

**2900-AR76 Reevaluation of Claims for Dependency and Indemnity  
Compensation  
(Final Rule - This rule is effective January 23, 2024)**

[Federal Register](#)

**What does the regulation do?**

This final rule amends VA's regulations for certain awards of Dependency and Indemnity Compensation (DIC) to incorporate statutory amendments made under Section 204 of the 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). As a result, relevant claimants can elect to have VA reevaluate certain previously denied DIC determinations based on changes that establish or modify a presumption of service connection. Any award following a reevaluation may be made retroactively, as if the new or modified presumption of service connection had been in effect when the original claim was submitted.

**Are the provisions, services, or benefits associated with this rule current practice or new to Veterans? Please explain.**

The provisions, services or benefits associated with this rule constitute current practice. This rule will only impact the potential effective date for benefits awarded to eligible survivors of Veterans eligible for the PACT Act.

**Who does it impact?**

This amendment impacts individuals who elect to have VA reevaluate a previously denied claim for DIC benefits that might have been evaluated differently if the new or modified presumption of service connection from a new law or regulation would have been applicable to their claim. Additionally, this amendment also impacts individuals eligible to submit a claim for substitution for a deceased claimant if the deceased claimant had elected to have VA reevaluate their previously denied DIC claim.

**Why is it happening/important?**

The PACT Act was signed into law on August 10, 2022, which expands eligibility to DIC benefits for certain survivors. This final rule updates VA's regulations to conform with the legislative changes in the PACT Act and allows relevant claimants the option of having VA reevaluate certain previously denied DIC claims based on a new or modified presumption of service connection.

## **Why are we doing it?**

This regulation is needed to appropriately determine DIC eligibility for relevant claimants and to align VA's regulations with the applicable changes enacted by the PACT Act. VA has created FAQs to provide further information regarding the impact of this new regulation. VA would like to highlight the following FAQs:

### **1. What is the relationship of this new regulation to the PACT Act?**

This new regulation, 38 CFR 3.33, codifies Section 204 of the PACT Act. Section 204 added new section 1305 to 38 of the United States Code which states that whenever a law, regulation, or Federal court decision establishes or modifies a presumption of service connection, VA will identify claims that were submitted and denied prior to the date on which the law went into effect and notify potentially entitled beneficiaries. This regulation would allow for the reevaluation of previously denied claims for DIC at the election of the claimant, and award benefits "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." Therefore, if VA is able to award benefits as a result of a request for reevaluation, the effective date of the award will be based on the date that the original claim was submitted to maximize the retroactive benefit due to the survivor.

### **2. Are there limitations on claims that are eligible for a reevaluation under this regulation?**

The provisions within the new regulation based on Section 204 of the PACT Act are limited to the reevaluation of a previously denied claim for DIC. These provisions do not apply to a pending claim for DIC which was received by VA but not yet decided, nor do they apply to a claim for disability compensation submitted by a Veteran. Due to the limitations in the PACT Act itself, this regulation cannot extend retroactivity to the original filing date following a request to reevaluate a pending claim for DIC that has not yet been decided nor for a Veteran's disability compensation claim.

VA identifies that exceptions to this requirement are provided in Section 404 of the PACT Act. This section prescribes two service-connected presumptive diseases related to herbicide exposure, hypertension and Monoclonal Gammopathy of Undetermined Significance, which would allow VA to pay retroactive benefits for an initial DIC claim which was received, but not yet decided, prior to the enactment of the PACT Act. The effective date in this scenario would be the earlier of the following dates: the date the initial claim was received, or the first day of the month of the Veteran's death if the claim is received within a year of the Veteran's death.

Finally, VA does wish to provide that a separate rulemaking by VA will address disability compensation benefits for Veterans. The separate rulemaking on disability compensation benefits will have its own public notice-and-comment periods.

### **3. How does this regulation impact a claim for accrued or substitution?**

The PACT Act did not include any provisions which would amend the legal constraints for the accrued or substitution process. Therefore, any request for the reevaluation of a previously denied DIC claim would follow the regular processes regarding accrued benefits and substitution.

The language within the PACT Act specifically allows for a reevaluation only at the election of the original claimant who was previously denied their DIC claim. Therefore, a potential substitute cannot elect a reevaluation if the original claimant had not made such an election prior to their death. As such, an individual seeking accrued benefits or substitution could continue a claim for DIC reevaluation only if an election for reevaluation of a previously denied DIC claim was pending at the time of the original claimant's death.