

Supplemental Statement regarding non-substantive changes made to VA Form 22-5490, Dependents' Application for VA Education Benefits (Under Provisions of chapters 33 and 35, of title 38, U.S.C.)

On June 26, 2013, the Supreme Court held, in *United States v. Windsor*, that section 3 of the Defense of Marriage Act (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).

Therefore, VA is revising VA Form 22-5490, to add the following statute language approved by the White House and Department of Justice, in the instructions section of the form:

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/>.