

Regarding Determinations of Spousal Status When Processing Applications for VA-Guaranteed Home Loans

1. Purpose and Intent. The Department of Veterans Affairs (VA) is issuing this policy to clarify the way that lenders should process and underwrite home loan applications when applicants assert that they are married. Effective immediately, subject to paragraph 3 below, lenders may accept a Veteran's assertion of spousal status when a Veteran is applying for home loan benefits.

2. Discussion. On June 26, 2013, the Supreme Court held, in *United States v. Windsor*, that section 3 of the Defense of Marriage Act (DOMA) is unconstitutional because it violates Fifth Amendment principles by discriminating against same-sex couples who are legally married under state law. On September 4, 2013, the Attorney General notified Congress that the President had directed the Executive Branch to cease enforcement of 38 U.S.C. §§ 101(3) and 101(31) insofar as they permit VA to recognize only "a person of the opposite sex" as a Veteran's "spouse" or "surviving spouse." On October 4, 2013, the Secretary of Veterans Affairs informed Congress that, in light of the President's directive, VA will no longer enforce the definitional provisions in Title 38 to the extent those provisions preclude recognition of legally married same-sex couples. As a result of the President's direction, VA may recognize a Veteran's same-sex marriage, provided that the marriage meets the requirements of 38 U.S.C. § 103(c). Section 103(c) provides that, for purposes of all laws administered by VA, a Veteran's marriage is to be recognized "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." Section 103(c) applies to all variations in state marriage laws such as common law and age-of-consent requirements.

a. The administrations within VA will apply the same level of scrutiny to all Veterans' marriages, regardless of whether they are same-sex or opposite-sex marriages. VA will therefore process claims and applications involving same-sex marriage in the same manner as claims and applications based on opposite-sex marriage, without any additional scrutiny or development.

b. To further implement this policy of equal treatment, VA is issuing this Circular and will continue to make the section 103(c) standard known through form instructions, Web pages, and other means so that VA claimants and applicants are aware of when VA can recognize their marriage. These instructions will identify that VA will generally accept a claimant's or applicant's assertion that he or she is married as sufficient evidence to establish the Veteran's marriage. For the purposes of home loan benefits administered by Loan Guaranty Service, VA will accept an assertion on VA Form 26-1802a, *HUD/VA Addendum to Uniform Residential Loan Application*, to establish spousal status for the purpose of this benefit.

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3. Lender Processing. The section 103(c) standard is satisfied for VA Home Loan benefit purposes if the marriage was legal in the place where the Veteran or the Veteran's spouse resided at the time of the marriage, legal in the place where the Veteran or the Veteran's spouse resided at the time the completed Uniform Residential Loan Application and VA Form 26-1802a, *HUD/VA Addendum to Uniform Residential Loan Application*, were submitted to the proposed lender, or legal in the place where the Veteran or the Veteran's spouse resided at the time of closing. The instructions on VA Form 26-1802a have been updated to include information on the section 103(c) standard and a link to a public Web site (<http://www.va.gov/opa/marriage/>) that contains information specific to marriage issues. If the applicant asserts a spousal relationship in item 19 and signs the form, which includes a certification by the applicant that "the information ... is true and complete to the best of [the applicant's] knowledge and belief," lenders with authority to close loans on an automatic basis may process the loan per normal practices without submitting a loan package to VA for approval of spousal status.

a. If an applicant informs a lender that the applicant is uncertain as to whether the marriage may be recognized for VA purposes, the lender may submit the loan file to VA for a determination regarding whether the marriage will be recognized. However, the lender has no obligation to VA to request a VA determination or to request additional information to verify the spousal assertion (unless the lender requests a VA determination). Consistent with current policy (applicable to all marriage-based benefits), if an assertion concerning a marriage appears unreliable, the lender should submit the file to VA for a determination as to whether the marriage will be recognized. Neither VA nor lenders will treat assertions regarding same-sex marriages as inherently suspect for this purpose.

b. If the applicant or lender requests that VA make a determination regarding whether the marriage can be recognized, the following information should be provided to the appropriate VA Regional Loan Center for further review: (1) date and state of marriage; (2) state(s) of residence of the parties at the time of marriage; (3) state where the subject property is located; (4) current state(s) of residence of the parties; (5) estimated date of loan closing; and (6) whether VA has previously recognized the marriage for the purpose of a different VA benefit or service. The lender should request this information from the applicant if not already available to the lender. VA staff will then notify the applicant if both spouses' incomes may be applied.

4. Questions. Direct any questions on this circular to Ms. Erica Lewis at lgylegal.vbavaco@va.gov. You can also find additional information about marriage and VA benefits at <http://www.va.gov/opa/marriage/>.

5. Rescission:

- a. Circular 26-13-18 is rescinded immediately.
- b. This circular is rescinded January 1, 2016.

By Direction of the Under Secretary for Benefits

Michael J. Frueh
Director, Loan Guaranty Service

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