



## DEPARTMENT OF VETERANS AFFAIRS

### System Error Message and High Call Volume Impacting Submissions of Claims

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of exception to date of receipt rule.

**SUMMARY:** In response to notification that some Veterans and survivors received error messages in recent days when submitting their claim for disability compensation or dependency and indemnity compensation (DIC), or intent to file such claim, through [www.va.gov](https://www.va.gov), the Veteran Benefits Administration (VBA) is instituting temporary provisions to consider any compensation or DIC claim or intent to file filed before 11:59PM ET on Monday August 14, 2023, as received by VA on August 8, 2023. This preserves, for claims subject to the PACT Act (further discussed below), the potential of retroactive compensation benefits back to the date of PACT Act enactment, August 10, 2022. Claims, or intents to file, for compensation or dependency and indemnity compensation, received on August 9, 2023 through 11:59PM ET on Monday August 14, 2023 will be deemed to have been received on August 8, 2023, the date of the initial problem on [www.va.gov](https://www.va.gov).

**FOR FURTHER INFORMATION CONTACT:** Jessica Pierce, Assistant Director, Policy Staff, Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On August 10, 2022, the President signed Public Law 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the PACT Act, into law, establishing substantial legislative changes for the Department of Veterans Affairs. This historic, multifaceted

law includes provisions such as specific examination requirements when there is toxic exposure risk activity, expanding conceded locations associated with radiation exposure, expanding presumptive conditions associated with herbicide exposure, amending the statute involving Persian Gulf War Veterans, and establishing presumptive conditions associated with toxic exposures.

On August 8, 2023, the Department of Veterans Affairs (VA) became aware that some Veterans and survivors who utilized the [www.va.gov](http://www.va.gov) website to submit compensation or DIC claims or an intent to file (ITF) such a claim received an error message. Despite these messages, every such Veteran or survivor who received an error message can consider their intent to file complete. VA is working to contact these individuals to confirm directly to them that their intent to file will be honored and their effective date protected. As of the evening of August 9, 2023, VA had resolved nearly all technical issues with the website.

While VA took steps to resolve this issue, an emergency banner on the VA website reassured Veterans and survivors that their ITFs will be honored. Also, VA has changed the intent to file error message to confirm that, despite the error message, the ITF has been saved.

Additionally, in recent days, VA has experienced an extremely high call volume on 1-800-MyVA411. Wait times for these calls, which are normally 10-30 seconds, reached 10-15 minutes at times throughout the day. VA took immediate steps to minimize these wait times for Veterans, their families, caregivers, and survivors. Some claimants may have been unable to submit their ITF through the call center due to the call volume and wait times.

38 CFR 3.114 provides that if a claim is reviewed at the request of a claimant received within one year of a change in law, benefits may be authorized from the effective date of the law. If the claimant's request is more than one year after the effective date of the law, benefits may be authorized for a period of one year prior to the date of receipt of such request. As such, claims or ITFs for PACT Act-related claims must have been submitted on or before August 10, 2023, to preserve the earliest potential effective date of August 10, 2022, the date the PACT Act was enacted. However, even for claims received more than a year following August 10, 2022, benefits may be authorized up to one year prior to the date of the filing if warranted by the facts found.

38 CFR 3.155(b) allows claimants to submit an ITF for a VA claim; if VA receives a complete application form within one year of receipt of the ITF for a claim, VA will consider the complete claim filed as of the date the ITF for the claim was received. An ITF can be submitted in one of three ways: 1) saved electronic application, 2) written intent on prescribed ITF form, or 3) oral intent communicated to designated VA personnel and recorded in writing (this includes contacting a VA call center agent). A VA regulation, 38 CFR 3.1(r), allows the Under Secretary for Benefits to establish by notice published in the Federal Register exceptions to VA's rule on the date of receipt of claims, information, or evidence. Ordinarily, "date of receipt" means the date on which a claim, information, or evidence was received in a VA office. This regulation states that exceptions may be established when a natural or man-made interference with the normal channels through which VBA ordinarily receives correspondence has resulted in one or more VBA regional offices experiencing extended delays in the receipt of claims, information, or evidence to an extent that, if not addressed, the delay would adversely affect such claimants, through no fault of their own.

Although the system issue on VA's website and long call wait times primarily have stemmed from the number of claimants attempting to file claims or ITFs for PACT Act-related issues to preserve consideration of an effective date back to August 10, 2022, all claim and ITF submissions may have been affected. As such, VA has established the following exception to the standard rule on date of receipt.

### **Exceptions to Date of Receipt Rule for Claimants Affected by System Errors and High Call Volume**

VA hereby gives notice that, claims, or intents to file, for compensation or DIC, received on August 9, 2023 through 11:59PM ET on Monday August 14, 2023 will be deemed to have been received on August 8, 2023, the date of the initial problem on [www.va.gov](http://www.va.gov). This preserves consideration of the earliest possible effective date for PACT Act-related benefits for these claims, dating back to August 10, 2022, the date the PACT Act was enacted. However, this exception to the date of receipt requirement applies to all claims and ITFs submitted for compensation or DIC during this period. The Under Secretary for Benefits has approved this exception under 38 CFR 3.1(r).

Starting on August 9, 2023, VA initiated an outreach campaign to notify Veterans and survivors about this filing extension, including notifying Veterans Service Organizations, Congress, and the media, as well as updating [va.gov](http://va.gov) and VA social media.

### **Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on August 11, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Michael P. Shores,**

*Director, Office of Regulation Policy & Management,*

*Office of General Counsel,*

*Department of Veterans Affairs.*

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