



**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**  
**Washington, D.C. 20420**

June 20, 2014

VBA Letter 20-14-08

Director (00/21)  
All VBA Regional Offices and Centers

SUBJ: Administration of Same-Sex Spousal Benefits

## **Purpose**

As of the date of this notification, the Veterans Benefits Administration (VBA) is processing same-sex spousal benefit claims. This letter provides instructions and procedures for processing these types of claims.

## **Background**

The Defense of Marriage Act (DOMA), enacted September 21, 1996, is a federal law that contains two operative sections: Section 2, which allows states to refuse to recognize same-sex marriages performed under the laws of other states; and Section 3, which defined “marriage” and “spouse” for purposes of federal law to preclude recognition of marriages of same-sex couples. On June 26, 2013, the Supreme Court held, in *United States v. Windsor*, that section 3 of DOMA violates the Fifth Amendment by discriminating against same-sex couples who are lawfully married under state law.

VBA administers benefits and programs that depend on the definition of the terms “spouse” and “surviving spouse.” For purposes of VA benefits, [38 U.S.C. § 101\(3\)](#) and [§ 101\(31\)](#) define “surviving spouse” and “spouse” as persons “of the opposite sex.” These definitions (codified separately from DOMA) were not specifically addressed in the Supreme Court’s decision. On September 4, 2013, the United States Attorney General announced that the President had directed the Executive Branch to cease enforcement of [38 U.S.C. §§ 101\(3\)](#) and [101\(31\)](#), to the extent they preclude provision of Veterans’ benefits to same-sex married couples. Accordingly, VA will no longer enforce the above-mentioned statutory provisions or VBA’s implementing regulation ([38 C.F.R. § 3.50](#)), to the extent that they preclude provision of Veterans’ benefits to same-sex married couples. This announcement allows VA to administer spousal and survivors’ benefits to same-sex married couples, provided their marriages meet the requirements of [38 U.S.C. § 103\(c\)](#). That provision states, “[i]n determining whether or not a person is or was the spouse of a Veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.”

## **Determining Whether VA Will Recognize A Marriage: Dependency Claims (Compensation and Pension), Survivors Pension, Dependency and Indemnity Compensation (DIC), and Accrued Benefits**

**NOTE:** The following procedures apply to adjudication of both compensation and pension claims. Education, insurance, loan guaranty, and vocational rehabilitation & employment will sometimes follow these same procedures for determining marital status, but in certain situations will follow benefit-specific guidance, which is provided later in this letter.

**Important:** Any claims related to same-sex marriage currently held at regional offices or centers must be processed expeditiously according to the guidance set forth in this notification.

### **Procedures**

#### **General**

Under [38 U.S.C. § 5124\(a\)](#), VA may accept the written statement of a claimant's marriage to another individual as proof of the existence of the relationship. This statute is implemented under [38 C.F.R. § 3.204\(a\)](#). To establish marriage under section 3.204(a), VBA requires only a statement by the claimant that includes the date and place of marriage and the name and social security number of the person the claimant has identified as his or her spouse.

Under [38 U.S.C. § 103\(c\)](#), which is currently administered under [38 C.F.R. § 3.1\(j\)](#), VBA will recognize a Veteran's marriage for the purposes of paying benefits if the marriage was recognized under the law of the place where at least one of the parties resided when they were married, or at the time when the claimant became eligible for benefits. To apply the section 103(c) standard, VBA will inform claimants of the standard through updated form instructions and provide claimants a link to a public website that contains information specific to marriage issues, and then, consistent with [38 U.S.C. § 5124\(a\)](#) and [38 C.F.R. § 3.204\(a\)](#), VBA will generally accept a claimant's statement that he or she is married. This same procedure applies no matter if the claimant is asserting that he/she is in an opposite-sex marriage or a same-sex marriage.

The only time when VA will not accept a claimant's statement that he/she is married as being sufficient evidence to establish the claimant's marriage is when the claimant's statement on its face raises a question of validity, the claimant's statement conflicts with other evidence in the record, or there is a reasonable indication of fraud or misrepresentation. In these instances, VBA shall require more information, per [38 C.F.R. § 3.204\(a\)\(2\)](#). The fact that a claimant is in a same-sex marriage, without additional information showing where the claimant and the spouse resided at the time of marriage and where they resided when the claim was filed, does not raise a question as to the marriage validity,

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conflict with the claimant's statement that he/she is married, or present a reasonable indication that there is evidence of fraud or misrepresentation.

**Important:** For claims involving a biological child of the Veteran, the Veteran's written statement is sufficient to establish the relationship to the child, per 38 C.F.R. § 3.204(a). For claims involving an adopted child, the parent/child relationship should be recognized per 38 C.F.R. § 3.210(c). For claims involving a stepchild of a same-sex marriage, the parent/child relationship should be recognized per section 3.210(d). In instances when the relationship between the Veteran and child is neither biological nor adoptive, but there is indication that the relationship may be something more than a stepchild relationship, then refer the claim to regional counsel for a determination as to whether the child may be considered a legitimate child for the purpose of VA benefits under 38 C.F.R. § 3.210(a). For example, if a child was born during a same-sex marriage, but the child's biological relationship is only to the non-Veteran parent, it is possible that, even without a biological or adoptive relationship, the child may be considered to be the child of the Veteran under state law. Although we anticipate that further legal guidance on this issue will be forthcoming, such issues should be referred to regional counsel until further notice.

## Survivors Claims

When determining whether VA will recognize a same-sex marriage in survivors claims, claims processors should accept the statement of the claimant that he/she was married. As previously stated, VA will inform claimants through a form instruction of the section 103(c) standard and provide a link to a public website that contains information specific to same-sex marriages. Under the section 103(c) standard, VA marriage recognition can be established by the law of the place where at least one of the parties resided when the claimant files a valid claim, or the law of the place where at least one of the parties resided at the time of the marriage. When a party to the marriage is deceased, VA considers the party's last place of residence while alive to be the place where that party resided at the time of claim.

**Note:** For survivors claims, VA may accept a written statement asserting the marital relationship, but should determine if the same-sex marriage satisfies the requirements of 38 C.F.R. §§ 3.50(b)(1)&(2) and 3.54 (marriage dates). When calculating years of marriage pursuant to section 3.54, use the date the marriage was performed, not the date the marriage could first be recognized for the purpose of VA benefits.

**Important:** In some cases, VA cannot recognize a marriage in a survivor's claim under section 103(c), but the case may raise the question of whether the marriage may be considered a "deemed valid" marriage under 38 U.S.C. § 103(a). Claims identified, as possibly implicating section 103(a), will be processed with the assistance of regional counsel. Refer all such claims based on a same-sex marriage to regional counsel until further notice. The limited exception provided in section 103(a) and implementing regulation 38 C.F.R. § 3.52 permits VA, for the purpose of gratuitous death benefits, to recognize certain marriages as *deemed valid marriages* that are not recognized under state law. In order for this provision to be applied, the surviving spouse claiming benefits must have been, among other requirements, without knowledge of the legal impediment to the marriage when entering into the

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marriage, which must have occurred one year or more before the Veteran's death or for any period of time if a child was born of the marriage.

## **Effective Date**

Although the Supreme Court did not directly address the constitutionality of the Title 38 provisions in its decision invalidating section 3 of DOMA, the Attorney General's September 4, 2013, announcement of the President's direction to cease enforcement of sections 101(3) and 101(31) of Title 38 may be characterized as a liberalizing change in law, if such a characterization would benefit the claimant. Therefore, the effective date should be assigned as follows:

1. If the claim was pending or open on direct review as of September 4, 2013, the effective date should be assigned under 38 U.S.C. § 5110 and 38 C.F.R. § 3.400, as if the laws barring VA's recognition of same-sex marriage had never been in effect.
2. If the claim was received after September 4, 2013, VA should apply 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114, to assign an effective date as early as September 4, 2013, if to do so would be to the claimant's benefit. If the claimant is entitled to an effective date earlier than September 4, 2013, based on some other provisions of 38 U.S.C. § 5110 and 38 C.F.R. § 3.400, then assign the effective date in accordance with those other provisions. For example if VA receives a claim for DIC or survivors' pension within one year of the date the death occurred, then the effective date of the award may be the first day of the month in which the death occurred, pursuant to 38 U.S.C. § 5110(d) and 38 C.F.R. § 3.400(c)(2), regardless of whether that date is prior to September 4, 2013. However, if death occurred more than one year prior to receipt of the claim, and section 5110(d) and section 3.400(c)(2) are therefore inapplicable, then VA may nonetheless assign an effective date as early as September 4, 2013, pursuant to 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114.

## **Same-Sex Relationships and Common-Law Marriage**

If the Veteran indicates that his or her same-sex marriage is a common-law marriage, claims processors must determine whether the same-sex relationship qualifies as a common-law marriage. See M21-1MR III.iii.5.C. Claims processors may seek guidance from regional counsel as needed.

## **Insurance**

For Servicemembers' Group Life Insurance (SGLI) and Family SGLI (FSGLI), where Veteran status is not a condition of participation, section 103(c) is inapplicable, and VA recognizes marriages for these programs based on the law of the place where the marriage occurred, which is the same standard as used by the Department of Defense (DoD). Section 103(c) also does not apply to the process of converting a spouse's FSGLI coverage to an individual policy, because that right of conversion depends upon status as a Servicemember's spouse, not as the spouse of a "Veteran." Similarly, when establishing a

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marriage for purposes of Veterans' Group Life Insurance (VGLI), section 103(c) is inapplicable, because VGLI proceeds are paid based on a relationship to a "former member" rather than a "Veteran."

For spousal determinations with respect to National Service Life Insurance (NSLI) or U.S. Government Life Insurance (USGLI), applicable regulations employ the place-of-residence analysis under section 103(c) to establish whether VA will recognize a marriage. Claims processors should follow the procedures set forth in this letter with regard to dependency claims for compensation and pension for determinations of marital status for NSLI and USGLI.

## **Loan Guaranty**

Loan Guaranty will rely on assertions of spousal relationship when determining eligibility for home loan benefits and when determining whether credit underwriting standards are satisfied. Guidance for lenders participating in the VA Home Loan Guaranty program will be published separately. See [http://www.benefits.va.gov/HOMELOANS/resources\\_circulars.asp](http://www.benefits.va.gov/HOMELOANS/resources_circulars.asp) for more information. This same procedure applies no matter if the applicant is asserting that he/she is in an opposite-sex marriage or a same-sex marriage.

## **Education**

### **Transfer of Post-9/11 GI Bill Benefits**

Section 103(c) does not apply to transfers of Post 9/11 GI Bill Benefits, per 38 U.S.C. § 3319, because an individual's eligibility to transfer this education benefit is based on the individual being a member of the uniformed services with a specific amount of qualifying service. For the purpose of this benefit VA's recognizes all DoD-approved Section 3319 transfers to dependents.

### **Survivors' and Dependents' Educational Assistance (DEA/Chapter 35)**

DEA/Chapter 35 claims eligibility may be established based on a relationship to either a Servicemember or a Veteran. For a dependent of a Servicemember, DEA eligibility may be established if either of the following exists:

1. A permanent and total disability, incurred or aggravated in the line of duty in the active military, naval, or air service, for which the Servicemember is hospitalized or receiving outpatient medical care, services, or treatment and is likely to be discharged or released from such service for such disability; OR
2. A Servicemember dies in the line-of-duty.

Section 103(c) is inapplicable when evaluating a Servicemember's dependents. DoD uses a different standard from VA in determining validity of marriage. For the purpose of determining whether VA will recognize a marriage to a Servicemember for this benefit, VA will recognize marriages that DoD recognizes. If eligibility is based on a relationship to a Veteran AND the relationship determination

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depends upon marital status (e.g. spouse/surviving spouse, child with no biological or adoptive relationship to the Veteran, or step-child), claims processors should accept the statement of the claimant that he or she is married for purposes of establishing eligibility of the child.

## **Vocational Rehabilitation and Employment**

### **Procedures**

Vocational Rehabilitation and Employment (VR&E) will follow compensation and pension processes for determining dependency status. As such, VR&E staff members should follow the procedures as outlined above for compensation and pension when making a determination of dependency status based on marriage.

### **Updates to Forms, Manuals, and Electronic Systems**

VBA is updating all forms that request information regarding marital status to include a short explanation of the [38 U.S.C. § 103\(c\)](#) criteria. The updated form language is as follows:

If you are certifying that you are married for the purpose of VA benefits, your marriage must be recognized by the place where you and/or your spouse resided at the time of marriage, or where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits) (38 U.S.C. § 103(c)). Additional guidance on when VA recognizes marriages is available at <http://www.va.gov/opa/marriage/>.

The updated forms will include a link to a VA public-facing website <http://www.va.gov/opa/marriage/> that provides an updated list of all states that recognize same-sex marriage, as well as more thorough guidance on how VA determines recognition of marriage.

VBA is in the process of updating its letters to include language regarding processing of claims based on marriage. Until these letters are updated, when denying a claim on the basis that the applicable marriage failed to meet the criteria of [38 U.S.C. § 103\(c\)](#), claims processors should add text to the decision notification letter regarding the specific reason for denial. See Appendix A for the approved mandatory language.

Claims processors must also insert the updated “Recognition of Marriage” paragraph into the “What the Evidence Must Show” (WTEMS) enclosure for DIC, Accrued, Death Pension, and/or All Death Benefits into all 5103 Notices for those benefits until this language is updated in MAP-D. If the 5103 Notice contains multiple applicable WTEMS, claims processors should only insert the new paragraph once, at the beginning of the WTEMS text. See Appendix B for this new language (the additional text is highlighted) and a sample WTEMS.

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VBA will make the necessary revisions to procedural manuals that require clarification of the policy discussed in this VBA Letter and notify the field when these updates are complete.

## Questions

For questions, please contact the following:

**Compensation:** Procedures and Program Development Staff at [VAVBAWAS/CO/212A](#).

**Pension:** VAVBAWAS/CO/PMC.

**Insurance:** [VAVBAPHI/IC/29/29A](#).

**Loan Guaranty:** Loan Guaranty Service at [LGYLEGAL.VBAVACO@va.gov](mailto:LGYLEGAL.VBAVACO@va.gov).

**Education:** If you have any questions, please direct them to the Education Policy & Regulations Team at [VABVAWAS/CO/225C](#).

**VR&E:** Questions concerning the policy and procedures in this VBA letter may be directed to your area VR&E field liaison at the email address listed below, or by telephone at (202) 461-9600.

Area	Primary	Alternate	E-mail
Eastern	Teri Nguyen	Veronica Brown	VAVBAWAS/CO/VRE/EA
Southern	Veronica Brown	Teri Nguyen	VAVBAWAS/CO/VRE/SA
Central	Marisa Liuzzi	Melinda Sargent	VAVBAWAS/CO/VRE/CA
Western	Melinda Sargent	Marisa Liuzzi	VAVBAWAS/CO/VRE/WA

/s/

Allison A. Hickey  
Under Secretary for Benefits

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## **Appendix A**

### **Notification Letter Text**

VA cannot recognize your marriage for the purpose of the benefit sought. Based on the information of record, your marriage is not recognized according to either the law of the place where you and/or your spouse resided at the time of the marriage *or* the law of the place where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits), per 38 U.S.C. § 103(c). In order for VA to recognize any marriage, whether same-sex or opposite-sex, the marriage must meet one of the above requirements.

## Appendix B

### What the Evidence Must Show DIC Benefits

#### Recognition of Marriage

If eligibility is based on a marital relationship, your marriage must be recognized by the law of the place where you and/or your spouse resided at the time of marriage, *or* at the time of the claim (or a later date when you became eligible for benefits), per 38 U.S.C. § 103(c). Because your Veteran spouse is deceased, VA will consider the place where the Veteran last resided while alive to be where the Veteran resided when you filed your claim. With respect to your residence, VA will consider where you actually resided when you filed your claim. In order for VA to recognize any marriage, whether same-sex or opposite-sex, the marriage must meet the requirements of 38 U.S.C. § 103(c).

Additional guidance on determining whether VA can recognize your same-sex marriage is available at <http://www.va.gov/opa/marriage/>.

#### **To support a claim for Dependency and Indemnity Compensation (DIC) benefits based on a service-connected disability established during the Veteran's lifetime, the evidence must show:**

- The Veteran died while on active military service; **OR**
- The Veteran had a service-connected disability(ies) that was either the principal or contributory cause of the Veteran's death; **OR**
- The Veteran died from a nonservice-connected injury or disease **AND** was receiving, or entitled to receive, VA compensation for a service-connected disability rated totally disabling
  - ⇒For at least 10 years immediately before death; **OR**
  - ⇒For at least 5 years after the Veteran's release from active duty preceding death; **OR**
  - ⇒For at least 1 year before death, if the Veteran was a former prisoner of war who died after September 30, 1999.

#### **To support a claim for DIC benefits based on a disability that was not service-connected or for which the Veteran did not file a claim during his or her lifetime, the evidence must show:**

- An injury or disease that was incurred or aggravated during active military service, or an event in service that caused an injury or disease; **AND**
- A physical or mental disability that was either the principal or contributory cause of death. This may be shown by medical evidence or by lay evidence of persistent and recurrent symptoms of disability that were visible or observable; **AND**

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- A relationship between the disability associated with the cause of death and an injury, disease, or event in military service. Medical records or medical opinions are generally required to establish this relationship.