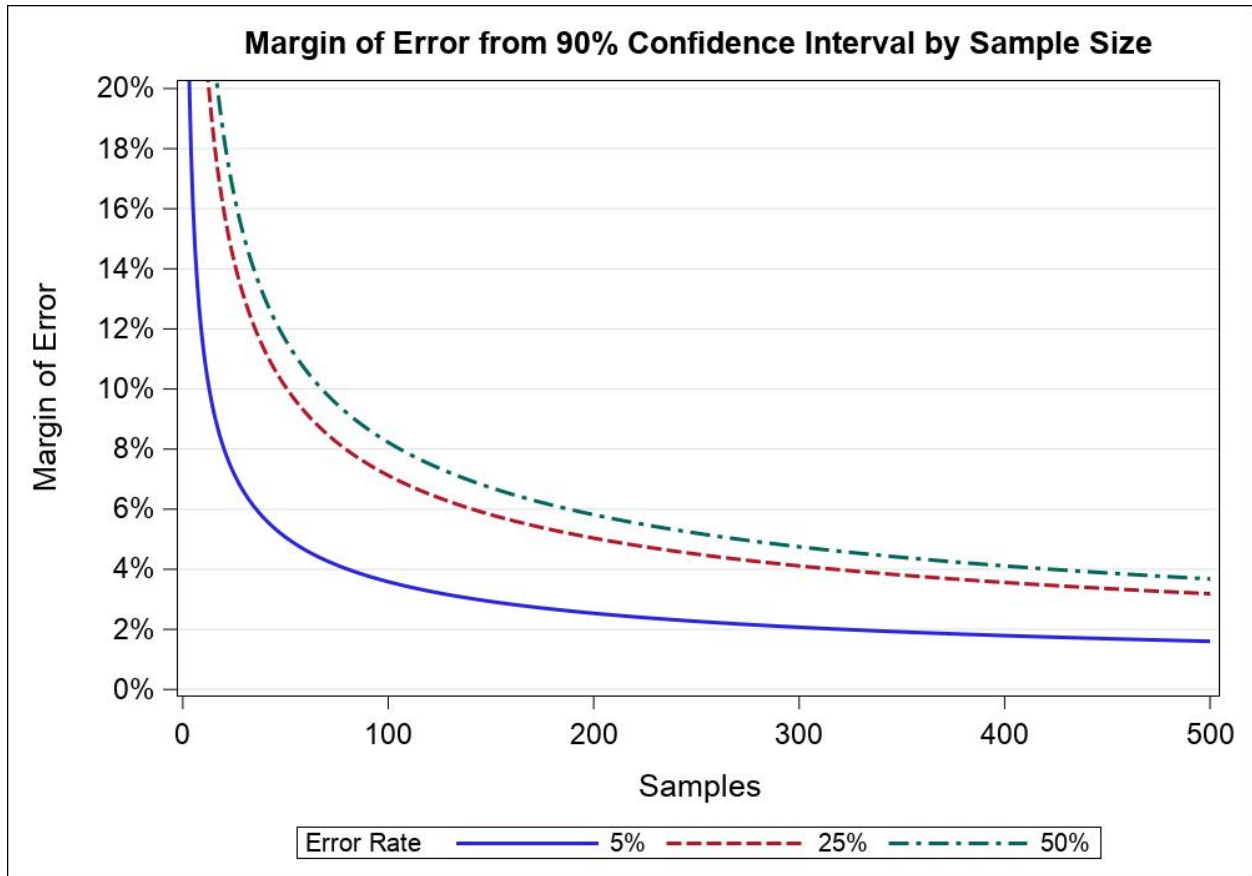


Figure D.1. Effect of sample size on margin of error.
 Source: VA OIG statistician’s analysis

Projections

The following tables detail the review team’s analysis and projected results for claims completed during the review period.

Table D.1. Statistical Projection for Estimated Population of Conditions Granted or Denied Compensation Due to Burn Pit Exposure

Description	Estimate number	Margin of error based on 90 percent confidence interval	90 percent confidence interval lower limit	90 percent confidence interval upper limit	Count from sample
Conditions granted or denied due to burn pit exposure	1,186	118*	1,068	1,305	114

Source: VA OIG statistician’s projection of estimated population based on the team’s findings.

* Projections and confidence intervals may not total precisely due to rounding.

Table D.2. Statistical Projection for Estimated Population of Conditions Granted Compensation Due to Burn Pit Exposure

Description	Estimate number	Margin of error based on 90 percent confidence interval	90 percent confidence interval lower limit	90 percent confidence interval upper limit	Count from sample
Conditions granted due to burn pit exposure	159	31	128	189*	60

Source: VA OIG statistician's projection of estimated population based on the team's findings.

* Projections and confidence intervals may not total precisely due to rounding.

Table D.3. Statistical Projection for Estimated Population of VBA-Identified Burn Pit Exposure Claimed Conditions Denied Compensation for Veterans who Served in Burn Pit Locations and Time frames

Description	Estimate number	Margin of error based on 90 percent confidence interval	90 percent confidence interval lower limit	90 percent confidence interval upper limit	Count from sample
Burn pit exposure conditions denied compensation for eligible veterans	1,028	114	914	1,142	54
Conditions from population inaccurately processed	874	136	738	1,010	46
Conditions from population inaccurately processed that had potential to impact benefits	627	138	489	765	33
Percentage of conditions from population that had medical examinations completed	89	8	81	97	41

Veterans Prematurely Denied Compensation for Conditions
That Could Be Associated with Burn Pit Exposure

Description	Estimate number	Margin of error based on 90 percent confidence interval	90 percent confidence interval lower limit	90 percent confidence interval upper limit	Count from sample
Conditions from population that did not have medical opinions requested regarding burn pit exposure	646	138	508	784	34
Conditions from population that did not provide Burn Pit Fact Sheet with opinion requests	608	137	471	745	32

Source: VA OIG statistician's projection of estimated population based on the team's findings.

Table D.4. Statistical Projection for Estimated Population of Claimed Respiratory Conditions* Denied Compensation for Veterans who Served in Burn Pit Locations and Time frames, Not Identified as Burn Pit Claims by VBA

Description	Estimate number	Margin of error based on 90 percent confidence interval	90 percent confidence interval lower limit	90 percent confidence interval upper limit	Count from sample
Respiratory conditions denied compensation for veterans who served in burn pit locations and time frames	4,220	666	3,554	4,886	71
Respiratory Conditions from population inaccurately processed (percent)	4,101 (97)	662 (3)	3,439 (94)	4,763 (100)	69

Veterans Prematurely Denied Compensation for Conditions
That Could Be Associated with Burn Pit Exposure

Description	Estimate number	Margin of error based on 90 percent confidence interval	90 percent confidence interval lower limit	90 percent confidence interval upper limit	Count from sample
Respiratory Conditions from population inaccurately processed that had potential to impact benefits	3,923	655	3,268	4,577**	66
Percentage of errors from population that involved VBA staff not developing claim to determine if related to burn pit exposure	99	1	96**	100	68
Percentage of respiratory conditions from population where veteran did not specify condition was due to burn pit exposure	89	6	82**	95	63

Source: VA OIG statistician's projection of estimated population based on the team's findings.

**Respiratory conditions were bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease.*

*** Projections and confidence intervals may not total precisely due to rounding.*

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

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs
1	The OIG found that errors in prematurely granting service-connected compensation for conditions claimed to be due to burn pit exposure resulted in \$78,300 in improper payments.	\$0	\$78,300

Note: The OIG determined VBA's inaccurate processing led to an estimated \$78,300 in questioned costs during the review period. The total consists of payments that were unsupported by documentation.

Appendix F: VA Management Comments

Department of Veterans Affairs Memorandum

Date: June 2, 2022

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report – Veterans Prematurely Denied Compensation for Conditions That Could Be Associated with Burn Pit Exposure (Project number 2021-02704-AE-0123) - VIEWS 07468546

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

1. Attached is VBA's response to the OIG Draft Report: Veterans Prematurely Denied Compensation for Conditions That Could Be Associated with Burn Pit Exposure.

The OIG removed point of contact information prior to publication.

(Original signed by)
Thomas J. Murphy
Director, Northeast District
Performing the Delegable Duties of the
Under Secretary for Benefits

Attachment

Attachment

**Veterans Benefits Administration (VBA) Comments on OIG Draft Report,
Veterans Prematurely Denied Compensation for Conditions
That Could Be Associated with Burn Pit Exposure
Project number 2021-02704-AE-0123**

VBA concurs with the findings in OIG's draft report and provides the following comments in response to the recommendations:

Recommendation 1: The Under Secretary for Benefits should take any needed corrective actions on the four errors involving the improperly granted conditions based on burn pit exposure.

VBA's Response to the Draft: Concur. The Veterans Benefits Administration (VBA) will review and take corrective action on the errors identified.

Target Completion Date: August 31, 2022.

Recommendation 2: The Under Secretary for Benefits should review all denials of compensation claims identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions claimed by eligible veterans to be due to burn pit exposure; correct any errors identified; and provide certification of completion of the review to the Office of Inspector General.

VBA's Response to the Draft: Concur.

Target Completion Date: December 31, 2022.

Recommendation 3: The Under Secretary for Benefits should review all denials of compensation claims not identified as burn pit claims completed from May 1, 2020, to May 1, 2021, for conditions of bronchial asthma, chronic bronchitis, allergic rhinitis, sleep apnea, and chronic obstructive pulmonary disease submitted by veterans who served where and when burn pits were used even if not specifically cited in the claim; correct any errors identified; and provide certification of completion of the review to the Office of Inspector General.

VBA's Response to the Draft: Concur.

Target Completion Date: December 31, 2022.

Recommendation 4: The Under Secretary for Benefits should update the Adjudications Procedures Manual to provide separate and specific guidance for when claims should be considered based on burn pit exposure and proper development for these claims.

VBA's Response to the Draft: Concur in principle. Currently, VBA does not recognize a presumption of service connection for burn pit-related health conditions. Therefore, all claims for disabilities due to burn pit exposure must be processed under direct service connection parameters. VBA has created some guidance regarding environmental exposures in the Adjudication Procedures Manual (M21-1) with the intent to raise awareness of the issue in order to establish possible in-service incurrence events. However, because each case may present different facts and circumstances, adjudicators must use discretion in determining the next steps in the claims process in each individual case in an effort to establish direct service connection. These steps could include actions such as whether to order a medical disability examination and/or opinion, when necessary, under 38 U.S.C. § 5103A and 38 C.F.R. § 3.159(c)(4).

The guidance in M21-1 cannot specifically prescribe substantive sub-regulatory guidance for a burn pit presumption as VA has not created such a presumption in any regulations. Therefore, VBA cannot instruct disability claims processors to take specific actions other than what is required under the authority governing processes for direct service connection. It is significant to note, however, that VBA has, since the period of OIG's review, updated M21-1 with the creation of new Part VIII, Subpart ii, Chapter 2, Section A to address the presumption of service connection for certain disabilities associated with exposure to particulate matter under the provisions of 38 C.F.R. § 3.320. This M21-1 revision was published on August 2, 2021 (Key Changes document attached) and discusses the regulatory presumption of service connection for asthma, sinusitis, and rhinitis, which are some of the most common conditions claimed on the basis of exposure to burn pits.

VBA requests closure of this recommendation.

Recommendation 5: The Under Secretary for Benefits should modify the examination request web-based application to add specialty language into medical opinion requests for burn pit exposure claims, to include the contents from the fact sheet for burn pit claims.

VBA's Response to the Draft: Concur. VBA will add the Burn Pit fact sheet language to the Examination Management System (EMS). This necessitates VBA to write a requirement to scope it for inclusion in EMS and it will require a new Medical Opinion type in the EMS Information Exchange Package Documentation (IEPD) to highlight it to the Vendors and Cerner. Until VBA can add a drop-down option for burn-pit specialty language, the Medical Disability Examination Office (MDEO) will provide procedural guidance to examination requestors to paste this language into the examination scheduling request (ESR).

Target Completion Date: December 31, 2022

Recommendation 6: The Under Secretary for Benefits should implement a plan to develop controls that review the accuracy of rating decisions going forward to minimize improper denials for burn pit claims, correct any errors identified, and address error trends.

VBA's Response to the Draft: Concur in principle. VBA concurs with the finding and intent of the recommendation, but not the totality of the recommendation. VBA currently has accuracy controls through Compensation Service Quality Assurance (QA). The Systematic Technical Accuracy Review (STAR) program conducts monthly quality assessments at the national level. These reviews include claims related to burn pit exposure. Compensation Service will run a quarterly STAR report through the remainder of fiscal year 2022 to review claims related to burn pit exposure. Based upon the findings, Compensation Service will determine if additional reviews are warranted. If errors and/or trends are identified QA will prepare reports and host quality calls to ensure all claims processors are aware of the identified trends. Claims processors will make corrections to identified errors through the STAR error process.

Target Completion Date: October 31, 2022

Recommendation 7: The Under Secretary for Benefits should update training materials and ensure they are consistent with the adjudication procedures manual guidance for developing burn pit exposure claims.

VBA's Response to the Draft: Concur. VBA will ensure that any procedural guidance changes based upon the above recommendations are communicated to the appropriate regional office staff. These changes may not warrant a full training course but may consist of a notification to the field using various

forms of communication, including manual update(s) to the M21-1, communication from the Office of Field Operations, or a notice in the Veterans Service Center Manager Call bulletin.

Target Completion Date: December 31, 2022

*OIG Note: The attachments were not included in this report. Copies may be obtained from the
OIG Information Release Office.*

*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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