Pension and Fiduciary Service

PMC VSR Core Course

Introduction to PACT Act-Related Claims

Job Aid

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**Please note:** this job aid serves as an **introductory guide only** and **is not all-inclusive**. VSRs are encouraged to refer to the [**P&F Subpage**](https://vbaw.vba.va.gov/pensionandfiduciary/pact-act.asp) for complete guidance. You may also use the [**PMC PCGL PACT Act Reevaluation Scenario Paragraphs**](https://vbaw.vba.va.gov/PENSIONANDFIDUCIARY/pension/docs/pcgl-pact-act-reevaluation-scenario-paragraphs.pdf) pdf or [**Notification Language**](https://epss.vba.va.gov/vsr_assistant/pmc_vsr/index.html) job aid for paragraphs needed within the “How We Made Our Decision” section of the notification letter.

References

* [PL 117-168](https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf) (Honoring our PACT Act of 2022)
* 38 USC 1117 (Compensation for Disabilities Occurring in Persian Gulf War Veterans)
* 38 USC 1119 (Presumptions of Toxic Exposure)
* 38 USC 1120 (Presumption of Service Connection for Certain Diseases Associated with Exposures to Burn Pits and Other Toxins)
* 38 USC 5103 (Notice to Claimants of Required Information and Evidence)
* 38 USC 5110 (Effective Dates of Awards)
* 38 USC 1305 (Reevaluation of DIC Determinations Pursuant to Changes in Presumptions of Service Connection)
* 38 CFR 3.114 (Change of Law or DVA Issue)
* 38 CFR 3.307 (Presumptive Service Connection for Chronic, Tropical, or POW Related Disease, Disease Associated with Exposure to Certain Herbicide Agents, or Disease Associated with Exposure to Certain Herbicide Agents, or Disease Associated with Exposure to Contaminants in the Water Supply at Camp Lejeune; Wartime and Service on or After January 1, 1947
* 38 CFR 3.309 (Disease Subject to Presumptive Service Connection)
* 38 CFR 3.320 (Claims Based on Exposure to Fine Particulate Matter)
* 38 CFR 3.400 (General)
* M21-1, Part XII.i.3.A.2.a-b. (DIC Initial Authorization Issues)
* M21-4, Appendix B (End Product (EP) Codes)
* M21-4, Appendix C (Index of Claim Labels)
* M21-4, Appendix E (Index of Corporate Flashes and Special Issues)
* [Prepare the Decision Notice](https://epss.vba.va.gov/vsr_assistant/pmc_vsr/pdfs/ja_decnot.pdf#zoom=100) job aid
* [Notification Language](https://epss.vba.va.gov/vsr_assistant/pmc_vsr/pdfs/ja_notification.pdf#zoom=100) job aid

Overview of the PACT Act

Background

On August 10, 2022, the President signed [Public Law (PL) 117-168](https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf), Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (hereafter referred to as “PACT Act”) establishing substantial legislative changes for the Department of Veterans Affairs (VA). This historic, multifaceted law:

* expands locations associated with radiation exposure
* expands presumptive conditions associated with herbicide exposure
* expands locations associated with herbicide exposure
* amends the statute involving Persian Gulf War Veterans
* establishes presumptive conditions associated with toxic exposures
* triggers changes to examination requirements when there is toxic exposure risk activity, and
* provides an avenue for a claimant-elected reevaluation of previously denied dependency and indemnity compensation (DIC) claims that can result in retroactive effective dates

Initial guidance was released to the field on August 10, 2022, followed by interim guidance on September 9, 2022. With the issuance of this standard operating procedure (SOP), both documents are rescinded as of January 1, 2023.

Terms and Definitions – *in no particular order and not all-inclusive*

* **Toxic Exposure Risk Activity (TERA)** is any activity that requires a corresponding entry in an exposure tracking record system, such as ILER, or qualifies when considering what is reasonably prudent to protect the health of Veterans.
* **Individual Longitudinal Exposure Record** (ILER) includes service records, any database maintained by the Department of Defense (DoD) and shared with VA to serve as a central portal for exposure-related data that compiles and provides available occupational and environmental exposure information to support the needs of DoD and VA
* **Covered Veteran** is any Veteran who served during the applicable timeframe in one of the locations listed in the statute.
* **Monoclonal Gammopathy of Undetermined Significance (MGUS):** is an asymptomatic, pre-malignant disorder characterized by monoclonal plasma cell proliferation in the bone marrow and absence of end-organ damage.
* **Warfare Agents**: Chemical weapons, Project 112/Project Shipboard Hazard and Defense (SHAD), herbicide tests and storage, and chemical experiments
* **Chemicals**: Herbicides (Agent Orange) used during Vietnam era, burn pits, sulfur fire in Iraq, Camp Lejeune water supplies, pesticides used during Gulf War, depleted uranium, industrial solvents
* **Air Pollutants**: Burn pits, oil well fire during Gulf War, sulfur fire in Iraq, Atsugi (Japan) waste incinerator, sand, dust, and very small, fine particles or liquid droplets
* **Occupational Hazards**: Asbestos, industrial solvents, lead, radiation, vibration, noise, fuels, polychlorinated biphenyl (PCBs), and special paint used on military vehicles
* An **atoll** is defined as a ring-shaped coral reef, island, or series of islets.

Effective Dates – Service-Connected Death Benefits

The effective date for these new presumptive conditions is August 10, 2022, the same day that the law went into effect. This is considered a **liberalizing law**. Therefore, for new claims (claimant did not elect VA to reevaluate the previously denied claim), consideration of the effective date provisions under **38 CFR 3.114 (Change of Law or DVA Issue)**, **38 USC 5110 (Effective Dates of Awards)**, and **38 CFR 3.400(General)** should be applied, allowing for consideration, in some cases, for an effective date earlier than the date of claim or date of enactment.

* all the presumptions in the PACT Act will be effective on the date of enactment, August 10, 2022
* there are no tiered enactment or effective dates

Under Section 204 of the PACT Act, the effective date retroactivity provisions for DIC reevaluations apply “with respect to presumptions of service connection established or modified on or after the date of enactment of the Act, including pursuant to amendments made by this Act.”

* Section 204 does not contain a time limit on when a claimant can request reevaluation of a previously denied DIC claim.

When elected by the claimant, VA is required to reevaluate such claims. **38 USC 1305 (Reevaluation of DIC Determinations Pursuant to Changes in Presumptions of Service Connection)** provides for reevaluation of previously denied DIC claims and the award of effective dates “as if the establishment or modification of the presumption of service connection had been in effect on the date of the submission of the original claim” without regard to **38 USC 5110 (Effective Dates of Awards)**.

Qualifying Service

In addition to the locations currently listed in 38 CFR 3.309(d), the Jackson RO will undertake the required development to the Department of Defense (DoD) to recognize **radiation risk activity** for any Veteran who is shown to have participated in one of the following qualifying activities during the applicable time frame:

|  |  |
| --- | --- |
| **Activity** | **Dates** |
| Clean up of Enewetak Atoll | 1/1/1977 – 12/31/1980 |
| Nuclear response near Palomares, Spain | 1/17/1966 – 3/31/1967 |
| Nuclear response near Thule Air Force Base, Greenland | 1/21/1968 – 9/25/1968 |

The table below represents how the PACT Act impacts the **current** **herbicide exposure claims** process.

|  |  |
| --- | --- |
| **Provision** | **PACT Act** |
| Qualifying Service | Expands presumption of exposure to new locations as listed under Expansion of Presumptive Herbicide Exposure (see [SOP](https://vbaw.vba.va.gov/pensionandfiduciary/pact-act.asp)) |
| Recognized Disabilities  | Adds MGUS and hypertension to the list of recognized presumptive herbicide disabilities effective 8/10/2022 |
| Degree of Disability | Statute does not require newly recognized disabilities (MGUS or hypertension) to manifest to a degree of disability of 10 percent or more to qualify as presumptive disease. |
| Nehmer | Does not apply to MGUS or hypertension |

In addition to the currently recognized locations and conditions of service **associated with presumptive herbicide exposure**, the PACT Act added the following locations:

|  |  |
| --- | --- |
| **Location** | **Dates** |
| Thailand at any United States or Royal Thai base, without regard to where on the base the Veteran was located or what MOS the Veteran performed | January 9, 1962, to June 30, 1976 |
| Laos | December 1, 1965, to September 30, 1969 |
| Cambodia at Mimot or Krek, Kampong Cham Province | April 16, 1969, to April 30, 1969 |
| Guam or American Samoa, or in the territorial waters thereof | January 9, 1962, to July 31, 1980 |
| Served on Johnston Atoll or on a ship that called at Johnston Atoll | January 1, 1972, to September 30, 1977 |

Recognize **presumptive exposure to herbicides** if a Veteran served during the applicable time in a qualifying location associated with presumptive herbicide exposure as follows:

|  |  |
| --- | --- |
| **Location** | **Dates** |
| Service in the RVN, which includes on land in the RVN, on its inland waterways, or in the eligible offshore waters of the RVN, including specific bays and harbors. | The period beginning on January 9, 1962, and ending on May 7, 1975  |
| In a unit determined by VA or the Department of Defense (DoD) to have operated in the Korean demilitarized zone (DMZ) | Between September 1, 1967, and August 31, 1971  |
| Thailand at any United States or Royal Thai base, without regard to where on the base the Veteran was located or what MOS the Veteran performed | January 9, 1962, to June 30, 1976 |
| Laos | December 1, 1965, to September 30, 1969 |
| Cambodia at Mimot or Krek, Kampong Cham Province | April 16, 1969, to April 30, 1969 |
| Guam or in the territorial waters thereof | January 9, 1962, to July 31, 1980 |
| American Samoa or in the territorial waters thereof | January 9, 1962, to July 31, 1980 |
| Served on Johnston Atoll or on a ship that called at Johnston Atoll | January 1, 1972, to September 30, 1977 |

Herbicide Exposure and Effective Dates

|  |  |
| --- | --- |
| **Disability** | **Effective Date** |
| Chloracne or other acne-form disease consistent with chloracne, and soft-tissue sarcoma, other than  osteosarcoma  chondrosarcoma  Kaposi’s sarcoma, or mesothelioma | February 6, 1991 |
| Non-Hodgkin’s lymphoma (NHL) | February 6, 1991 |
| Porphyria cutanea tarda (PCT), and ω Hodgkin’s disease | February 3, 1994 |
| Respiratory cancers of the: lung, bronchus, larynx, or trachea, and multiple myeloma | June 9, 1994 |
| Prostate cancer, and acute and subacute peripheral neuropathy | November 7, 1996 |
| Type 2 diabetes mellitus | May 8, 2001 |
| Chronic lymphocytic leukemia (CLL) | October 16, 2003 |
| AL amyloidosis | May 7, 2009 |
| Ischemic heart disease (IHD), chronic B-cell leukemia, and Parkinson’s disease | August 31, 2010 |
| Early-onset peripheral neuropathy | September 6, 2013 |
| Parkinsonism, bladder cancer, and hypothyroidism | January 1, 2021 |
| Monoclonal gammopathy of undetermined significance (MGUS), Hypertension | August 10, 2022 |

Requirement to Identify Service-Connected Death PACT Act-Related Claims

The guidance below also applies to claims for service-connected death benefits for survivors if:

* the Veteran’s service falls into one of the newly recognized presumptive locations and there is evidence to indicate the Veteran’s death was caused by or is secondary to one of the existing or newly recognized presumptive conditions associated with the toxic exposure in that location
* there is evidence indicating that the principal or contributory cause of the Veteran’s death is, or is secondary to one of the newly recognized presumptive conditions and the Veteran’s service meets the current or newly recognized presumptive locations associated with the presumptive condition(s)
* there is a specific allegation of eligibility by the claimant under the PACT Act, or
* the claim otherwise raises a question as to whether the PACT Act may affect eligibility

**Note:** While the PACT Act only specifically addressed DIC benefits, the provisions of the law expanding presumption of service connection will result in additional claimants qualifying for other types of survivor benefits.

Development - Requesting Additional Evidence from the Claimant

It is unnecessary to issue a 5103 notice when a Veteran or survivor files a claim related to exposure to herbicides on a form that provides or otherwise indicates he/she received the notice, such as VA Form 21P-534EZ, Application for DIC, Death Pension, and/or Accrued Benefits.

Send a subsequent VBMS development letter using the AO–Exposure General Notice paragraph in the following situations:

* claimant fails to provide specifics of how or where exposure occurred, or
* claimant states they served in a qualifying location, but fails to provide specific dates, and service records do not show service in a qualifying presumptive location

**Exception**: If the claimant has already provided specific dates of TDY or other service in a presumptive herbicide location, do not send a subsequent development letter.

Claims Establishment

Unless otherwise specified below, claim establishment for PACT Act-related survivor claims should align with EP controls per [**M21-4, Appendix B and C**](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000011474/Appendix%20B.%20End%20Product%20%28EP%29%20Codes).

Apply all applicable special issues or flashes in addition to any PACT Act special issues or flashes under normal guidance, as applicable, found in [**M21-4, Appendix E**](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000179710/Appendix%20E.%20Index%20of%20Corporate%20Flashes%20and%20Special%20Issues).

VBA’s Mail Automation Service (MAS) will conduct a review of VA Form 21P-534EZ, during the claims intake process and at the time of claims establishment.

There are no new claim labels available for manual establishment that are related to the PACT Act. Follow the below table when establishing a claim.

|  |  |  |
| --- | --- | --- |
| **EP** | **Use this EP for a PACT Act-related claim for** | **Special issues should be applied upon claims establishment or when otherwise identified.****The applied special issue should be** |
| 140 | original DIC where no prior claim for survivors’ benefits has been adjudicated | the PACT special issue |
| * for claims that are identified as relating to the PACT Act, this special issue must be applied to the DIC contention in VBMS
* this special issue should be applied upon claims establishment or when otherwise identified
 |
| 020 | DIC after an initial eligibility decision has been made | * the PACT special issue, applied to the DIC contention in VBMS, when there is no claim for reevaluation of a previously denied claim for DIC under the PACT Act, **OR**
* the PACT ACT DIC Reevaluation special issue, applied to the DIC contention in VBMS, when a valid claim for reevaluation is elected and received by the claimant
 |
| * A valid claim for reevaluation consists of an election by the claimant and the existence of a previously denied claim for DIC.
* An election for a reevaluation of a previously denied DIC claim is accepted if correspondence requesting such a reevaluation is received with, or following receipt of, a prescribed form for survivor benefits.
 |
| 040 | Supplemental claim | when a supplemental claim is submitted on the prescribed supplemental claim form, **VA Form 20-0995, Decision Review** Request, use EP 040 * PACT ACT DIC Reevaluation” special issue is used.
 |
| 130 | DIC claims from other beneficiaries after initial claims adjudicated under EP 140 | the PACT special issue |
| * for claims that are PACT Act-related, this special issue must be applied to the DIC contention in VBMS.
* this special issue should be applied upon claims establishment or when otherwise identified.
 |
| 160 | service-connected burial allowance | * the PACT special issue, applied to the appropriate contention, **OR**
* in instances where service-connected burial is being addressed because of a grant of DIC benefits by reevaluation, the PACT Act DIC Reevaluation special issue should be used in lieu of the PACT special issue
 |
| If service connection can be granted under existing procedures and existing authorities (direct, secondary, aggravation, or established presumptions other than those specified by the PACT Act), do not apply any PACT Act-related special issues. **IMPORTANT**: Follow current procedures to review for service connection entitlement. |
| 165 | accrued, including when substitution is at issue | either the PACT or PACT ACT DIC Reevaluation special issue applied to the appropriate contention. |
| 290 | request for substitution, without an accompanying accrued claim, is received | either the PACT or PACT ACT DIC Reevaluation special issue applied to the appropriate contention. |

**NOTE:** The PACT ACT DIC Reevaluation and PACT special issue should not both be applied to the same EP. Therefore, when the PACT ACT DIC Reevaluation special issue is applicable, then the PACT special issue should not be added and, if it was already added, then it should be removed prior to applying the PACT ACT DIC Reevaluation special issue to the EP.

Processing New DIC Claims Related to PACT Act

When potential entitlement to DIC retroactivity is shown, but a proper reevaluation election has not been received, solicit for a VA Form 21P-534EZ or VA Form 21P-535 in the notification letter and inform the claimant they could be entitled to retroactivity.

PL 114-315 allows VBA to grant service-connected burial allowance to a surviving spouse without a claim when DIC benefits are granted upon reevaluation, and the Veteran's date of death occurred **on or after December 16, 2016**.

* ***The DIC award establishes entitlement and dependency.***

**Follow the below guidance when processing new PACT Act-related claims for DIC:**

|  |  |
| --- | --- |
| **Stage** | **Description** |
| 1 | Review the submitted claim to confirm the application was received on the appropriate prescribed form, **and** claim is a PACT Act-related claim. |
| 2 | Establish claims as described within the content titled Manual Claims Establishment, **and** add the PACT special issue to the DIC contention in VBMS. |
| 3 | Initiate any necessary development for entitlement issues, to include gathering STRs. |
| **References:*** obtaining STRs, see M21-1, Part III, Subpart ii, 2.B
* common DIC processing issues, see M21-1, Part XII, Subpart i, 1.B, and
* general claims development, see M21-1, Part III, Subpart i, 2.A-F
 |
| 4 | Continue processing the claim under existing DIC processing guidance unless otherwise specified within this letter. |
| 5 | At the authorization stage, if a deferral is necessary, defer all PACT Act-impacted contentions using the appropriate deferral reason. |

Processing DIC Claims for Reevaluation of Previously Denied DIC

Requirements for submission of a valid claim for DIC have changed over time. Prior to March 24, 2015, a standardized claim form was not a requirement for a substantially complete application (M21-1, Part II, Subpart iii, 2.A.1.a., and M21-1, Part I, Subpart i, 1.A.4.f.).

If the corporate record does not indicate a claim for DIC has been previously filed, claims processors must exhaust all methods to determine if a claim has been previously filed, such as completing a full review of the claims folder to identify any documentation showing a previous claim for DIC (eFolder and physical claims folder if necessary), prior to moving to the next step.

**Follow the below guidance when processing DIC claims for reevaluation of a previously denied PACT Act-related claim for DIC.**

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Review the submitted claim to confirm that a request for a reevaluation of a previously denied DIC claim, has been received by the original claimant or valid substitute claimant. |
| 2 | Establish claims as described within the content titled, Manual Claims Establishment section of this letter, **and** add the PACT ACT DIC Reevaluation special issue to the DIC contention in VBMS. |
| 3 | Claims processors should utilize the corporate record in Share, and/or VBMS, to identify the date of claim of a previously established EP 140, or the dates of claim of any subsequent EP 020, **and** use these dates as a basis to review documents in the claims folder. |
| 4 | If a valid claim for reevaluation is shown go to Step 5. |
| **If** the corporate record indicates no original claim for survivor benefits was ever previously filed, the claims folder is void of any source documents related to a previously filed claim for survivors benefits, **and** the current claim for survivor benefits is filed on a prescribed form with the reevaluation request the same scenario exists as stated above, except that the current claim for reevaluation was **not** filed on a prescribed form. | Then change the EP to 140, the PACT special issue must replace the PACT ACT DIC Reevaluation special issue, an initial claim for DIC should be adjudicated, **and** the claimed reevaluation should be denied in the final notification letter, the special issue should be removed, the EP should be changed to an EP 400, a request for application should be provided to the claimant, **and** the EP should be closed. |
| 5 | Initiate any necessary development for entitlement issues, to include gathering STRs. |
| 6 | Continue processing the claim under existing DIC processing guidance unless otherwise specified within this letter. |

Processing Service-Connected Burial Claims Related to PACT Act

When a claim is received for service-connected burial benefits based on newly recognized presumptive eligibility under the PACT Act, claims processors should confirm a PACT Act-related claim has been received, and establish claims as required.

Processing Accrued Claims and Requests for Substitution Related to PACT Act

There is **no language in the PACT Act that supersedes 38 CFR 3.1010(g), therefore, a substitute claimant** **can only pursue claims and appeals that were pending**, **and** **cannot not pursue a new claim that was not filed by the deceased DIC claimant.**

An individual seeking **accrued benefits or substitution could elect to have an original claim reevaluated**, even if the original claimant had not made such an election, if a relevant DIC claim was pending at the time of the original claimant’s death.

When a claim is received for accrued benefits or a request for substitution based on expanded presumptive eligibility under the PACT Act, claims processors should apply the following guidance:

* confirm a PACT Act-related claim has been received by referencing Topic1, Overview of the PACT Act and that the prescribed application (where applicable) has been submitted,
* establish claims as described within the content titled, Manual Claims Establishment of this letter. Special issues should be applied upon claims establishment or when otherwise identified, **and**
* utilize current accrued/substitution procedures found in M21-1, Part XI, Subpart ii.3 while applying policy letter benefit-specific guidance associated with the claim pending at death to address potential entitlement under the PACT Act.

Processing Supplemental Claims Requesting DIC

When a supplemental claim is received and is associated with a PACT Act-related claim for DIC, use the guidance listed below:

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Review the submitted claim to confirm the application was received on the appropriate prescribed form, and claim is a PACT Act-related claim. |
| 2 | Establish an EP 040, and add the PACT special issue to the DIC contention in VBMS. |
| 3 | Initiate any necessary development for entitlement issues, to include gathering STRs. |
| 4 | Continue processing the claim under existing DIC processing guidance unless otherwise specified within this letter. |

Processing HLRs and Supplemental Claims Requesting Reevaluation of a Previously Denied DIC Claim

With **higher-level reviews (HLRs)** are closed evidentiary records, therefore, reevaluation must have been previously elected. For consideration for reevaluation that was not previously claimed, the claimant must select the supplemental claim lane, appeal to the Board of Veterans’ Appeals (BVA) or file a new claim altogether.

When a **supplemental claim** is received requesting a reevaluation of a previously denied DIC claim due to the PACT Act, use the following guidelines:

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Review the submitted claim to confirm the application was received on the appropriate prescribed form, **and** request for a reevaluation of a previously denied DIC claim has been received by the original claimant or valid substitute claimant. |
| 2 | Establish an EP 040, **and** add the PACT ACT DIC Reevaluation special issue to the DIC contention in VBMS. |
| 3 | Claims processors should utilize the corporate record in Share, and/or VBMS, to identify the date of claim of a previously established EP 140, or the dates of claim of any subsequent EP 020, and use these dates as a basis to review documents in the claims folder. |
| 4 | If a valid claim for reevaluation is shown go to Step 5. |
| If the corporate record indicates no claim for DIC was ever previously filed, **and** the claims folder is void of any source documents related to a previously filed claim for DIC | Then the special issue should be removed the EP should be changed to an EP 400, a request for application should be provided to the claimant, **and** the EP should be closed |
| 5 | Initiate any necessary development for entitlement issues, to include gathering STRs. |
| 6 | Continue processing the claim under existing DIC processing guidance unless otherwise specified within this letter. |

Processing HLRs and Supplemental Claims Requesting Reevaluation of a Previously Denied DIC Claim

VA’s current notice provided in accordance with [**38 USC 5103**](https://www.law.cornell.edu/uscode/text/38/5103) (**Notice to Claimants of Required Information and Evidence**) is sufficient to provide the general information to substantiate the basic elements of DIC claims for the PACT Act, including what evidence is necessary.

**Important**: It is unnecessary to issue a 5103 notice when a claimant submits a claim on a form that provides or otherwise indicates they received the notice. However, should specific development for the new presumptive conditions be necessary, ensure that any free text development actions properly address the new presumptive condition(s). Use the language in VBMS for all PACT Act-related development action as it pertains to service-connected death.

When VBMS development letters are not possible, and Modern Awards Processing – Development (MAP-D) must be utilized, claims processors should not include AO–not a recognized condition paragraph or the MAP-D AO – SC Death, Nexus, Vietnam Service paragraph simply because the conditions are not currently listed under 38 CFR 3.309(e).

Individual Longitudinal Exposure Record (ILER)

The absence of exposure or deployment-related verification in ILER does not mean exposure-related evidence does not exist. If a Veteran that may be subject to a Toxic Exposure Risk Activity (TERA) is not found in ILER or ILER does not provide exposure or deployment-related verification for a Veteran, claims processors should continue developing for a potential TERA through normal verification methods.

ILER currently provides access to over two million unique Veteran records and acts as a single access point to deployment history; including time, location, military occupational specialty (MOS), occupational hazard data, environmental hazards known or later found, monitoring performance in the area(s), diagnosis, treatment, and laboratory data.

Mandatory use of ILER applies to claims for service-connected death that involve TERA-related service-connected conditions or causes of death where:

* the evidence of record does not provide exposure-related verification and
* the benefit cannot otherwise be granted based on the evidence of record

The use of ILER is suggested for the following types of claims (this is not an all-inclusive list and claims processors should determine if information available in ILER may satisfy the elements of an event, injury, or disease in service):

* Common claimed exposures related to service-connected (SC) Survivor benefits such as Dependency and Indemnity Compensation (DIC) and SC Burial claims
	+ Diseases specific to former prisoners of war under 38 CFR 3.309(c).
	+ Diseases specific to radiation-exposed Veterans under 38 CFR 3.309(d).
	+ Chronic diseases and rare cancers associated with fine particulate matter under 38 CFR 3.320.

Using the TERA Tool

**Definition**: Toxic exposure risk activity (TERA) includes any activity requiring entry in an exposure tracking record system such as ILER or the Secretary determines qualifies.

**NOTE**: Claims under the PACT Act may include claims in which the Veteran claims a non-presumptive disability **whether the individual clearly claims it or indirectly indicates participation** in toxic exposure risk activity. Consider ALL EVIDENCE of record when determining whether the Veteran specifically claimed an exposure.

**Examples:**

|  |  |
| --- | --- |
| **EXPLICIT (CLEAR)** | **IMPLICIT (INFERRED)** |
| VA Form specifying toxic exposure | Veteran’s service was in a location associated with toxic exposure |
| Lay statements submitted with the claim | Veteran’s military occupation is associated with a toxic exposure |
|  | ILER or other military record shows participation in a TERA |

Unless another theory of service connection applies, such as presumption, the Veteran’s claim must be based on a TERA under the direct service connection provisions of 38 CFR 3.303 and 3.304

* **IMPORTANT**: For claims related to TERA, VA **MUST** request an **exam** and **medial opinion** **BEFORE** deciding a non-presumptive exposure claim. There is **no required minimum level of exposure or duration of participation in a TERA**.



Exceptions to Ordering TERA Examinations

If the Secretary determines there is no indication of an association between the disability claimed by the Veteran and the toxic exposure risk activity for which the Veteran submitted evidence medical examinations and medical opinions are not required.

**DON’Ts for requesting an examination:**

1. **DO NOT** order an examination based upon a TERA if the non-presumptive claim is based on physical trauma (ex: hearing loss) UNLESS the Veteran submits competent medial or scientific evidence of an association between their disability and in-service TERA
2. **DO NOT** order an examination for mental disorders. Toxic exposure can result in neurological decline and such diagnoses should be considered on a direct or secondary basis.
3. **DO NOT** order an examination for claims for disabilities that manifested during military service or with an etiology not associated with toxic exposure.
	1. This exception applies to conditions that manifested during service for which a medical nexus opinion would not be needed to decide service connection on a direct basis (evidence of chronicity or continuity is of record) and to claims where the evidence of record indicates that the claimed condition is clearly related to an etiology that is not associated with toxic exposure.

**Exceptions Scenarios:**

**Scenario 2:** On October 22, 2022, Sally Veteran submitted a claim for left leg injury, which is due to physical trauma.

**Action Required:** The claims processor would not order an examination with medical opinion.

**Scenario 3:** On February 3, 2023, Lyle Veteran submitted a claim for skin disorders, and STRS show complaints of outbreaks of rashes and other skin conditions.

**Action Required:** Since the condition manifested during military service, it would be an exception under the TERA examination requirements. The claims processor would not order a TERA exam with medical opinion. Process the claim based on direct service connection provision unrelated to TERA.

Steps to Take Once a Veteran from ANY Period of Service

When a Veteran from ANY ERA claims non-presumptive disability and participation in a TERA (meaning activity that required entry in an exposure tracking record system such as ILER or the Secretary determined qualifies):

1. Review for clearly claimed or inferred claims and determine when an exception to TERA applies.
2. Obtain service records and review ILER
3. Complete the Toxic Exposure Risk Activity Memorandum
	* Apply appropriate TERA attributes
4. Request a TERA examination AND medical opinion
	* Identify relevant evidence for the examiner
	* Select appropriate DBQ
	* Use TERA medical opinion template language
	* Confirm the examination provided the appropriate opinion
5. Ensure the Rating:
	* Discusses the TERA in the reasons for decision
	* Includes the correct effective date
	* Cites TERA as a favorable finding
	* The TERA special issues is applied in VBMS-R