



# US DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

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OFFICE OF MANAGEMENT

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## **VA's Allocation of Initial PACT Act Funding for the Toxic Exposures Fund**

Management Advisory  
Memorandum

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January 11, 2024

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DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**  
WASHINGTON, DC 20001



November 15, 2023

**MANAGEMENT ADVISORY MEMORANDUM**

**TO:** Jon J. Rychalski, Assistant Secretary for Management and Chief Financial Officer  
Office of Management (004)

**FROM:** Larry Reinkemeyer, Assistant Inspector General  
VA Office of Inspector General's Office of Audits and Evaluations (52)

**SUBJECT:** VA's Allocation of Initial PACT Act Funding for the Toxic Exposures Fund

The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, passed in August 2022, authorizes VA to deliver veterans' health care and benefits associated with exposure to environmental hazards during military service.<sup>1</sup> As part of the PACT Act, VA is authorized to use funds appropriated to the Cost of War Toxic Exposures Fund (TEF) for veterans' health care and benefits, including administration costs and the Veterans Benefits Administration's (VBA) modernization of its information technology systems and infrastructure to support the expected increase in claims processing for newly eligible veterans. Congress authorized an initial appropriation of \$500 million to set up the TEF, with the funds being of use beginning in fiscal year 2022 and remaining available until the end of fiscal year 2024, with the requirement that VA produce a spend plan detailing how it would allocate the funds.<sup>2</sup>

The VA Office of Inspector General (OIG) examined the initial \$500 million TEF appropriation, as requested by the VA Secretary. This memorandum focuses on VA's spend plans to Congress for the initial \$500 million TEF appropriation.<sup>3</sup> Spend plans detail how VA will allocate funds for the various programs, projects, or activities authorized for the TEF, and are updated when VA reallocates funds. VA's Office of Management leads VA's budgetary and financial

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<sup>1</sup> Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022. Pub. L. No. 117-168, 136 Stat. 1759 (2022).

<sup>2</sup> PACT Act § 806, 136 Stat. at 1805 (authorization and spend plan requirement).

<sup>3</sup> After the initial appropriation, Congress appropriated an additional \$5 billion in TEF monies through fiscal year 2027. See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4957 (2022). It was not part of the scope of this examination to evaluate the spend plan for the \$5 billion appropriation made under the Consolidated Appropriations Act, 2023.

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oversight, including budget formulation, execution monitoring, and audit readiness.<sup>4</sup> This office is also responsible for conducting and reporting its monthly budget reviews for spend plan oversight and fund execution. The Office of Management, through VA’s Office of Budget, guides and coordinates with the VA administrations and staff offices on matters relating to the formulation and execution of the TEF budget. During its examination, the OIG noted deficiencies with the spend plans and several other items reviewed. The OIG is issuing this memorandum to bring these identified issues to the department’s attention to determine the need for any additional corrective actions.<sup>5</sup>

The TEF appropriation authorizes investment in

(1) the delivery of veterans’ health care associated with exposure to environmental hazards in the active military, naval, air, or space service in programs administered by the Under Secretary for Health; (2) any expenses incident to the delivery of veterans’ health care and benefits associated with exposure to environmental hazards in the active military, naval, air, or space service, including administrative expenses, such as information technology and claims processing and appeals, and excluding leases as authorized or approved under [Title 38, United States Code, Section 8104]...; and (3) medical and other research relating to exposure to environmental hazards.<sup>6</sup>

Pursuant to Title 31, United States Code, Section 1301 (the Purpose Statute), appropriations may be applied only to the objects for which the appropriations were made, except as otherwise provided by law. Accordingly, the use of TEF money for purposes that are not consistent with this authorization could violate federal appropriations law.

## **VA’s Initial Spend Plan**

The VA spend plan for the \$500 million initial appropriation to the TEF was originally provided by VA Secretary Denis McDonough to Congress as an enclosure to a letter dated September 9, 2022. VA’s spend plan is designed to ensure adequate resources are provided to each VA

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<sup>4</sup> VA Financial Policy, “Chapter 12–Toxic Exposure Fund,” accessed July 24, 2023, <https://department.va.gov/financial-policy-documents/financial-document/chapter-12-toxic-exposures-fund/>. In July 2023, VA updated its financial policy to reflect that the Office of Management is responsible for the overall VA spend governance process.

<sup>5</sup> The OIG issues management advisory memoranda when exigent circumstances or areas of concern are identified by OIG hotline allegations or in the course of its oversight work, particularly when immediate action by VA can help reduce further risk of harm to veterans or significant financial losses. Memoranda are published unless otherwise prohibited from release or to safeguard protected information.

<sup>6</sup> See PACT Act § 805(a), 136 Stat. at 1804, codified at 38 U.S.C. § 324(c).

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administration and staff office as they use the \$500 million allocated through fiscal year 2024.<sup>7</sup> This allocation provided for approximately 2,400 full-time employees (FTE).

VBA, the Office of Information and Technology (OIT), and the Veterans Health Administration (VHA) received about 92 percent of the \$500 million—which was used primarily for hiring staff. The work summarized in this memorandum focused on VA’s allocation of the TEF to these three offices. The remaining approximately 8 percent of funding was distributed among eight other VA offices. Table 1 provides an overview of the funding.

**Table 1. Overview of Initial Funding**

Entity	Initial funding allocation (rounded in millions of dollars)
VHA	\$35
VBA	\$302
OIT	\$123
Other*	\$40
<b>Total</b>	<b>\$500</b>

*Source: Consolidated Step Down PACT Act Initial Spend Plan, September 2022, and interviews.*

*\*The “Other” category includes eight VA entities.*

The initial spend plan described VA’s intent to use the \$500 million to support the delivery of veterans’ health care and benefits associated with exposure to environmental hazards.<sup>8</sup> For example, VHA requested 123 employees, including 50 public affairs officers, to enhance local outreach efforts. VBA requested 1,898 employees, which includes 716 claims processors and 459 National Call Center personnel.<sup>9</sup> OIT requested 99 employees to support the increase in the volume of inquiries, claims being processed, and health care associated with the surge in hiring and onboarding VA staff.

The spend plan has been amended multiple times since it was initially submitted. In some instances, amendments to the spend plan were made based on advice from the VA Office of

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<sup>7</sup> Secretary Denis McDonough letter and enclosure to Congress, September 9, 2022.

<sup>8</sup> The OIG is performing additional oversight work related to the number of permanent FTE employees being hired with PACT Act funds.

<sup>9</sup> Here, claims processors refers to 317 rating veterans service representatives and 399 veterans service representatives. Claims processors are members of an adjudication team that includes veterans service representatives, rating veterans service representatives, and others. They are responsible for the development, rating, and authorization activities necessary to process a VBA claim. VA Manual 21-1, “Functions and Composition of the Adjudication Teams,” part 1, sub. 2, chap. 1, sec. A, topic 1.c, in *Adjudication Procedures Manual*, January 24, 2022.

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General Counsel to avoid possible violations of appropriations law.<sup>10</sup> Examples of some of these amendments are included below. The OIG team looked at both the initial spend plan produced by VA as well as amendments to the plan and associated reports.

## Estimation Methodologies Further Explain Spend Plans

VA complied with the PACT Act requirement to submit a TEF spend plan to Congress.<sup>11</sup> Subsequently, in December 2022, the US Office of Management and Budget requested that VA produce policies and procedures related to how the TEF was allocated to ensure compliance with applicable laws and regulations. VA’s associate deputy assistant secretary of budget operations interpreted this as a request for VA’s financial policy and estimation methodologies for the use of those funds. These estimation methodologies explain the intended use of the allocated funds.

As of September 2023, the estimation methodologies had not been completed for every VA administration and office. While VHA finalized its estimation methodology to support expenses that are allowable under the TEF, both VBA and OIT were still in the process of preparing estimation methodologies to explain their TEF spend plans. Table 2 provides an overview of the status of the estimation methodologies.

**Table 2. Status of TEF Estimation Methodologies**

Entity	Publication date
VHA	July 2023 (completed)
VBA	Anticipated December 2023
OIT	Anticipated February 2024

*Source: Correspondence with VA’s associate deputy assistant secretary of budget operations and the VA Financial Policy, Chapter 12–Toxic Exposure Fund.*

Because all estimation methodologies were not available, the OIG could not provide meaningful oversight and analysis of whether VBA and OIT’s spending complied with the authorized purposes of the TEF. Without approved estimation methodologies to support the TEF spend plan, VA risks spending the funds on unallowable items.<sup>12</sup>

The team was able to examine only VHA’s estimation methodology for TEF expenditures and found it was reasonable and consistent with the authorized purposes.

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<sup>10</sup> For example, the VHA public affairs employees were removed in subsequent spend plan revisions based on guidance from the VA Office of General Counsel.

<sup>11</sup> See PACT Act § 806(b), 136 Stat. at 1805 (spend plan requirement). The PACT Act did not require VA to explain how its spend plan complied with federal appropriations law.

<sup>12</sup> 31 U.S.C. § 1301(a).

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## Identification of Potential Purpose Statute Violations in the Initial Spend Plan

To identify possible violations of the Purpose Statute, the team reviewed documentation, including memoranda and relevant laws, and conducted interviews with responsible management officials. While assessing VA's initial spend plan, the OIG team learned that the Office of Management requested a legal review of proposed TEF spending plans. The VA's Office of General Counsel identified two proposed expenditures that did not align with the TEF's purpose. In both instances, once VA's Office of General Counsel alerted the responsible VA administration of a possible violation, that administration revised its spend plan to eliminate the questionable expenditure and resolved the potential issue before funds were used. These two planned expenditures are discussed below.

### *OIT Removed National Cemetery Administration Costs from the Spend Plan after Receiving Office of General Counsel Guidance*

OIT's initial spend plan included \$1.1 million to update the Memorial Benefits Management System for the National Cemetery Administration. The administration uses the system to determine eligibility, schedule services, and perform other related functions. In March 2023, VA's Office of General Counsel provided an opinion to the Office of Management that the costs were not linked to the TEF's purpose. The OIG team examined the submitted spend plans and confirmed that OIT followed VA Office of General Counsel's guidance and removed the system costs. OIT has since submitted a revised spend plan.

### *VHA Removed Communications Staff from the Spend Plan also after Receiving Office of General Counsel Guidance*

VHA's initial spend plan included \$34.7 million for 123 FTE. Of these, 50 would be associated with communications. However, the TEF authorization does not explicitly allow communications staff. In December 2022, VHA received guidance from VA's Office of General Counsel regarding tracking employees' hours in accordance with the TEF. VHA reallocated the funds to other job categories, which is reflected in a February 2023 revised spend plan. By comparing the spend plan and its supporting documentation to the law, the OIG team determined spending on communications staff would have been inconsistent with the authorized purposes of the TEF.<sup>13</sup> The team reviewed the spend plan and subsequent plans to validate that the costs were removed.

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<sup>13</sup> See PACT Act § 805(a), 136 Stat. at 1804, codified at 38 U.S.C. § 324(c).

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## Monthly Spend Reports

VA issues a monthly report to Congress on VA's progress related to TEF expenditures, including positions onboarded, funds allocated, obligations, and paid expenditures.<sup>14</sup> The team reviewed these reports from November 2022 through August 2023 and found minor calculation inaccuracies and inconsistencies. For example, the OIG team could not determine whether reported permanent and "term" FTEs were based on per month or cumulative data because the method used for reporting was not consistent.<sup>15</sup> Although there were some inaccuracies in the reports to Congress on hiring progress under the TEF, they did not materially affect the reports. The team informed VA of the errors.

## Conclusion

The OIG acknowledges VA's efforts to comply with the TEF and prevent violations of federal appropriations law, such as the Purpose Statute. The OIG commends the Office of Management for proactively seeking legal guidance from the Office of General Counsel to ensure the TEF allocations are used in accordance with their authorized purposes. This memorandum is meant to convey the information necessary for the Office of Management to determine if additional actions are warranted. The OIG recognizes VBA and OIT are still preparing detailed methodologies to support their spend plans. At this time, the OIG is taking no additional steps on the issues identified in this memorandum.

## Requested Action

The OIG requests that the Office of Management inform the OIG what action, if any, is taken to ensure that VA spend plans are consistent with the authorized purposes of the TEF once VBA and OIT finalize their estimation methodologies.

## VA Management Comments

The OIG provided VA with a draft of this memorandum for review (comments were not required). On November 29, 2023, the Office of Management responded that it was not providing comments to the memorandum.

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<sup>14</sup> These reports are not publicly available.

<sup>15</sup> "Term appointments may be for a period of more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Term appointments are often appropriate for persons employed to work on medical research projects." VA Handbook 5005, *Staffing*, August 12, 2005.

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## OIG Contact and Staff Acknowledgments

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