

ELIGIBILITY AUTHORITIES AND ADMINISTRATION OF BURIAL BENEFITS IN VA NATIONAL CEMETERIES

1. REASON FOR ISSUE: To replace, in part, National Cemetery Administration (NCA) Directive 3210/1 - Eligibility Requirements (January 18, 2011), which includes authorities for burial and memorialization benefits. This Directive encompasses burial eligibility authorities and responsibilities related to provision of burial benefits. A separate directive will include the authorities for memorialization benefits and provision of benefits guidance.

2. SUMMARY OF CHANGES:

a. Previously, NCA's eligibility authorities for burial and memorialization were contained in a single directive and displayed in charts. NCA is separating burial and memorialization authorities into two directives and will no longer provide ineligibility information.

b. This directive identifies the roles and responsibilities of program offices that are involved in NCA burial eligibility determinations and the provision of burial benefits, to include those memorial products authorized for eligible decedents interred in national cemeteries.

c. This directive provides information on the statutory authorities underlying NCA's provision of memorialization benefits, to include application of statutory bars to benefits and special considerations relating to qualifying service and relationships. Citations to the burial statutes and regulations is provided in Appendix A.

3. RESPONSIBLE OFFICE: National Cemetery Administration, Legislative and Regulatory Service, 810 Vermont Avenue, NW, Washington, DC 20420, is responsible for the material contained in this Directive. Questions may be referred to NCA42EACTION@va.gov.

4. RELATED PUBLICATIONS:

a. NCA Directive 3211 – Eligibility Authorities and Administration of Memorialization Benefits (date TBD);

b. VA Form 40-10007 – Application for Pre-need Determination of Eligibility for Burial in a VA National Cemetery (May 24, 2017);

c. VA Form 40-10088 – Request for Reimbursement of Casket/Urn (January 14, 2018);

d. VA Form 27-2008 – Application for United States Flag for Burial Purposes (July 10, 2018).

5. RESCISSIONS:

a. NCA Directive 3210/1 – Eligibility Requirements (January 18, 2011);

b. NCA Notice 2019-01 – Public Law 115-47, The Veterans Benefits and Transaction Act of 2018 (February 05, 2019);

c. NCA Notice 2017-01 – Public Law 114-273, The Charles Duncan Buried with Honor Act of 2016 (January 31, 2017);

d. NCA Notice 2012-02 – Public Law 112-260 Provisions Relevant to the National Cemetery Administration (September 20, 2012);

e. Policy Memorandum NCA-41-2014-03 – Requests for NCA Benefits Based on Same-Sex Marriage (June 20, 2014);

f. 401 Policy Letter – Determining Eligibility (January 21, 1997).

6. RECERTIFICATION: This publication is scheduled for recertification on the last day of June 2025.

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Principal Deputy Under Secretary for Memorial Affairs

Distribution: Electronic

ELIGIBILITY AUTHORITIES AND ADMINISTRATION OF BURIAL BENEFITS IN VA NATIONAL CEMETERIES

1. PURPOSE:

a. The purpose of this Directive is to identify burial eligibility requirements for interment in national cemeteries under control of the National Cemetery Administration (NCA), as well as responsibilities related to the provision of burial benefits. This directive also updates information about responsible offices and duties.

b. The statutory authorities for this Directive are found in sections 2402 and 2411 of title 38 United States Code (U.S.C.). Implementing regulations are found in sections 38.617, 38.618, 38.319, and 38.620 of title 38 Code of Federal Regulations (CFR).

2. POLICY:

a. It is NCA policy that adjudication of and appeal decisions affecting requests for burial benefits will be in accordance with Title 38 authorities codified in the United States Code (U.S.C.) and Code of Federal Regulations (CFR).

b. NCA will comply with Title 38 authorities to bar burial and memorialization benefits in cases where eligibility has been determined, but there is reason to inquire into whether a decedent's criminal actions would result in application of the bar. Additionally, NCA will reconsider eligibility determinations if there is reason to consider whether the statutory bar to benefits applies to that burial or memorialization decision.

c. NCA will process requests for burial in VA national cemeteries of otherwise ineligible individuals in a consistent manner and will inform requesters of the decision.

d. NCA will comply with the statutorily mandated Veterans Claims Assistance Act (VCAA) requirements to provide applicants timely written notice of required information and evidence to substantiate their claims, assistance to claimants to obtain such information or evidence, and timely written notice of decisions on their claims, to include appeal rights for adverse decisions.

3. BACKGROUND:

a. For burial in VA national cemeteries, NCA must first determine eligibility based on an individual's qualifying military service or relationship to an individual with qualifying military service.

b. Once NCA determines eligibility for burial, NCA must consider whether statutory bars apply that would prohibit NCA from providing the benefit. This includes consideration of the capital crime or sex offender prohibition in 38 U.S.C. § 2411. For cases that involve other bars to benefits under 38 U.S.C. § 5303 and implementing regulations in 38 CFR § 3.12, NCA must refer such cases to the Veterans Benefits Administration for an administrative decision.

c. In some instances, NCA benefit eligibility may be affected by one or more components of eligibility that relate to qualifying military service. Such considerations include the following:

- (1) Line of duty and misconduct, 38 U.S.C. § 105, 38 CFR § 3.301;
- (2) Certain service deemed not to be active service, 38 U.S.C. § 107;
- (3) Minimum active duty service requirement, 38 U.S.C. § 5303A; 38 CFR § 3.12a;
- (4) Character of discharge, 38, U.S.C. § 5303, 38 CFR § 3.12;
- (5) Periods of war, 38 U.S.C. §101, 38 CFR § 3.2,
- (6) Duty periods, 38 U.S.C. §§101, 106; 38 CFR § 3.6;
- (7) Individuals and groups considered to have performed active military, naval, or air service, 38 CFR § 3.7.

4. RESPONSIBILITIES:

a. **Under Secretary for Memorial Affairs (USMA)** is responsible for:

- (1) Reviewing cases and providing findings in accordance with VA regulations that implement the statutory bar to benefits under 38 U.S.C. § 2411.
- (2) Deciding burial requests for otherwise ineligible individuals under the VA Secretary's delegated authority in 38 U.S.C. § 2402(a)(6).

b. **Deputy Under Secretary for Field Programs and Cemetery Operations (DUSFPCO)** is responsible for:

- (1) providing recommendations to the USMA when deciding burial requests for otherwise ineligible individuals.
- (2) Assigning resources as necessary to support burial requests.

c. **Executive Director, Office of Engagement and Memorial Innovations (OEMI)** is responsible for ensuring NCA public outreach materials, press releases, and responses to public inquiries reflect updated eligibility requirements.

d. **Executive Director, Field Programs** is responsible for:

- (1) Managing the National Cemetery Scheduling Office (NCSO) and its subordinate programs that provide eligibility determinations for burial in national cemeteries;

(2) Addressing issues affecting NCA's infrastructure, databases, and systems that support the provision of burial in national cemeteries and associated memorial products.

(3) Managing the intake and review processes for burial requests for otherwise ineligible individuals under in 38 U.S.C. § 2402(a)(6); and, recommending a decision with rationale for the DUSFPCO.

e. **District Executive Directors** are responsible for:

(1) Providing the Executive Director, Field Programs with timely notice of complex or controversial eligibility requests that require review or approval by NCA Central Office (NCACO) leadership;

(2) Assisting Cemetery Directors on cases that involve the application of statutory bars to benefits, reconsideration of interment or memorialization decisions, or other complex matters.

(3) Ensuring that Cemetery Directors are capable of advising customers about eligibility requirements for burial in a national cemetery and, when necessary, coordinating with NCSO and the Eligibility Division to determine eligibility for burial requests received at their cemeteries.

f. **Director, National Cemetery Scheduling Office (NCSO)** is responsible for:

(1) Ensuring employees are appropriately trained on Title 38 authorities and relevant NCA or VA policies and procedures affecting requests for burial and associated memorialization products at VA national cemeteries;

(2) Providing the Executive Director, Field Programs, and as needed by the situation, the Executive Director, Cemetery Operations with timely notice of complex or controversial eligibility requests that require review or approval by NCACO leadership.

(3) Managing communications of burial eligibility decisions that meet the statutorily mandated requirements under the VCAA to provide claimants with timely notice of required information and evidence to substantiate their claims, assistance to claimants to obtain such information or evidence, and timely written notice of decisions on their claims, to include appeal rights for adverse decisions.

g. **Chief, Eligibility Division** is responsible for:

(1) Providing timely review and guidance on burial eligibility authorities for time of need and pre-need burial requests referred by NCSO and NCA cemetery staff.

(2) Referring complex or controversial cases to the appropriate levels of NCA leadership for guidance or approval.

(3) Developing burial requests that require input or analysis from VA program offices or external agencies that are necessary for determining eligibility, including but not limited to the National Personnel Records Center, Veterans Benefits Administration (VA administrative decision), VA Office of the General Counsel, U.S. Citizenship and Immigration Service, appropriate Armed Forces General Court-Martial Convening Authorities, or State Attorneys General offices.

h. **Director, Memorial Products Service (MPS)** is responsible for:

(1) Managing program offices that provide associated memorial products (e.g., headstones, markers, Presidential Memorial Certificates) for eligible decedents interred in national cemeteries.

(2) Processing requests for appellate review of adverse burial eligibility decisions in accordance with Title 38 requirements.

i. **Cemetery Directors** are responsible for:

(1) Requesting assistance from VA District Counsel offices, local law enforcement, or Attorneys General offices, to provide information for determining whether the bar to benefits under 38 U.S.C. § 2411 applies to burial requests at their cemeteries;

(2) Providing their District Executive Director with timely notice of complex or controversial eligibility requests that require review or approval by NCA leadership.

(3) Coordinating with NCSO and the Eligibility Division, when necessary, to determine eligibility for burial requests received at their cemeteries, to include for cremated remains or when directed by NCA leadership.

(4) Reviewing cases scheduled for burial by the NCSO to confirm the correct decision was made in each case.

k. **Director, Human Capital Management (HCM) Training and Safety** is responsible for incorporating updated eligibility guidance in NCA training materials, references, and other informational resources.

l. **Director, Legislative and Regulatory Service** is responsible for advising NCA program offices on applicable authorities and the impact the changes have on NCA benefits administration.

m. **NCA Historian, History Program** is responsible for conducting research to support eligibility determinations that have a historical component relating to an individual, era of service, incident or event, verification of service documentation, etc.

5. REFERENCES: Please see Appendix A for additional information about Title 38 burial authorities.

APPENDIX A – ELIGIBILITY FOR BURIAL IN A VA NATIONAL CEMETERY

NOTE: VA must consider whether to apply to bar benefits under 38 U.S.C. § 2411 to any person found eligible under 38 U.S.C. § 2402.

<p><u>VETERAN</u> Person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable</p> <p><u>SERVICEMEMBER</u> Person who died in the active military, naval, or air service</p>		<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(1) -38 CFR § 38.620(a)</p>
<p>OTHER RELEVANT AUTHORITIES 38 U.S.C. § 101(2), “veteran”; 101(18), “discharge or release”; 101(24), “active military, naval, or air service”;</p>	<p>TIME/AGE SERVICE CRITERIA -38 U.S.C. § 5303A, Minimum active-duty service requirement -38 CFR § 3.12a, Minimum active-duty service requirement</p>	<p>CHARACTER OF DISCHARGE -38 U.S.C. § 5303, Certain bars to benefits -38 CFR § 3.12, Character of discharge</p>
<p><u>CERTAIN INDIVIDUALS AND GROUPS RECOGNIZED AS HAVING PERFORMED ACTIVE MILITARY, NAVAL, OR AIR SERVICE.</u></p>		<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(1) -38 CFR 38.620(a)(1)</p>
<p>OTHER RELEVANT AUTHORITIES -38 U.S.C. § 101(24), “active military, naval, or air service”; -38 U.S.C. §106, Certain service deemed to be active service -38 CFR §§ 3.7, Individuals and groups considered to have performed active military, naval, or air service</p>		<p>CHARACTER OF DISCHARGE TIME/AGE SERVICE CRITERIA Case-by-case determinations</p>
<p><u>RESERVISTS</u> Members of a Reserve component of the Armed Forces, Army or Air National Guard, who die under honorable conditions while hospitalized/treated for injury/disease contracted/incurred under honorable conditions while on active duty for training or inactive duty training</p>		<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(2) -38 CFR § 38.620(b)</p>
<p>OTHER RELEVANT AUTHORITIES -38 U.S.C. § 101(22), “active duty for training”; 101(23), “inactive duty training”; 101(26), “Reserve”; 101(27), “reserve component”</p>		<p>CHARACTER OF DISCHARGE TIME/AGE SERVICE CRITERIA Case-by-case determinations</p>

<p><u>RESERVE OFFICERS' TRAINING CORPS</u> (ROTC - Army, Navy, or Air Force) who die under honorable conditions while attending authorized training, on travel to/from training; hospitalized treated, for injury/disease contracted/incurred under honorable conditions</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(7) -38 CFR § 38.620(c)</p>
<p>CHARACTER OF DISCHARGE / TIME/AGE SERVICE CRITERIA / OTHER RELEVANT AUTHORITIES – N/A</p>	
<p><u>RETIRED RESERVISTS</u> Retirees who at time of death were entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay was under 60 years of age</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(3) -38 CFR § 38.620(g)</p>
<p>OTHER RELEVANT AUTHORITIES -10 U.S.C. § 12731, Age and service requirements (DoD retired pay statute)</p>	<p>CHARACTER OF DISCHARGE – N/A TIME/AGE SERVICE CRITERIA – N/A</p>
<p><u>ALLIED SERVICE MEMBERS</u> Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(4) -38 CFR § 38.620(d)</p>
<p>OTHER ELIGIBILITY CRITERIA -38 U.S.C. § 101(6), "Spanish-American War"; 101(7), "World War I"; 101(8), "World War II"; 101(9), "Korean conflict"; 101(11), "period of war"; 101(29), "Vietnam era"; 101(33), "Persian Gulf War" -38 CFR §3.2, Periods of war</p>	<p>CHARACTER OF DISCHARGE – N/A TIME/AGE SERVICE CRITERIA – N/A</p>
<p><u>SPOUSES AND SURVIVING SPOUSES</u> Spouse, surviving spouse (which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage) of a burial-eligible Veteran, Servicemember, qualified US citizen w/ honorable Allied wartime service, qualified Reservist, retired Reservist; or, the deceased spouse a living active duty Servicemember serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority (GCMCA), at the time of the spouse's death if such occurs before October 1, 2024.</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(5) -38 CFR 38.620(e)</p>

<p>OTHER ELIGIBILITY CRITERIA -38 U.S.C. § 101(3), “surviving spouse”; 101(31), “spouse”; NOTE: VA recognizes all same-sex marriages without regard to a Veteran’s current or previous state of residence. -38 U.S.C. § 103, Special provisions relating to marriages</p>	<p>CHARACTER OF DISCHARGE – N/A TIME/AGE SERVICE CRITERIA – N/A</p>
<p><u>CHILDREN</u> Minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), of a burial-eligible Veteran, Servicemember, qualified US citizen w/ honorable Allied wartime service, qualified Reservist, retired Reservist; or, the deceased child of a living active duty Servicemember serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse’s death if such occurs before October 1, 2024. <u>ADULT DEPENDENT CHILDREN</u> At the discretion of the Secretary, unmarried adult child of a burial-eligible Veteran, Servicemember, qualified US citizen w/ honorable Allied wartime service, qualified Reservist, retired Reservist; or, the deceased unmarried adult child of a living active duty Servicemember serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse’s death if such occurs before October 1, 2024.</p>	<p><u>TITLE 38 BURIAL AUTHORITIES</u> -38 U.S.C. § 2402(a)(5) -38 CFR § 38.620(e)</p>
<p>OTHER RELEVANT AUTHORITIES 38 U.S.C. § 101(4), “child”</p>	<p>CHARACTER OF DISCHARGE – N/A TIME/AGE SERVICE CRITERIA – N/A</p>
<p><u>VA-DESIGNATED AS ELIGIBLE PERSONS</u> Such other persons or classes of persons as may be designated by the Secretary.</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(6) -38 CFR § 38.620(f)</p>
<p>CHARACTER OF DISCHARGE / TIME/AGE SERVICE CRITERIA / OTHER RELEVANT AUTHORITIES – N/A</p>	

<p><u>FOREIGN SERVICE MEMBERS</u> Any individual who has certain service deemed not to be active service (Commonwealth Army Veteran or member of organized guerillas or Philippine Scouts) if such individual at the time of death was a U.S. citizen or alien lawfully admitted for permanent residence and resided in the U.S.</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(8) -38 CFR § 38.620(h) Eligibility applicable to deaths occurring on or after date of enactment, November 1, 2000.</p>
<p><u>TIME/AGE SERVICE CRITERIA</u> -38 U.S.C. 107(a)(3), Certain service deemed not to be active service; includes as an exception for chapter 23 and § 2402(a)(8) purposes service before 7/1/1946 in the organized military forces of the Commonwealth of the Philippines, in service of the U.S. Armed Forces under the 7/26/1941 Presidential order and organized guerrilla forces -38 CFR § 3.40, Philippine and Insular Forces</p>	<p>CHARACTER OF DISCHARGE – N/A OTHER RELEVANT AUTHORITIES – N/A</p>
<p><u>PARENT</u> The parent of an individual who is deemed a hostile casualty or died from a training related injury, interred in a national cemetery, and who at the time of the parent’s death did not have a spouse, surviving, spouse, or child who is buried or is eligible for burial in a national cemetery</p>	<p><u>TITLE 38 BURIAL ELIGIBILITY AUTHORITIES</u> -38 U.S.C. § 2402(a)(9), (b) -38 CFR § 38.620(i) Eligibility applicable to parent deaths occurring on or after date of enactment, October 13, 2010.</p>
<p><u>OTHER RELEVANT AUTHORITIES</u> Subject to a determination by the Secretary that there is available space within the interred individual’s gravesite</p>	<p>CHARACTER OF DISCHARGE – N/A TIME/AGE SERVICE CRITERIA – N/A</p>
<p><u>HMONG FIGHTERS</u> Any individual naturalized by the Hmong Veterans’ Naturalization Act of 2000 who at the time of death resided in the U.S.</p>	<p><u>TITLE 38 REFERENCES</u> 38 U.S.C. § 2402(a)(10) Eligibility applies to deaths occurring on or after the date of enactment, March 23, 2018.</p>
<p>CHARACTER OF DISCHARGE / TIME/AGE SERVICE CRITERIA / OTHER RELEVANT AUTHORITIES – N/A</p>	