



441 G St. N.W.
Washington, DC 20548

B-335785

December 6, 2023

The Honorable Jon Tester
Chairman
The Honorable Jerry Moran
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Mike Bost
Chairman
The Honorable Mark Takano
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Reevaluation of Claims for Dependency and Indemnity Compensation*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Veterans Affairs (VA) entitled "Reevaluation of Claims for Dependency and Indemnity Compensation" (RIN: 2900-AR76). We received the rule on November 24, 2023. It was published in the *Federal Register* as a final rule on November 24, 2023. 88 Fed. Reg. 82261. The effective date is January 23, 2024.

The final rule, according to VA, amends adjudication regulations concerning certain awards of Dependency and Indemnity Compensation (DIC). VA stated that relevant claimants will be eligible to elect to have certain previously denied DIC claims reevaluated pursuant to changes that establish or modify a presumption of service connection. Further, VA stated any award as a result of the reevaluation may be made retroactive 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. Last, VA stated that the rule incorporates legislative changes enacted by the Sergeant First Class Health Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759 (Aug. 10, 2022), and will bring federal regulations into conformance with those changes.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on November 24, 2023. 88 Fed. Reg. 82261. The *Congressional Record* does not reflect the date of receipt by the House of Representatives or the Senate. However, VA provided documentation reflecting that the House of Representatives and the Senate received the rule on November 29, 2023. Email from Director, Office of Regulation Policy and Management, Office of the Secretary, VA, to Senior Attorney, GAO, *Subject: Seeking*

Congressional Delivery Confirmation For VA Rule (Dec. 6, 2023). The rule has a stated effective date of January 23, 2024. Therefore, based on the date of congressional receipt, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of VA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Luvenia Potts
Reg. Dev. Coord., Office of Regulation Policy & Management
Office of General Counsel
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
“REEVALUATION OF CLAIMS FOR DEPENDENCY AND INDEMNITY COMPENSATION”
(RIN: 2900-AR76)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) prepared a Regulatory Impact Analysis for this final rule, available at <https://www.regulations.gov/document/VA-2023-VBA-0014-0007>. In the analysis, VA stated that benefits include the ability for relevant claimants to elect a reevaluation of certain previously denied Dependency and Indemnity Compensation determinations pursuant to changes that establish or modify a presumption of service connection, and that any grant of benefits following reevaluation may be made retroactive to the date of a previously denied claim.

In the analysis, VA stated that the total budgetary impact of this final rule is estimated to be \$2.2 billion in 2024, \$4.8 billion over five years, and \$7.1 billion over 10 years. Transfers, according to VA, are estimated to be \$2.1 billion in 2024, \$4.7 billion over five years, and \$7.0 billion over 10 years. VA stated that costs are estimated to be \$37.4 million in 2024, \$89.1 million over five years, and \$93.3 million over 10 years.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

The Secretary of VA certified that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined by RFA.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

VA stated that this final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the

OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

VA does not discuss the Administrative Pay-As-You-Go Act of 2023 in the final rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On March 22, 2023, VA promulgated a proposed rule. 88 Fed. Reg. 17166. VA received three comments on the proposed rule. VA responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

VA stated that this final rule includes provisions constituting a revised collection of information under PRA and that OMB has reviewed and approved this revised collection of information.

Statutory authorization for the rule

VA promulgated this final rule pursuant to section 501(a) of title 38, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

VA stated that the Office of Information and Regulatory Affairs has determined that this final rule is a significant regulatory action under the Order, as amended by Executive Order 14094.

Executive Order No. 13132 (Federalism)

In its submission to us, VA indicated that it did not discuss the Order in the preamble to this final rule.