



# VA Begins Adjudicating Claims for New Agent Orange Presumptions Included in NDAA FY2021

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## Background

On January 1, 2021, the [William M. \(Mac\) Thornberry National Defense Authorization Act for Fiscal Year 2021 \(NDAA FY2021\)](#) became law (P.L. 116-283) after the House and Senate voted to override then-President Donald Trump’s veto of the bill on December 28, 2020, and January 1, 2021, respectively. Section 9109 of the NDAA FY2021 amended [Section 1116\(a\)\(2\) of Title 38](#) of the *U.S. Code* by adding bladder cancer, hypothyroidism, and Parkinsonism (a term for neurological disorders that cause movement problems similar to that of Parkinson’s disease) to the list of presumptive conditions for Vietnam-era veterans exposed to Agent Orange. This brought an end to a multiyear attempt to expand the list of presumptions for this specific group of veterans.

As background, during the 116<sup>th</sup> Congress, H.R. 2200, H.R. 5610, and S. 3444 were introduced. These bills sought to statutorily add the aforementioned conditions as presumptions. In addition, H.Res. 729 and S.Res. 420 would have encouraged then-President Trump to act on creating these presumptions. The legislation and resolutions came following two updated reports from the National Academies of Sciences (NAS) studies and scientific literature reviews of health conditions associated with exposure to Agent Orange. In March 2016, NAS released its [Veterans and Agent Orange: Update 2014](#), which [changed the classification of certain diseases/conditions](#) among the Categories of Association. The classification of hypothyroidism and bladder cancer changed from “inadequate/insufficient evidence” of association to “limited/suggestive evidence” of association, while Parkinsonism remained at a “limited/suggestive evidence” of association. Then, in November 2018, NAS released its [latest report](#) on Agent Orange, which reinforced the previous report’s categorizations on bladder cancer, hypothyroidism, and Parkinsonism.

Following the NAS reports and introduced legislation, Congress held multiple hearings to listen to medical and scientific personnel, veterans, VA officials, and veteran service organizations. In July 2020, Senator Jon Tester proposed S.Amdt. 1972 to the annual National Defense Authorization Act to address

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the issue. The amendment was included, and the legislation passed. Now bladder cancer, hypothyroidism, and [Parkinsonism](#) are presumptive conditions for veterans exposed to Agent Orange.

## Budget Request to Assist with Claims

On [June 16, 2021](#), VA Secretary Denis McDonough appeared before the Senate Committee on Veterans' Affairs to present VA's budget request for FY2022. In his statement, McDonough addressed the newly established presumptive conditions, stating, "[VA will begin implementing these provisions so that Vietnam Veterans will no longer wait for these earned benefits.](#)" In order to accomplish this, funding for additional staffing and an increase to VA's Compensation and Pension account was included in the budget request. Specifically, the Veterans Benefit Administration's (VBA's) General Operating Expense [budget request for FY2022](#) includes an 8% increase over FY2021, which will include the hiring of an additional [429 full-time-equivalent employees](#) to process the claims for the new presumptive conditions and to manage the increased inventory of benefit claims.

In a briefing to congressional staff, VA estimated that 72,000 claims could be received by VBA in the first year and over 171,000 claims received over a five-year period as a result of the new Agent Orange presumptions. In addition, VA estimated that 52,000 veterans and 2,000 survivors may be eligible to receive recurring benefit payments due to the expanded list of health conditions. As a result of the increased number of claims, VA estimates that there will be an increase of [\\$3 billion in obligations to the Compensation and Pension budget](#), which will include approximately \$2.2 billion in retroactive payments.

## Adjudicating Claims

On [May 27, 2021](#), VA [announced plans to implement provisions](#) to grant benefits for disability claims for veterans with bladder cancer, hypothyroidism, and Parkinsonism who were exposed to Agent Orange during their military service in the Vietnam era. In this announcement VA Secretary McDonough stated, "Many of our Nation's Veterans have waited a long time for these benefits. VA will not make them wait any longer. This is absolutely the right thing to do for Veterans and their families."

Less than a month later, on [June 21, 2021](#), VA began to adjudicate disability compensation claims for the presumptive conditions of these three conditions. Typically, VA issues interim final regulations for adjudicating claims. As of the date of this Insight, VA has not issued regulations. However, VA did update [Part VIII.i.1.A](#) and [Part III.iv.4.N](#) of the M21-1 adjudication manual providing guidance on processing claims for these presumptions. On July 26, 2021, VBA and VA announced on [Twitter](#) and [Facebook](#) that VBA was adjudicating claims for Vietnam-era veterans with the aforementioned conditions. Since June 21, 2021, VA has [granted over \\$4 million in retroactive benefits](#) to eligible veterans and their families under these new presumptions.

In its [May 27, 2021, press release](#) VA explained that veterans and their survivors who previously filed claims but were denied benefits for one of the three conditions will automatically have their cases reviewed and therefore do not need to reapply for benefits. VA said it will mail a letter to inform these veterans or their survivors of this automatic review. For veterans who have not filed claims for these presumptive conditions, VA is encouraging veterans and their family members to go to their [Agent Orange Exposure and VA Disability Compensation](#) webpage for more information.

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