

Department of Veterans Affairs

§ 38.600

(2) the maximum amount of coverage allowed under the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

(Authority: 42 U.S.C. 4104a)

[62 FR 5534, Feb. 6, 1997]

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

Sec.

- 38.600 Definitions.
- 38.601 Advisory Committee on Cemeteries and Memorials.
- 38.602 Names for national cemeteries and features.
- 38.603 Gifts and donations.
- 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes or certain sex offenses.
- 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.
- 38.619 Requests for interment, committal services or memorial services, and funeral honors.
- 38.620 Persons eligible for burial.
- 38.621 Disinterments.
- 38.628 Reimbursement for caskets and urns for unclaimed remains of veterans.
- 38.629 Outer burial receptacle allowance.
- 38.630 Burial headstones and markers; medallions.
- 38.631 Memorial headstones and markers.
- 38.632 Emblems of belief.
- 38.633 Group memorial monuments.

VETERANS LEGACY GRANTS PROGRAM

- 38.710 Purpose and use of grant funds.
- 38.715 Definitions.
- 38.720 Grants—general.

- 38.725 Notice of Funding Availability (NOFA).
- 38.730 Applications.
- 38.735 Additional factors for deciding applications.
- 38.740 Scoring and selection.
- 38.745 Disposition of applications.
- 38.750 Withdrawal of grant application.
- 38.755 Grant agreement.
- 38.760 Payments under the grant.
- 38.765 Grantee reporting requirements.
- 38.770 Recovery of funds by VA.
- 38.775 Compliance review requirements.
- 38.780 Financial management.
- 38.785 Recordkeeping.

AUTHORITY: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

SOURCE: 70 FR 4769, Jan. 31, 2005, unless otherwise noted.

§ 38.600 Definitions.

(a) The following definitions apply to this part:

Appropriate State official means a State attorney general or other official with statewide responsibility for law enforcement or penal functions.

Clear and convincing evidence means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.

Convicted means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.

Federal capital crime means an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Interment means the burial of casketed remains or the placement or scattering of cremated remains.

Life imprisonment means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.

Memorialization means any action taken to honor the memory of a deceased individual.

Personal representative means a family member or other individual who has identified himself or herself to the National Cemetery Administration as the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.

State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of

§ 38.601

imprisonment for life or the death penalty may be imposed.

(b) Other terms not defined in paragraph (a) of this section may be defined within and be applicable to other sections throughout this part.

(Authority: 38 U.S.C. 2404, 2411)

[86 FR 43097, Aug. 6, 2021; 86 FR 47387, Aug. 25, 2021]

§ 38.601 Advisory Committee on Cemeteries and Memorials.

Responsibilities in connection with Committee authorized by 38 U.S.C. chapter 24 are as follows:

(a) The Under Secretary for Memorial Affairs will schedule the frequency of meetings, make presentations before the Committee, participate when requested by the Committee, evaluate Committee reports and recommendations and make recommendations to the Secretary based on Committee actions.

(b) The Committee will evaluate and study cemeterial, memorial and burial benefits proposals or problems submitted by the Secretary or Under Secretary for Memorial Affairs, and make recommendations as to course of action or solution. Reports and recommendations will be submitted to the Secretary for transmission to Congress.

§ 38.602 Names for national cemeteries and features.

(a) *Responsibility.* The Secretary is responsible for naming national cemeteries. The Under Secretary for Memorial Affairs, is responsible for naming activities and features therein, such as drives, walks, or special structures.

(b) *Basis for names.* The names of national cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic related to the area. Newly constructed interior thoroughfares for vehicular traffic in national cemetery activities will be known as *drives*. To facilitate location of graves by visitors, drives will be named after cities, counties or States or after historically notable persons, places or events.

38 CFR Ch. I (7–1–23 Edition)

§ 38.603 Gifts and donations.

(a) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:

(1) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance will be coordinated with the superintendent of the national cemetery.

(2) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the articles were donated cannot be accomplished.

(3) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Department of Veterans Affairs policy.

(4) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.

(b) The Under Secretary of Memorial Affairs, or his designee, may solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for donation of money or articles to the Department of Veterans Affairs for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

AUTHORITY: 38 U.S.C. 2407.

[70 FR 4769, Jan. 31, 2005, as amended at 81 FR 44795, July 11, 2016]

§ 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes or certain sex offenses.

(a) *Persons prohibited.* The interment in a national cemetery under control of the National Cemetery Administration of the remains of any person, or memorialization of such person, shall not take place absent a good faith effort by the Under Secretary for Memorial Affairs, or his or her designee, to determine whether such person is barred from receipt of such benefits because the individual for whom interment or memorialization is sought is:

(1) A person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime, and whose conviction is final, other than a person whose sentence was commuted by the President.

(2) A person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime, and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) A person found under procedures specified in § 38.618 to have committed a Federal or State capital crime but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(4) A person identified to the Secretary of Veterans Affairs, by the United States Attorney General, in the case of a Federal crime, or by an appropriate State official, in the case of a State crime, as an individual who has been convicted of a Federal or State crime causing the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (34 U.S.C. 20901, *et seq.*); who, for such crime, is sentenced to a minimum of life imprisonment; and whose conviction is final (other than a person whose sentence was commuted by the President or Governor of a State).

(b) *Notice.* The prohibition referred to in paragraph (a)(3) of this section is not

contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) *Receipt of notification.* The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification referred to in paragraphs (a)(1), (2), and (4) of this section.

(d) *Decision where notification previously received.* Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1), (2), or (4) of this section with regard to the deceased, the Under Secretary for Memorial Affairs, or his or her designee, will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) *Inquiry.* (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1), (2), or (4) of this section with regard to the deceased, but the Under Secretary for Memorial Affairs, or his or her designee, has reason to believe that the deceased may have been convicted of a Federal or State capital crime or sex offense as referred to in paragraph (a)(1), (2), or (4) of this section, the Under Secretary for Memorial Affairs, or his or her designee, will initiate an inquiry to either:

(i) The United States Attorney General, requesting notification of whether the deceased has been convicted of a Federal capital crime or sex offense as referred to in paragraph (a)(1) or (4) of this section; or

(ii) An appropriate State official, requesting notification of whether the deceased has been convicted of a State capital crime or sex offense as referred to in paragraph (a)(2) or (4) of this section.

(2) The Under Secretary for Memorial Affairs, or his or her designee, will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) *Decision after inquiry.* Where an inquiry has been initiated under paragraph (e) of this section, the Under Secretary for Memorial Affairs, or his or her designee, will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested, unless the Under Secretary for Memorial Affairs, or his or her designee, initiates an inquiry pursuant to § 38.618(a).

(g) *Notice of decision.* Written notice of a decision under paragraph (d) or (f) of this section will be provided by the Under Secretary for Memorial Affairs, or his or her designee, to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the Under Secretary for Memorial Affairs, or his or her designee. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411, 7105)

[70 FR 4769, Jan. 31, 2005, as amended at 73 FR 35352, June 23, 2008; 84 FR 5954, Feb. 25, 2019]

§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Inquiry.* With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information. After completion of this inquiry and any further measures required under paragraphs (c), (d), (e), and (f) of this section, the cemetery di-

rector will make a decision on the request for interment or memorialization in accordance with paragraph (b), (e), or (g) of this section.

(b) *Decision approving request without a proceeding or termination of a claim by personal representative without a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there is no clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving the interment or memorialization.

(2) If the personal representative elects for burial at a location other than a VA national cemetery, or makes alternate arrangements for burial at a location other than a VA national cemetery, the request for interment or memorialization will be considered withdrawn and action on the request will be terminated.

(c) *Initiation of a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there appears to be clear and convincing evidence that the deceased has committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director will provide the personal representative of the deceased with a written summary of the evidence of record and a written notice of procedural options.

(2) The notice of procedural options will inform the personal representative that he or she may, within 15 days of receipt of the notice:

- (i) Request a hearing on the matter;
- (ii) Submit a written statement, with or without supporting documentation, for inclusion in the record;
- (iii) Waive a hearing and submission of a written statement and have the matter forwarded immediately to the Under Secretary for Memorial Affairs for a finding; or
- (iv) Notify the cemetery director that the personal representative is withdrawing the request for interment

or memorialization, thereby, closing the claim.

(3) The notice of procedural options will also inform the personal representative that, if he or she does not exercise one or more of the stated options within the prescribed period, the matter will be forwarded to the Under Secretary for Memorial Affairs for a finding based on the existing record.

(d) *Hearing.* If a hearing is requested, the Director, Memorial Services Network will conduct the hearing. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime which would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing will be produced and included in the record.

(e) *Decision of approval or referral for a finding after a proceeding.* Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified:

(1) If the cemetery director determines that it has not been established by clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving interment or memorialization; or

(2) If the cemetery director believes that there is clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a

request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record to the Under Secretary for Memorial Affairs.

(f) *Finding by the Under Secretary for Memorial Affairs.* Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) *Decision after finding.* Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) *Notice of decision.* The cemetery director will provide written notice of the finding of the Under Secretary for Memorial Affairs and of a decision under paragraph (b), (e)(1), or (g) of this section. With notice of any decision denying a request for interment or memorialization, the cemetery director will provide written notice of appellate rights to the personal representative of the deceased, in accordance with §19.25 of this title. This will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in

§ 38.619

38 CFR Ch. I (7-1-23 Edition)

accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411)

§ 38.619 Requests for interment, committal services or memorial services, and funeral honors.

(a) *Interment requests.* A personal representative, as defined in § 38.600, may request interment of an eligible decedent in a national cemetery by contacting the National Cemetery Scheduling Office (NCSO) at 1-800-535-1117.

(1) *Required information.* VA will request the following information from the decedent's personal representative at the time of the request for interment to allow VA to schedule the interment for the decedent:

(i) Documentation of the decedent's eligibility for national cemetery interment. If needed, VA will make reasonable efforts to assist the personal representative in obtaining such documentation;

(ii) Preferred date and time for the interment;

(iii) Whether a committal service is requested (a committal service is not required);

(iv) Whether the remains are in a casket or urn. For cremated remains, the personal representative will be advised to present a certificate of cremation or other documentation sufficient to identify the decedent at the time of interment.

(v) The size of the casket or urn.

(vi) The contact information for the personal representative.

(vii) Whether a private vault will be provided to the national cemetery or a government-furnished grave liner is required.

(viii) Whether the personal representative intends to have funeral honors during the committal service, if the decedent is a veteran.

(ix) Other relevant information necessary to establish or confirm eligibility of the decedent and/or for cemetery logistics and planning.

(2) [Reserved].

(b) *Memorial services requests.* The personal representative may request a memorial service for a decedent who is eligible for interment in a VA national cemetery. Memorial services may be conducted if the decedent's cremated

remains will be scattered and will not be interred, or if the remains of the eligible individual are otherwise not available for interment, or were previously interred without a committal service. The personal representative may request the memorial service by contacting the National Cemetery Scheduling Office (NCSO) at 1-800-535-1117 and providing the following required information:

(1) Documentation of the decedent's eligibility for national cemetery interment. If needed, VA will make reasonable efforts to assist the personal representative in obtaining such documentation;

(2) Preferred date and time for the memorial service;

(3) The contact information for the personal representative;

(4) Whether the personal representative intends to have funeral honors services during the memorial service, if the decedent is a veteran;

(5) Other relevant information necessary to establish or confirm eligibility of the decedent and/or for cemetery logistics and planning.

(c) *Content of committal or memorial services.* VA will respect and defer to the expressed wishes of the personal representative for the content and conduct of a committal or memorial service, including the display of religious or other symbols chosen by the family, the use of all appropriate public areas, and the selection of funeral honors providers, provided that the safety and security of the national cemetery and its visitors are not adversely affected.

(d) *Location of services.* Committal or memorial services at VA national cemeteries will be held in committal shelters located away from the gravesite to ensure accessibility and visitor safety, unless the cemetery director determines that a committal shelter is not available for logistical reasons, or the cemetery director approves a request from the personal representative for a gravesite service. A request for a gravesite service may be approved by the cemetery director if:

(1) The service is requested by the decedent's personal representative for religious reasons; and

(2) The request is made sufficiently prior to the scheduled committal service to ensure the gravesite is accessible; and

(3) The cemetery director has sufficient staffing resources for the gravesite service, and

(4) The site can be safely accessed on the day of the service.

(e) *Witnessing interment without additional services.* When scheduling the interment, the decedent's personal representative may request to witness the interment of the decedent's remains without additional services at the committal shelter. Approval of a request for witness-only interment is at the discretion of the cemetery director, and may be made only if:

(1) The timing of the request provides sufficient time to ensure the gravesite is accessible, and;

(2) The site can be safely accessed on the day of the interment. This determination may require limiting the number of individuals who may witness the interment and other logistics, such as distance from the gravesite, as the cemetery director finds necessary.

(f) *Funeral honors—(1) List of organizations providing funeral honors.* Each cemetery director will maintain a list of organizations that will, upon request, provide funeral honors at the cemetery at no cost to the family. Each list must include DoD funeral honors contacts. Non-DoD funeral honors providers who want to be included on the list must make a request to the cemetery director and meet the requirements of paragraph (f)(5) of this section.

(2) *Request required.* Funeral honors will be provided at a committal or memorial service for an eligible individual only if requested by the decedent's personal representative. When scheduling a committal or memorial service for a veteran or other eligible individual who served in the U.S. armed forces, the NCSO will make available to the personal representative the list of available funeral honors providers, as described in paragraph (f)(1) of this section, for the cemetery where interment or services are to be scheduled. The decedent's personal representative may choose any funeral honors provider(s) on the list provided by VA, and/or any

other organization that provides funeral honors services.

(3) *Agreement.* Any agreement to provide funeral honors is exclusively between the organization(s) providing funeral honors and the decedent's personal representative. The composition of a funeral honors detail, as well as the specific content of the ceremony provided during a committal or memorial service is dependent on available resources of the providing organization(s). The Department of Defense (DoD) is responsible for determining eligibility for funeral honors provided by a DoD funeral honors detail. If funeral honors are provided by a combined detail that includes one or more funeral honors providers, all providers must provide services as requested by the personal representative.

(4) *Requirements for all funeral honors providers.* All organizations performing funeral honors at VA national cemeteries, including DoD organizations and any provider selected by the personal representative that is not on the list of providers provided by VA under paragraph (f)(1) of this section, must:

(i) Provide to the cemetery director the name and contact information of a representative for the organization who is accountable for funeral honors activities; and

(ii) Comply with VA security, safety, and law enforcement regulations under 38 CFR 1.218; and

(iii) Maintain and operate any equipment in a safe manner consistent with VA and DoD policies and regulations; and

(iv) Not solicit for or accept donations on VA property except as authorized under 38 CFR 1.218(a)(8).

(5) *Additional requirements for non-DoD funeral honors providers.* Non-DoD funeral honors providers, including any provider selected by the personal representative that is not on the list of providers provided by VA under paragraph (f)(1) of this section, must certify that:

(i) They will comply with the requirements in subparagraphs (f)(4) of this section;

(ii) They are conducting activities on federal property as an independent entity, not as an agent or employee of

VA, unless registered as a VA volunteer;

(iii) Members of the organization who will conduct the funeral honors have completed training on funeral honors tasks and the safe use of funeral honors equipment; and

(iv) The funeral honors will be provided in accordance with the agreement in paragraph (f)(3) of this section between the personal representative and the funeral honors provider.

(g) *Public areas.* The cemetery director and cemetery staff will allow access to and use of appropriate public areas of the national cemetery by national cemetery visitors, as well as to families and funeral honors providers for service preparations, contemplation, prayer, mourning, or reflection, so long as the safety and security of the national cemetery and cemetery operations are not adversely affected. Appropriate public areas include, but are not limited to, committal shelters, rest areas, chapels, and benches. The cemetery director will ensure that signs adequately identify restricted or non-public areas in the national cemetery.

(h) *Gifts.* Nothing in this section prohibits or constrains any member of a funeral honors provider, a Veterans Service Organization, or the public from offering a gift or token to a family member of the decedent or any person at a committal or memorial service, provided that no compensation is requested, received, or expected in exchange for such gift or token. Committal or memorial service attendees may accept or decline any such gift or token, and may request that the offeror refrain from making any such offers to the service attendees.

(Authority: 38 U.S.C. 2402, 2404)

[84 FR 38557, Aug. 7, 2019]

§ 38.620 Persons eligible for burial.

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or

the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Hospitalized or undergoing treatment at the expense of the United States.

(d) Any person 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, whose last such service terminated honorably, and who was a citizen of the United States at the time of entry on such service and at the time of his or her death.

(e) The spouse, surviving spouse, minor child, or unmarried adult child of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section. For purposes of this section—

(1) A surviving spouse includes a surviving spouse who had a subsequent remarriage;

(2) A minor child means an unmarried child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution; and

(3) An unmarried adult child means a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21

Department of Veterans Affairs

§ 38.620

years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

(f) Such other persons or classes of persons as may be designated by the Secretary.

(g) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(h) Any person who:

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States at the time of their death; and

(2) Resided in the United States at the time of their death; and

(3) Either was a—

(i) Commonwealth Army veteran or member of the organized guerillas—a person who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who died on or after November 1, 2000; or

(ii) New Philippine Scout—a person who enlisted between October 6, 1945, and June 30, 1947, with the Armed Forces of the United States with the consent of the Philippine government, pursuant to section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who died on or after December 16, 2003.

(i)(1) Any biological or legally adoptive parent who dies on or after October 13, 2010, and whose deceased child:

(i) Is a veteran who dies on or after October 7, 2001, and

(A) Except as provided in paragraph (i)(2) of this section, dies as the direct result of hostile action with the enemy, while in combat, while in transit to or from a combat mission if the cause of death is directly related to

hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat; or

(B) Is killed mistakenly or accidentally by friendly fire that was directed at a hostile force or what was thought to be a hostile force; or

(C) Died from a training-related injury while performing authorized training activities in preparation for a combat mission;

(ii) Is interred in a national cemetery; and

(iii) Has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a national cemetery under paragraph (e) of this section.

(2) A parent is not eligible for burial if the veteran dies due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the veteran was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.

(3)(i) A parent may be buried only within the veteran child's gravesite.

(ii) No more than two parents are eligible for burial per deceased veteran child.

(4) Parent burial eligibility is subject to a determination by the Secretary that there is available space within the veteran's gravesite.

(j) Any individual who:

(1) Was naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000 (Pub. L. 106-207, 114 Stat. 316; 8 U.S.C. 1423 note); and

(2) At the time of the individual's death resided in the United States; and

(3) Died on or after March 23, 2018.

(k) The spouse, minor child, and unmarried adult child of a member of the Armed Forces 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 or child's death if such death occurs before October 1, 2024. Paragraphs (e)(2) and (3) of this section provide the applicable definitions for "minor child" and "unmarried adult child."

NOTE 1 TO § 38.620: A benefit request pertaining to a decedent whose character of discharge may potentially bar eligibility to that benefit may be referred to the Veterans

§ 38.621

Benefits Administration for review in accordance with 38 CFR 3.12 (Character of discharge) or other applicable sections.

(Authority: 38 U.S.C. 107, 501, 2402)

[70 FR 4769, Jan. 31, 2005, as amended at 77 FR 4678, Jan. 31, 2012; 86 FR 43098, Aug. 6, 2021; 86 FR 52077, Sept. 20, 2021]

§ 38.621 Disinterments.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery District Executive Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when:

(1) A court order or State instrumentality of competent jurisdiction directs the disinterment; or

(2) All living immediate family members of the decedent, and the individual who initiated the interment (whether or not the individual is a member of the immediate family), give their written consent.

(i) If the individual who initiated the interment does not consent, or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must provide VA with an order from a court or State instrumentality of competent jurisdiction to direct the disinterment as provided in paragraph (a)(1) of this section.

(ii) For purposes of this section, “immediate family members” are defined as surviving spouse, whether or not he or she is or was remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent’s parents will be considered “immediate family members.”

(b)(1) All requests to disinter remains as described in paragraph (a)(2) of this section must be submitted on VA Form 40–4970, Request for Disinterment, and must include the following information:

38 CFR Ch. I (7–1–23 Edition)

(i) A full statement of reasons for the proposed disinterment.

(ii) Notarized statement(s) by all living immediate family members of the decedent, and by the person who initiated the interment (whether or not the individual is a member of the immediate family), that all parties consent to the proposed disinterment.

(iii) A notarized statement by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased and the individual who initiated the interment.

(2) If the person provides a false certification on VA Form 40–4970, he or she may be subject to penalties, to include fine or imprisonment or both.

(c) Any VA-approved disinterment in this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) of this section have been approved by the Office of Management and Budget under OMB control number 2900–0365)

(Authority: 38 U.S.C. 2404)

[87 FR 50575, Aug. 17, 2022]

§ 38.628 Reimbursement for caskets and urns for unclaimed remains of veterans.

(a) VA will reimburse any individual or entity for the actual cost of a casket or an urn, purchased by the individual or entity for the burial in a national cemetery of an eligible veteran who died on or after January 10, 2014, for whom VA:

(1) Is unable to identify the veteran’s next-of-kin; and

(2) Determines that sufficient resources are otherwise unavailable to furnish the casket or urn.

(b) For purposes of satisfying the requirements of paragraph (a) of this section, VA will rely entirely on the requesting individual’s or entity’s certification as required under paragraphs (c)(2) and (3) of this section.

(c) An individual or entity may request reimbursement from VA under paragraph (a) of this section by completing and submitting VA Form 40–10088, and supporting documentation, in accordance with the instructions on

the form. Prior to approving reimbursement VA must find all of the following:

(1) The veteran is eligible for burial in a VA national cemetery;

(2) The individual or entity has certified that they cannot identify the veteran's next-of-kin, or that an identified next-of-kin is unwilling or unable to assume responsibility for the deceased veteran's burial arrangements, and that the individual or entity has followed applicable state or local law relating to the disposition of unclaimed remains;

(3) The individual or entity has certified that, to the best of their knowledge, sufficient resources are otherwise unavailable to furnish the casket or urn;

(4) The invoice presented by the individual or entity clearly indicates the purchase price of the casket or urn purchased by the individual or entity; and

(5) The invoice presented by the individual or entity contains information sufficient for VA to determine, in conjunction with a visual inspection, that the casket or urn meets the following standards:

(i) Caskets must be of metal construction of at least 20-gauge thickness, designed for containing human remains, sufficient to contain the remains of the deceased veteran, include a gasketed seal, and include external fixed rails or swing arm handles.

(ii) Urns must be of a durable construction, such as durable plastic, wood, metal, or ceramic, designed to contain cremated human remains, and include a secure closure to contain the cremated remains.

(d) Reimbursement for a claim received in any calendar year under paragraph (a) of this section will not exceed the average cost of a 20-gauge metal casket or a durable plastic urn during the fiscal year preceding the calendar year of the claim, as determined by VA and published annually in the FEDERAL REGISTER.

(e) If, before July 2, 2014, an individual or entity purchased a casket or urn for burial in a VA national cemetery of the remains of a veteran who died after January 10, 2014, and the burial receptacle is not at least a 20-gauge metal casket or a durable plastic urn,

VA will reimburse the purchase price of the burial receptacle, providing all other criteria in this regulation are met. The reimbursement amount will be subject to the maximum reimbursement amount calculated for 2015.

(The Office of Management and Budget has approved the information collection requirements under this section under control number 2900-0799.)

(Authority: 38 U.S.C. 2306, 2402, 2411)

[80 FR 19538, Apr. 13, 2015]

EFFECTIVE DATE NOTE: At 88 FR 42247, June 30, 2023, §38.625 was amended by revising the section heading, the introductory text of paragraphs (a) and (c), and paragraphs (c)(1), (c)(5)(i), (d), and (e), effective July 31, 2023. For the convenience of the user, the added and revised text is set forth as follows:

§ 38.628 Allowance for caskets and urns for unclaimed remains of veterans.

(a) VA will issue a flat-rate allowance, as established in paragraph (d) of this section, to any individual or entity for a casket or urn, purchased by the individual or entity for the burial in a national cemetery or in a veterans' cemetery of a State or Tribal Organization that has received a grant under 38 U.S.C. 2408, of an eligible deceased veteran for whom VA:

* * * * *

(c) An individual or entity may request an allowance from VA under paragraph (a) of this section by completing and submitting VA Form 40-10088 and supporting documentation, in accordance with the instructions on the form. Prior to approving issuance of an allowance, VA must find all of the following:

(1) The veteran is eligible for burial in a VA national cemetery or in a veterans' cemetery of a State or Tribal Organization that has received a grant under 38 U.S.C. 2408;

* * * * *

(5) * * *

(i) Caskets must be of metal construction of at least 20-gauge thickness, designed for containing human remains, sufficient to contain the remains of the deceased veteran, and include external fixed rails or swing arm handles.

* * * * *

(d) The allowance for a claim received in any calendar year under paragraph (a) of this section is \$1,199.00 for a metal casket and \$138.00 for an urn of durable material.

(e) VA will make cost-of-living adjustments for the flat-rate casket and urn allowances using the Consumer Price Index (CPI). Each fiscal year, VA will provide a percentage increase (rounded to the nearest dollar) in the casket and urn flat-rate allowances equal to the percentage by which the CPI (all items, United States city average) for the 12-month period (June to June) preceding the beginning of the fiscal year for which the percentage increase is made exceeds the CPI for the 12-month period preceding the 12-month period described in this paragraph (e). VA will only make cost-of-living increases to the flat rate allowances when the CPI has increased.

* * * * *

§ 38.629 Outer Burial Receptacle Allowance.

(a) *Definitions—Outer burial receptacle.* For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

(c) *Second interments.* In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person pri-

vately purchased the outer burial receptacle (however, if a person who is not listed as the next of kin provides evidence that he or she privately purchased the outer burial receptacle, the allowance will be paid instead to that person). No application is required to receive payment of a monetary allowance.

(e) *Amount of the allowance.* (1) For calendar year 2000 and each calendar year thereafter, the allowance will be the average cost, as determined by VA, of Government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

(i) The average cost of Government-furnished graveliners will be based upon the actual average cost to the Government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA's total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, the amount of the allowance for each calendar year will be published in the "Notices" section of the FEDERAL REGISTER. The FEDERAL REGISTER notice will also provide, as information, the determined average cost of Government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for

payment of any allowances for interments which occurred during the period from October 9, 1996 through December 31, 1999.

(Authority: 38 U.S.C. 2306(d))

§ 38.630 Burial headstones and markers; medallions.

(a) *Eligibility*—(1) *Unmarked graves.* VA will furnish, when requested under paragraph (b)(1)(i) or (ii) of this section, a burial headstone or marker for the unmarked grave of the following individuals:

(i) Any individual buried in a national cemetery or in a military post cemetery. When more than one individual is buried in a single gravesite in a national cemetery, VA will, if feasible, include inscription information for all such individuals on a single headstone or marker, rather than furnishing a separate headstone or marker for each buried individual.

(ii) The following individuals eligible for burial in a national cemetery but who are buried elsewhere, where such graves may be located in any type of non-national cemetery (e.g., state, tribal, private, or local government such as town or city cemetery):

(A) Veterans as described in § 38.620(a).

(B) Members of a Reserve component of the Armed Forces, or members of the Army National Guard or the Air National Guard, whose deaths occurred under the conditions described in § 38.620(b).

(C) Members of the Reserve Officers' Training Corps of the Army, Navy, or Air Force, whose deaths occurred under the conditions described in § 38.620(c).

(D) Individuals who separated from military service and were entitled to retired pay under chapter 1223 of title 10 (10 U.S.C. 12731 *et seq.*), as described in and subject to § 38.620(g).

(E) Individuals who served in the organized military forces of the Government of the Commonwealth of the Philippines, or who served in the New Philippine Scouts, as described in and subject to § 38.620(h).

(F) Individuals who were naturalized pursuant to sec. 2(1) of the Hmong Veterans' Naturalization Act of 2000, as described in and subject to § 38.620(j).

(iii) Soldiers of the Union and Confederate Armies of the Civil War, whose graves may be located in any type of non-national cemetery (e.g., state, tribal, private, or local government cemetery).

(iv) Spouses, surviving spouses, and dependent children, as described in and subject to § 38.620(e) or § 38.620(k), whose graves are located in a veterans' cemetery owned by a State, or a veterans' cemetery owned by a Tribal Organization or on land owned by or held in trust for a Tribal Organization.

(2) *Marked graves.* (i) Subject to paragraphs (a)(2)(ii) and (iii) of this section, VA will furnish, when requested under paragraph (b)(1)(ii) of this section, a burial headstone or marker for the graves of the following individuals who are buried in a non-national cemetery (e.g., state, tribal, private, or local government cemetery), notwithstanding that such graves are already marked by a privately purchased headstone or marker.

(A) Veterans as described in § 38.620(a).

(B) Members of a Reserve component of the Armed Forces, or members of the Army National Guard or the Air National Guard, whose deaths occurred under the conditions described in § 38.620(b).

(C) Members of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose deaths occurred under the conditions described in § 38.620(c).

(D) Individuals who separated from military service and were entitled to retired pay under chapter 1223 of title 10 (10 U.S.C. 12731 *et seq.*), as described in and subject to § 38.620(g).

(E) Individuals who served in the organized military forces of the Government of the Commonwealth of the Philippines, or who served in the New Philippine Scouts, as described in and subject to § 38.620(h).

(F) Individuals who were naturalized pursuant to sec. 2(1) of the Hmong Veterans' Naturalization Act of 2000, as described in and subject to § 38.620(j).

(ii) An individual described in paragraph (a)(2)(i) of this section is eligible for a headstone or marker provided under this paragraph (a)(2) if:

(A) The individual died on or after November 1, 1990; or

(B) They were a Medal of Honor recipient and served in the Armed Forces on or after April 6, 1917.

(iii) In lieu of a headstone or marker provided under this paragraph (a)(2), veterans described in paragraph (a)(2)(i)(A) of this section are eligible for a medallion to be affixed to their privately purchased headstone or marker if they served in the Armed Forces on or after April 6, 1917.

(b) *General*—(1) *Application*. (i) When burial occurs in a cemetery that uses the National Cemetery Administration (NCA) electronic ordering system (e.g., national cemetery, State veterans' cemetery, or military post cemetery), the headstone or marker provided under paragraph (a)(1) or (2) of this section will be ordered by the applicable cemetery as part of the process of arranging burial.

(ii) When burial occurs in a cemetery that does not use NCA's electronic ordering system (e.g., private or local government cemetery), an applicant, as defined in paragraph (c)(1) of this section, may either:

(A) Request a burial headstone or marker provided under paragraph (a)(1) or (2) of this section by completing and submitting VA Form 40-1330, Claim for Standard Government Headstone or Marker; or

(B) Request a medallion provided under paragraph (a)(2)(iii) of this section to be affixed to a privately purchased headstone or marker, by completing and submitting VA Form 40-1330M, Claim for Government Medallion for Placement in a Private Cemetery.

(iii) VA Forms 40-1330 and 40-1330M include application and submission instructions as well as additional information related to emblems of belief, and are accessible through the following links: <https://www.va.gov/vaforms/va/pdf/VA40-1330.pdf>, and <https://www.va.gov/vaforms/va/pdf/VA40-1330M.pdf>.

(A) An applicant for a burial headstone or marker for an unmarked grave provided under paragraph (a)(1) of this section, for placement in a private cemetery or a local government cemetery, must certify on VA Form 40-1330 that such headstone or marker will be

placed on or at the grave for which it is requested.

(B) An applicant for a burial headstone or marker for a marked grave provided under paragraph (a)(2) of this section, for placement in a private cemetery or a local government cemetery, must certify on VA Form 40-1330 that such headstone or marker will be placed on the grave for which it is requested, or if such placement is not possible or practicable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

(C) A representative of a private cemetery or local government cemetery that accepts delivery of a burial headstone or marker provided under paragraph (a)(1) or (2) of this section must certify on VA Form 40-1330 that placement of the headstone or marker adheres to the policies or guidelines of the cemetery in which the grave is located.

(2) *Styles, types, and inscriptions*. The styles and types of burial headstones and markers provided under paragraphs (a)(1) and (2) of this section, as well as the inscriptions thereon to include an emblem of belief, will be provided in accordance with VA policy as well as in a manner consistent with 38 U.S.C. 2306(c) and 2404(c).

(i) The styles and types of burial headstones and markers made available for selection, as well as the inscriptions thereon, may be limited in accordance with certain requirements, including but not limited to aesthetic or administrative requirements of the cemetery in which the headstone or marker will be placed.

(ii) The same styles and types of headstones and markers made available for selection by requestors of headstones and markers provided for unmarked graves under paragraph (a)(1) of this section shall be made available for requestors of headstones or markers for marked graves provided under paragraph (a)(2) of this section.

(iii) Upon request under paragraph (b)(1)(i) or (ii) of this section, a headstone, marker, or medallion provided under paragraph (a)(1) or (2) of this section shall signify the deceased's status as a Medal of Honor recipient as applicable.

(iv) If an emblem of belief is requested that is not offered in VA's inventory of images for emblems of belief, additional requirements apply under § 38.632.

(3) *Replacement.* (i) Upon request, VA will replace a Government-furnished burial headstone, marker, or medallion, if the previously furnished headstone, marker, or medallion:

(A) Is damaged beyond repair; or

(B) Has deteriorated to the extent it no longer serves to identify the buried decedent (e.g., identifying elements of an inscription are not legible, such as a decedent's name or a grave number for an unknown decedent), or, in the case of a medallion, no longer serves to identify the buried decedent as a veteran or as a Medal of Honor recipient if applicable; or

(C) Has been stolen or vandalized; or

(D) Is the incorrect style or type for the veteran's era of service; or

(E) Requires changing or adding inscription information for the following reasons:

(1) To correct errors in factual information (such as name or date of birth or death) provided to VA as part of the initial application process; or

(2) To indicate information related to the deceased's military service that is provided to VA after the initial application process (such as the deceased's posthumous receipt of military awards); or

(3) To identify on a single headstone or marker multiple decedents who are each eligible for a headstone or marker and who are buried in the same gravesite in a cemetery, to include identification of a spouse or dependent in accordance with 38 U.S.C. 2306(g)(1); or

(4) To indicate the deceased's status as a Medal of Honor recipient if applicable, for a headstone or marker provided for a marked grave under paragraph (a)(2) of this section, in accordance with 38 U.S.C. 2306(d)(5)(B).

(5) For any reason not listed in paragraphs (b)(3)(i)(E)(1) through (4) of this section, if the request to change or add inscription information is received from the decedent's next of kin as indicated in NCA's records systems, within six months of the initial headstone or marker being provided.

(ii) To the extent practicable, replacement burial headstones, markers, and medallions will be of the same style and type (to include inscription information) as those headstones, markers, or medallions being replaced, except that style, type, or inscription information may differ for replacements if one of the criteria in paragraph (b)(3)(i)(D) or (E) is the reason for replacement.

(iii) Requests to replace Government-furnished burial headstones, markers, or medallions are made as follows:

(A) Through NCA's electronic ordering systems, when the headstone, marker, or medallion to be replaced is located in a cemetery that uses NCA electronic ordering systems; or

(B) By completing and submitting VA Form 40-1330 or VA Form 40-1330M, when the headstone, marker, or medallion to be replaced is located in a cemetery that does not use NCA's electronic ordering systems.

(4) *Limitations.* (i) VA will not pay costs associated with installing a burial headstone or marker provided under paragraph (a)(1) or (2) of this section for placement in a non-national cemetery, but VA will deliver such headstone or marker directly to the non-national cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(ii) VA will not pay costs associated with affixing a medallion provided under paragraph (a)(2) of this section to a privately purchased headstone or marker in a non-national cemetery, but VA will deliver such medallion directly to the applicant.

(5) *Ownership, alteration, and disposition.* (i) All Government-furnished headstones, markers, and medallions remain the property of the United States Government in perpetuity and should not be defaced or altered in any way. Knowingly converting Government property to private use (such as using whole or partial headstones or markers in structures or landscaping or offering such items for sale) is a violation of Federal law under 18 U.S.C. 641.

(ii) Under 38 CFR 1.218(b)(5), the destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within

the limits of any national cemetery is prohibited, with an associated fine of \$500. Under 18 U.S.C. 1361, willful depredation of any property of the United States (*i.e.*, a headstone or marker in a non-national cemetery) shall be punishable by a fine or imprisonment under title 18 of the United States Code.

(iii) When a Government-furnished burial headstone, marker, or medallion is removed from any cemetery, it should be properly disposed. Unless a headstone or marker that has been removed from a cemetery would be maintained by NCA for historic purposes, or in cases of disinterment would be relocated to a different gravesite, such headstones or markers made of stone must be physically broken into small enough pieces to ensure no portion of the inscription is legible and to ensure no part is available for any private, personal, or commercial use, and those made of bronze must be returned to VA for recycling.

(c) *Definitions*—(1) *Applicant*. An applicant for a burial headstone or marker for an eligible deceased individual, or an applicant for a medallion to be affixed to a privately purchased headstone or marker, may be:

(i) A decedent's family member, which includes the decedent's spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent;

(ii) A personal representative, as defined in § 38.600(a);

(iii) A representative of a congressionally chartered Veterans Service Organization;

(iv) An individual employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans, such as a state or county veterans service officer;

(v) Any individual who is responsible, under the laws of the relevant state or locality, for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent; or

(vi) Any individual, if the dates of service of the veteran to be memorialized, or on whose service the eligibility of another individual for memorialization is based, ended prior to April 6, 1917.

(2) *Ascertainable*. Ascertainable means inscribed on the headstone or marker or discoverable from some inscription on the headstone or marker that corresponds to information that is reasonably accessible by the public (*e.g.*, a corresponding burial ledger at the cemetery, or publicly available burial information accessible on the internet).

(3) *Local government*. Local government means the administrative body of a geographic area that is not a state, such as a county, city, or town.

(4) *Medal of Honor recipient*. Medal of Honor recipient means an individual who is awarded the Medal of Honor under sec. 7271, 8291, or 9271 of title 10 or sec. 2732 of title 14 of the United States Code, or corresponding predecessor provisions.

(5) *Privately purchased and durable headstone or marker*. Privately purchased and durable headstone or marker means a headstone or marker that was not purchased or provided by the Government, and that is made of a material (such as but not limited to stone) that is lasting and not anticipated to unduly degrade under exposure to the environment in which it is placed.

(6) *Unmarked grave*. Unmarked grave means a grave in a cemetery where:

(i) A Government-furnished headstone or marker has not been erected or installed at or by the grave, or the condition of a Government-furnished headstone or marker erected or installed at or by the grave warrants replacement under paragraph (b)(3) of this section; and

(ii) A privately purchased and durable headstone or marker, from which the buried individual's name (if known) is ascertainable:

(A) Has not been erected or installed at or by the grave, or

(B) Is damaged beyond repair; or

(C) Has deteriorated to the extent it no longer serves to identify the buried decedent (*e.g.*, identifying elements of an inscription are not legible); or

(D) Has been stolen or vandalized.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0222)

(Authority: 38 U.S.C. 2306, 2402, 2404, sec. 203(b), Pub. L. 110-157, 121 Stat. 1831)

[86 FR 43098, Aug. 6, 2021; 86 FR 47387, Aug. 25, 2021]

§ 38.631 Memorial headstones and markers.

(a) *Eligibility.* (1) VA will furnish, when requested under paragraph (b)(1) of this section, a memorial headstone or marker to commemorate the following individuals whose remains are unavailable:

(i) A veteran (which includes an individual who dies in the active military, naval, or air service), where the headstone or marker may be provided for a national cemetery, a State, local, or private cemetery, a veterans' cemetery owned by a State, or a veterans' cemetery owned by a tribal organization or on land owned by or held in trust for a tribal organization.

(ii) An individual who dies on or after November 11, 1998, who is the spouse or surviving spouse of a veteran (which includes a surviving spouse who had a subsequent remarriage), or the spouse of a member of the Armed Forces 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 death occurs before October 1, 2024—where the headstone or marker may be provided for a national cemetery, a veterans' cemetery owned by a State, or a veterans' cemetery of a Tribal Organization or on land owned by or held in trust for a Tribal Organization;

(iii) An individual who dies on or after November 11, 1998, who is an eligible dependent child of a veteran, or the eligible dependent child of a member of the Armed Forces 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 child's death if such death occurs before October 1, 2024—where the headstone or marker may be provided for a national cemetery, a veterans' ceme-

tery owned by a State, or a veterans' cemetery of a Tribal Organization or on land owned by or held in trust for a Tribal Organization—if that dependent child is:

(A) Under the age of 21 years; or

(B) Under the age of 23 years if pursuing a course of instruction at an approved educational institution; or

(C) Unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching the age of 21 years, or before reaching the age of 23 years if pursuing a course of instruction at an approved educational institution.

(2) When VA has furnished a burial headstone or marker under § 38.630(a)(1), VA will, if feasible, add a memorial inscription to that headstone or marker (or provide a replacement headstones or marker to newly include a memorial inscription) rather than furnishing a separate memorial headstone or marker for the surviving spouse or eligible dependent child of such individual, in accordance with 38 U.S.C. 2306(g)(1).

(3) When VA has furnished a memorial headstone or marker under paragraph (a)(1) of this section for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, VA will, if feasible, add a memorial inscription to that headstone or marker (or provide a replacement headstones or marker to newly include a memorial inscription) rather than furnishing a separate memorial headstone or marker for the surviving spouse or eligible dependent child of such individual, in accordance with 38 U.S.C. 2306(g)(2).

(b) *General*—(1) *Application.* (i) An applicant, as defined in paragraph (c)(1) of this section, may request a memorial headstone or marker by completing and submitting VA Form 40-1330, Claim for Standard Government Headstone or Marker. VA Form 40-1330 includes application and submission instructions and is accessible through the following link: <https://www.va.gov/vaforms/va/pdf/VA40-1330.pdf>.

(ii) A representative of a private cemetery or local government cemetery that accepts delivery of a memorial headstone or marker must certify on VA Form 40-1330 that placement of

§ 38.631

38 CFR Ch. I (7-1-23 Edition)

the headstone or marker adheres to the policies or guidelines of the cemetery in which the grave is located.

(2) *Styles, types, and inscriptions.* The styles and types of memorial headstones and markers provided under this section, as well as the inscriptions thereon to include emblems of belief, will be provided in accordance with VA policy as well as in a manner consistent with 38 U.S.C. 2306(c).

(i) The styles and types of memorial headstones and markers made available for selection, as well as the inscriptions thereon, may be limited in accordance with certain requirements, including but not limited to aesthetic or administrative requirements of a cemetery.

(ii) All inscriptions for memorial headstones and markers must be preceded by the phrase “In Memory Of”.

(iii) If an emblem of belief is requested that is not offered in VA’s inventory of images for emblems of belief, additional requirements apply under § 38.632.

(3) *Replacement.* (i) Upon request, VA will replace a Government-furnished memorial headstone or marker, if the previously furnished headstone or marker:

- (A) Is damaged beyond repair; or
- (B) Has deteriorated to the extent it no longer serves to identify the decedent (e.g., identifying elements of an inscription are not legible, such as a decedent’s name); or
- (C) Has been stolen or vandalized; or
- (D) Is the incorrect style or type for the veteran’s era of service; or
- (E) Requires changing or adding inscription information for the following reasons:

(1) The inscription is not preceded by the phrase “In Memory Of”; or

(2) To correct errors in factual information (such as name or date of birth or death) provided to VA as part of the initial application process; or

(3) To indicate information related to the deceased’s military service that is provided to VA after the initial application process (such as the deceased’s posthumous receipt of military awards); or

(4) To identify a spouse or dependent in accordance with 38 U.S.C. 2306(g)(2); or

(5) For any reason not listed in paragraphs (b)(3)(i)(E)(1) through (4) of this section, if the request to add or change inscription information is received from the decedent’s next of kin as indicated in NCA’s records systems, within six months of the headstone or marker initially being provided.

(ii) To the extent practicable, replacement memorial headstones and markers will be of the same style and type (to include inscription information) as those being replaced, except that style, type, or inscription content may differ for replacement headstones and markers if one of the criteria under paragraphs (b)(3)(i)(D) and (E) of this section is the reason for replacement.

(iii) Requests to replace Government-furnished memorial headstones and markers are made as follows:

(A) Through NCA’s electronic ordering systems, when the headstone or marker to be replaced is located in a cemetery that uses NCA electronic ordering systems; or

(B) By completing and submitting VA Form 40-1330, when the headstone or marker to be replaced is located in a cemetery that does not use NCA’s electronic ordering systems.

(4) *Limitations.* VA will not pay the cost of installing a memorial headstone or marker provided under this section for placement in any cemetery that is not a national cemetery but will deliver the headstone or marker directly to such cemetery or to a receiving agent for delivery to the cemetery.

(5) *Ownership, alteration, and disposition.* (i) All Government-furnished memorial headstones and markers remain the property of the United States Government in perpetuity and should not be defaced or altered in any way. Knowingly converting Government property to private use (such as using whole or partial headstones or markers in structures or landscaping or offering such items for sale) is a violation of Federal law under 18 U.S.C. 641.

(ii) Under 38 CFR 1.218(b)(5), the destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited, with an associated fine of

\$500. Under 18 U.S.C. 1361, willful depre-
dation of any property of the United
States (*i.e.*, a headstone or marker in a
non-national cemetery) shall be pun-
ishable by a fine or imprisonment
under title 18 of the United States
Code.

(iii) When a Government-furnished
memorial headstone or marker is re-
moved from any cemetery (due to it
warranting replacement under para-
graph (b)(3) of this section), it should
be properly disposed. Unless a memo-
rial headstone or marker that has been
removed from a cemetery would be
maintained by NCA for historic pur-
poses, such headstones and markers
made of stone must be physically bro-
ken into small enough pieces to ensure
no portion of the inscription is legible
and to ensure no part is available for
any private, personal, or commercial
use, and those made of bronze must be
returned to VA for recycling.

(c) *Definitions*—(1) *Applicant*. An ap-
plicant for a memorial headstone or
marker, to commemorate an eligible
individual under paragraph (a)(1) of
this section, must be a member of the
decedent's family, which includes the
decedent's spouse or individual who
was in a legal union as defined in 38
CFR 3.1702(b)(1)(ii) with the decedent;
a child, parent, or sibling of the de-
cedent, whether biological, adopted, or
step relation; and any lineal or collat-
eral descendant of the decedent.

(2) *Unavailable remains*. An individ-
ual's remains are considered unavail-
able if they:

(i) Have not been recovered or identi-
fied;

(ii) Were buried at sea, whether by
the individual's own choice or other-
wise;

(iii) Were donated to science; or

(iv) Were cremated and the ashes
scattered without interment of any
portion of the ashes.

(Authority: 38 U.S.C. 2306, 2402, 2404)

[86 FR 43100, Aug. 6, 2021]

§ 38.632 Emblems of belief.

(a) *General*. This section contains
procedures for requesting the inscrip-
tion of new emblems of belief on Gov-
ernment-furnished headstones and
markers.

(b) *Definitions*. For purposes of this
section:

(1) *Applicant* means the decedent's
next-of-kin (NOK), a person authorized
in writing by the NOK, or a personal
representative authorized in writing by
the decedent to apply for a new em-
blem of belief for inscription on a Gov-
ernment-furnished headstone or mark-
er.

(2) *Emblem of belief* means an emblem
that represents the decedent's religious
affiliation or sincerely held religious
belief system, or a sincerely held belief
system that was functionally equiva-
lent to a religious belief system in the
life of the decedent. In the absence of
evidence to the contrary, VA will ac-
cept as genuine an applicant's state-
ment regarding the sincerity of the re-
ligious or functionally equivalent be-
lief system of a deceased eligible indi-
vidual. The religion or belief system
represented by an emblem need not be
associated with or endorsed by a
church, group or organized denomina-
tion. Emblems of belief do not include
social, cultural, ethnic, civic, frat-
ernal, trade, commercial, political,
professional or military emblems. VA
will not accept any emblem that would
have an adverse impact on the dignity
and solemnity of cemeteries honoring
those who served the Nation, including
(but not limited to) emblems that con-
tain explicit or graphic depictions or
descriptions of sexual organs or sexual
activities that are shocking, titil-
lating, or pandering in nature; and em-
blems that display coarse or abusive
language or images.

(3) *Federally-administered cemetery*
means a VA National Cemetery, Ar-
lington National Cemetery, the Sol-
diers' and Airmen's Home National
Cemetery, a military post or base cem-
etery of the Armed Forces, a service
department academy cemetery, and a
Department of the Interior National
Cemetery.

(4) *Headstones or markers* means
headstones or markers that are fur-
nished by the Government to mark the
grave or memorialize a deceased eligi-
ble veteran or eligible family member.

(5) *State veterans cemetery* means a
cemetery operated and maintained by a

§ 38.632

38 CFR Ch. I (7-1-23 Edition)

State or territory for the benefit of deceased eligible veterans or eligible family members.

(c) *Application process for new emblems of belief.* When there is an immediate need, and the applicant requests a new

emblem of belief for inscription on a new, first Government-furnished headstone or marker for a deceased eligible individual, the following procedures will apply:

If the burial or memorialization of an eligible individual is in a:	The applicant must:
(1) Federally-administered cemetery or a State veterans cemetery that uses the NCA electronic ordering system.	(i) Submit a written request to the director of the cemetery where burial is requested indicating that a new emblem of belief is desired for inscription on a Government-furnished headstone or marker; and (ii) Provide the information specified in paragraph (d) of this section to the NCA Director of Memorial Programs Service.
(2) Private cemetery (deceased eligible veterans only), Federally-administered cemetery, or a State veterans cemetery that does not use the NCA electronic ordering system.	(i) Submit a completed VA Form 40-1330 to the NCA Director of Memorial Programs Service, indicating in the REMARKS section of the form that a new emblem of belief is desired; and (ii) Provide the information specified in paragraph (d) of this section to the NCA Director of Memorial Programs Service.

(d) *Application.* The applicant must identify the deceased eligible individual for whom a request has been made to add a new emblem of belief to those emblems of belief available for inscription on Government-furnished headstones and markers. The application must include the following:

(1) Certification by the applicant that the proposed new emblem of belief represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent.

(2) A three-inch diameter digitized black and white representation of the requested emblem that is free of copyright or trademark restrictions or authorized by the owner for inscription on Government-furnished headstones and markers and can be reproduced in a production-line environment in stone or bronze without loss of graphic quality.

(e) *Incomplete application.* If VA determines that an application for a new emblem of belief is incomplete, VA will notify the applicant in writing of any missing information and that he or she has 60 days to submit such information or no further action will be taken. If the applicant does not submit all required information or demonstrate that he or she has good cause for failing to provide the information within 60 days of the notice, then the applicant will be notified in writing that no

further action will be taken on the request for a new emblem.

(f) *Evaluation criteria.* The Director of NCA's Office of Field Programs shall forward to the Under Secretary for Memorial Affairs all complete applications, any pertinent records or information, and the Director's recommendation after evaluating whether:

(1) The applicant has demonstrated that there is an immediate need to inscribe the emblem on a new, first, Government-furnished headstone or marker for a deceased eligible individual, unless good cause is shown for an exception;

(2) The applicant has submitted a certification concerning the emblem that meets the requirements of paragraph (d)(1) of this section.

(i) In the absence of evidence to the contrary, VA will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual. If a factual dispute arises concerning whether the requested emblem represents the sincerely held religious or functionally equivalent belief of the decedent, the Director will evaluate whether the decedent gave specific instructions regarding the appropriate emblem during his or her life and the Under Secretary will resolve the dispute on that basis.

(ii) In the absence of such instructions, the Under Secretary will resolve

the dispute in accordance with the instructions of the decedent's surviving spouse. If the decedent is not survived by a spouse, the Under Secretary will resolve the dispute in accordance with the agreement and written consent of the decedent's living next-of-kin. For purposes of resolving such disputes under this section, next-of-kin means the living person(s) first listed as follows:

(A) The decedent's children 18 years of age or older, or if the decedent does not have children, then

(B) The decedent's parents, or if the decedent has no surviving parents, then

(C) The decedent's siblings.

(3) The emblem meets the definition of an emblem of belief in paragraph (b)(2);

(4) The emblem would not have an adverse impact on the dignity and solemnity of cemeteries honoring those who served the Nation—for example, the emblem cannot contain explicit or graphic depictions or descriptions of sexual organs or sexual activities that are shocking, titillating, or pandering in nature, or display coarse or abusive language or images. A determination that an emblem would have an adverse impact on the dignity and solemnity of cemeteries honoring those who served the Nation may not be made based on the content of the religious or functionally equivalent belief that the emblem represents.

(5) The emblem meets the technical requirements for inscription specified in paragraph (d)(2) of this section.

(g) *Decision by the Under Secretary for Memorial Affairs.* (1) A decision will be made on all complete applications. A request to inscribe a new emblem on a Government-furnished headstone or marker shall be granted if the Under Secretary for Memorial Affairs finds that the request meets each of the applicable criteria in paragraph (f) of this section. In making that determination, if there is an approximate balance between the positive and negative evidence concerning any fact material to making that determination, the Under Secretary shall give the benefit of the doubt to the applicant. The Under Secretary shall consider the Director of NCA's Office of Field Programs' rec-

ommendation and may consider information from any source.

(2) If the Under Secretary for Memorial Affairs determines that allowing the inscription of a particular proposed emblem would adversely affect the dignity and solemnity of the cemetery environment or that the emblem does not meet the technical requirements for inscription, the Under Secretary shall notify the applicant in writing and offer to the applicant the option of either:

(i) Omitting the part of the emblem that is problematic while retaining the remainder of the emblem, if this is feasible, or

(ii) Choosing a different emblem to represent the religious or functionally equivalent belief that does not have such an adverse impact.

(3) Applicants will have 60 days from the date of the notice to cure any adverse impact or technical defect identified by the Under Secretary. Only if neither option is acceptable to the applicant, the applicant's requested alternative is also unacceptable, or the applicant does not respond within the 60-day period, will the Under Secretary ultimately deny the application.

(4) If the Under Secretary determines that the request should be denied and that decision is based wholly or partly on information received from a source other than the applicant, then the following procedure will be followed:

(i) A tentative decision denying the request will be prepared;

(ii) Written notice of the tentative decision accompanied by a copy of any information on which the Under Secretary intends to rely will be provided to the applicant;

(iii) The applicant will have 60 days from the date of the written notice specified in subparagraph (ii) to present evidence and/or argument challenging the evidence and/or tentative decision; and

(iv) The Under Secretary will consider the applicant's submission under subparagraph (iii) and will issue a final decision on the request.

(5) The Director, Office of Field Programs, will provide the individual who

§ 38.633

made the request written notice of the Under Secretary's decision.

(Authority: 38 U.S.C. 501, 2404)

[74 FR 26096, June 1, 2009, as amended at 81 FR 10771, Mar. 2, 2016; 86 FR 43101, Aug. 6, 2021]

§ 38.633 Group memorial monuments.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) *Group*—all the known and unknown dead who perished in a common military event.

(2) *Memorial Monument*—a monument commemorating veterans, whose remains have not been recovered or identified.

(3) *Next of kin*—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or step-brothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) *Documentary evidence*—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Monuments Commission, to commemorate the dead from a common military event, an additional group memorial

38 CFR Ch. I (7–1–23 Edition)

monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

[70 FR 4769, Jan. 31, 2005, as amended at 86 FR 43102, Aug. 6, 2021]

VETERANS LEGACY GRANTS PROGRAM

SOURCE: 86 FR 59037, Oct. 26, 2021, unless otherwise noted.

§ 38.710 Purpose and use of grant funds.

Sections 38.710 through 38.785 establish the Veterans Legacy Grants Program (VLGP). Under this program, VA may provide grants to eligible entities defined in § 38.715 to:

(a) Conduct research related to national, State, or Tribal Veterans' cemeteries;

(b) Produce educational materials that teach about the history of Veterans interred in national, State, or Tribal Veterans' cemeteries;

(c) Contribute to the extended memorialization of Veterans interred in national, State, or Tribal Veterans' cemeteries by presenting grantee research on national, State, or Tribal Veterans' cemeteries through site hosting and other digital technologies; and,

(d) Promote community engagement with the histories of Veterans interred in national, State, or Tribal Veterans' cemeteries.

(Authority: 38 U.S.C. 501(d), 2400 note)

§ 38.715 Definitions.

For purposes of this part and any Notice of Funding Availability (NOFA) issued pursuant to this part:

(a) *Applicant* means an eligible entity that submits a VLGP grant application that is announced in a NOFA.

(b) *Community engagement* means strategic interaction with identified groups of people, whether they are connected by geographic location, special interest, or affiliation, to identify and

Department of Veterans Affairs

§ 38.725

address issues related to the legacy of Veterans.

(c) *Eligible recipient (or entity)* means one of the following:

(1) An institution of higher learning;

(2) A local educational agency;

(3) A non-profit entity that the Secretary determines has a demonstrated history of community engagement that pertains to the projects described in the relevant NOFA;

(4) An educational institution; or

(5) Another recipient (or entity) the Secretary deems appropriate.

(d) *Institution of higher learning (IHL)* means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(e) *Educational institution* means any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults.

(f) *Local educational agency (LEA)* means any public agency or authority, including a state educational agency, that has administrative control or direction over public elementary or secondary schools under 20 U.S.C. 7801(30). The term would also include any Bureau of Indian Education school, as covered in 20 U.S.C. 7801(30)(C).

(g) *State educational agency (SEA)* means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

(h) *Non-profit entity* means any organization chartered under 26 U.S.C. 501(c)(3).

(i) *Educational materials* means a framework of digital instructional materials relevant to the grade level of K-12 students involved (e.g., lesson plans) that can be used for outreach and other purposes.

(j) *Grantee* means an eligible recipient that is awarded a VLGP grant under this part.

(k) *Notice of Funding Availability (NOFA)* means a Notice of Funding Availability published in the OMB-designated government-wide website in accordance with §38.725 and 2 CFR 200.203 regulations.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.720 Grants—general.

(a) *Grants.* VA may award VLGP grants to eligible recipients selected under §38.730 of this part.

(b) *Maximum amounts.* The maximum grant amount to be awarded to each grantee and the total maximum amount for all grants will be specified in the annually published NOFA.

(c) *Number of grants awarded.* The number of grants VA will award will depend on the total amount of grant funding available at VA's discretion and the funding amount awarded to each grantee, which is based on each grantee's proposal.

(d) *Grant is not a course buyout.* The grant funds shall not be used to substitute a class that an instructor is required to teach during an academic year.

(e) *Matching requirement.* VA will determine whether a grantee must provide matching funds as a condition of receiving a VLGP grant as set forth in the NOFA.

(f) *Grant is not Veterans' benefit.* The VLGP grant is not a Veterans' benefit. VA decisions on VLGP applications are final and not subject to the same appeal rights as Veterans' benefits decisions.

(Authority: 38 U.S.C. 501(d), 2400 note)

§ 38.725 Notice of Funding Availability (NOFA).

When funds are available for VLGP grants, VA will publish a NOFA in the FEDERAL REGISTER and in *Grants.gov* (<http://www.grants.gov>). The NOFA will identify:

(a) The location for obtaining VLGP grant applications, including the specific forms that will be required;

(b) The date, time, and place for submitting completed VLGP grant applications;

§ 38.730

(c) The estimated total amount of funds available and the maximum funds available to a single grantee;

(d) The minimum number of total points and points per category that an applicant must receive to be considered for a grant and information regarding the scoring process;

(e) Any timeframes and manner for payments under the VLGP grant;

(f) A description of eligible entities or other eligibility requirements necessary to receive the grant; and

(g) Other information necessary for the VLGP grant application process, as determined by VA, including contact information for the office that will oversee the VLGP within VA.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.730 Applications.

To apply for a grant, an eligible entity must submit to VA a complete application package, as described in the NOFA. Applications will be accepted only through *Grants.gov* (<http://www.grants.gov>). A complete grant application, as further described in the NOFA, includes standard forms specified in the NOFA and the following:

(a) *Project description.* Each project must serve a minimum of one VA national cemetery, State Veterans' cemetery, or Tribal Veterans' cemetery. The applicant must provide a narrative project description that demonstrates the best approach for attaining required results as set forth in the NOFA;

(b) *Project team.* If applicable, the applicant must provide a narrative description of anticipated project team and any work partner(s), including the responsibilities of the principal investigator, the co-principal investigators, and any extramural partner entity;

(c) *Project plan.* The applicant must include a detailed timeline for the tasks outlined in the project description and proposed milestones;

(d) *Expertise and capacity.* The applicant must provide a description of the applicant's ability and capacity to administer the project. This may include evidence of past experience with projects similar in scope as defined by the NOFA, to include descriptions of the engagement model, examples of successful leadership and management

38 CFR Ch. I (7-1-23 Edition)

of a project of similar scale and budget (or greater), or related work in this field;

(e) *Match.* If specified as a requirement in the NOFA, the applicant must provide evidence of secured cash matching (1:1) funds or of its ability to secure commitments to receive such funds;

(f) *Proposed budget.* The applicant's proposed budget should identify all costs and proposed expenditures, to include additional compensation and honoraria (and to whom); equipment costs; production costs; and travel costs. The applicant must provide a budget that specifies costs and payments, as well as indirect and other relevant costs. The budget will be submitted in a format specified in the NOFA; and

(g) *Additional information.* Any additional information as deemed appropriate by VA and set forth in the NOFA.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.735 Additional factors for deciding applications.

(a) *Applicant's performance on prior award.* VA may consider the applicant's noncompliance with requirements applicable to prior VA or other Federal agency awards as reflected in past written evaluation reports and memoranda on performance and the completeness of required prior submissions.

(b) *Applicant's fiscal integrity.* Applicants must meet and maintain standards of fiscal integrity for participation in Federal grant programs as reflected in 2 CFR 200.205.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.740 Scoring and selection.

(a) *Scoring.* VA will only score complete applications received from eligible applicants by the deadline established in the NOFA. The applications must meet the minimum criteria set forth in § 38.730 and will be scored as specified in the NOFA, as set forth in § 38.725.

(b) *Selection of recipients.* All complete applications will be scored using the

Department of Veterans Affairs

§ 38.760

criteria in paragraph (a) of this section and ranked in order of highest to lowest total score. NOFA announcements may also clarify the selection criteria in paragraph (a) of this section. The relative weight (point value) for each selection will be specified in the NOFA. VA will award any VLGP grant on the primary basis of the scores but will also consider a risk assessment evaluation.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.745 Disposition of applications.

(a) *Disposition of applications.* Upon review of an application and dependent on availability of funds, VA will:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions that VA deems necessary or desirable;

(2) Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but disapprove the application for funding because it does not rank sufficiently high in relation to other applications to qualify for an award based on the level of funding available, or for another reason as provided in the decision document; or

(3) Defer action on the application for such reasons as lack of funds or a need for further review.

(b) *Notification of disposition.* VA will notify the applicant in writing of the disposition of the application. A signed grant agreement form, as defined in § 38.755, will be issued to the applicant of an approved application.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.750 Withdrawal of grant application.

Applicants may withdraw a VLGP application submitted through *Grants.gov* by writing the specified VA point of contact and including rationale for the withdrawal request within a certain number of days as determined in the NOFA.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.755 Grant agreement.

After a grant is approved for award, VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the grant amount. The grant agreement will provide that the recipient agrees, and will ensure that each subrecipient (if applicable) agrees, to:

(a) Operate the program in accordance with the provisions of §§ 38.710 through

38.785, 2 CFR part 200, and the applicant's VLGP application;

(b) Comply with such other terms and conditions, including record-keeping and reports for program monitoring and evaluation purposes, as VA may establish in the Terms and Conditions of the grant agreement for purposes of carrying out the VLGP project in an effective and efficient manner; and

(c) Provide additional information that VA requests with respect to:

(1) Program effectiveness, as defined in the Terms and Conditions of the grant agreement;

(2) Compliance with the Terms and Conditions of the grant agreement; and

(3) Criteria for evaluation, as defined in the Terms and Conditions of the grant agreement.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.760 Payments under the grant.

(a) Grantees are to be paid in accordance with the timeframes and manner set forth in the NOFA.

(b) *Availability of grant funds.* Federal financial assistance will become available subsequent to the effective date of the grant as set forth in the grant agreement. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the grant, if such costs are authorized by VA in the NOFA or the grant agreement or authorized subsequently by VA in writing, and otherwise would be allowable as costs of the grant under applicable guidelines, regulations, and terms and conditions of the grant agreement.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.765

§ 38.765 Grantee reporting requirements.

(a) *Final report.* All grantees must submit to VA, not later than 60 days after the last day of grant period for which a grant is provided under this part, a final report that meets the requirement set forth in the NOFA.

(b) *Additional reporting.* Additional reporting requirements may be requested by VA to allow VA to assess program effectiveness.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.770 Recovery of funds by VA.

(a) *Recovery of funds.* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover such funds, VA will issue to the grantee a notice of intent to recover grant funds, and the grantee will then have 30 days to return the grant funds or submit documentation demonstrating why the grant funds should not be returned. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds.

(b) *Prohibition of additional VLGP payments.* When VA makes a final decision to recover grant funds from the grantee, VA must stop further payments of grant funds under this part until the grant funds are recovered and the condition that led to the decision to recover grant funds has been resolved.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

§ 38.775 Compliance review requirements.

(a) *Site visits.* VA may conduct, as needed, site visits to grantee locations to review grantee accomplishments and management control systems.

(b) *Inspections.* VA may conduct, as needed, inspections of grantee records to determine compliance with the provisions of this part. All visits and evaluations will be performed with minimal disruption to the grantee to the extent practicable.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

38 CFR Ch. I (7-1-23 Edition)

§ 38.780 Financial management.

(a) *Compliance.* All recipients will comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200.

(b) *Financial Management.* All grantees must use a financial management system that complies with 2 CFR part 200. Grantees must meet the applicable requirements of the Office of Management and Budget's regulations on Cost Principles at 2 CFR 200.400-200.475.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.400-200.475)

§ 38.785 Recordkeeping.

Grantees must ensure that records are maintained in accordance with 2 CFR 200.333. Grantees must produce such records at VA's request.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.333)

PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES

Subpart A—General Provisions

- Sec.
- 39.1 Purpose.
- 39.2 Definitions.
- 39.3 Priority list.
- 39.4 Decision makers, notifications, and additional information.
- 39.5 Submission of information and documents to VA.
- 39.6 Amendments to grant application.
- 39.7 Line item adjustment to grants.
- 39.8 Withdrawal of grant application.
- 39.9 Hearings.
- 39.10 Cemetery requirements and prohibitions and recapture provisions.
- 39.11 State or Tribal Organization to retain control of operations.
- 39.12-39.29 [Reserved]

Subpart B—Establishment, Expansion, and Improvement Projects

GRANT REQUIREMENTS AND PROCEDURES

- 39.30 General requirements for a grant.
- 39.31 Preapplication requirements.
- 39.32 Plan preparation.
- 39.33 Conferences.
- 39.34 Application requirements.
- 39.35 Final review and approval of application.
- 39.36-39.49 [Reserved]