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Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Survivors Did Not Always Receive Accurate Retroactive Benefits for Dependency and Indemnity Compensation Claims Reopened Under the PACT Act

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Executive Summary

Dependency and Indemnity Compensation is a monthly benefit paid to eligible survivors of service members who died in the line of duty or whose death resulted from a service-related injury or illness.¹ The PACT Act, enacted on August 10, 2022, broadened the scope of conditions presumed to be related to military service and added locations associated with toxic exposures, thereby expanding eligibility for this benefit.² Included in the PACT Act is the potential that survivors with previously denied claims who may be eligible following this expansion for Dependency and Indemnity Compensation related to toxic exposure might receive retroactive payments dating back to the original date of entitlement.³ For survivors to receive retroactive payments, the act requires VA to reevaluate previously denied claims “at the election of the claimant” (meaning at the request of the survivor).⁴

Survivors may reapply for these previously denied claims by submitting VA Form 21P-534EZ (the EZ application), VA Form 21P-534 (the standard application), or VA Form 20-0995 (the decision review request form).⁵ Given the significant expansion of presumptive conditions and locations under the PACT Act and the likelihood of an increase in survivors eligible for these payments, the VA Office of Inspector General (OIG) conducted this review to assess the

¹ 38 C.F.R. § 3.5 (2008). VA also presumes certain diseases or conditions to have been incurred in or aggravated by military service within the prescribed time frames specified by regulation or statute, even if there is no evidence of such disease during service. VA Manual 21-1, “Overview of Presumptive SC,” updated September 27, 2022, topic V.ii.2.B.1.a in *Adjudication Procedures Manual*. Dependency and Indemnity Compensation can be granted when the cause of death is a presumptive disease or condition, and the evidence shows the veteran meets the particular presumptive criteria—such as having served in a particular time and place. VA Manual 21-1, “DIC Benefits under 38 USC 1310 and 1318,” updated December 1, 2022, topic XII.i.2.A.1.

² Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168.

³ See appendix A for the expanded military service criteria that qualifies for presumptive toxic exposure and presumptive health conditions under the PACT Act. In determining the original date of entitlement, also known as the effective date, veterans service representatives must consider several factors, including date of death, when the original claim for Dependency and Indemnity Compensation was received, and the guidance in place at the time of the original claim. VA Manual 21-1, “Determining the Effective Date for DIC and Application of 38 CFR. 3.114,” updated August 2, 2022, topic XII.i.3.A.2.

⁴ PACT Act § 204; this section of the PACT Act is codified at 38 U.S.C. § 1305.

⁵ During the OIG review period from January 1 through July 31, 2023, survivors may have reopened a previously denied Dependency and Indemnity Compensation claim by submitting one of three forms. VA Form 21P-534EZ (called the EZ application in this report), the Application for Dependency and Indemnity Compensation, Survivors Pension, and/or Accrued Benefits (July 2022), is used when the survivor submits evidence along with their claim to get a decision on the claim faster. When the survivor prefers to submit evidence at a later time to support the claim, they can use VA Form 21P-534 (referred to here as the standard application), the Application for Dependency and Indemnity Compensation, Survivors Pension, and Accrued Benefits by a Surviving Spouse or Child (July 2022). Finally, VA Form 20-0995, the Decision Review Request: Supplemental Claim (September 2022), is referred to in this report as the decision review request form.

accuracy of the Veterans Benefits Administration's (VBA) processing of reopened Dependency and Indemnity Compensation claims under the PACT Act.

The Pension and Fiduciary Service administers Dependency and Indemnity Compensation by developing rulemaking and policy requirements, overseeing training, assessing the accuracy of claims processing, and conducting advisory reviews.⁶ Processing teams at the pension management centers are responsible for the development, rating, and award and authorization activities necessary to process a claim.⁷ After an eligible survivor submits a claim to VA, veterans service representatives review the claim and assist the survivor in gathering evidence needed to evaluate it. Rating veterans service representatives analyze the evidence, request a medical opinion if needed, and make decisions on the claim. Veterans service representatives then implement the decision, determine the effective date, authorize payment if Dependency and Indemnity Compensation is granted, and send a notification letter to the survivor.

What the Review Found

Survivors can request reevaluation of a denied Dependency and Indemnity Compensation claim by submitting

- the EZ application, where, in response to the prompt, “What benefit are you claiming?” the applicant has checked the box for “DIC [Dependency and Indemnity Compensation] due to claimant election of a re-evaluation of a previously denied claim based on expanded eligibility under [the PACT Act],” or
- the decision review request form, the standard application, or an older version of the EZ application with an accompanying statement mentioning the PACT Act or one of its presumptive exposure locations or conditions.⁸

⁶ The Pension and Fiduciary Service is separate from Compensation Service staff who provide disability compensation to veterans, assess nationwide claims-processing accuracy, develop and oversee training for VBA employees who process compensation claims and appeals, and develop policy and procedures related to disability compensation. VA, *2021 Functional Organizational Manual*, ver. 7.0.

⁷ Dependency and Indemnity Compensations claims were consolidated at VBA's three pension management centers in Philadelphia, Pennsylvania; Milwaukee, Wisconsin; and St. Paul, Minnesota. VA Manual 21-1, “Purpose of PMCs,” updated November 20, 2023, topic I.ii.1.B.1. VA Manual 21-1, “PMC Team Structure and Work Processing,” updated March 2, 2023, topic I.ii.1.B.3. The processing of a decision is commonly referred to as an “award” action, regardless of whether the decision constitutes a grant or denial of benefits.

⁸ At the beginning of the review, the OIG team asked VBA what qualifies as an election for reevaluation under the PACT Act, specifically if submission of the EZ application or decision review request form alone qualified as a request for reevaluation. An assistant director with the Pension and Fiduciary Service responded that submission of a form alone was not enough but that claims processors take a “liberal approach” and would accept, for example, “a statement that the claimant is filing under a new presumptive location introduced under the PACT Act, or the mention of the PACT Act itself” as an election for reevaluation.

If VBA receives one of these reevaluation requests, and if a grant of service-connected death is warranted based on a new PACT Act exposure location or presumptive condition, a retroactive award based on the effective date from the original claim should be granted.⁹ To determine the original effective date, VBA veterans service representatives must consider several factors, including date of death, when the original claim was received, and the guidance in place at the time of the original claim.¹⁰

If one of the forms is received but does not specify a request for reevaluation, the rating veterans service representative determines whether a grant of service-connected death is warranted based on a new PACT Act exposure location or presumptive condition. If service-connected cause of death is granted, then the veterans service representatives determine the effective date based on when the reopened claim was received. If the reopened claim was pending on the date the PACT Act became law—August 10, 2022—the effective date used will be the date of the law change.¹¹ In addition, if the reopened claim was received within a year from the date of the law change and the claim was granted based on a newly recognized presumptive condition or location under the PACT Act, then the effective date would be August 10, 2022.¹² When a request for reevaluation has not been received, but potential retroactive entitlement is shown, veterans service representatives must include specific language in the notification letter—which notifies the survivor of VA’s decision—and informs them they could be entitled to a retroactive effective date and that they can submit a request for reevaluation.¹³

The OIG team reviewed a sample of reopened Dependency and Indemnity Compensation claims that were completed from January 1 through July 31, 2023, and were identified as related to the PACT Act; these claims were previously denied and were denied again after being reopened.¹⁴

⁹ VBA, “Service-Connected Death Benefits under the PACT Act,” topic 6 in “Public Law (PL) 117-168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (PACT Act) Implementation Standard Operating Procedures” (PACT Act Implementation SOP), ver. 3, updated April 10, 2023 (topic 7 in ver. 2, updated February 6, 2023, and topic 7 in ver. 1, updated January 1, 2023). An effective date establishes the date a claimant’s entitlement to benefits begins. VA Manual 21-1, “General Guidance on Assignment of Effective Dates,” updated March 31, 2023, topic V.ii.4.A.1.

¹⁰ Veterans service representatives gather relevant evidence, generate the award, and send the notification letter to the survivor.

¹¹ VBA, “Service-Connected Death Benefits under the PACT Act”; 38 C.F.R. § 3.114 (2019). For any Dependency and Indemnity Compensation “claim that continuously pursues an initial claim ... the potential to grant an earlier effective date prior to the enactment of the PACT Act is limited only to the newly added presumptive conditions listed under Section 404 of the law: hypertension and MGUS [monoclonal gammopathy of undetermined significance].” VBA, “Service-Connected Death Benefits under the PACT Act.”

¹² 38 C.F.R. § 3.114; VA Manual 21-1, “Effective Dates Based on a Change of Law or Regulation,” updated June 27, 2022, topic V.ii.4.A.6.

¹³ VBA, “Service-Connected Death Benefits under the PACT Act.” VA Manual 21-1, “Notification Requirements,” updated January 8, 2024, topic VI.i.1.B.1.

¹⁴ A reopened claim for this report means an initial compensation claim was denied and the claimant is requesting reconsideration.

Based on a statistical sample of 30 claims, the team projected that 1,042 of the estimated total population of 1,117 claims were correctly processed (93 percent), indicating no systemic issue.¹⁵

In contrast, the team found that pension management center staff inaccurately processed about 517 of the estimated total population of 1,669 previously denied Dependency and Indemnity Compensation claims that were granted based on newly established presumptive conditions or locations under the PACT Act (31 percent). The team determined the following three types of Dependency and Indemnity Compensation errors occurred:

- **Impact errors** occurred in an estimated 284 of 1,669 (17 percent), resulting in about \$33.1 million in underpayments to survivors.¹⁶ These errors were identified in claims where the claims processors did not assign the correct effective date.
- **Potential impact errors** were found in an estimated 417 claims (25 percent), which could result in at least \$3 million or more in underpayments and \$585,000 in overpayments to survivors.¹⁷ These errors were related to Dependency and Indemnity Compensation being prematurely granted because additional evidence was required before making the determination, or the effective date of the original claim was not assigned because the survivor did not request reevaluation and the notification letter did not inform them of potential retroactive payments.
- **Non-impact errors** occurred in an estimated 117 claims (7 percent). These errors took place when an incorrect effective date was assigned but was later corrected by VBA, and the survivor received the retroactive benefits.¹⁸

The OIG team determined impact errors (and non-impact errors) occurred in part because the Pension and Fiduciary Service did not always provide clear guidance to pension management center staff for reevaluation of Dependency and Indemnity Compensation claims, which affects their assignment of effective dates. The VBA employees interviewed did not fully understand how to apply guidance when a request for reevaluation was received. Furthermore, the team

¹⁵ Appendixes B and C provide additional details on the team’s actions and methodology.

¹⁶ Both underpayments and overpayments are considered “improper payments.” The Office of Management and Budget defines federal payments as improper when they are paid in the incorrect amount, paid to an ineligible recipient, or issued without adequate supporting documentation. Office of Management and Budget, “Requirements for Payment Integrity Improvement,” app. C in OMB Circular A 123, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, March 5, 2021. Based on appendix C of the OMB Circular, underpayments are a form of improper payments where VA action or inaction fails to fully compensate eligible beneficiaries. Also see appendix D of this report for the OIG’s calculations of monetary impact.

¹⁷ The potential underpayments represent money that could be paid to survivors if they submit a request for reevaluation. The potential overpayments represent money that may have been overpaid, but this cannot be determined unless VBA obtains additional evidence.

¹⁸ The total number of errors exceeds 517 improperly processed claims (of the population of 1,669 claims) because some errors applied to more than one claim. For example, an impact error may have contained both an incorrect effective date and a potential impact error due to an incorrect notification letter.

determined that initial training on the PACT Act provided to pension management center staff in December 2022 lacked an explanation on what constituted an election for reevaluation, contributing to their confusion. Additionally, the guidance evolved during and after the OIG review period. Clarification from the Pension and Fiduciary Service on what to accept as a request for reevaluation of Dependency and Indemnity Compensation indicated that “any kind of written statement from the [survivor] indicating a request for evaluation, reconsideration, readjudication, etc., of a previously denied claim would be sufficient.” In September 2023, based on an inquiry to and response from the VA Office of General Counsel, the Pension and Fiduciary Service provided guidance to pension management center staff to state that survivors do not need to specifically indicate on the decision request review form that they are requesting a reevaluation under the PACT Act.

A lack of system enhancements contributed to notification letters not informing survivors of potential retroactive benefits (potential impact errors). To create notification letters, pension management center employees rely on Personal Computer Generated Letter, a system designed to generate letters by either typing a letter “from scratch,” selecting individual paragraphs to create a letter, or using “predefined letters.”¹⁹ Several staff and managers from the Pension and Fiduciary Service stated that this system has not been updated for the PACT Act, so employees must be aware of potential retroactive effective dates and then remember to copy and paste into the notification letter the specific language that informs the survivor they could be entitled to a retroactive effective date. In contrast, VBA’s Compensation Service uses a web-based application to create notification letters; it uses a function called an “automated decision letter” that can generate a notification letter with minimal user input.²⁰ Updating the web-based system to incorporate Pension and Fiduciary Service automated decision letters is on the under secretary for benefits’ priority list. The Pension and Fiduciary Service chief for the business management team said VA’s Office of Information and Technology is reviewing the requirements they have for automated letters and staff is engaged in the quality review process.

Finally, VBA modifying the request for reevaluation could facilitate eligible survivors receiving full retroactive benefits. Consistent with the act’s language allowing reevaluation of a previously denied Dependency and Indemnity Compensation claim “at the election of the claimant,” VBA implemented regulations requiring survivors to request reevaluation on a form prescribed by the Secretary.²¹ The forms to request reevaluation have varied requirements, such as checking a specific box on a form or attaching an additional specific request for reevaluation along with the

¹⁹ VBA, *PCGL User Guide*, Training Guide 20-01-01, revised April 29, 2005, <http://vbaw.vba.va.gov/bl/21/publicat/Users/PCGL/UG2005.doc>.

²⁰ VA Manual 21-1, “Decision Notices Prepared Using the Redesigned Automated Decision Letter (RADL) Process,” updated September 6, 2022, topic VI.i.1.B.3.

²¹ 38 C.F.R. § 3.33(c)(2) (2024).

submitted form. VBA could consider whether survivor-centric improvements could be made to the reevaluation request process consistent with the PACT Act and related regulations.²²

What the OIG Recommended

The OIG made three recommendations to the under secretary for benefits. First, VBA should ensure the two errors the OIG identified involving prematurely denied Dependency and Indemnity Compensation claims are corrected. VBA should also conduct a file review of the reopened Dependency and Indemnity Compensation claims granted under the PACT Act from January 1 through August 31, 2023, and take appropriate actions to make sure monetary benefits and notification letters are accurate. Finally, VBA should consider whether modifications could be made to the reevaluation request process consistent with the PACT Act and related regulations and, should this result in a policy change, consult with the VA Office of General Counsel.

VA Management Comments and OIG Response

The under secretary for benefits concurred with and requested closure of recommendation 1. VBA corrected one of the errors, but the other cannot be corrected until the Board of Veterans' Appeals has completed a review that the claimant initiated. The OIG will close this recommendation after the Board of Veterans' Appeals has finished its review and the claim has been corrected. The under secretary concurred with recommendations 2 and 3 and provided acceptable action plans for implementation. The OIG will monitor VBA's progress and follow up on the implementation of these recommendations until all proposed actions are completed. The comments are provided in full in appendix E.



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²² To make a policy change, VBA consults with the Office of General Counsel to ensure consistency with law; 38 C.F.R. § 14.500 (1977).

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Abbreviations

OIG	Office of Inspector General
PACT Act	Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022
VBA	Veterans Benefits Administration



Introduction

The mission of the Veterans Benefits Administration (VBA) is to provide benefits and services to veterans, their families, and survivors in a responsive, timely, and compassionate manner in recognition of their service to the nation.²³ On August 10, 2022, Congress enacted the PACT Act, which significantly expanded veterans' eligibility to disability benefits for conditions that VA presumes are related to exposure to burn pits, herbicide agents, and other toxic substances.²⁴

Dependency and Indemnity Compensation is a monthly tax-free benefit paid to eligible survivors of service members who died in the line of duty or veterans whose death resulted from a service-related injury or illness.²⁵ The PACT Act broadened the scope of conditions presumed to be related to military service and locations associated with toxic exposures. By doing so, eligibility for this benefit was expanded and has offered survivors the potential for retroactive payments dating back to the original date of entitlement under specific criteria.²⁶ According to VBA, in fiscal year 2023, the number of Dependency and Indemnity Compensation recipients rose to about 497,000 (from 477,000 the prior fiscal year), and recipients received an estimated \$9.84 billion (up from \$8.69 billion in fiscal year 2022) in Dependency and Indemnity Compensation payments.²⁷

The act requires VA to reevaluate previously denied Dependency and Indemnity Compensation claims "at the election of the claimant" (meaning at the request of the survivor).²⁸ For example, a survivor who was previously denied this benefit now has an opportunity, under the provisions of the PACT Act, to reopen a claim with the possibility of VBA awarding it. If awarded, this would

²³ Department of Veterans Affairs, *FY 2025 Budget Submission*, vol. 3, *Burial and Benefit Programs and Department Administration*, March 2024, <https://www.va.gov/opa/docs/remediation-required/management/fy2025-va-budget-volume-iii.pdf>.

²⁴ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168.

²⁵ 38 C.F.R. § 3.5 (2008).

²⁶ See appendix A for the expanded military service that qualifies for presumptive toxic exposure and presumptive medical conditions under the PACT Act. In determining the original date of entitlement, also known as the effective date, veterans service representatives (who gather the evidence on which a claim is decided and rated) must consider several factors, including the veteran's date of death, when the original claim for Dependency and Indemnity Compensation was received, and the governing guidance at the time of the original claim. VA Manual 21-1, "Determining the Effective Date for DIC and Application of 38 CFR. 3.114," updated August 2, 2022, topic XII.i.3.A.2 in *Adjudication Procedures Manual*.

²⁷ Department of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2023*, <https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf>. Department of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2022*, <https://www.benefits.va.gov/REPORTS/abr/docs/2022-abr.pdf>.

²⁸ PACT Act § 204.

result in ongoing monthly payments with the potential for retroactive payment back to the original date of entitlement.

Given the significant expansion of presumptive conditions and locations under the PACT Act and the likelihood of an increase in the number of survivors eligible for Dependency and Indemnity Compensation payments, the VA Office of Inspector General (OIG) conducted this review to assess the accuracy of VBA's processing of reopened Dependency and Indemnity Compensation claims under the PACT Act.

Dependency and Indemnity Compensation

VBA provides Dependency and Indemnity Compensation to the surviving spouse, child, or parent of a veteran who died from a service-related injury or illness.²⁹ If a veteran's death is determined to be related to or aggravated by service, and the veteran meets the unique circumstances and service requirements for that condition, then service connection for cause of death can be granted and this benefit can be awarded to the eligible survivor. VA automatically presumes that certain diseases or conditions (referred to collectively in this report as conditions) were caused by military service, even if there is no evidence of such disease during service.³⁰ This type of claim can be granted when the cause of death is a presumptive condition and the evidence shows the veteran meets the particular presumptive criteria—such as having served in a particular place during a specific time period.³¹

Processing teams are responsible for the development, rating, and award and authorization activities necessary to process a claim, as shown in figure 1.³² After an eligible survivor submits a claim to VA, veterans service representatives review the claim and assist the survivor in gathering evidence needed to evaluate it. Rating veterans service representatives analyze the evidence, request a medical opinion if needed, and make decisions on the claim. Veterans service representatives implement the decision, determine the effective date and authorize payment if applicable, and then send a notification letter to the survivor.³³

²⁹ 38 C.F.R. § 3.5.

³⁰ VA Manual 21-1, "Overview of Presumptive SC," updated September 27, 2022, topic V.ii.2.B.1.a.

³¹ VA Manual 21-1, "DIC Benefits under 38 USC 1310 and 1318," updated December 1, 2022, topic XII.i.2.A.1.

³² VA Manual 21-1, "PMC Team Structure and Work Processing," updated March 2, 2023, topic I.ii.1.B.3. The processing of a decision is commonly referred to as an "award" action, regardless of whether the decision constitutes a grant or denial of benefits.

³³ A notification letter must inform the claimant of VA's decision; for denied a claim it must include the element(s) required to grant the claim that were not met, and for a granted claim it must include the effective date and rates of payments. VA Manual 21-1, "Notification Requirements," updated January 8, 2024, topic VI.i.1.B.1.

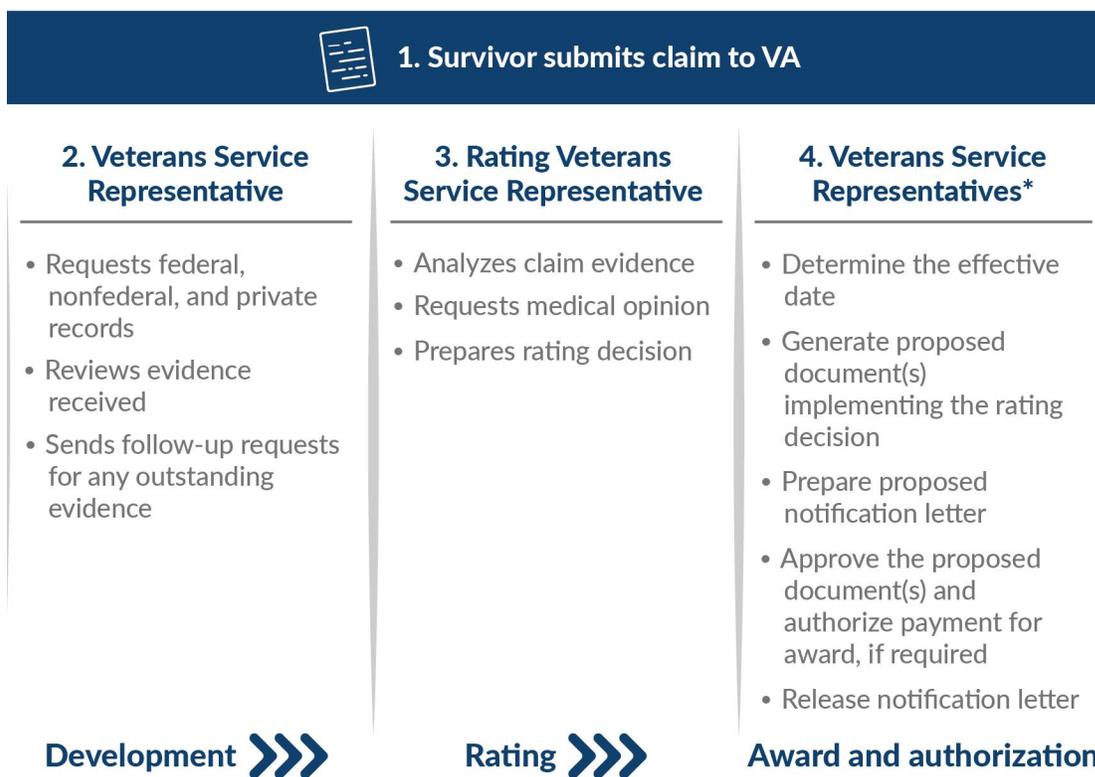


Figure 1. VA Dependency and Indemnity Compensation claims process.

Source: VA OIG’s analysis of VA Manual 21-1 and VBA training materials.

* Multiple veterans service representatives are involved in award and authorization because decisions cannot be implemented and authorized by the same veterans service representative.

The Pension and Fiduciary Service administers Dependency and Indemnity Compensation by developing rulemaking and policy requirements, overseeing training, assessing accuracy of claims processing, and conducting advisory reviews.³⁴ In May 2008, these claims were consolidated at VBA’s three pension management centers in Philadelphia, Pennsylvania; Milwaukee, Wisconsin; and St. Paul, Minnesota.³⁵ In October 2021, VBA further consolidated these claims to the Philadelphia pension management center. However, due to workload demands as a result of the PACT Act, all three pension management centers can process these claims.

³⁴ The Pension and Fiduciary Service is separate from Compensation Service staff who provide disability compensation to veterans, assess nationwide claims-processing accuracy, develop and oversee training for VBA employees who process compensation claims and appeals, and develop policy and procedures related to disability compensation. VA, *2021 Functional Organizational Manual*, ver. 7.0.

³⁵ VA Manual 21-1, “Purpose of PMCs,” updated November 20, 2023, topic I.ii.1.B.1.

PACT Act and Dependency and Indemnity Compensation Reevaluation Requirements

For survivors, the PACT Act expansion applies to claims for service-connected death benefits in the following situations:

- The veteran *served in one of the new presumptive locations under the PACT Act* and there is evidence to indicate the veteran's death was caused by or was secondary to one of the existing or new presumptive conditions under the act. For example, a veteran served in Thailand (a new location) and the cause of death was prostate cancer (an existing presumptive condition), or the veteran served in Thailand and the cause of death was hypertension (a new presumptive condition).
- There is *evidence indicating that the principal or contributory cause of the veteran's death was, or was related to, one of the new presumptive conditions under the PACT Act* and the veteran's service meets the existing or new presumptive locations under the act. For example, the principal cause of the veteran's death was hypertension (new presumptive condition) and the veteran served in Vietnam (existing presumptive location), or the principal cause of the veteran's death was hypertension and the veteran served in Laos (new presumptive location).³⁶

The PACT Act section on reevaluation of Dependency and Indemnity Compensation states that at the request of the survivor, VBA will reevaluate previously denied claims, which can result in retroactive effective dates.³⁷ An effective date establishes when a claimant's entitlement to benefits begins.³⁸ Specifically, this PACT Act section allows benefits to be granted retroactively based on reevaluation "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."³⁹ For a claimant to qualify for retroactive benefits, the service-connected cause of death must be related to one of the newly recognized presumptive conditions or locations under the PACT Act. The act does not stipulate a time limit for a claimant to seek reevaluation.

³⁶ VBA, "Overview of the PACT Act," topic 1 in PACT Act Implementation SOP, ver. 3 (topic 1 in ver. 2, topic 1 in ver. 1). This overview section notes that VBA is required to identify claims where there is a specific allegation of eligibility by the claimant under the PACT Act, or there is an implicit claim, meaning the claim otherwise raises a question whether the PACT Act may affect eligibility.

³⁷ PACT Act § 204.

³⁸ VA Manual 21-1, "General Guidance on Assignment of Effective Dates," updated March 31, 2023, topic V.ii.4.A.1.

³⁹ VA has applied new presumptions of service connection based on statutory or regulatory changes prospectively in accordance with 38 U.S.C. § 5110(g). Based on the PACT Act, VBA can award effective dates retroactively to the original date of entitlement. VBA, "Service-Connected Death Benefits under the PACT Act."

Effective Dates for Reopened Dependency and Indemnity Compensation Claims Under the PACT Act

Assigning an effective date is an integral part of the claims process.⁴⁰ Survivors may reopen a previously denied Dependency and Indemnity Compensation claim by submitting VA Form 21P-534EZ (the EZ application), VA Form 21P-534 (the standard application), or VA Form 20-0995 (the decision review request form).⁴¹ VBA policy states when each form is needed:

- If the benefit claimed is Dependency and Indemnity Compensation, use the EZ and standard applications.
- If the benefit claimed is associated with a supplemental claim, use the decision review request form.⁴²

In July 2022, VA updated the EZ application to include instructions to survivors for an option to mark “DIC [Dependency and Indemnity Compensation] due to claimant election of a re-evaluation of a previously denied claim based on expanded eligibility under [the PACT Act]”; see figure 2.⁴³ The decision review request form and the standard application have not yet been updated to include information related to the PACT Act.

⁴⁰ VA Manual 21-1, “General Guidance on Assignment of Effective Dates.”

⁴¹ During the OIG review period from January 1 through July 31, 2023, survivors may have reopened a previously denied Dependency and Indemnity Compensation claim by submitting one of three forms. VA Form 21P-534EZ (called the EZ application in this report), the Application for Dependency and Indemnity Compensation, Survivors Pension, and/or Accrued Benefits (July 2022), is used when the survivor submits evidence along with their claim to get a decision on the claim faster. When the survivor prefers to submit evidence at a later time to support the claim, they can use VA Form 21P-534 (referred to here as the standard application), the Application for Dependency and Indemnity Compensation, Survivors Pension, and Accrued Benefits by a Surviving Spouse or Child (July 2022). Finally, VA Form 20-0995, the Decision Review Request: Supplemental Claim (September 2022), is referred to in this report as the decision review request form.

⁴² VA Manual 21-1, “Application for Benefits,” updated April 7, 2023, sec.II.iii.1.A. A supplemental claim is a new review of an issue(s) previously decided by VA based on submission of new and relevant evidence. VA Form 20-0995, Decision Review Request: Supplemental Claim, September 2022.

⁴³ VBA abbreviates Dependency and Indemnity Compensation; however, the OIG did not abbreviate it in this report except where necessary in quotes and figures.

SECTION VII: DEPENDENCY AND INDEMNITY COMPENSATION (DIC) <i>(Skip to Section VIII if you are NOT claiming DIC)</i>		
7A. WHAT BENEFIT ARE YOU CLAIMING? <i>(Check one)</i>		
<input type="checkbox"/> DIC	<input type="checkbox"/> DIC under U.S.C. 1151 (Note: DIC under 38 U.S.C. is a rare benefit. Please refer to the Instructions page 5 for guidance on 38 U.S.C. 1151)	<input checked="" type="checkbox"/> DIC due to claimant election of a re-evaluation of a previously denied claim based on expanded eligibility under PL 117-168 (PACT Act) (Note: Please refer to Instructions page 6 for guidance on PACT Act)

Figure 2. Excerpt of VA Form 21P-534EZ (the EZ application) showing option to request reevaluation of previously denied claim.

Source: VA Form 21P-534EZ, July 2022. VA OIG re-created the excerpt for accessibility.

Note: VBA abbreviates Dependency and Indemnity Compensation; however, the OIG did not abbreviate it in this report except where necessary in quotes and figures.

As previously stated, the PACT Act provides an avenue for survivors to request reevaluation of previously denied Dependency and Indemnity Compensation claims, which can result in retroactive effective dates. VBA will accept one of the following as a request for reevaluation of a previously denied claim:

- the EZ application, with the box pertaining to the PACT Act checked, or
- the decision review request form, the standard application, or an older version of the EZ application with an accompanying statement such as noting one of the PACT Act presumptive exposure locations, one of the conditions, or mentioning the PACT Act.⁴⁴

If a survivor uses one of these methods but does not specify that the request is tied to the PACT Act, a retroactive effective date before August 10, 2022, (the date of the law change) would not be assigned.

If VBA receives a request for reevaluation, the rating veterans service representative determines whether a grant of service-connected cause of death is warranted based on a new PACT Act exposure location or presumptive condition. If service-connected cause of death is granted, then the veterans service representatives determine the retroactive effective date based on several factors, including date of death, when the original claim was received, and the guidance in place at the time of the original claim. Table 1 shows how the date of a veteran’s death and when VBA receives the claim determines the effective date of benefits.

⁴⁴ At the beginning of the review, the team asked VBA what qualifies as an election (request) for reevaluation under the PACT Act, specifically if submission of the EZ application or decision review request form alone qualified as a request for reevaluation. An assistant director with the Pension and Fiduciary Service responded that submission of a form alone was not enough but that claims processors take a “liberal approach” and would accept, for example, “a statement that the claimant is filing under a new presumptive location introduced under the PACT Act, or the mention of the PACT Act itself” as an election for reevaluation.

**Table 1. General Guidance for Effective Dates for Dependency
and Indemnity Compensation**

If the date of death...	...then the effective date is
is before October 1, 1982, and the claim is received within one year of death,	the first day of the month of death.
is before October 1, 1982, and the claim is <i>not</i> received within one year of death,	the date the claim was received.
is on or after October 1, 1982, the claim is received within one year of death, and the veteran's rate for the month of death is equal to or greater than the monthly Dependency and Indemnity Compensation benefit rate, ⁴⁵	the first day of the month of death.
is on or after October 1, 1982, the claim is received within one year of death, and the veteran's rate for the month of death is less than the monthly Dependency and Indemnity Compensation rate,	the first day of the month following the death.
is on or after October 1, 1982, and the claim is <i>not</i> received within one year of death,	the date of receipt of claim.
is on or after January 1, 1997, and the claim is received within one year of death,	the first day of the month of death.
is on or after January 1, 1997, and the claim is <i>not</i> received within one year of death,	the date the claim was received.

Source: OIG analysis of VA Manual 21-1, "Determining the Effective Date for DIC When Veteran Dies After Separation From Service," updated August 2, 2022, topic XII.i.3.A.2.a.

VBA training materials provide this example: A veteran died on November 3, 1980. VA received an initial claim for Dependency and Indemnity Compensation on November 3, 1982, showing the veteran's cause of death was hypertension. VA denied the claim on December 3, 1982. On April 14, 2023, the survivor requested VA reevaluate the claim because hypertension was added as a presumptive condition of herbicide exposure under the PACT Act. Assuming the veteran served in a location where herbicide exposure is presumed, VA would reevaluate the claim as if hypertension was a service-connected condition on the date the claimant filed the original claim. Based on the second row of table 1, VA can grant service-connected cause of death and then assign a retroactive effective date for this benefit of November 3, 1982, the date VA received the

⁴⁵ If the veteran died on or after October 1, 1982, the survivor may be paid Dependency and Indemnity Compensation for the month in which the veteran died at a rate equal to the benefit amount that would have been payable to the veteran for that month had death not occurred, but only if such rate is equal to or greater than the monthly rate of Dependency and Indemnity Compensation to which the survivor is entitled. 38 C.F.R. § 3.20 (1999).

original claim. In this example, an effective date of the first day of the month of death could not be established because the claimant did not apply within one year of the veteran's death.

If one of the forms is received but does not specify a request for reevaluation, the rating veterans service representative determines whether a grant of service-connected death is warranted based on a new PACT Act exposure location or presumptive condition. If service-connected cause of death is granted, then the veterans service representatives determine the effective date based on when the reopened claim was received. If the reopened claim was pending on the date the PACT Act became law—August 10, 2022—the effective date used will be the date of the law change.⁴⁶ In addition, if the reopened claim was received within a year from the date of the law change, and the claim was granted based on a newly recognized presumptive condition or location under the PACT Act, then the effective date would be August 10, 2022.⁴⁷ If a survivor files a Dependency and Indemnity Compensation claim and did not request reevaluation under the PACT Act but potential retroactive entitlement exists, then the veterans service representatives must inform the claimant, via the notification letter, that they could be entitled to an earlier effective date.⁴⁸

In another example from VBA training materials, a veteran who served in Thailand during the eligibility period established by the PACT Act died on August 28, 2012. An initial Dependency and Indemnity Compensation claim was received on September 27, 2012, which showed the veteran's cause of death was lung cancer. VA denied the claim on November 12, 2013. On November 3, 2022, the survivor filed an EZ application. The survivor did not request reevaluation on the application or on any additional documents with the claim. Service connection for the cause of death should be granted and an effective date assigned from August 10, 2022, based on the passage of the PACT Act. Further, VBA should also include the language in figure 3 in the notification letter.

⁴⁶ VBA, "Service-Connected Death Benefits under the PACT Act," topic 6 in PACT Act Implementation SOP, ver. 3, updated April 10, 2023 (topic 7 in ver. 2, updated February 6, 2023, and topic 7 in ver. 1, updated January 1, 2023); 38 C.F.R. § 3.114 (2019). For any Dependency and Indemnity Compensation "claim that continuously pursues an initial claim ... the potential to grant an earlier effective date prior to the enactment of the PACT Act is limited only to the newly added presumptive conditions listed under Section 404 of the law: hypertension and MGUS [monoclonal gammopathy of undetermined significance]." VBA, "Service-Connected Death Benefits under the PACT Act."

⁴⁷ 38 C.F.R. § 3.114; VA Manual 21-1, "Effective Dates Based on a Change of Law or Regulation," updated June 27, 2022, topic V.ii.4.A.6.

⁴⁸ VBA, "Service-Connected Death Benefits under the PACT Act."

A review of the evidence of record indicates that you may be entitled to an earlier effective date under the provisions of the PACT Act. If you wish for us to reevaluate a previous DIC claim, please submit VA Form 21-534EZ; Application for DIC, Death Pension and/or Accrued Benefits and ensure you answer question 7A requesting “DIC under PL 117-168 (PACT Act)” located in Section VII. We are unable to process a reevaluation of a previous claim unless it is specifically elected.

Figure 3. Excerpt of notification language when reevaluation was not requested.

Source: VBA’s Pension Management Center PCGL PACT Act Reevaluation Scenario Paragraphs.

Note: VBA abbreviates Dependency and Indemnity Compensation; however, the OIG did not abbreviate it in this report except where necessary in quotes and figures.

Results and Recommendations

Finding: Pension Management Center Staff Inaccurately Processed Claims When Determining Reopened Dependency and Indemnity Compensation Entitlement Under the PACT Act

The PACT Act requires VA to reevaluate a Dependency and Indemnity Compensation claim if requested by the survivor, and granted claims have the potential to include retroactive benefits. The OIG team reviewed two statistical samples of claims that were reopened after having previously been denied. One set were claims that, after being reprocessed under the PACT Act, were again denied; the other set were claims that were granted after being reprocessed under the PACT Act. Both sets involved claims

- completed from January 1 through July 31, 2023, and
- identified by VBA as being related to the PACT Act.

The OIG found that pension management center staff generally denied these claims appropriately; however, there were some inaccuracies when claims were granted. These inaccuracies had three outcomes: (1) improper amounts were paid to survivors; (2) there was potential to affect survivors' benefits but improper payments were not made; and (3) errors were subsequently corrected and survivors' received retroactive benefits. In total, the team identified errors that resulted in about \$33.1 million in underpayments to survivors based on the statistical sample.

The errors occurred in part because the Pension and Fiduciary Service did not provide pension management center staff with clear guidance for reevaluation. Additionally, a lack of system enhancements contributed to notification letters not informing survivors of potential retroactive benefits. Further, modifying the application process could allow eligible survivors to receive retroactive benefits without having to repeatedly resubmit claims or check a box on a form.

The finding is based on the following determinations:

- Reopened Dependency and Indemnity Compensation claims identified as related to the PACT Act were generally denied appropriately.
- Pension management center staff inaccurately processed claims when granting entitlement to reopened Dependency and Indemnity Compensation under the PACT Act.
- The Pension and Fiduciary Service did not always provide pension management center staff with clear guidance on determining effective dates for reevaluation of Dependency and Indemnity Compensation.

- Lack of system enhancements contributed to survivors not receiving accurate notification letters for potential retroactive benefits.
- Modifying the request for reevaluation process could facilitate eligible survivors receiving full retroactive benefits.

What the OIG Did

The OIG team conducted two statistically random reviews from an overall population of reopened Dependency and Indemnity Compensation claims that were previously denied, identified as related to the PACT Act, and completed from January 1 through July 31, 2023 (the review period).⁴⁹ The first sample of 30 claims came from an estimated population of 1,117 reopened claims that, after being reprocessed under the PACT Act, were again denied. The second sample of 100 claims was selected from an estimated population of 1,669 reopened claims that were granted based on a newly established presumptive condition or location associated with toxic exposures under the PACT Act. The team interviewed staff at the VA central office in Washington, DC, and pension management center staff and managers in Milwaukee and Philadelphia. Appendixes B and C provide additional details on the team's actions and the review scope and methodology.

Reopened Dependency and Indemnity Compensation Claims Identified as Related to the PACT Act Were Generally Denied Appropriately

Based on the statistically random sample of 30 reopened claims that were denied, the team projected that VBA correctly processed about 93 percent of all denied reopened claims during the review period—that is, an estimated 1,042 of 1,117 reopened claims. From the sample of 30, the two claims that were not processed correctly (about 7 percent) involved decisions that prematurely denied compensation to survivors. In both cases, VBA did not obtain additional evidence needed to determine whether the cause of death was service-connected. The team notified VBA of these errors, and VBA agreed with the team's assessment. Examples 1 and 2 provide the details of these two premature denials.

Example 1

A veteran died in 2012. The death certificate showed multiple primary and contributing causes of death, none of which are considered presumptive under the PACT Act.⁵⁰ The veteran served in an area where exposure to burn pits and other

⁴⁹ For this report, a reopened claim means an initial compensation claim was denied and the claimant is requesting reconsideration.

⁵⁰ PACT Act § 406.

toxins is presumed. VBA received a Dependency and Indemnity Compensation claim on February 29, 2012. VBA denied the claim, and service-connected death was not established. In 2022, the surviving spouse reapplied by submitting an EZ application. Pension management center staff failed to request a medical opinion as required to see whether the cause of death was a result of the veteran's toxic exposure.⁵¹ The rating decision, dated March 13, 2023, therefore prematurely denied there was a service-connected cause of death because the required medical opinion was not requested before making the decision; as a result, VBA failed to gain the necessary assurance that the spouse was not eligible for benefits before denying entitlement.

Example 2

A veteran died in 2015. The death certificate showed multiple causes of death, none of which are considered presumptive under the PACT Act.⁵² The veteran served in Qatar, an area where exposure to burn pits and other toxins is presumed. VBA received a Dependency and Indemnity Compensation claim on April 11, 2018. VBA denied the claim, and a service-connected death was not established. In 2022, the surviving spouse submitted a decision review request form to reopen the previously denied claim. Pension management center staff requested a medical opinion to determine whether the cause of death was related to the toxic exposure. However, the medical opinion received was incomplete and should have been returned for the examiner to provide the missing information.⁵³ The rating decision, dated March 15, 2023, therefore prematurely denied there was a service-connected cause of death because a sufficient medical opinion was not received before making the decision. As a result, VBA lacked certainty that the spouse should have been denied these benefits.

Although the OIG found no systemic trends, the OIG's first recommendation addresses the need for VBA to take any needed corrective actions on the two errors identified.

⁵¹ VBA, "Toxic Exposure Risk Activity (TERA) Procedures for Non-Presumptive Claims," topic 2 in PACT Act Implementation SOP, ver. 3 (topic 2 in ver. 2, topic 2 in ver. 1).

⁵² PACT Act § 406.

⁵³ VA Manual 21-1, "Requirement for Supporting Rationale for Medical Opinions," updated July 1, 2022, topic V.ii.1.A.3.g; VA Manual 21-1, "Insufficient Examination Reports," updated September 21, 2023, topic IV.i.3.C.1.a.

Pension Management Center Staff Inaccurately Processed Claims When Granting Entitlement to Reopened Dependency and Indemnity Compensation Under the PACT Act

Based on the statistically random sample of 100 reopened claims that were granted, the team projected that pension management center staff inaccurately processed an estimated 517 of 1,669 claims (about 31 percent). Further, the team projected that about 284 of 1,669 claims (about 17 percent) resulted in underpayments to survivors totaling about \$33.1 million.

The team identified three types of errors related to reopened Dependency and Indemnity Compensation claim processing:

- **Impact errors** occurred when the correct effective date was not assigned, resulting in an improper payment to the survivor.⁵⁴
- **Potential impact errors** occurred when Dependency and Indemnity Compensation was prematurely granted because additional evidence was required before making the determination, or the effective date of the original claim was not assigned because the survivor did not request reevaluation and the notification letter did not inform them of potential retroactive payments. These errors could affect the survivor's benefits but did not result in improper payments.
- **Non-impact errors** occurred when an incorrect effective date was assigned but later corrected by VBA and the survivor received the retroactive benefits.⁵⁵

Table 2 breaks down these errors and their monetary impact on survivor benefits.

⁵⁴ An improper payment is a financial obligation that should not have been paid or was paid in the wrong amount. Both underpayments and overpayments are considered improper payments. The Office of Management and Budget defines federal payments as improper when they are paid in the incorrect amount, paid to an ineligible recipient, or issued without adequate supporting documentation. Office of Management and Budget, "Requirements for Payment Integrity Improvement," app. C in OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, March 5, 2021. Based on appendix C of the OMB Circular, underpayments are a form of improper payments where VA action or inaction fails to fully compensate eligible beneficiaries. Also see appendix D of this report for the OIG's calculations of monetary impact.

⁵⁵ The team did not identify an error where a claims processor granted PACT Act retroactive benefits to a survivor and the survivor did not submit a statement showing an intent to request reevaluation.

Table 2. Estimated Number of Reopened Dependency and Indemnity Compensation Claims by Error Type

Error type	Estimated number of claims with errors	Estimated underpayments	Estimated overpayments
Impact error	284	\$33,081,070	\$0
Potential impact error	417	\$3,030,047*	\$585,140*
Non-impact error	117	NA	NA

Source: VA OIG analysis of reopened Dependency and Indemnity Compensation claims that were previously denied, identified as related to the PACT Act, and completed from January 1 through July 31, 2023.

Note: The total number of errors exceeds 517 improperly processed claims (of the population of 1,669 claims) because some errors applied to more than one claim. For example, an impact error may have contained both an incorrect effective date and a potential impact error due to an incorrect notification letter.

** These two values are lower bounds, so they represent the minimum estimate of underpayments and overpayments. The potential underpayments represent money that could be paid to survivors if they submit a request for reevaluation. The potential overpayments are those in which survivors were paid without sufficient evidence to have supported the grant of benefits. However, additional evidence may show they are eligible for the benefit, but that cannot be determined unless VBA obtains such evidence.*

Impact Errors

As stated above, based on the errors identified in the sample, the OIG team projected that veterans service representatives did not assign the correct effective dates for reopened Dependency and Indemnity Compensation in an estimated 284 of 1,669 claims granted after reprocessing (17 percent), resulting in about \$33.1 million in underpayments to survivors. In the sample of 100 claims the OIG team reviewed, underpayments ranged from about \$1,438 for one month to \$455,785 for a claim with an effective date going back nearly 32 years. The OIG team notified VBA of the impact errors, and VBA concurred with all of them. As example 3 demonstrates, when a survivor requests reevaluation of a previously denied claim and it is subsequently granted consistent with the PACT Act, then the veterans service representative should assign the correct effective date as the original date of entitlement.⁵⁶

Example 3

In 2011, a veteran died with diabetes mellitus and prostate cancer as contributing causes of death. The veteran served in Guam during a period when herbicide exposure is presumed.⁵⁷ VBA received the surviving spouse’s Dependency and

⁵⁶ VBA, “Service-Connected Death Benefits under the PACT Act.”

⁵⁷ 38 C.F.R. § 3.307 (a)(6)(i) (2023). Throughout this report, the term “herbicide” refers to chemicals used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

Indemnity Compensation claim on June 14, 2012, within a year of the veteran's death. VBA denied the claim, and a service-connected death was not established. In 2023, the spouse submitted a decision review request form to reopen the claim with a statement citing the PACT Act. Based on the updated PACT Act criteria, VBA granted the claim and then assigned an effective date of August 10, 2022—the date of the law change.⁵⁸ However, because the spouse claimed Dependency and Indemnity Compensation reevaluation based on the PACT Act and originally filed a claim within one year of the veteran's death, the effective date should have been November 1, 2011, the first day of the month of death.⁵⁹ Therefore, the spouse was underpaid about \$165,452. VBA agreed with the OIG's assessment.

Potential Impact Errors

The OIG team also projected from its sample that potential impact errors occurred in an estimated 417 of 1,669 claims granted after reprocessing (25 percent), potentially resulting in at least \$3 million in underpayments and \$585,000 in overpayments to survivors.⁶⁰ Potential impact errors occurred when rating veterans service representatives prematurely granted a service-connected cause of death before obtaining evidence required to determine whether the decision was correct.⁶¹ These errors also included instances when the effective date of the original claim was not assigned because the survivor did not specifically request reevaluation, and the notification letter did not mention the possibility of an earlier effective date. Lack of notification comprised the majority of the potential impact errors, affecting about 350 claims. In the OIG team's sample of 100 claims reviewed, potential underpayments ranged from about \$35,930 for a single claim over about two years to \$157,815 for a claim going back more than 10 years.⁶² The team notified VBA of the potential impact errors, and VBA concurred with all.

⁵⁸ The PACT Act added Guam to the list of herbicide presumptive locations. PACT Act § 403. Liberalizing law allows VBA to assign the effective date in accordance with the facts found but not earlier than the effective date of the change in law or the date one year before the date of application, whichever is later. 38 C.F.R. § 3.114.

⁵⁹ See table 1, second to last row: date of death is on or after January 1, 1997, and the claim is received within one year of death.

⁶⁰ The potential underpayments represent money that could be paid to survivors if they submit a request for reevaluation. The potential overpayments represent money that may have been overpaid, but this cannot be determined unless VBA obtains additional evidence.

⁶¹ Though the team found four premature grants, the errors did not appear to be systemic and are not discussed further.

⁶² The range of potential underpayments is for those *potential impact* errors and excludes any amounts for *impact* error underpayments.

Example 4 illustrates that when VBA fails to notify the survivor that they may submit a request of reevaluation, the survivor is likely unaware of the potential for an earlier effective date allowed under the PACT Act that can lead to additional retroactive benefits.⁶³

Example 4

In 2014, a veteran died from metastatic rectal cancer. The veteran served in Saudi Arabia during a period in which exposure to burn pits or other toxins is presumed.⁶⁴ The surviving spouse submitted a claim for Dependency and Indemnity Compensation in April 2016, more than a year after the veteran's death, and VBA denied the claim. In 2022, the spouse reapplied by submitting an older version of the EZ application (without the PACT Act check box that is on the newer form) and did not mention the PACT Act or specifically request reevaluation. Based on the updated PACT Act criteria, VBA granted the claim and then assigned an effective date of August 10, 2022—the date of the law change.⁶⁵ However, the notification letter did not inform the spouse of the potential for an earlier effective date or ask for an EZ application that specifically requests reevaluation.⁶⁶ Therefore, the spouse has been potentially underpaid about \$77,454. VBA agreed with the OIG's assessment.

Non-Impact Errors

The OIG team projected that non-impact errors occurred in an estimated 117 of 1,669 claims granted after reprocessing (7 percent); however, VBA identified and corrected these before the team's review. Example 5 illustrates this type of error.

Example 5

In 2017, a veteran died with contributing conditions of diabetes mellitus and coronary artery disease. The veteran served in Thailand during a period in which herbicide exposure is presumed.⁶⁷ The surviving spouse submitted a claim for Dependency and Indemnity Compensation within a year of the veteran's death, which VBA denied. In 2022, the spouse submitted a decision review request form

⁶³ VBA, "Service-Connected Death Benefits under the PACT Act."

⁶⁴ PACT Act §§ 302 and 406.

⁶⁵ PACT Act § 302. The effective date is correct since a request for reevaluation was not received and the PACT Act is considered liberalizing law because it brings about a "substantive change in the law creating a new and different entitlement to a benefit." Liberalizing law allows VBA to assign the effective date in accordance with the facts found but not earlier than the effective date of the change in law or the date one year prior to the date of application, whichever is later. 38 C.F.R. § 3.114. VA Manual 21-1, "Effective Dates Based on a Change of Law or Regulation."

⁶⁶ VBA, "Service-Connected Death Benefits under the PACT Act."

⁶⁷ PACT Act § 403.

to reopen the claim based on the passage of the PACT Act and Thailand being recognized as a location for herbicide exposure. Based on the updated PACT Act criteria, VBA granted the claim and assigned an effective date of August 31, 2022—the date of the reopened claim. However, since the spouse requested Dependency and Indemnity Compensation reevaluation based on the PACT Act, and because the original claim was submitted within a year of the veteran’s death, the effective date should have been February 1, 2017, the first day of the month of death.⁶⁸ VBA discovered the error in March 2023 and assigned the correct effective date, resulting in the correct retroactive payment.

The Pension and Fiduciary Service Did Not Always Provide Pension Management Center Staff with Clear Guidance on Determining Effective Dates for Reevaluation of Dependency and Indemnity Compensation

The OIG projected that 284 of 1,669 claims granted after reprocessing (17 percent) had incorrect effective dates based on its statistical sample. To determine the original effective date, veterans service representatives must consider several factors, including date of death, when the original claim was received, and the guidance in place at the time of the original claim. The determination of what effective date will be used for a given claim can affect the amount of compensation awarded to the survivor.

The review team found that guidance from the Pension and Fiduciary Service was not always clear to staff at the pension management centers. The team interviewed pension management center veterans service representatives, quality review employees, and managers at two locations.⁶⁹ Of the 20 veterans service representatives interviewed, 13 said guidance on effective dates for reopened claims and the PACT Act was confusing, unclear, or somewhat clear. During the first two weeks of processing PACT Act claims, the Pension and Fiduciary Service held a “live chat” for staff to ask questions and get answers specific to the PACT Act. A quality and oversight program analyst with the Pension and Fiduciary Service stated the question-and-answer sessions were with the pension management center quality review teams. Additionally, a field inquiry tool was available to staff at the pension management centers where questions on PACT Act Dependency and Indemnity Compensation claims were routed.⁷⁰ Despite these

⁶⁸ See table 1, second to last row: date of death is on or after January 1, 1997, and the claim is received within one year of death.

⁶⁹ Veterans service representatives refers to both those who complete awards and those who authorize as noted in figure 1 of this report. Pension management centers have quality review teams who are responsible for evaluating individual employee accuracy and performing in-process reviews to eliminate errors at the earliest possible stage in the claims process. VA Manual 21-4, “QRT Overview,” updated March 23, 2018, chap. 7, in *Manual*, topic 7.

⁷⁰ Staff were instructed to route questions through the pension management center quality review teams to the Pension and Fiduciary Service. The tool was designed to provide a response only to the author of the inquiry.

resources, staff from pension management center quality teams and some managers stated that the guidance was not always clear. One manager noted that unclear guidance was the biggest complaint from staff, and initial training on the PACT Act was confusing; furthermore, the manager said they were getting so many changes that it was difficult to make decisions clearly and effectively on PACT Act claims.

The OIG team presented veterans service representatives and quality review employees with two scenarios to determine whether they could provide accurate effective dates for reopened Dependency and Indemnity Compensation claims based on the PACT Act. The first scenario involved determining the effective date when a survivor who was previously denied Dependency and Indemnity Compensation requested reevaluation under the PACT Act by marking the box indicating “DIC [Dependency and Indemnity Compensation] due to claimant election of a re-evaluation” on the EZ application (shown above in figure 2). In this scenario, the effective date should be based on the original claim and the guidance in table 1 because the cause of death was related to newly recognized presumptive eligibility under the PACT Act and the survivor requested reevaluation. Of 24 employees interviewed, seven (29 percent) gave an incorrect response. The second scenario involved determining the effective date when a previously denied survivor submits the decision review request form and claims Dependency and Indemnity Compensation due to a new PACT Act location. Of the same 24 employees, 10 (42 percent) answered incorrectly, indicating a misunderstanding of the policy to make the effective date retroactive to the original claim and guidance in table 1.

The team reviewed the initial training created by Pension and Fiduciary Service that was provided to pension management center staff on Dependency and Indemnity Compensation and the PACT Act in December 2022. The training stated, “An election for a reevaluation of a previously denied DIC [Dependency and Indemnity Compensation] claim is accepted if correspondence requesting such a reevaluation is received with or following receipt of a prescribed form for survivor benefits,” without further explanation of what an election for reevaluation means.⁷¹ The team determined the training lacked an explanation of what constitutes an “election for a reevaluation,” which led to confusion among staff—as evidenced by the incorrect response rates in the different scenarios and the impact errors identified in the team’s sample review.

Pension management centers started processing PACT Act claims in January 2023. The OIG team determined that while guidance was unclear on what was required for a request for reevaluation, the guidance evolved during and after the sample review period, which ran through July 2023. The Pension and Fiduciary Service’s response to an inquiry from Milwaukee’s pension management center on what to accept as an election for Dependency and Indemnity

⁷¹ Pension and Fiduciary Service training, “PACT Act Dependency and Indemnity Compensation—Original and Reevaluation DIC Claims,” December 2022.

Compensation reevaluation stated, “Any kind of written statement from the claimant indicating a request for reevaluation, reconsideration, readjudication, etc., of a previously denied claim would be sufficient.” One manager stated that in the beginning of the PACT Act rollout, survivors had to specifically say they were requesting reevaluation under the PACT Act. Another manager noted that at the start, survivors had to use the word “reevaluation” or say they “disagree” with the original denial for the effective date to be retroactive. This manager further noted that if the survivor indicated the PACT Act, then an effective date of August 10, 2022—the date of the law change—would be assigned, and the notification letter would inform the survivor they could be eligible for an earlier effective date, meaning the language shown above in figure 3 would be included in the notification letter.

In February 2023, the Milwaukee pension management center asked the Pension and Fiduciary Service if the submission of the decision review request form alone would qualify the claimant request for reevaluation. Staff from offices within the Pension and Fiduciary Service on quality and oversight as well as on policy and procedures could not agree on a response. Ultimately, the quality and oversight staff thought a stand-alone decision review request form was a “claimant-centric” approach and satisfied the requirement for the survivor to request reevaluation.

In July 2023, the OIG team asked VBA to clarify what it would accept as a reevaluation at the “election of the claimant.” Specifically, the team asked whether a decision review request form alone, with no mention of the PACT Act, is sufficient to meet the requirement because it is specifically used “in a new review of an issue(s) previously denied by the Department of Veterans Affairs.”⁷² At that time, VBA stated it did not interpret that form alone as meeting the requirement. In August 2023, the Pension and Fiduciary Service policy and procedures staff submitted a question similar to the OIG’s to the VA Office of General Counsel. In September 2023, the Pension and Fiduciary Service provided the pension management centers guidance based on the Office of General Counsel’s response (about eight months after initial reevaluation claims processing began and seven months after the pension management center first asked about the sufficiency of a decision review request form alone). The clarifying guidance to pension management center staff states,

There is no requirement for VBA to hold DIC [Dependency and Indemnity Compensation] reevaluation elections under the PACT Act to a higher standard than any other claim submission, including claims submitted on VA Form 20-0995 [the decision review request form]. Therefore, when reviewing a VA Form 20-0995, there is no need for [survivors] to specifically indicate that they are requesting a reevaluation under the PACT Act. VA only requires that the

⁷² VA Form 20-0995, Decision Review Request: Supplemental Claim.

[survivor] indicate that they are electing the reevaluation of a previously denied DIC claim.⁷³

Figure 4 illustrates the sequence of events from the initial processing in January 2023 to the resolution of guidance on this particular form in September 2023.

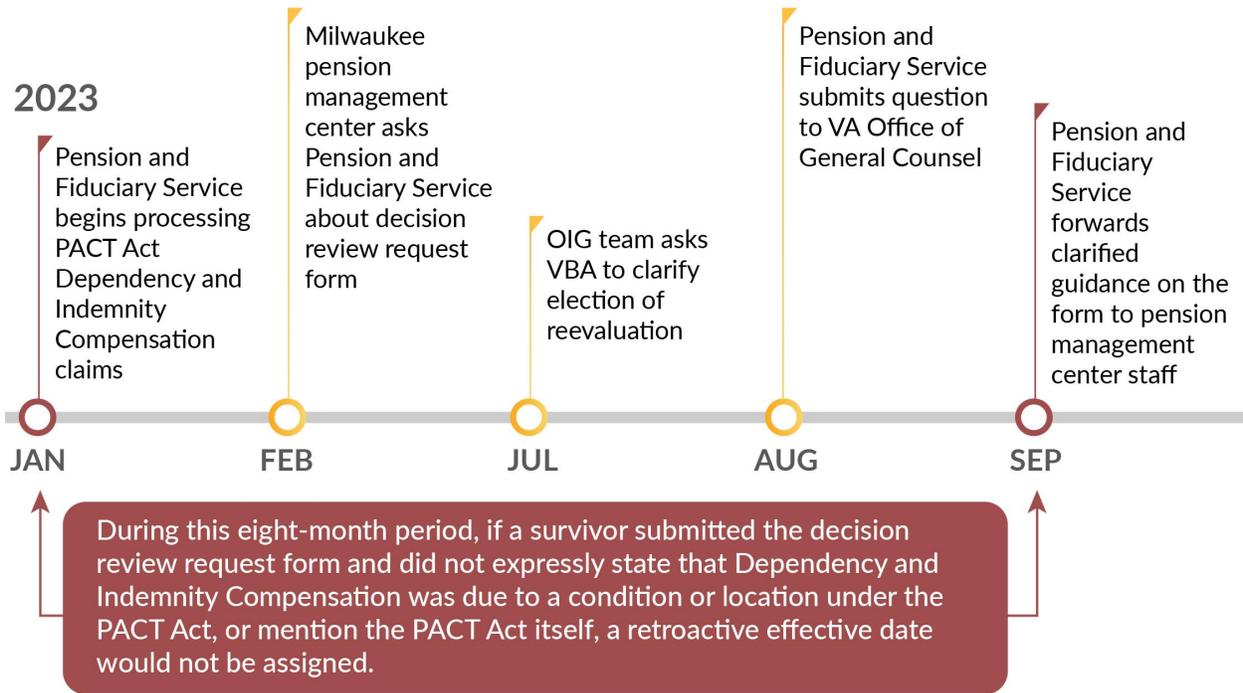


Figure 4. Timeline of questions and discussion concerning the decision review request form.

Source: VA OIG analysis of communications.

The Philadelphia pension management center manager noted that if claims had been worked under the current guidance from September 2023, the errors the review team identified could have been avoided because the guidance is now clear.

Given that impact errors were identified in about 17 percent of claims with incorrect effective dates related to underpayments to survivors and that clarifying guidance was not provided until September 2023 (after the review period), recommendation 2 calls for VBA to review the reopened Dependency and Indemnity Compensation claims under the PACT Act from January 1 through August 31, 2023, and take appropriate actions to ensure survivor benefit payments and notification letters are accurate.

⁷³ Pension and Fiduciary Service Policy and Procedures email, “PACT Act Reevaluation Guidance for Supplemental Claims,” September 1, 2023.

Lack of System Enhancements Contributed to Survivors Not Receiving Accurate Notification Letters for Potential Retroactive Benefits

The OIG projected that, for 350 of the 1,669 claims granted after reprocessing, survivors did not receive accurate notification letters explaining potential entitlement to retroactive effective dates for Dependency and Indemnity Compensation.

To create notification letters, pension management center staff rely on a system called Personal Computer Generated Letters. The system allows users to type a letter “from scratch,” select individual paragraphs to generate a letter, or use a “predefined” letter.⁷⁴ Several staff and managers from the Pension and Fiduciary Service stated that the Personal Computer Generated Letters system has not been updated for the PACT Act, so employees must be aware of potential retroactive effective dates and then remember to copy and paste into the notification letter the language explaining a potential earlier effective date may be available (shown above in figure 3) when appropriate. Staff from Pension and Fiduciary Service business management stated they are not requesting any updates to Personal Computer Generated Letters related to the PACT Act as the Pension and Fiduciary Service’s focus is on automation. Several veterans service representatives said they resort to templates not provided in the Personal Computer Generated Letters system. Staff from both pension management centers reported that this is an old system. The Philadelphia pension management center manager further stated that the system allows for human errors and that generating the notification letter is the hardest part of a pension management center staff’s work.

In contrast, VBA’s Compensation Service uses a web-based application called Veterans Benefits Management System-Awards to create notification letters.⁷⁵ The application has a feature called “automated decision letter” that can be used to create a notification letter with minimal user input. At the time of the OIG review, there was no automated decision letter provided to VBA’s Pension and Fiduciary Service for Dependency and Indemnity Compensation claims. The Milwaukee pension management center manager stated that there was no standardization with notification letters because a veterans service representative has to build the letter, whereas automated decision letters allow for standardization across the nation. Managers and veterans service representatives suggested that an automated decision letter would help ensure the notification letter informs the survivor of potential retroactive benefits; some also said it would be more efficient. Staff and managers from the Pension and Fiduciary Service said they also want automated decision letters, they are not making any updates to Personal Computer

⁷⁴ VBA, *PCGL User Guide*, Training Guide 20-01-01, revised April 29, 2005, <http://vbaw.vba.va.gov/bl/21/publicat/Users/PCGL/UG2005.doc>.

⁷⁵ VA Manual 21-1, “Decision Notices Prepared Using the Redesigned Automated Decision Letter (RADL) Process,” updated September 6, 2022, topic VI.i.1.B.3.

Generated Letters until these letters are implemented, and that these automated letters have been on their top priority list. Specifically, updating Veterans Benefits Management System-Awards letters to incorporate the Pension and Fiduciary Service automated decision letters is on the under secretary for benefits' priority list.⁷⁶ The Pension and Fiduciary Service chief for the business management team said VA's Office of Information and Technology is reviewing the requirements they have for automated letters and staff is engaged in the quality review process. However, Pension and Fiduciary Service managers and staff reported that due to various factors like funding, prioritization, and level of effort, there is no set timeline on when their automated letters will be incorporated into Veterans Benefits Management System-Awards.

Modifying the Request for Reevaluation Process Could Facilitate Eligible Survivors Receiving Full Retroactive Benefits

Consistent with the language in the PACT Act, which allows reevaluation of a previously denied Dependency and Indemnity Compensation claim "at the election of the claimant," VBA implemented regulations requiring survivors to request reevaluation on a form prescribed by the Secretary.⁷⁷ VBA policy requires the survivor to show an intent to request a reevaluation. The review team found that this resulted in inconsistent claims determinations and that the process may be confusing for survivors.

Under the current process, survivors may show an intent to request reevaluation of a previously denied Dependency and Indemnity Compensation claim by submitting

- an EZ application,
- a standard application, or
- a decision review request form.

Each of these forms has different requirements that must be met before a survivor's claim can be considered for retroactive benefits. For the EZ application, survivors are required to check the box, as shown in figure 2. If they use the standard application, the survivor must include an accompanying statement indicating a request for reevaluation. Finally, as of September 1, 2023, a decision review request form can be submitted without an accompanying statement specifically claiming Dependency and Indemnity Compensation under the PACT Act. If one of these reevaluation requests is not received, then the notification letter should contain the language

⁷⁶ Specifically, this is on the 1-N priority list, which is a tool that allows VA to continuously rank its priorities and then essentially move a priority up or down based on available funding.

⁷⁷ "Reevaluation of a previously denied DIC [Dependency and Indemnity Compensation] claim must be at the election of the relevant claimant on a prescribed form pursuant to [38 C.F.R.] § 3.152(a)." 38 C.F.R. § 3.33(c)(2) (2024).

shown in figure 3. However, this guidance and reevaluation process may not always be sufficient to ensure survivors receive retroactive benefits, as demonstrated in example 6.⁷⁸

Example 6

In 2017, a veteran died with diabetes mellitus as a contributing cause of death. The veteran served in Thailand during a period when herbicide exposure is presumed.⁷⁹ VBA received the surviving spouse's Dependency and Indemnity Compensation claim on January 26, 2018, but denied the claim. In 2023, the spouse reapplied by submitting the EZ application without checking the box shown in figure 2 of this report or including a statement claiming Dependency and Indemnity Compensation under the PACT Act. Based on the updated guidance, VBA granted the claim and assigned an effective date of August 10, 2022—the date of the law change.⁸⁰ The notification letter correctly informed the spouse of the potential for an earlier effective date and asked for an EZ application that specifically requests reevaluation. The surviving spouse resubmitted the form, again without checking the box. VBA then sent another letter to inform the surviving spouse again of the potential for an earlier effective date and asked for an EZ application that specifically requests reevaluation. As of June 2024, VBA has not received an EZ application with the appropriate box indicated. If the surviving spouse submits an EZ application with the correct box checked, they will receive about \$77,795 in retroactive benefits.

In reviewing the second statistical sample of 100 claims reprocessed under the PACT Act and then granted, the OIG team found that 69 claims did not contain one of the three previously mentioned error types. Of these claims, however, the team identified 12 with inconsistencies in which the survivor did not specifically request reevaluation under the PACT Act.⁸¹ In four of those 12 instances, there was no request for reevaluation, but veterans service representatives assigned a retroactive effective date to the original date of claim. In the remaining eight claims, VBA did not award survivors retroactive benefits to the original date of entitlement; instead, VBA awarded benefits to the date of the change in law and, consistent with governing guidance, informed the survivors of potential retroactive benefits and asked for a request for reevaluation. As of June 2024, only one of these eight survivors had responded with a request for reevaluation,

⁷⁸ Example 6 was not part of the statistical sample, but the team identified it in the course of the review. According to VBA's guidance, the claim was correctly processed.

⁷⁹ See appendix A, table A.1.

⁸⁰ Liberalizing law allows VBA to assign the effective date in accordance with the facts found but not earlier than the effective date of the change in law or the date one year prior to the date of application, whichever is later. 38 C.F.R. § 3.114.

⁸¹ Projections are not included due to the small number of sampled claims with these results.

leaving about \$693,000 in unclaimed monetary benefits for the remaining seven claimants—ranging from about \$31,910 for about two years to \$268,249 spanning almost 16 years. This further suggests that the current process may be insufficient to facilitate survivors' obtaining retroactive benefits to which they are entitled.

All eight managers interviewed noted that VBA should not require survivors to mark a box or specifically make a statement about the PACT Act if they are entitled—that retroactive benefits should be granted regardless. Further, a program analyst with the Pension and Fiduciary Service stated that they think the current process is too hard on claimants, and the lack of clear guidance has been difficult for claims processors.

Recommendation 3 requests VBA consider whether survivor-centric modifications could be made to the reevaluation request process consistent with the PACT Act and related regulations, just as it did in August 2023 when determining that the submission of the decision review request form alone was sufficient for a request of reevaluation.⁸²

Conclusion

The PACT Act broadened the scope of conditions presumed to be related to military service and locations associated with toxic exposures, thereby expanding eligibility for Dependency and Indemnity Compensation benefits to more survivors. As a result of the act, claims that had previously been filed by survivors and denied by VA could be reopened and readjudicated. The OIG team identified inconsistencies in these reopened claims when granting benefits due to the PACT Act, which led to underpayments to survivors, primarily due to unclear and evolving Pension and Fiduciary Service guidance given to pension management center staff. As a result, staff inaccurately determined entitlement when processing reopened claims, resulting in a projected \$33.1 million in underpayments to survivors.

Because the Pension and Fiduciary Service did not provide clear guidance for reevaluating these claims, staff did not understand how to correctly determine effective dates. Furthermore, during and after the review period, the guidance changed. The Pension and Fiduciary Service process to manually generate notification letters contributed to notification letters sent to survivors that did not inform the survivors about potential retroactive benefits. The Pension and Fiduciary Service is working toward creating automated decision letters. Finally, modifying the application process could facilitate eligible survivors receiving full retroactive benefits.

Recommendations 1–3

The OIG made the following recommendations to the under secretary for benefits:

⁸² To make a policy change, VBA consults with the Office of General Counsel to ensure consistency with law. 38 C.F.R. § 14.500 (1977).

1. Correct the two errors involving prematurely denied Dependency and Indemnity Compensation claims.
2. Conduct a file review of the reopened Dependency and Indemnity Compensation claims granted under the PACT Act from January 1 through August 31, 2023, and take appropriate actions to ensure monetary benefits and notification letters are accurate.
3. Consider whether modifications could be made to the reevaluation request process consistent with the PACT Act and related regulations and, should this result in a policy change, consult with the VA Office of General Counsel.

VA Management Comments

The under secretary for benefits concurred with all recommendations. To address recommendation 1, VBA corrected one of the errors involving a prematurely denied claim; however, the other claim cannot be corrected until the Board of Veterans' Appeals finishes a review of the claim initiated by the claimant. VBA requested closure of this recommendation. To comply with recommendation 2, VBA will develop a plan to reassess the reopened Dependency and Indemnity Compensation claims granted under the PACT Act from January 1 to August 31, 2023. Finally, to address recommendation 3, VBA consulted with the Office of General Counsel and, as a result, will modify its guidance to "liberally interpret" Dependency and Indemnity Compensation claims to qualify as an election for reevaluation when the claimant was previously denied the benefit. The under secretary's comments are presented in full in appendix E.

OIG Response

Concerning recommendation 1, the OIG recognizes VBA's corrective action on one claim and will close the recommendation after the second claim pending review before the Board of Veterans' Appeals has also been corrected. The under secretary for benefits provided acceptable action plans for implementation of recommendations 2 and 3. The OIG will monitor VBA's progress and follow up on the implementation of these recommendations until all proposed actions are completed.

Appendix A: Expanded Military Service That Qualifies for Presumptive Toxic Exposure and Presumptive Diseases

The presumption of exposure to certain herbicide agents for Vietnam-era veterans expanded under the PACT Act to include veterans who performed active duty in the locations in table A.1.⁸³

Table A.1. Exposure to Herbicides

Location	Dates
Thailand at any United States or Royal Thai base, without regard to where on the base the veteran was located or what military job 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 their territorial waters	January 9, 1962, to July 31, 1980
Johnston Atoll or on a ship that called at Johnston Atoll	January 1, 1972, to September 30, 1977

Source: PACT Act § 403.

Veterans who participated in the activities at the locations listed in table A.2 are presumed to have been exposed to radiation.

Table A.2. Exposure to Radiation

Location	Dates
Enewetak Atoll radioactive cleanup	January 1, 1977, to December 31, 1980
Palomares, Spain, nuclear response	January 17, 1966, to March 31, 1967
Thule, Greenland, nuclear response	January 21, 1968, to September 25, 1968

Source: PACT Act §§ 401 and 402.

⁸³ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168.

VA has presumed that veterans have been exposed to burn pits or other toxins if they served in or in the airspace above any of the locations on the dates in table A.3.

Table A.3. Exposure to Burn Pits or Other Toxins

Location	Dates
Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, United Arab Emirates	On or after August 2, 1990
Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Uzbekistan, Yemen	On or after September 11, 2001

Source: PACT Act § 302.

The PACT Act expanded the definition of a Persian Gulf veteran as listed in table A.4 by adding additional locations, not including airspace.

Table A.4. Expansion of Persian Gulf Veteran

Location	Dates
Afghanistan, Egypt, Israel, Jordan, Syria, Turkey	On or after August 2, 1990

Source: PACT Act § 405.

The PACT Act established two diseases as presumptive to exposure to herbicides:⁸⁴

- hypertension
- monoclonal gammopathy of undetermined significance

The PACT Act established these diseases as presumptive to exposure to burn pits and other toxic exposures:⁸⁵

- | | |
|---|--|
| <ul style="list-style-type: none"> • asthma diagnosed after service • brain cancer • chronic bronchitis • chronic obstructive pulmonary disease (COPD) • chronic rhinitis • chronic sinusitis | <ul style="list-style-type: none"> • constrictive or obliterative bronchiolitis • emphysema • gastrointestinal cancer of any type • glioblastoma • granulomatous disease • head cancer of any type |
|---|--|

⁸⁴ PACT Act § 404.

⁸⁵ PACT Act § 406.

- interstitial lung disease
- kidney cancer
- lymphoma cancer of any type
- lymphomatic cancer of any type
- melanoma
- neck cancer of any type
- pancreatic cancer
- pleuritis
- pulmonary fibrosis
- reproductive cancer of any type
- respiratory cancer of any type
- sarcoidosis
- any other disease for which the VA Secretary determines, pursuant to regulation, a presumptive service connection is warranted based on a positive association with a substance, chemical, or airborne hazard identified under 38 U.S.C. § 1119(b)(2).

Appendix B: Scope and Methodology

Scope

The VA Office of Inspector General (OIG) conducted its review from October 2023 through August 2024. The team reviewed two statistical samples of reopened Dependency and Indemnity Compensation claims identified as related to the PACT Act and completed from January 1 through July 31, 2023, to ensure the processing accuracy of these reopened claims under the PACT Act.⁸⁶

The two samples were drawn from populations of reopened Dependency and Indemnity Compensation claims for survivors who were previously denied and were subsequently

1. denied claims identified as related to the PACT Act, and
2. granted claims based on newly established presumptive conditions or locations associated with toxic exposures under the PACT Act.

Methodology

To accomplish its objective, the OIG team completed these actions:

- reviewed applicable laws, policies, and procedures related to Dependency and Indemnity Compensation claims processing under the PACT Act
- assessed the two populations of Dependency and Indemnity Compensation statistical samples, which consisted of
 - 30 reopened claims identified as PACT Act claims that were denied, and
 - 100 previously denied claims that were granted based on newly established presumptive conditions or locations associated with toxic exposures under the PACT Act
- interviewed and obtained information from managers and staff at the Veterans Benefits Administration (VBA) central office, as well as managers and staff from the pension management centers in Milwaukee, Wisconsin, and Philadelphia, Pennsylvania.

⁸⁶ VBA has used the following “special issues” to identify a claim as related to the PACT Act: “PACT,” “PACT ACT DIC [Dependency and Indemnity Compensation] Reevaluation,” “VACO Special Issue 6,” or “NWQ Project #4.” A special issue is a claim-specific indicator that can represent a certain claim type, disability, or disease, or another special notation that is only relevant to a particular claim.

Internal Controls

The review team assessed VBA's internal controls significant to the objective. This included an assessment of the five internal control components to include control environment, risk assessment, control activities, information and communication, and monitoring.⁸⁷ In addition, the team reviewed the principles of internal controls as associated with the objective. The team identified two components and three principles as significant to the objective.⁸⁸ The team identified the following internal control weaknesses during this review that are discussed in the report findings and proposed recommendations.

- Component: Control Activities
 - Principle 11: Design Activities for the Information System
- Component: Information and Communication
 - Principle 14: Communicate Internally
 - Principle 15: Communicate Externally

Data Reliability

The OIG used computer-processed data from VBA's Corporate Database. To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The team also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the team compared veterans' names, file numbers, end products, dates of claims, and end product closed dates as provided in the 130 Veterans Benefits Management System records reviewed.

Testing of the data showed sufficient reliability for the review objective. Comparison of the data with information contained in the Veterans Benefits Management System records for the veterans within the review sample did not disclose any problems with data reliability.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

⁸⁷ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

⁸⁸ Since the review was limited to the internal control components and underlying principles identified, it may not have disclosed all internal control deficiencies that may have existed at the time of this review.

Appendix C: Statistical Sampling Methodology

Approach

To accomplish the objective of assessing the accuracy of VBA’s processing of reopened Dependency and Indemnity Compensation claims under the PACT Act, the review team reviewed a statistical sample of two datasets from claims completed from January 1 through July 31, 2023 (the review period), with a rating decision complete in the life cycle status, and a “special issue” that indicated it was a PACT Act claim. A special issue is a claim-specific indicator that can represent a certain claim type, disability, or disease or another special notation that is relevant only to a particular claim.⁸⁹ The team also considered “end product codes” from the system that is the primary workload monitoring and management tool for VBA. The end product codes for the claims included end product codes 020 and 040 with a payee code other than the veteran.⁹⁰ The two datasets were then composed of (1) denials and (2) grants. The team used statistical sampling to quantify the records indicating VBA employees inaccurately processed these reopened claims under the PACT Act.

Population

The review population for the first dataset included 1,154 completed reopened Dependency and Indemnity Compensation claims during the review period that were identified as related to the PACT Act and denied. For the purposes of this review, the team estimated the population that met scope requirements to be 1,117 reopened claims under the PACT Act. The difference between the review population and the estimated population occurred because the team estimated 37 claims to be out of scope because they did not meet scope requirements, such as being an initial claim and not a reopened claim.

The review population for the second dataset included 1,886 completed reopened Dependency and Indemnity Compensation claims during the review period that were identified as related to and granted under the PACT Act. For the purposes of the review, the review team estimated the population that met scope requirements to be 1,669. The difference between the review population and the estimated population occurred because the team estimated 217 claims did not meet scope requirements for reasons such as:

- The grant was not the result of expanded conditions or locations under the PACT Act.

⁸⁹ VBA has used the following special issues to identify a claim as related to the PACT Act: “PACT,” “PACT ACT DIC [Dependency and Indemnity Compensation] Reevaluation,” “VACO Special Issue 6,” or “NWQ Project #4.”

⁹⁰ End product 020 is for claims received after the initial eligibility decision and end product 040 is for supplemental claims. The payee code indicates who will receive the payment if warranted.

- The claim was not reopened with a previous denial before August 10, 2022.

Sampling Design

The team coordinated with an OIG statistician to construct a statistical sample from each dataset. The first dataset consisted of a sample of 30 claims and the second sample of 100 claims, for a total of 130 claims reviewed. The statistical samples are based on a 90 percent confidence level with the following expected error rate and resulting margin of error:

- Dataset 1: design precision of 6.5 percent and an expected error rate of 5 percent
- Dataset 2: design precision of 7.3 percent and an expected error rate of 30 percent

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations. For example, the team calculated the error rate estimates by first summing the sampling weights for all sample records that contained the given error, then dividing that value by the sum of the weights for all sample records.

Projections and Margins of Error

The projection is an estimate of the population value based on the sample. The associated margin of error and confidence interval show the precision of the estimate. If the OIG repeated this review with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value about 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate estimates, margins of error, and confidence intervals that account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of the sample review. While precision improves with larger samples, the rate of improvement decreases significantly as more records are added to the sample review.

Figure C.1 shows the effect of progressively larger sample sizes on the margin of error.

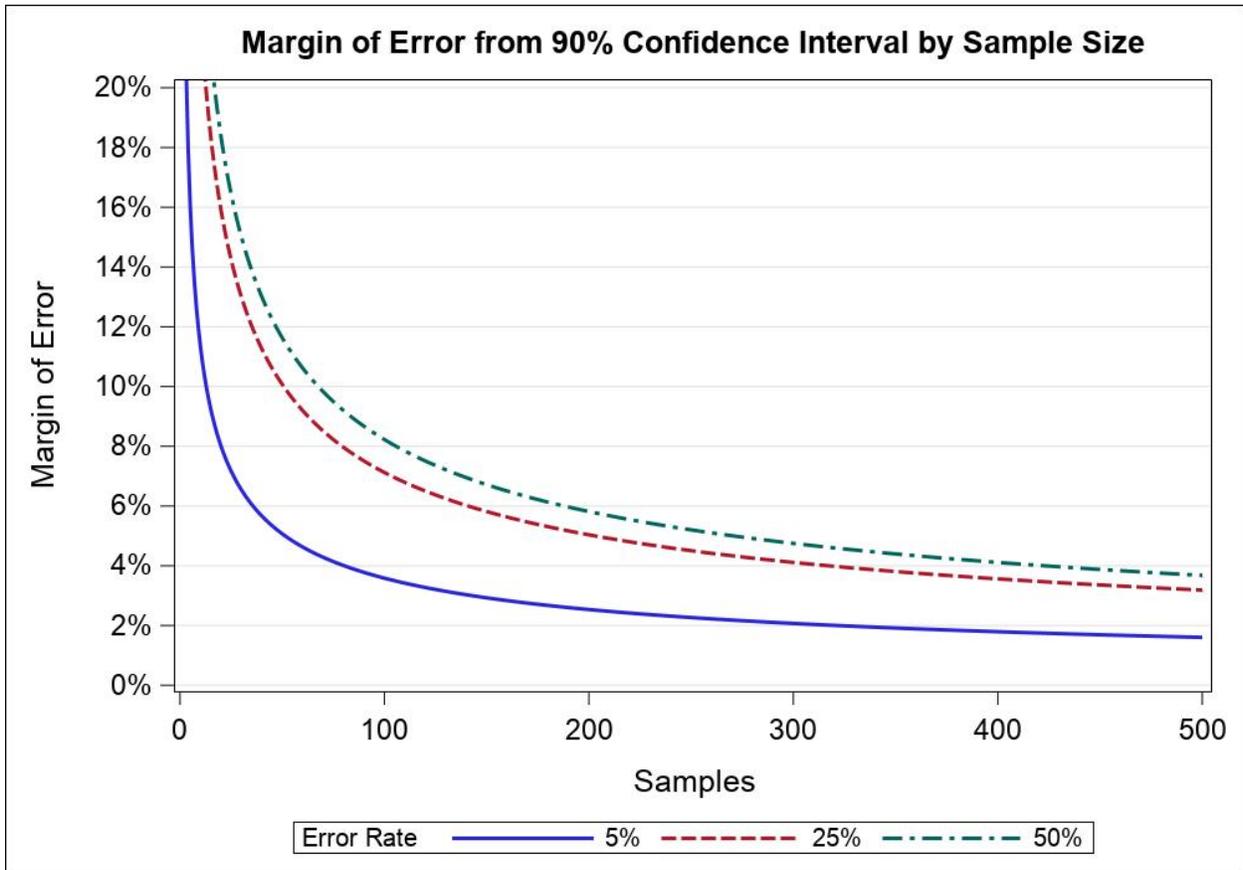


Figure C.1. Effect of sample size on margin of error.

Source: VA OIG statistician’s analysis.

Projections

Tables C.1 through C.6 detail the review team’s analysis based on the findings from the statistical sample noted above under the approach and the statistician’s projection of estimated populations.

Table C.1. Estimated In-Scope and Out-of-Scope Populations of Reopened Dependency and Indemnity Compensation Claims Under the PACT Act

Estimate name	Estimate number	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Completed reopened claims identified as PACT Act-related that were denied, in-scope population	1,117	63	1,054	1,153*	30

Survivors Did Not Always Receive Accurate Retroactive Benefits for Dependency and Indemnity
Compensation Claims Reopened Under the PACT Act

Estimate name	Estimate number	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Completed reopened claims identified as PACT Act-related that were denied, out-of-scope population	37	63	1‡	100	1
Completed reopened claims granted under the PACT Act, in-scope population	1,669	94	1,575	1,763	100
Completed reopened claims granted under the PACT Act, out-of-scope population	217	94	123	311	13

Source: VA OIG analysis.

* Projection and upper limit do not total because the upper limit would be more than the universe. The upper limit cannot exceed the adjusted total population, which is 1,154 minus one sample out of scope.

‡ The value was adjusted to the number found during the sample review.

Table C.2. Estimated Review Population of Reopened Dependency and Indemnity Compensation Claims Identified as Related to PACT Act That Were Denied

Estimate name	Estimate number	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Reopened claims, identified as PACT Act-related, denied and correctly processed (percentage)	1,042 (93%)	106 (8%)	937* (85%)	1,148 (100%*)	28
Reopened claims identified as PACT Act-related, denied and incorrectly processed (percentage)	74 (7%)	88 (8%)	2‡ (0%)	162 (15%)	2

Source: VA OIG analysis.

* Projections and confidence intervals may not total precisely due to rounding.

‡ The value was adjusted to the number found during the sample review.

**Table C.3. Estimated Review Processing Errors of Granted Reopened
Dependency and Indemnity Compensation Claims Identified as PACT Act–Related**

Estimate name	Estimate number	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Reopened claims granted based on newly established presumptive conditions or locations under the PACT Act and inaccurately processed (percentage)	517 (31%)	132 (8%)	386* (23%)	649 (29%)	31
Impact errors (percentage)	284 (17%)	106 (6%)	178 (11%)	389* (23%)	17
Potential impact errors (percentage)	417 (25%)	123 (7%)	295* (18%)	540 (32%)	25
Non-impact errors (percentage)	117 (7%)	71 (4%)	46 (3%)	188 (11%)	7

Source: VA OIG analysis.

Note: Impact errors were identified in claims where the claims processors did not assign the correct effective date. Potential impact errors related to Dependency and Indemnity Compensation that was prematurely granted because additional evidence was required before making the determination, or the effective date of the original claim was not assigned because the survivor did not request reevaluation and the notification letter did not inform them of potential retroactive payments. Non-impact errors took place when an incorrect effective date was assigned but was later corrected by VBA, and the survivor received the retroactive benefits. The total number of errors exceeds 517 improperly processed claims (of the 1,669 population of claims) because some errors applied to more than one claim. For example, an impact error may have contained both an incorrect effective date and a potential impact error due to an incorrect notification letter.

* Projections and confidence intervals may not total precisely due to rounding.

Table C.4. Estimated Potential Impact Errors Due to Lack of Notification of Retroactive Date Eligibility

Estimate name	Estimate number of claims	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Notification letter did not include the PACT Act language	350	115	236*	465	21

Source: VA OIG analysis.

* Projections and confidence intervals may not total precisely due to rounding.

Table C.5. Estimated Improper Underpayments

Estimate name	Estimate number	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Underpayments	\$33,081,070	\$18,091,598	\$14,989,472	\$51,172,668	17

Source: VA OIG analysis.

Note: The OIG team chose to use the point estimate because it is the best estimate of what the true population value is, based on sample results. The margin of error and confidence interval show the reasonable range for the estimate of the true population value (at the 90 percent confidence level).

Table C.6. Potential Over- and Underpayments

Estimate name	Estimate number	90 percent confidence one-tailed interval			Sample size
		Margin of error	Lower limit*	Upper limit	
Potential underpayments	\$7,887,856	NA	\$3,030,047	NA	5
Potential overpayments	\$1,689,828	NA	\$585,140	NA	4

Source: VA OIG analysis.

Note: The potential underpayments represent money that could be paid to survivors if they submit a request for reevaluation. The potential overpayments are those in which survivors were paid without sufficient evidence to have supported the grant of benefits. However, additional evidence may also show they are eligible for the benefit, but that cannot be determined unless VBA obtains such evidence.

* For the potential underpayments and overpayments, the one-tailed lower bounds in the shaded column are used in the report due to poor precision because of small sample size.

Appendix D: Monetary Benefits in Accordance with Inspector General Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs ⁹¹
2	The OIG estimated that inaccurate effective dates for reopened Dependency and Indemnity Compensation claims under the PACT Act resulted in about \$33.1 million in improper payments.	\$0	\$33.1 million
	Total	\$0	\$33.1 million

Source: VA OIG analysis.

Note: The OIG determined VBA's inaccurate processing led to an estimated \$33.1 million in questioned costs during the review period. The estimate includes payments that were either incorrect or unsupported. The potential under- and overpayments are not considered questioned costs and therefore are not included in this table.

⁹¹ The OIG questions costs when VA action or inaction (such as spending or failure to fully compensate eligible beneficiaries) is determined by the OIG to violate a provision of law, regulation, contract, grant, cooperative agreement, or other agreement; when costs are not supported by adequate documentation; or when they are expended for purposes that are unnecessary or unreasonable under governing authorities. Within questioned costs, the OIG must, as required by section 405 of the IG Act, report unsupported costs. Unsupported costs are those determined by the OIG to lack adequate documentation at the time of the audit.

Appendix E: VA Management Comments, Under Secretary for Benefits

Department of Veterans Affairs Memorandum

Date: October 8, 2024

From: Under Secretary for Benefits (20)

Subj: Office of Inspector General (OIG) Draft Report - Survivors Did Not Always Receive Accurate Retroactive Benefits for Dependency and Indemnity Compensation Claims Reopened under the PACT Act [Project No. 2023-03517-AE-0144] — [VIEWS 12046537]

To: Assistant Inspector General for Audits and Evaluations (52) Attachment

1. Thank you for the opportunity to review and comment on the OIG draft report: Survivors Did Not Always Receive Accurate Retroactive Benefits for Dependency and Indemnity Compensation Claims Reopened under the PACT Act. The Veterans Benefits Administration (VBA) provides the attached response to the draft report.

The OIG removed point of contact information prior to publication.

(Original signed by)

Joshua Jacobs

Attachments

Attachment

**Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
Survivors Did Not Always Receive Accurate Retroactive Benefits for Dependency and Indemnity
Compensation Claims Reopened under the PACT Act**

VBA takes the findings seriously. Caring for the families of service members killed in service and who die of service-related injuries and conditions is one of our most sacred responsibilities.

VBA concurs with OIG's draft report findings and provides the following comments in response to the recommendations:

Recommendation 1: Correct the two errors involving prematurely denied Dependency and Indemnity Compensation claims.

VBA Response: Concur. VBA has reviewed the two errors involving prematurely denied Dependency and Indemnity Compensation claims and corrected one but cannot take corrective action on the other until claimant-initiated review by the Board of Veterans' Appeals has concluded.

VBA requests closure of this recommendation based on the evidence provided in Attachment A.

Recommendation 2: Conduct a file review of the reopened Dependency and Indemnity Compensation claims granted under the PACT Act from January 1, 2023, through August 31, 2023, and take appropriate actions to ensure monetary benefits and notification letters are accurate.

VBA Response: Concur. VBA will develop a plan to reassess the reopened DIC claims granted under PACT Act from January 1, to August 31, 2023. The plan will ensure benefits determinations, to include any retroactive benefits due, and accuracy of notification letters. VBA will determine the target completion date once it has established a plan for implementation of the recommendation.

Target Completion Date: TBD

Recommendation 3: Consider whether modifications could be made to the reevaluation request process consistent with the PACT Act and related regulations, and should this result in a policy change, consult with the VA Office of General Counsel.

VBA Response: Concur. VBA has consulted with the Office of General Counsel (OGC) regarding the evidence required to infer that a claimant is electing a reevaluation of a previously denied DIC claim under the PACT Act. As a result of VBA's collaboration with OGC, it has been determined that in order to be consistent with the PACT Act and related regulations, VBA will modify the reevaluation request process.

VBA will modify its procedural guidance to liberally interpret DIC claims to qualify as an election for a reevaluation when the claimant has a previously denied DIC claim on record. This modification will support a streamlined claims submission process for survivors.

Target Completion Date: October 31, 2024

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

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