

# TOXIC EXPOSURE RISK ACTIVITY CLAIMS

# AGENDA

- Background and Basics
- Examples of TERAs
- TERA Claims
- TERA Medical Exams/Opinions
- Miscellaneous
- Hypos
- TERA & VHA



# BACKGROUND AND BASICS

# THE PACT ACT

- **8/10/2022: “Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022” or the “Honoring our PACT Act of 2022” signed into law**
- Expanded VA Health Care eligibility for millions of Vets
- Made it easier for Vets and DIC claimants to obtain SC disability and death benefits for diseases associated with toxic exposure

# THE PACT ACT

- **New radiation-risk activities that qualify Vet as “radiation exposed” and entitled to presumptive SC for several cancers**
- **New locations where herbicide exposure is presumed**
- **New diseases presumed caused by herbicide exposure**
- **New locations that qualify Vets for presumptive SC for Gulf War illnesses – undiagnosed illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses (MUCMIs)**

# THE PACT ACT

- Eases some requirements to establish SC for Gulf War illnesses
- Presumptive SC for diseases associated with exposure to burn pits and other toxins
- Lowers burden for triggering VA's duty to provide medical exams / opinions for claims associated with toxic exposure
- Provides for favorable effective date if DIC claim was previously denied and is now granted based on new presumption

# PACT ACT DEFINITIONS: “TOXIC EXPOSURE”

**A. A toxic exposure risk activity (TERA), which is any activity that:**

1. Requires a corresponding entry in an exposure tracking record system for the Vet
2. Secretary of VA determines what qualifies as a TERA when taking into account what is reasonably prudent to protect the health of Vets

▪ 38 U.S.C. §§ 101(37)(A); 1710(e)(4)

# PACT ACT DEFINITIONS: “EXPOSURE TRACKING RECORD SYSTEM”

- Any system, program, or pilot program used by the Secretary of VA or the Secretary of Defense to track how Vets or members of the Armed Forces have been exposed to various occupational or environmental hazards
- Includes the Individual Longitudinal Exposure Record (ILER), or successor system
- 38 U.S.C. 1119(c)(2)



# PACT ACT DEFINITIONS: “ILER”

- **ILER includes:**
  - Service records
  - Any database maintained by DOD and shared w/ VA to serve as central portal for exposure-related data that compiles, collates, presents, and provides available occupational and environmental exposure info to support the needs of DOD and VA
  - Any successor system to that database
    - **38 U.S.C. § 1171**

# MORE ON THE ILER

- It is a web-based application designed in collaboration between VA and DOD that provides an individual electronic record of exposures for each service member / future Vet
- It begins with service member's entry into military service and spans entire military career

# MORE ON THE ILER

- **ILER contains:**
  - Dates of deployments
  - Locations and events during deployments
  - All hazard occupational data
  - Environmental hazards that were known or found later
  - Any monitoring performed in the area(s) of service
  - Medical encounter information (e.g., diagnosis, treatment, and laboratory data)
  - Medical concerns that should be addressed regarding possible exposures

# MORE ON THE ILER

- **ILER contains (cont'd):**
  - **Name-only entries and records from contractor or civilian service periods**
    - VA does not accept these entries as participation in a TERA
  - **Self-reported info alleging exposure**
    - VA must validate these reports to determine if the alleged exposure is consistent with the facts and circumstances of the Vet's service
      - VBA Letter 20-24-06 (June 12, 2024)

# MORE ON THE ILER

- Available to VA and DoD health care providers, epidemiologists and researchers, and VBA claims adjudicators
- It is used to improve internal processes, but is not available for individual access
  - [www.publichealth.va.gov/exposures/publications/military-exposures/meyh-1/ILER.asp](http://www.publichealth.va.gov/exposures/publications/military-exposures/meyh-1/ILER.asp)
  - <https://health.mil/Reference-Center/Fact-Sheets/2023/07/24/ILER>

# PACT ACT DEFINITIONS: “TOXIC EXPOSURE”

- B. An exposure to a substance, chemical, or airborne hazard identified in a list to be created under 38 U.S.C. § 1119(b)(2)**
- VA Secretary must establish and maintain the list, in collaboration with the Secretary of Defense
    - 38 U.S.C. § 101(37)(B); 1119(b)(2)(A)

# PACT ACT DEFINITIONS: “TOXIC-EXPOSED VETERAN”

- Any Vet described in 38 U.S.C. § 1710(e)(1):
  - Vietnam-era herbicides
  - Radiation
  - SW Asia during Persian Gulf War 8/1990-11/1998
  - In theater of combat ops or in combat after 11/11/1998
  - DOD chem and bio weapons testing 1962-1973
  - Camp Lejeune for at least 30 days 8/1/1953-12/31/1987
  - Toxic-exposure risk activity participant

# PACT ACT DEFINITIONS: “TOXIC-EXPOSED VETERAN”

- Any Vet described in 38 U.S.C. § 1710(e)(1) (cont’d)
  - Covered Vet in 38 U.S.C. § 1119(c), i.e., w/ service:
    - On/after 8/2/1990, in:
      - Bahrain
      - Iraq
      - Kuwait
      - Oman
      - Qatar
      - Saudi Arabia
      - Somalia
      - U.A.E
    - On/after 9/11/2001, in:
      - Afghanistan
      - Djibouti
      - Egypt
      - Jordan
      - Lebanon
      - Syria
      - Yemen
      - Uzbekistan
      - Any country added by VA



# PACT ACT DEFINITIONS: “TOXIC-EXPOSED VETERAN”

- Any Vet described in 38 U.S.C. § 1710(e)(1) (cont’d)
  - Vet who deployed in support of:
    - Operation Enduring Freedom
    - Operation Freedom’s Sentinel
    - Operation Iraqi Freedom
    - Operation New Dawn
    - Operation Inherent Resolve
    - Resolute Support Mission

# VA GUIDANCE

- **Claims involving TERA include those related to “garrison exposures”**
  - Environmental exposure that may have been experienced while stationed on a military base
  - Includes exposure to substances such as asbestos, fuels, lead, and perfluoroalkyl and polyfluoroalkyl substances (PFAS)
  - VBA Letter 20-24-06, § 4.3

# SIGNIFICANCE OF PARTICIPATION IN TERA

- **VHA**

- Triggers healthcare eligibility for Vets

- 38 U.S.C. § 1710(e)(1)(G)

- **VBA**

- Triggers VA exam / opinion for Vets who participated in TERA and are claiming SC for certain non-presumptive conditions

# EXAMPLES OF TERA

# TERA

- What are some examples of TERAs?



# TYPES OF TERA EXPOSURE

<b>Chemicals</b>	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
<b>Air Pollutants</b>	Burn pits, oil well fire during Gulf War, sulfur fire in Iraq, Atsugi (Japan) waste incinerator, sand, dust, and very small particles or liquid droplets
<b>Occupational Hazards</b>	Asbestos, industrial solvents, lead, radiation, vibration, noise, fuels, polychlorinated biphenyl (PCBs), and special paint used on military vehicles
<b>Radiation</b>	Nuclear weapons and testing, x-rays, depleted uranium
<b>Warfare Agents</b>	Chemical weapons, Project 112/Project Shipboard Hazard and Defense (SHAD), herbicide tests and storage, and chemical experiments

[www.va.gov/iron-mountain-health-care/programs/pact-act-cheat-sheet/](http://www.va.gov/iron-mountain-health-care/programs/pact-act-cheat-sheet/)

# SURVEY #1

• Is receiving vaccines and medications, in general, considered participation in a TERA?

A. Yes

B. No

C. Maybe



# VACCINATIONS AND MEDICATIONS



- Receiving vaccines and medications, in general, is not considered participation in a TERA, because there is no scientific or medical evidence that supports the conclusion that vaccines and medications administered to service members have resulted in long-term adverse health effects
- Will not trigger consideration of relaxed TERA exam requirements under 38 U.S.C. § 1168
  - VA PACT Act Implementation SOP, <https://vbaw.vba.va.gov/bl/21/pact.htm>



# RECOGNIZED TERA LOCATIONS

- Whether explicitly claimed or not, VA should recognize TERA participation if Vet served in a location associated with:
  - Presumption of exposure to a toxic substance (burn pits or other toxins, herbicides, etc.)
  - Mustard gas exposure, as listed in Manual M21-1, VIII.iii.3.A.1.b
  - Exposure to pollutants from a waste incinerator near the Naval Air Facility at Atsugi, Japan
    - VA PACT Implementation SOP, <https://vbaw.vba.va.gov/bl/21/pact.htm>

# CIRCUMSTANCES OF VET'S SERVICE

- When determining Vet's participation in TERA, VA must research military records, ILER, and alternative sources of evidence, to include:
  - Personal statements
  - Buddy statements
  - Unit histories
  - News articles
  - Military exposure info on VHA's Military Exposures site ([www.publichealth.va.gov/exposures/index.asp](http://www.publichealth.va.gov/exposures/index.asp))
    - Manual M21-1,VIII.iii.9.B.2 (change date June 8, 2022)

# CIRCUMSTANCES OF VET'S SERVICE

- **VA must also follow Manual M21-1 guidance regarding concession of MOS-related toxic exposure, such as:**
  - Military occupational hazards in M21-1, VIII.iii.9.B.2.g (exposure to CARC, paint, fuels, industrial solvents, lead, PCBs)
  - Asbestos exposure probability by MOS in M21-1, VIII.iii.7.C.1.b
- **Ultimately, VA must concede participation in TERA if it is consistent with the places, types, and circumstances of the Vet's service**
  - 38 C.F.R. 3.303(a); Manual M21-1, VIII.iii.9.B.2.b

# SERVICE AT K<sub>2</sub>

- **On 8/2/2024, VA announced it would take steps to:**
  - Acknowledge that Vets who served at Karshi-Khanabad (K<sub>2</sub>) base in Uzbekistan after 9/11/2001 were exposed to contaminants including jet fuel, volatile organic compounds, particulate matter and dust, asbestos roofing tiles, and lead-based paint
  - Consider Vets who served at K<sub>2</sub> as “Persian Gulf Veterans,” making them eligible for presumptive SC for undiagnosed illnesses and MUCMIs
  - Ensure that toxic exposures are fully taken into account when processing K<sub>2</sub> Vets’ claims and all benefits to which Vet entitled are granted, to include pre-decisional review

# TERA CLAIMS

# TERA CLAIMS

- When does VA need to address toxic exposure as a possible basis for establishing SC disability or death benefits?



# TERA CLAIMS

- **VA must assess whether a Vet participated in a TERA when:**
  - There is evidence of the claimed disability, AND
  - The issue is not a claim for increase, AND
  - The disability cannot be granted on a presumptive basis, AND
  - The condition is not considered a TERA exam exception

# TERA CLAIMS

- **Claims associated with TERA may include claims in which claimant:**
  - Explicitly states a disability is related to
    - Service in a location where toxic exposure is presumed, or
    - Toxic exposure
  - Does not explicitly state what caused a claimed disability, but Vet served in a location where toxic exposure is presumed
  - Claims SC for a newly recognized presumptive disability, or
  - Claims a non-presumptive disability and evidence establishes participation in TERA



# EXPLICIT CLAIMS

- **Explicit claims of toxic exposure:**
  - Vet lists an exposure in “Exposure Information” section on VA Form 21-526EZ
  - Vet notes exposure on VA Form 20-0995
  - Survivor claims Vet’s cause of death is due to a toxic exposure on/with VA Form 21P-534EZ
  - Lay statement submitted with a claim includes info about exposure

# VA FORM 21-526EZ

## SECTION IV: EXPOSURE INFORMATION

**15A. ARE YOU CLAIMING ANY CONDITIONS RELATED TO TOXIC EXPOSURES?** **NOTE:** See Page 4 of the Instructions for further information on the evidence needed to support your claim for presumptive service connection. (You can also refer to the following websites for more information: PACT ACT (<https://www.va.gov/PACT>) and PUBLIC HEALTH MILITARY EXPOSURES (<https://www.publichealth.va.gov/exposures/index.asp>))

☐ YES (If "Yes," complete Items 15B, 15C, 15D and 15E) ☐ NO (If "No," skip to Item 16, Section V: Claim Information)

**15B. DID YOU SERVE IN ANY OF THE FOLLOWING GULF WAR HAZARD LOCATIONS?**

Iraq; Kuwait; Saudi Arabia; the neutral zone between Iraq and Saudi Arabia; Bahrain; Qatar; the United Arab Emirates; Oman; Yemen; Lebanon; Somalia; Afghanistan; Israel; Egypt; Turkey; Syria; Jordan; Djibouti; Uzbekistan; the Gulf of Aden; the Gulf of Oman; the Persian Gulf; the Arabian Sea; and the Red Sea.

☐ YES ☐ NO

FROM:

TO:

WHEN DID YOU SERVE IN THESE LOCATIONS? (MM-YYYY)

Note: Please provide an approximate time frame (month and year).

**15C. DID YOU SERVE IN ANY OF THE FOLLOWING HERBICIDE (e.g., Agent Orange) LOCATIONS?**

Republic of Vietnam to include the 12 nautical mile territorial waters; Thailand at any United States or Royal Thai base; Laos; Cambodia at Mimot or Krek; Kampong Cham Province; Guam or American Samoa; or in the territorial waters thereof; Johnston Atoll or a ship that called at Johnston Atoll; Korean demilitarized zone; aboard (to include repeated operations and maintenance with) a C-123 aircraft known to have been used to spray an herbicide agent (during service in the Air Force and Air Force Reserves).

☐ YES ☐ NO

Please list other location(s) where you served, if not listed above:

FROM:

TO:

WHEN DID YOU SERVE IN THESE LOCATIONS? (MM-YYYY)

Note: Please provide an approximate time frame (month and year).

**15D. HAVE YOU BEEN EXPOSED TO ANY OF THE FOLLOWING? (Check all that apply)**

☐ ASBESTOS

☐ MUSTARD GAS

☐ RADIATION

☐ SHAD (Shipboard Hazard and Defense)

☐ MILITARY OCCUPATIONAL SPECIALTY (MOS)-related toxin

☐ CONTAMINATED WATER AT CAMP LEJEUNE

☐ OTHER (Specify)

FROM:

TO:

WHEN WERE YOU EXPOSED? (MM-YYYY)

Note: Please provide an approximate time-frame (month and year).

**15E. IF YOU WERE EXPOSED MULTIPLE TIMES, PLEASE PROVIDE ALL ADDITIONAL DATES AND LOCATIONS OF POTENTIAL EXPOSURE**

# IMPLICIT CLAIMS

- If not explicitly claimed, VA should liberally construe a claim to determine if it is implicitly based on toxic exposure:
  - Vet served in location associated with toxic exposure
  - Vet's MOS is associated with toxic exposure
  - ILER or other military records show participation in a TERA
  - Documented concession of exposure in a prior claim or Vet's VA corporate record contains a claim attribute for toxic exposure, such as the Toxic Exposure - Sec. 1119 Covered Veteran flash

# IMPLICIT CLAIMS

- **VA should liberally construe claim to determine if it is implicitly based on toxic exposure (cont'd):**
  - Medical records, such as VHA exposure screening, contain an allegation of exposure to a toxic substance, chemical, or airborne hazard
  - Survivor submits death certificate that lists a primary or contributing cause of death for which a TERA exception does not apply, and there is reasonable probability that the death may be related to service
  - Any other relevant evidence of record
    - VA PACT ACT Implementation SOP, <https://vbaw.vba.va.gov/bl/21/pact.htm>

# SURVEY #2

• Is there required minimum level of exposure or duration of participation in a TERA necessary to qualify as a toxic-exposed Vet?

A. Yes

B. No

C. Maybe



# TERA



- There is no required minimum level of exposure or duration of participation in a TERA
- Also, when adjudicating claims, VA must consider the combined effect of ALL TERAs

# REMEMBER

- VBA is required to search for evidence of any potential toxic exposures during Vet's military service, even if it is not mentioned in the claim



# TERA MEDICAL EXAMS/OPINIONS



# 38 U.S.C. § 1168

- **Medical nexus exams for toxic exposure risk activities**
- **VA must provide a medical exam and obtain a medical nexus opinion if Vet (not DIC claimant) submits a claim for SC and there is**
  1. Evidence of a disability,
  2. Evidence of participation in a TERA during active service,
  3. An indication of an association between the disability and the TERA, and
  4. Insufficient evidence to GRANT service connection

# 38 U.S.C. § 5103A(a)

- Section 5103A(a) controls VA's duty to obtain a medical opinion for DIC claims, including those involving TERA
- VA must obtain a medical opinion regarding a DIC claim *unless no reasonable possibility exists that such assistance would aid in substantiating a claim*
  - *Wood v. Peake*, 520 F.3d 13545 (Fed. Cir. 2008)
  - This threshold is much lower than the thresholds for living Vets set forth in *McLendon* and Section 1168

# VA MEDICAL EXAMS / OPINIONS



NVLSP  
NATIONAL VETERANS LEGAL SERVICES PROGRAM

- **Exam / opinion may be needed when:**
  - Claimed condition not subject to a presumption of SC
  - Vet does not have qualifying service in a recognized location, but may have other exposures shown in the totality of evidence
  - Severity of disability needs to be determined for evaluation

# WHEN EXAM/OPINION NOT REQUIRED



- Exam/opinion generally NOT required for living Vets if there is no indication of an association between the claimed condition and the toxic exposure
  1. Non-presumptive claims based on physical trauma (blunt force, repetitive use, penetrating)
  2. Mental disorders
  3. Conditions determined by VA Secretary to have no positive association with herbicide exposure
  4. Disabilities that manifested during service or with an etiology not associated w/ toxic exposure

# WHEN EXAM/OPINION NOT REQUIRED



5. The only participation in a TERA that is established is based on an entry in an exposure tracking record system, such as ILER, that doesn't corroborate or correspond to an activity carried out by the Vet during active military service that could result in potential exposure to toxic substances, chemicals, or airborne hazards
  - Such as a routine health encounter (e.g., ankle sprain) with no evidence of exposure to toxin

# WHEN EXAM/OPINION NOT REQUIRED



6. The only participation in a TERA that is established is based on an entry in an exposure tracking record system, such as ILER, that is based on the Vet's self-reports of exposure to toxic substances, chemicals and airborne hazards that cannot be substantiated
  - Such as a post-service health assessment or registry
  - Includes self-reported records that are inconsistent with the info available and circumstances of the Vet's service or that provide insufficient info to permit reasonable verification
  - VBA Letter 20-24-06, § 4.3

# NON-PRESUMPTIVE CLAIMS BASED ON PHYSICAL TRAUMA

- Fracture of any bone or joint
- Any muscle/ligament tear/sprain/strain
- Meniscal tear
- Dislocation of any joint
- Osteoarthritis/traumatic arthritis of any joint
- Spinal fusion
- Spinal stenosis
- Spondylolisthesis
- Degenerative disc disease
- Cold/electrical/thermal burns
- Osteitis deformans
- Metatarsalgia
- Pes planus
- Plantar fasciitis
- Traumatic brain injury
- Heterotopic ossification
- Lower extremity bones shortening

# NON-PRESUMPTIVE CLAIMS BASED ON PHYSICAL TRAUMA

## • NOTES:

- Hearing loss is not considered a physical trauma under this exception
- If it is unclear whether the joint condition is related to physical trauma, it should be assumed that it is, unless there is competent medical/scientific evidence to the contrary
- Penetrating traumas with toxic embedded fragments don't fall under this exception (i.e., an exam will be required if other elements met)
  - VBA Letter 20-24-06



# MENTAL DISORDERS

- Mental disorders for which there is no association w/ toxic exposure are those listed in 38 C.F.R. § 4.130
  - A diagnosed mental disorder should be considered on a direct or secondary basis
- But, toxic exposure can result in symptoms of neurobehavioral decline, like decreased memory and concentration, not associated with a diagnosed mental disorder, and for which a TERA exam may be warranted
  - VA PACT Act Implementation SOP, <https://vbaw.vba.va.gov/bl/21/pact.htm>

# CONDITIONS DETERMINED TO HAVE NO POSITIVE ASSOCIATION WITH HERBICIDE EXPOSURE

## Malignant Conditions (Cancers)

- **Melanoma**
- Nonmelanoma skin cancer
- **Hepatobiliary cancers and pancreatic cancer**
- Cancers of the pleura, mediastinum, and other unspecified sites w/in the respiratory system and infrathoracic organs
- **Bone and connective tissue cancer**
- Endocrine cancers
- Cancers of the reproductive organs (excluding prostate)
- **Cancers of the digestive organs**
- Breast cancer
- **Cancers of the brain and nervous system (including eye)**
- Leukemia (other than all chronic B-cell leukemias)
- **Cancers of the oral cavity, pharynx, and nasal cavity**

# CONDITIONS DETERMINED TO HAVE NO POSITIVE ASSOCIATION WITH HERBICIDE EXPOSURE



## Non-Malignant Conditions

- **Osteoporosis**
- Farmer's lung
- **COPD**
- Immune system disorders
- **Neurodegenerative diseases, excluding Parkinson's disease and Parkinsonism**
- Asthma
- **Hearing loss**
- **Neurobehavioral disorders**
- Circulatory disorders (other than hypertension, ischemic heart disease, and stroke)
- **Endometriosis**
- Diseases of the eye
- **Gastrointestinal, metabolic, and digestive disorders**
- Chronic peripheral nervous system disorders (other than early-onset peripheral neuropathy)

# CONDITIONS DETERMINED TO HAVE NO POSITIVE ASSOCIATION WITH HERBICIDE EXPOSURE

- The conditions under this exception only apply to claims based on herbicide exposure
- Claims processors must still consider all evidence, as there may be a record of a *TERA other than* herbicide exposure
  - VA PACT Act Implementation SOP, <https://vbaw.vba.va.gov/bl/21/pact.htm>

# EXCEPTION TO THE EXCEPTIONS

- Even if medical exam / opinion would not normally be required because it falls in categories 1, 2, or 3 on the previous slides, VA must order TERA exam if Vet submits competent medical or scientific evidence of an association between the disability and the in-service toxic exposure
- Ex: private medical opinion indicating a link between Vet's tongue cancer and his herbicide exposure
  - VBA Letter 20-24-06

# DISABILITIES THAT MANIFESTED DURING SERVICE OR WITH AN ETIOLOGY NOT ASSOCIATED WITH TOXIC EXPOSURE

- **Applies to conditions that:**
  - Manifested during service for which a nexus opinion would not be needed to decide SC on a direct basis (evidence of chronicity or continuity is of record)
  - Evidence shows are clearly caused by something not associated with toxic exposure (including a post-service event)
- **Claims processors must liberally apply reasonable doubt when determining if this exception applies. When there is an approximate balance of evidence, they should request the TERA exam and nexus opinion**
  - VBA Letter 20-24-06

# WHEN VA HAS A NEGATIVE NON-TERA MEDICAL OPINION

If the...	AND...	Then a TERA Opinion is...
Direct or secondary medical opinion is negative	There is no diagnosis	Not needed
Direct or secondary medical opinion is negative	The rationale attributes the disability to a non-TERA etiology unrelated to service	Not needed
Direct or secondary medical opinion is negative	The rationale concludes the disability is not due to the non-TERA in-service event or not secondary to the SC disability, but does not attribute the condition to a specific etiology	Needed if TERA participation is shown

# WHEN VA HAS A NEGATIVE NON-TERA MEDICAL OPINION

If the...	AND...	Then a TERA Opinion is...
Claim <u>does not meet</u> presumptive service connection provisions	No TERA participation is shown  <i>Note: This finding must be documented on TERA MEMO</i>	Not needed
Claim <u>does not meet</u> presumptive service connection provisions	TERA participation is shown	Needed

VA PACT ACT Implementation SOP, <https://vbaw.vba.va.gov/bl/21/pact.htm>



# 38 U.S.C. § 1168(A)(2)

- **Medical nexus opinion provider must consider:**
  1. **Total potential exposure through all of Vet's applicable military deployments**
    - **Provided by claims processor to examiner**
  2. **Synergistic, combined effect of all toxic exposure risk activities of Vet**
    - **But not the synergistic, combined effect of each of the substances, chemicals, and airborne hazards in list created under § 1119(b)(2)**

## SECTION VII - MEDICAL OPINION FOR TOXIC EXPOSURE RISK ACTIVITIES

Choose the statement that most closely approximates the etiology of this claimed condition.

- ☐ 7a. The claimed condition was at least as likely as not (likelihood is at least approximately balanced or nearly equal, if not higher) caused by the indicated toxic exposure risk activity(ies), after considering the total potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities of the Veteran. Provide rationale in section C.
- ☐ 7b. The claimed condition was less likely than not (likelihood is less than approximately balanced or nearly equal) caused by the indicated toxic exposure risk activity(ies), after considering the total potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities of the Veteran. Provide rationale in section C.

7c. Provide rationale:

## SECTION VIII - OPINION REGARDING CONFLICTING MEDICAL EVIDENCE

8. I have reviewed the conflicting medical evidence and am providing the following opinion:

Veteran was instructed to send all personal medical records to the VA Evidence Intake Center if applicable, for proper submission into VBMS.

# TERA MEMO

- Provides justification for ordering or not ordering a TERA exam and opinion
- Includes details about potential exposures for the examiner to facilitate a well-informed opinion

# TERA MEMO

**Question 1. Does the Veteran qualify for a presumption of exposure(s) for one or more of the following hazards during military service? (If Yes, provide details below.)**

☒ No ☐ Yes, the Veteran was exposed to the following (select all that apply):

- ☐ Herbicide Agent - 2,3,7,8 - Tetrachlorodibenzodioxin (TCDD)
- ☐ Radiation - Ionizing
- ☐ Mustard Gas - Nitrogen, Sulfur Mustard or Lewisite
- ☐ Camp Lejeune Water Contamination - Perchloroethylene (PCE), trichloroethylene (TCE), vinyl chloride, benzene

Evidence of exposure (include the subject and date of receipt of the cited documents):

**Question 2A. Is there an Individual Longitudinal Exposure Record (ILER) entry for an activity carried out by the Veteran while on active duty involving toxic exposure to occupational or environmental hazards?** (If Yes, answer 2B and ensure that the *Individual Exposure Summary* is uploaded into VBMS.)

☐ No ☒ Yes

**Question 2B. Is there any evidence of exposure over permissible limits in the ILER report?** (If Yes, ensure that pertinent evidence is bookmarked or annotated in VBMS.)

☒ No ☐ Yes

**Question 3A. Does the Veteran's VBMS eFolder contain the *Persian Gulf War Service - Sec. 1117* flash and/or 1117 memo?** (If No, answer 3B as well.)

☒ No ☐ Yes

**Question 3B. Is there evidence of record verifying that the Veteran served in a 38 C.F.R. § 3.317(e)(2) and/or Sec. 1117 location?** (If Yes, provide details below.)

☒ No ☐ Yes

Evidence of service in a 38 C.F.R. § 3.317(e)(2) and/or Sec. 1117 location (include the subject and date of receipt of the cited documents):



**Question 4A.** Does the Veteran's VBMS eFolder contain the *Toxic Exposure - Sec. 1119 Covered Veteran* flash and 1119 memo? (If No, answer 4B as well.)

☐ No ☒ Yes

**Question 4B.** Is there evidence of record verifying that the Veteran served in a 38 C.F.R. § 3.320 and/or Sec. 1119 location? (If Yes, provide details below.)

☐ No ☒ Yes

Evidence of service in a 38 C.F.R. § 3.320 and/or Sec. 1119 location (include the subject and date of receipt of the cited documents):

Sec 1119 Covered Veteran  
12/03/2022  
Determination: VA Memo

**Question 5A.** Is there evidence of other deployment related exposure in the eFolder and/or ILER (not already depicted in the questions above) which is consistent with the circumstances of the Veteran's service? (If Yes, provide details below and answer 5B as well.)

☐ No ☒ Yes

Evidence and details about deployment related exposure (include the subject and date of receipt of the cited documents):

VIS & ILER Report received on 2/7/23 and Military Personnel Records received 2/9/11 show service in Djibouti

**Question 5B. Where in the eFolder does the deployment information exist (e.g., ILER, VIS military personnel record)? (Ensure that the pertinent evidence is bookmarked or annotated in VBMS.)**

VIS & ILER Report received on 2/7/23 and Military Personnel Records received 2/9/11 show service in Djibouti

**Question 6. Is there evidence of non-deployment related exposure in the eFolder and/or ILER which is consistent with the circumstances of the Veteran's service? (If Yes, provide details below.)**

☐ No ☒ Yes

Evidence and details about non-deployment related exposure (such as Military Occupational Specialty; other military duties; garrison exposures; any relevant location, dates, and length of each exposure, etc.):

MOS medical technologist and health care administrator with exposed radiation, fuels, such as diesel and JP-8, used to operate vehicles during military service;; industrial solvents cleaning, degreasing, paint stripping, and thinning oil-based paints; CARC (Chemical Agent Resistant Coating) is a paint used on military vehicles to make metal surfaces highly resistant to corrosion and penetration of chemical agents, asbestos, PFAS

DD214  
Personnel records  
12/22/2004

**CONCLUSION.** Did the Veteran participate in a TERA during active military service? (If Yes was answered to any of the above questions, then "Yes, the Veteran participated in a TERA" should be selected.)

- ☒ Yes, the Veteran participated in a TERA
- ☐ No, the Veteran did not participate in a TERA

VBAMGYGREENL Awards VSR 322

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Employee signature



# MISCELLANEOUS

# TIPS FOR TERA CLAIMS

- Utilize the *Exposure Information* section of the VA Form 21-526EZ (recently updated to better reflect exposure events)
- Don't forget garrison and other non-deployment related TERAs
- Encourage Vet to write lay statement describing claimed condition (including onset and symptoms) and any TERAs to which it may be related
- Be specific in terms of the exposure dates, duration, occupation, and circumstances
- If Vet has medical records to support claim, submit them up front to reduce claims processing time

# EFFECTIVE DATES

- If claim was pending prior to 8/10/2022, SC claims granted under theory unrelated to new PACT Act presumptions of exposure (locations) or service connection (diseases) should be effective the later of:
  - Date of claim
  - Date disability first manifested
- In other words, benefits granted under theory of direct SC may be assigned an effective date prior to 8/10/2022

# ADVOCACY ADVICE

- VA's internal PACT Act Implementation SOP **INCORRECTLY** states that any grant based on the new exam threshold under 38 U.S.C. § 1168 cannot be before 8/10/2022
  - Incorrect, because claim not granted under new theory of SC or based on new presumption
    - Similar to claims pending when VCAA enacted
- If VA fails to assign effective date prior to 8/10/2022 for this reason, seek direct review at BVA and notify NVLSP

# TERA HYPOS

Adopted from VA's PACT Act FAQs Version 6.0  
<https://vbaw.vba.va.gov/bl/21/pact.htm>

# **HYPOTHESIS #1**

- **What are the requirements for records development in association with looking for toxic exposures?**
- **Does every claim filed with VA now require development for the personnel file if not already of record when a non-presumptive disability is claimed?**

# ANSWER - HYPO #1



**VA must ensure all military records, to include personnel records (if not already of record), have been requested and obtained prior to determining that a Vet did not participate in a TERA**

# **HYPO #2**

- If Vet claims any non-presumptive condition and doesn't specify a basis/theory of SC, but a TERA can be verified, does VA need to request a TERA medical exam/opinion (presuming exception does not apply)?**





# HYPO #2 - ANSWER



- If ...
  - There is lay or other evidence of a current disability
  - It's not a claim for increase
  - TERA exceptions don't apply, AND
  - The evidence is insufficient to grant the claim
- Then an exam and TERA medical nexus opinion are required if Vet participated in a TERA, even if Vet did not specifically claim the condition on that basis

# HYPOTHESIS #3

- Can a buddy statement be a credible source of lay evidence for a TERA claim? For example, Vet submits a buddy statement asserting that Vet was exposed to a toxic substance. The RVSR has no idea whether that toxic substance is located where the Vet was stationed, but it seems plausible given the statement.



# **HYPO #3 - ANSWER**



- **A buddy statement can be credible lay evidence for a TERA claim**
- **The statement must be provided by a person who has knowledge of facts or circumstances of the Vet's TERA and conveys matters that can be observed and described by a lay person. The statement should be consistent with the circumstances and conditions of the reported TERA and be evaluated with available service records.**

# TERA & VA HEALTH CARE



# PACT ACT § 103

- Expansion of Health Care for Specific Categories of Toxic-Exposed Veterans and Veterans Supporting Certain Overseas Contingency Operations
- Amends 38 U.S.C. § 1710(e)



# EXPANSION OF VA HEALTH CARE FOR TOXIC-EXPOSED VETS

- VA must furnish hospital care (including mental health services and counseling), medical services, and nursing home care, for any illness, to any Vet “who is a toxic-exposed veteran, in accordance with [38 U.S.C. § 1710(e)]”
- 38 U.S.C. § 1710(a)(2)(F)
- Toxic-exposed Vets will qualify for at least Priority Group 6

# EXPANSION OF VA HEALTH CARE FOR TOXIC-EXPOSED VETS

- New categories of toxic-exposed Vets:
  1. Vets who participated in a toxic exposure risk activity while serving on active duty, active duty for training, or inactive duty training
  2. “Covered veterans” who served in certain locations during certain periods (listed in new 38 U.S.C. § 1119(c));
  3. Those who deployed in support of a specified contingency operation
    - 38 U.S.C. § 1710(e)(1)(G), (H), (I)

# CATEGORY 1 – TERA PARTICIPANTS

- **Vet exposed during active duty, active duty for training, or inactive duty training to:**
  - Air pollutants (burn pits, sand storms, oil well fires, etc.)
  - Chemicals (pesticides, herbicides, depleted uranium, contaminated water, etc.)
  - Occupational hazards (asbestos, paint, industrial solvents, lead, PFAS, CARC, etc.)
  - Radiation
  - Warfare agents (chem & bio weapons, nerve agents)



# CATEGORY 2 – “COVERED” VETS

- Under 38 U.S.C. § 1119(c), Vet served:
  - On/after 8/2/1990, in:
    - Bahrain
    - Iraq
    - Kuwait
    - Oman
    - Qatar
    - Saudi Arabia
    - Somalia
    - U.A.E
  - On/after 9/11/2001, in:
    - Afghanistan
    - Djibouti
    - Egypt
    - Jordan
    - Lebanon
    - Syria
    - Yemen
    - Uzbekistan
    - Any other country per Sec VA

# CATEGORY 3 – SPECIFIED CONTINGENCY OPERATION

- **Vet deployed in support of:**
  - Operation Enduring Freedom
  - Operation Freedom's Sentinel
  - Operation Iraqi Freedom
  - Operation New Dawn
  - Operation Inherent Resolve
  - Resolute Support Mission

# ELIGIBILITY DATES

## 38 U.S.C. § 1710(e)(6)

- Under PACT Act, eligibility for VA health care for new categories of toxic-exposed Vets was to be phased in between 10/1/2024 and 10/1/2032
- PACT Act gave VA Secretary the authority to move up eligibility start dates if VA had resources to do so
- 3/5/2024: VA announced that Vets in these categories were immediately eligible to enroll in VA health care!
  - 89 Fed. Reg. 15,753 (Mar. 4, 2024)

# ENROLLMENT FOR CATEGORY 1

- **If eligibility based participation in TERA:**
  - If new enrollee, Vet must apply using VA Form 10-10EZ
  - If existing enrollee in Priority Group 7 or 8 and seeking higher Priority Group 6, Vet must file VA Form 10-10EZR
- **VHA must determine if Vet participated in a TERA**
  - Prior VA finding in disability comp claim that Vet participated in a TERA is binding on VA for health care enrollment purposes
  - If VA has not previously found Vet participated in a TERA, VA will consider required entries in Vet's ILER, Vet's service personnel records, and other sources

# ENROLLMENT FOR CATEGORIES 2 & 3

- **For current enrollees, VA will review its existing records to determine if the enrollee is a “Covered Veteran” or deployed in support of an identified contingency operation**
  - If Vet’s service qualifies, VA will place Vet in Priority Group 6, unless Vet qualifies for a higher Priority Group based on other factors
- **New enrollees must file VA Form 10-10EZ**
  - VA will review application to determine if Vet is eligible for enrollment in Priority Group 6 based on qualifying service as a “Covered Veteran” or in an identified contingency operation

# SURVEY #3

- Do toxic-exposed Vets need to apply for VA disability compensation benefits prior to enrolling in VA health care?
- A. Yes
  - B. No
  - C. Not Sure



# VA HEALTH CARE ELIGIBILITY



- Toxic-exposed Vets can enroll in VA Health Care without applying for disability comp first, if they meet basic service and discharge requirements
- Even non-toxic exposed Vets may be eligible for VA Health Care without applying for disability comp, based on other factors

# VA HEALTH CARE ELIGIBILITY



- The instructions for VA Form 10-10EZ note that Vets not currently receiving benefits from VA can attach a copy of their DD-214
- Instructions add that if claiming military exposure, Vets “may provide a written statement, or statements from people who witnessed your claimed exposure(s).”
- Hence, Vets may wish to submit a VA Form 21-4138 to accompany their VA Form 10-10EZ



# TERA MEMO – VA HEALTH CARE

☐

TERA conceded. VBA is able to verify a TERA based on the following evidence:

☐

TERA Memorandum

☐

Qualifying entry in ILER

☐

Rating Decision Code Sheet -TERA conceded verification

☐

VBMS eFolder corporate flash/verification (Persian Gulf Veteran – Sec.1117, Toxic Exposure – Sec. 1119 Covered Veteran, Agent Orange exposure)

☐

Qualifying service on DD214

☐

TERA/qualifying service documented in Service Treatment Records

☐

TERA/qualifying service documented in Personnel Records.

☐

Cohort 2; verification of 38 U.S.C 1119 service

☐

Cohort 3; verification of deployment in support of Operation Enduring Freedom, Operation Freedom's Sentinel, Operation Iraqi Freedom, Operation New Dawn, Operation Inherent Resolve, or Resolute Support Mission

☐

Other

**Note:** Only one TERA is required to verify health care eligibility.

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If TERA is **not** conceded, complete, and upload a TERA Memorandum in VBMS.

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VBA Employee

Version 2 (updated 03/26/2024)

# QUESTIONS?

