

**Attachment: Summary of Relevant Sections  
Applicable to the Veterans Benefits Administration (VBA)  
Public Law (PL) 117-168,  
PACT Act Interim Guidance  
September 09, 2022**

On August 10, 2022, the President signed the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022*, (PACT Act), PL 117-168. This historic piece of legislation involves many aspects of VA. This attachment summarizes only the relevant sections of the law that impact the Veterans Benefits Administration (VBA).

**Table of Contents**

[Title I – Expansion of Health Care Eligibility](#)

[Title II – Toxic Exposure Presumption Process](#)

[Title III – Improving the Establishment of Service Connection Process for Toxic-Exposed Veterans](#)

[Title IV – Presumptions of Service Connection](#)

[Title VI – Improvement of Resources and Training Regarding Toxic-Exposed Veterans](#)

[Title VII - Resourcing](#)

[Title VIII – Records and Other Matters](#)

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

**Section 102. Definitions relating to toxic-exposed veterans.**

This section defines “toxic exposure” as: toxic exposure risk activity or an exposure to an identified substance, chemical or airborne hazard.

A “toxic exposed Veteran” means a Veteran described in [38 U.S.C. § 1710\(e\)\(1\)](#).

“Toxic exposure risk activity” is any activity that requires a corresponding entry in an exposure tracking record system (defined in Section 1119(c) of this title) for the Veteran who carried out the activity, or that the Secretary determines qualifies for purposes of the subsection when considering what is reasonably prudent to protect the health of Veterans.

VBA Action: This section primarily affects health care, but regional offices (ROs) should be aware of the new definitions. As a result of this change in law, VBA will amend [38 C.F.R. § 3.1](#).

## **Title II – Toxic Exposure Presumption Process**

Title II applies to the new presumptive conditions established in the PACT Act and to any additional presumptive condition that may be established in the future. This would apply when a presumptive condition is established through Congressional legislation or if the Secretary of VA establishes a presumption under existing authorities.

### **Section 202. Improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure.**

#### **38 U.S.C. § 1171**

This section establishes a new framework in 38 U.S.C. § 1171 to establish, modify or remove presumptions of service connection based on toxic exposure. VA must establish a process regarding the review of recommendations for presumptive disabilities associated with toxic exposure.

VBA Action: This section assists in streamlining the process to establish toxic exposure presumptive conditions. There is no direct impact to ROs; however, awareness is important as VA may routinely establish new presumptive conditions under this process. As a result of this change, VBA may codify the process in a future regulation.

### **Section 202. Improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure.**

#### **38 U.S.C. § 1172**

This section establishes an annual notice and opportunity for public comment on the health outcomes chosen for formal evaluation under new 38 U.S.C. § 1172. At least once a year, it requires the Secretary to publish in the Federal Register a notice of the formal presumptive evaluations that VA will conduct. VA will seek public comments about the formal evaluation, consider all comments and respond to all comments in the Federal Register. For each published notice, VA will hold an open meeting for members of the public to voice their comments in response to the notice.

On a quarterly basis, VA will collaborate with, partner with, and give weight to the advice of Veteran Service Organizations and other stakeholders. VBA and the Veterans Health Administration (VHA) will establish a workgroup.

VBA Action: This section requires public transparency and stakeholder collaboration in VA's efforts to establish new presumptive conditions. There is no direct impact to ROs; however, awareness is important as VA may establish new presumptive conditions through this process. As a result of this change, VBA may codify the process in a future regulation.

**Section 202. Improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure.**

**38 U.S.C. § 1173**

This section requires VA to establish a process of evaluating presumptive recommendations under new 38 U.S.C. § 1173. It requires VA to establish a formal facts-based process to assess the disabilities brought forth by the workgroup (established under § 1172) for validation of potential presumptive conditions or removal of current presumptive conditions. Considered evidence includes scientific research, claims data and other factors deemed appropriate, such as level of disability and mortality.

VBA Action: This section requires VBA to establish a formal process for the assessment of potential presumptive conditions. There is no direct impact to ROs; however, awareness is important as VA may establish new presumptive conditions, or potentially remove existing presumptive conditions, through this process. As a result of this change, VBA may codify the process in a future regulation.

**Section 202. Improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure.**

**38 U.S.C. § 1174**

This section requires VA to issue regulations within 160 days following receipt of a recommendation to establish, modify or remove a presumption of service connection based on toxic exposure under new 38 U.S.C. § 1174. If VA removes a presumption, there is a provision for Veterans and other beneficiaries who are receiving benefits based on that presumption to continue to receive such benefits.

VBA Action: This section requires VBA to publish applicable regulations within 160 days following receipt of the recommendation. There is no direct impact to ROs; however, awareness is important as VA may establish, modify or remove presumptive conditions through this process. As a result of this change, VBA may codify the process in a future regulation.

**Section 203. Outreach to claimants for disability compensation pursuant to changes in presumptions of service connection.**

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

VBA Action: This section requires VBA to conduct outreach to claimants with previously denied claims. There is no direct impact to ROs; however, awareness is important as claims processors will come across the outreach letters during claim development and review. Claims processors must accept and readjudicate any valid and complete supplemental claim for the previously denied condition under the new presumptive policy.

#### **Section 204. Reevaluation of claims for Dependency and Indemnity Compensation (DIC) involving presumptions of service connection.**

This section adds 38 U.S.C. § 1305 Reevaluation of Dependency and Indemnity Compensation Determinations Pursuant to Changes in Presumptions of Service Connection.

For DIC claims, whenever a law, regulation, or Federal court decision establishes or modifies a presumption of service connection, the Secretary will identify claims that were submitted and denied prior to the date on which the law went into effect and notify potentially entitled beneficiaries. A readjudication of such claims, at the election of the claimant, would be needed to re-evaluate the original claim.

If upon re-evaluation of a previously denied claim an entitlement is shown, monetary benefits can be awarded without delay.

Claims for DIC based on herbicide exposure are not subject to Section 5110 of title 38 and retroactivity is not limited to liberalized legislation and may be granted as if eligibility existed at the time of original application.

VBA Action: This section requires VBA to conduct outreach to DIC claimants with previously denied DIC claims. There is no direct impact to ROs, however, awareness is important as claims processors will come across the outreach letters during claim development and review. Claims processors must accept and readjudicate any valid and complete DIC claim, *at the election of the claimant*, that was previously denied, under the new presumptive policy.

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

#### **Section 302. Presumptions of toxic exposure.**

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

38 U.S.C. § 1119(c)(1) defines “covered veteran” as any Veteran who:

- On or after August 2, 1990, performed active military, naval, air or space service while assigned to a duty station in, including airspace above:
  - Bahrain
  - Iraq
  - Kuwait
  - Oman
  - Qatar
  - Saudi Arabia
  - Somalia, or
  - United Arab Emirates, or
- On or after September 11, 2001, performed active military, naval, air or space service while assigned to a duty station in, including airspace above:
  - Afghanistan,
  - Djibouti,
  - Egypt,
  - Jordan,
  - Lebanon,
  - Syria,
  - Yemen,
  - Uzbekistan, or
  - Any other country determined relevant by the Secretary.

VBA Action: VBA is working to ensure all claims processors have ILER access and training. VBA will provide guidance on how to utilize the information in ILER for claim adjudication.

As a result of this change, VBA will update [38 C.F.R. § 3.320](#).

### **Section 303. Medical nexus examinations for toxic exposure risk activities.**

New 38 U.S.C. § 1168 requires that when a claim for service-connected disability is submitted, with evidence of a disability and evidence of participation in a toxic exposure risk activity during service, unless the evidence of record is sufficient to establish service connection for the disability, VBA shall request an examination, along with a medical opinion, to ascertain total potential exposure and the combined effect of toxic exposure risk activities.

The health care provider shall consider the potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities.

There is an exception for cases where there is no indication of an association between the disability claimed and the toxic exposure risk activity.

VBA Action: VBA is developing policy incorporating the new exam requirements. This includes how to identify, document and convey military toxic exposure information during the claim process.

As a result of this change, VBA may amend 38 C.F.R. § 3.159 or establish a new section of the regulation.

## **Title IV – Presumptions of Service Connection**

### **Section 401. Treatment of veterans who participated in cleanup of Enewetak Atoll as radiation-exposed veterans for purposes of presumption of service connection of certain disabilities by Department of Veterans Affairs.**

This section establishes that participants in the cleanup of Enewetak Atoll from January 1, 1977, through December 31, 1980, are radiation-exposed Veterans. Enewetak Atoll is a large coral atoll of 40 islands, located in the Marshall Islands.

VBA Action: VBA is developing formal policy addressing this new exposure group.

As a result of this change, VBA will amend [38 C.F.R. § 3.309](#) to include the new radiation risk activity.

### **Section 402. Treatment of veterans who participated in nuclear response near Palomares, Spain, or Thule, Greenland, as radiation-exposed veterans for purposes of presumption of service connection of certain disabilities by Department of Veterans Affairs.**

This section establishes that participants in the cleanup of four thermonuclear weapons, following the collision of a United States Air Force B-52 bomber and refueling plane off the coast of Palomares, Spain, from January 17, 1966, to March 31, 1967, are radiation-exposed Veterans.

It also establishes that participants in the response efforts following the on-board fire and crash of a United States Air Force B-52 bomber, which released four thermonuclear weapons in the vicinity of Thule Air Force Base, Greenland, from January 21, 1968, to September 25, 1968, are radiation-exposed Veterans.

VBA Action: VBA is developing formal policy addressing this new exposure group.

As a result of this change, VBA will amend [38 C.F.R. § 3.309](#) to include the new radiation risk activity.

### **Section 403. Presumptions of service connection for diseases associated with exposures to certain herbicide agents for veterans who served in certain locations.**

This section expands presumptive herbicide exposure to additional locations by amending 38 U.S.C. § 1116. This includes the following:

- Service in Thailand at any United States or Royal Thai base, without regard to the military occupational specialty the Veteran performed or where on the base

the Veteran was located, from January 9, 1962, through June 30, 1976.

- Service in Laos, from December 1, 1965, through September 30, 1969.
- Service in Cambodia at Mimot or Krek, Kampong Cham Province, from April 16, 1969, through April 30, 1969.
- Service in Guam or American Samoa, or in the territorial waters thereof, from January 9, 1962, through July 31, 1980.
- Service on Johnston Atoll or on a ship that called at Johnston Atoll, from January 1, 1972, through September 30, 1977.

VBA Action: VBA is developing formal policy addressing the new exposure groups.

As a result of this change, VBA will amend [38 C.F.R. § 3.307](#) to include the new herbicide exposed populations.

#### **Section 404. Addition of additional diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in certain locations.**

This section creates a presumption of service connection for hypertension and monoclonal gammopathy of undetermined significance (MGUS) related to exposure to certain herbicide agents.

VBA Action: VBA is developing formal policy incorporating the new presumptive conditions.

As a result of this change, VBA will amend [38 C.F.R. § 3.309](#) to include the new herbicide presumptive conditions.

#### **Section 405. Improving compensation for disabilities occurring in Persian Gulf War veterans.**

This section amends existing 38 U.S.C. § 1117 by permanently extending the period of eligibility for compensation based on Gulf War Illness (GWI). It removes the manifestation period for Persian Gulf Veterans, allowing for a qualifying chronic disability to manifest to any degree of disability at any time, and expands the service areas that qualify under the definition of a Persian Gulf Veteran.

It requires the creation of a GWI Disability Benefits Questionnaire (DBQ), administration of training, and annual reporting to Congress on implementation.

The law defines a Persian Gulf Veteran as serving during the Persian Gulf War:

- in the Southwest Asia theater of operations or
- in Afghanistan, Israel, Egypt, Turkey, Syria, or Jordan.

A Persian Gulf Veteran as defined above may be eligible for presumptive service connection for a [§ 3.317](#) condition that manifests to any degree at any time. This means

any Veteran with the above-described qualifying service may now be eligible for benefits even if their qualifying condition manifests to less than 10 percent.

VBA Action: VBA is developing formal policy incorporating the new law.

As a result of this change, VBA will amend [38 C.F.R. § 3.317](#).

**Section 406. Presumption of service connection for certain diseases associated with exposure to burn pits and other toxins.**

This section establishes 25 new conditions—13 lung conditions and 12 cancers—under new 38 U.S.C. § 1120 as presumptively related to exposure to burn pits and other toxins for Veterans with qualifying service under new 38 U.S.C. § 1119.

Qualifying service includes:

- Service on or after August 2, 1990, in, or the airspace above:
  - Bahrain,
  - Iraq,
  - Kuwait,
  - Oman,
  - Qatar,
  - Saudi Arabia,
  - Somalia or
  - United Arab Emirates or
- Service on or after September 11, 2001, in, or the airspace above:
  - Afghanistan,
  - Djibouti,
  - Egypt,
  - Jordan,
  - Lebanon,
  - Syria,
  - Yemen or
  - Uzbekistan

The new presumptive conditions are:

- head cancer of any type,
- neck cancer of any type,
- respiratory cancer of any type,
- gastrointestinal cancer of any type,
- reproductive cancer of any type,
- lymphoma cancer of any type,
- lymphomatic cancer of any type,
- kidney cancer,
- brain cancer,
- melanoma,



- pancreatic cancer,
- chronic bronchitis,
- chronic obstructive pulmonary disease,
- constrictive bronchiolitis,
- obliterative bronchiolitis,
- emphysema,
- granulomatous disease,
- interstitial lung disease,
- pleuritis,
- pulmonary fibrosis,
- sarcoidosis,
- glioblastoma,
- asthma diagnosed after service,
- chronic sinusitis or
- chronic rhinitis.

Some of the new presumptive conditions are specific diagnoses while others are general, allowing VBA to interpret the law. VBA will further define the qualifying cancers and eligible diagnoses that may fall under the broad cancer categories, such as head cancer, neck cancer, gastrointestinal cancer and reproductive cancer. If a claimant with qualifying service includes a cancer condition on their claim, apply liberal consideration when determining if the cancer falls into one of these categories. For example, a claim for breast cancer may qualify as a reproductive cancer.

VBA Action: VBA is developing formal policy incorporating the new law, which includes further definition of the qualifying diagnoses.

As a result of this change, VBA will amend [38 C.F.R. § 3.320](#) and may establish a new regulation.

#### **Section 407. Rule of construction.**

This section describes requirements for VA when processing a claim for the conditions and circumstances identified in the PACT Act.

It states that nothing will prevent VA from processing a benefit claim for a condition or disease for which the law establishes a presumption of service connection as a benefit claim for a condition or disease with direct service connection. Further, VA cannot deny a claim for benefits for a condition or disease for which the law establishes a presumption of service connection because the claimant filed the claim prior to the effective date or date of applicability for the condition or disease.

VBA Action: VBA is establishing policy to ensure proper application of the rule.

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

### **Section 604. Training for personnel of the Department of Veterans Affairs with respect to veterans who report toxic exposures.**

This section requires VA to administer a training program, on an annual basis, for personnel who process and review claims for disability benefits related to service-connected disabilities based on toxic exposure.

VBA Action: There is no immediate impact to claims processors. VBA is developing training courses and will notify claims processors when to take the course(s).

As a result of this change, VBA will develop an annual training plan to address toxic exposure claims.

## **Title VII – Resourcing**

### **Section 701. Authority to use appropriations to enhance claims processing capacity and automation.**

This section requires the Secretary of VA to submit a plan for modernization of VBA information technology systems within 180 days that focuses on increasing productivity, accuracy and consistency, maximizing use of resources, protecting claimant rights, and preserving the role of claims processors in decision making.

VBA Action: VBA is developing and piloting automation capabilities consistent with these requirements.

As a result of this change, VBA will continue to expand automation capabilities that maintain the role of employees as decision makers.

## **Title VIII – Records and Other Matters**

### **Section 803. Correction of exposure records by members of the Armed Forces and Veterans.**

This section requires the Secretary of VA to coordinate with the Secretary of Defense to provide a means for Veterans to update their records, such as ILER, to reflect exposures to occupational or environmental hazards. The Secretary of VA shall prescribe the regulations.

VBA Action: There is no immediate impact to claims processors.

As a result of this change, VBA will collaborate with the Department of Defense before establishing a new regulation(s).

**Section 807. Authorization of electronic notice in claims under laws administered by the Secretary of Veterans Affairs.**

This section updates statutory language to allow VA to provide claimants with an option to electronically receive claim-related information. The claimant is required to opt into electronic receipt and has an option to revoke that election at any time.

VBA Action: There is no immediate impact to claims processors.

As a result of this change, VBA will develop procedures and system enhancements on how to obtain the claimant's election to opt in to receipt of electronic notifications, how to revoke this option and how electronic notification will be administered to eligible claimants. This will require substantial efforts that will take time to implement. Procedures will be established after determining the required system enhancement.