

PUBLIC LAW 117-103
THE CONSOLIDATED APPROPRIATIONS ACT FOR FISCAL YEAR 2022
(Burial Equity for Guards and Reserves Act)

1. PURPOSE/REASON FOR ISSUE: This notice provides information and direction about Public Law 117-103, the Consolidated Appropriations Act, 2022, signed by the President on March 15, 2022. The Burial Equity for Guards and Reserves Act was incorporated as Division CC of the law and includes provisions for Department of Veterans Affairs (VA) National Cemetery Administration (NCA) affecting the Veterans Cemetery Grants Program (VCGP).

2. SUMMARY OF DIVISION CC, PUBLIC LAW 117-103, BURIAL EQUITY FOR GUARDS AND RESERVES ACT:

Section 102(a) of this division amends Section 2408 of title 38, United States Code (U.S.C.) to prohibit VA from establishing a condition for a cemetery grant that would restrict the ability of a State receiving a grant to inter certain non-veteran individuals who are otherwise ineligible for burial in a VA national cemetery. It also prohibits VA from denying a grant application based solely on the basis that the state receiving such grant may use funds from the grant to expand, improve, operate, or maintain a veterans' cemetery in which interment of such individuals is allowed. Such individuals include:

- Any member of a reserve component of the Armed Forces who was discharged or released from service under conditions other than dishonorable or whose death occurs under conditions other than dishonorable while a member of the reserve component.
- Any member of the Army National Guard or the Air National Guard who was discharged or released from service under conditions other than dishonorable or whose death occurs under conditions other than dishonorable while a member of the Army National Guard or the Air National Guard.
- Any member of the Reserve Officers' Training Corps (ROTC) of the Army, Navy, or Air Force whose death occurs under conditions other than dishonorable while a member of the ROTC.
- Any spouse of any member described above.
- Any minor child or unmarried adult child (as defined in 2402(a) of Title 38) of the above individuals.

Section 102(b) prohibits VA from enforcing a condition related to interment of the above-described individuals, that was established before the law was enacted on March 15, 2022.

While Sections 102(a) and (b) do not explicitly address Tribal veterans' cemeteries, 38 USC 2408(g)(1) and (2) specify that grants awarded to tribal organizations for establishing, expanding, or improving veterans' cemeteries, or in operating and maintaining such cemeteries, on trust land owned by, or held in trust for, the tribal organization shall be made in the same manner, and under the same conditions, as grants to States. Therefore, the provisions of those sections apply to grants for Tribal veteran cemeteries as well. Additionally, the law does not reference Territories of the United States; however, VA regulations governing grants awarded under § 2408 define "State" to mean each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico (see 38 CFR § 39.2). As such, VA will apply the provisions of this law to grants for Territories and other entities that meet the definition of State in 38 CFR § 39.2.

VA's Benefits Law Group (BLG), Office of General Counsel, has determined that the law allows grant-funded cemeteries to inter non-Veteran individuals described in subsection (i)(2) in gravesites and columbaria niches that were developed with federal grant funds.

The new law does not compel grant funded cemeteries to inter the non-veteran individuals described in 102(a), and States and Tribal Organizations still have authority to determine whether they will inter such individuals.

Section 102(c) amends Section 2303 of Title 38 U.S.C. to authorize VA to pay a plot allowance for an eligible veteran interred in a cemetery that is owned by a State, or an agency or political subdivision of a State, or on trust land owned by or held in trust for a tribal organization. The amendment allows for payment of the plot allowance if the veteran is buried in a cemetery or a section of a cemetery that is used solely for the interment of persons who are eligible for burial in a national cemetery, members of a reserve component of the Armed Forces not otherwise eligible for such burial, or former members not otherwise eligible for such burial who are discharged or released from service under conditions other than dishonorable, or any of the individuals described under Section 102(a). This expands the plot allowance to include payment to tribal veterans' cemeteries for Veterans buried there and eases restrictions related to who else can be interred in these cemeteries. The Veterans Benefits Administration (VBA) is responsible for administering this change in the law which does not authorize VA pay plot allowance to individuals described in Section 102(a).

Appendix A includes a set of Frequently Asked Questions.

3. ACTIONS:

NCA's Legislative and Regulatory Service (42E) will work with the Veterans Cemetery Grant Program (VCGP) (41C) to amend existing regulations to account for the non-Veteran individuals described in the law (amend 39.10(a), 39.10(c), 39.31(c)(1), 39.81(c)(1)), and to develop new regulations establishing guidelines for how grant funds may be used in cemeteries that inter non-veteran individuals described in the law.

Veterans Cemetery Grant Program (VCGP) (41C) will revise grant pre-application and application materials, grantee cemetery reporting requirements that address burial activity at VCGP cemeteries, and internal processes and procedures, as necessary to accommodate the individual decisions of VCGP cemeteries to inter (i)(2) individuals while maintaining the program's ability to answer stakeholder questions and to plan for future needs.

OEMI will develop appropriate communications as necessary to assist (i)(2) individuals and their families to understand what Veterans benefits are and are not available to them, (e.g. Veterans Legacy Memorial.)

Improvement and Compliance Service (42D) will develop appropriate Standards and Measures to be use in future triennial reviews of VCGP cemeteries that opt to inter those individuals in subsection (i)(2).

Business Transformation and Requirements Service (BTRS) (43E) will work with 41C and 41B to make appropriate enhancements to BOSS and future MBMS requirements that support NCA management of this new program.

4. RESPONSIBLE OFFICE: NCA, Office of Finance and Planning, Legislative and Regulatory Service (42E), 810 Vermont Avenue, NW, Washington, DC 20420, is responsible for the contents of this notice.

5. RESCISSION: None.

6. EXPIRATION: This notice will be archived on the last day of May 2023.

/s/
Matthew T. Quinn
Under Secretary for Memorial Affairs

Distribution: Electronic

APPENDIX A Frequently Asked Questions

Q1: Does the law change eligibility for burial in a national cemetery?

A: No, the law does not address or change eligibility for burial in a national cemetery. The law allows States that operate VA grant funded cemeteries to inter certain non-veteran individuals without risk of losing or being disqualified from cemetery grant funding.

Q2: Does the law mean that grant funded cemeteries must allow interment of the individuals described?

A: The law does not compel interment of these individuals. Each State and tribe have authority to determine whether they will inter individuals described in subsection (i)(2).

Q3: Does the law apply to Tribal Veteran Cemeteries and Territories of the United States?

A: Yes. Even though the law does not explicitly address Tribal Veterans' cemeteries, 38 U.S.C. § 2408(g)(1) and (2) specify that grants awarded to tribal organizations for establishing, expanding, or improving veterans' cemeteries, or in operating and maintaining such cemeteries, on trust land owned by, or held in trust for, the tribal organization shall be made in the same manner, and under the same conditions, as grants to States. Therefore, the provisions of the law would apply to Tribal Veterans' cemeteries seeking cemetery grant funds. Additionally, the law does not reference Territories of the United States; however, VA regulations governing grants awarded under § 2408 define "State" to mean each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico (see 38 CFR § 39.2). As such, VA will apply the provisions of this law to grants for Territories and other entities that meet the definition of State in 38 CFR § 39.2.

Q4: When is the law effective?

A: The provisions of the Guards and Reserves Burial Equity Act were effective on the date of enactment, March 15, 2022. This means that individuals described in the law may be interred in grant-funded cemeteries with no risk to prior or future grant funding. However, States and Tribal Organizations will make their own decisions as to whether and how quickly to begin interring the categories of individuals described in the law. The changes effected by the new law convey no new VA burial benefits and imply no restrictions regarding date of death. The National Cemetery Administration is amending existing regulations which govern the Veterans Cemetery Grants Program (VCGP) to remove the relevant constraints.

Q5: If grant funded cemeteries choose to inter nonveteran individuals as described in the law, is it allowable to inter these individuals in gravesites with preplaced crypts and columbarium niches secured and installed using federal cemetery grant funds?

A: VA has determined that the law allows grant-funded cemeteries to inter nonveteran individuals described in subsection (i)(2) in gravesites and columbaria niches that were developed with federal grant funds.

Q6: Will grant funded cemeteries be allowed to use equipment and facilities that were purchased or constructed using federal cemetery grant funds for activities related to burial of the individuals described in subsection (i)(2)?

A: VA has determined that the law allows grant-funded cemeteries to use grant funded equipment and facilities for the common benefit of both Veterans and nonveteran individuals described in the law.

Q7: If grant funded cemeteries choose to inter non-Veteran individuals as described in the law, gravesites would likely be utilized at an increased pace driving earlier need for expansion. How would that affect future expansion project grant eligibility?

A: If the gravesites planned for Veteran burials are used for burial of the nonveteran individuals identified in the law, it will likely deplete the available gravesites in grant funded cemeteries more quickly. If this occurs, the law ensures that grant funded cemeteries remain eligible for future expansion project grants, subject to funding. VA will continue to award grants based on VA prioritization, which considers the expected depletion and number of Veterans served.

Q8: Are these individuals authorized to receive government headstones and markers? Burial flags? Military funeral honors?

A:

Headstones and markers: 38 U.S.C. § 2306 establish eligibility for headstones and markers. This new law does not change the existing statute and certain individuals described in the law are not eligible for a VA headstone or marker. VA is authorized to provide headstones and markers only for individuals identified in section 2306. If States, and tribes decide to inter non-Veteran individuals described in the law, VA may provide the contact information for vendors used by NCA to acquire headstones and markers; however, State officials would need to establish procurement agreements in accordance with each State's acquisition laws.

Burial Flags: Congress specifies in 38 U.S.C. § 2301 for whom VA may provide burial flags. Specifically, section 2301(f)(1) authorizes VA to provide burial flags, among other individuals, for each deceased member or former member of the Selected Reserve who

is not otherwise eligible for a flag, who meets certain criteria. Deceased members or former members of the Selected Reserve who (A) completed at least one enlistment or, in the case of an officer, completed the period of initial obligated service, or (B) were discharged before completion of initial enlistment or, in the case of an officer, period of initial obligated service for a disability incurred or aggravated in line of duty are eligible for a burial flag as long as their last discharge from service was not under conditions less favorable than honorable. VA is not authorized to provide burial flags to members of the ROTC, not otherwise eligible, nor to spouses or minor children of any of the above.

Military Funeral Honors: The Department of Defense (DOD) is responsible for providing military funeral honors for Veterans, and VA defers to DOD for comments on the potential impact of the new law on its program.

Q9: Is the plot allowance payable for burial of the individuals described in the new law?

A: No. The plot allowance is only payable in the case of a veteran who is eligible for burial in a national cemetery, but instead is buried in a cemetery that is owned by a State or by an agency or political subdivision of a State; or on trust land owned by, or held in trust for, a tribal organization. The payment is authorized to be paid to the relevant State, agency, political subdivision or tribal organization. The new law did not expand this eligibility.

Q10: Can you explain the changes made in the new law regarding payment of plot allowance to States and Tribes?

A: Prior to enactment of this law, VA was only authorized to pay a plot allowance for qualifying burials in cemeteries owned by a State, State agency, or political subdivision of a State. The new law expanded VA's authority to pay a plot allowance for qualifying burials in cemeteries owned by a Tribal organization on trust land or held in trust for a Tribal Organization.

In addition, the law eased restrictions related to who else can be interred in such cemeteries and still be qualified to receive a plot allowance for burials of eligible veterans.

Prior to enactment, payment of the plot allowance was authorized if the cemetery, or section of the cemetery, was used *only* for interment of persons who were: 1) eligible for burial in a national cemetery, 2) members of a reserve component of the Armed Forces not otherwise eligible for such burial, or 3) former members of a reserve component not otherwise eligible who were discharged or released from service under conditions other than dishonorable. If a cemetery was used for interment of other individuals, VA was not authorized to pay the allowance.

The new law added additional categories of persons that may be interred in a cemetery or section of a cemetery without disqualifying the State or tribe from receiving plot allowance for eligible veteran burials. These include spouses and certain dependents of Guard/Reserve members, as well as certain ROTC members and their spouses and dependents. Again, if the cemetery or section is used to inter other individuals not described here, then VA would not be authorized to pay the State or Tribe the plot allowance when they buried a Veteran who was eligible to be buried in a national cemetery.

The plot allowance continues to be authorized only for the burial of a Veteran who would be eligible for burial in a national cemetery. The new law does not authorize VA to pay a plot allowance for any other individuals interred in such cemeteries.

Q11: What is the amount of the plot allowance?

A: The amount of the plot allowance is specified in law (38 U.S.C. § 2303(a) and (b)) by Congress. In 2010, Congress increased the amount from \$300 to \$700 for both the maximum amount payable for burial expenses and the plot allowance. However, the law also requires VA to provide a percentage increase annually based on the change in Consumer Price Index (CPI). VA annually calculates the percent increase, which has accumulated to the current amount for fiscal year 2022 is \$828.

Q12: Does VA have an estimated number of individuals that may be eligible to be interred under this new provision?

A: Each State and Tribal Organization has authority to determine whether they will inter the nonveteran individuals described in the law. Additionally, each State has flexibility to establish their own eligibility requirements such as length and character of service. Therefore, VA cannot make projections about the number of individuals described in subsection (i)(2) that may be interred in grant funded cemeteries. The Veterans Cemetery Grant Program works with grant funded cemeteries to track interments and develop projected depletion rates and will require that States and Tribes disaggregate interment data between individuals eligible to be buried in a national cemetery and those who the States and Tribes optionally bury under this new law.

Q13: What about interment of former service members who did not complete the minimum active-duty service requirement required by VA? What happens if a grant funded cemetery establishes a lesser standard for length of service?

A: While each State and Tribal organization has authority to establish eligibility requirements, it is important to be aware of and consider all relevant statutory provisions.

In particular, the law governing plot allowance (38 U.S.C. 2303) still includes some restriction on the use of cemeteries for interment of certain categories of persons. A plot allowance can only be paid for interment of an eligible veteran in a cemetery or section of a cemetery that is used solely for the interment of persons who are:

- (i) eligible for burial in a national cemetery;
- (ii) members of a reserve component of the Armed Forces not otherwise eligible for such burial or former members of such a reserve component not otherwise eligible for such burial who are discharged or released from service under conditions other than dishonorable;
- (iii) individuals described in 2408(i)(2), which include members of the Reserve Officers' Training Corps whose death occurs under conditions other than dishonorable while a member of ROTC, spouses and certain dependents of Guard/Reserve members, and of ROTC members.

This means that if a State or Tribal Organization wants to remain qualified to receive a plot allowance for eligible veteran interments, they should ensure their cemeteries, or relevant sections, are used solely for interment of the persons described above. Unfortunately, there may be Veterans that do not meet any of the criteria above. For example, a Veteran who did not complete 24 months of continuous active duty would not be eligible for burial in a national cemetery, and unless that individual also was part of another category, such as having been a member of the Guard or Reserves, they would not be a qualifying interment with regard to plot allowance.

If a State or Tribal Organization relaxes its cemetery eligibility requirements beyond what is allowed for receiving the plot allowance, it would jeopardize its ability to receive plot allowance for all eligible veteran burials.

Q14: Can you clarify the distinction regarding who is eligible to be buried in a grant-funded cemetery and who is eligible for a headstone and marker?

A: The new law does not change eligibility for headstones and markers. Each State or Tribal Organization will determine eligibility for burial within veterans cemeteries under their ownership and control. The new law provides more flexibility for States and Tribal Organizations to inter certain individuals without jeopardizing grant funding.

Q15: Does a grant funded cemetery need to inform VA if they decide to inter (i)(2) individuals?

A: We request that grant-funded cemeteries inform us of the effective date they will inter (i)(2) individuals if they choose to do so by providing a "supplemental" annual data report with the information on eligibility requirements for the State updated in box 46. VA will update its annual data form (VA Form 40-0241) in the future and will require that

States/Tribes indicate quantities of interments of those eligible for burial in a national cemetery and quantities of interments of (i)(2) individuals in a disaggregated fashion.

Q16: Can the States that use NCA's Burial Operations Support System (BOSS) continue to use the system to standardize processes used at the cemetery?

Yes. There are clear advantages for States to use BOSS, including, but not limited to the inclusion of all individuals interred in the gravesite locator system. For those reasons States will be allowed to use BOSS for (i)(2) individuals. NCA is currently working on enhancements to BOSS to ensure accurate record-keeping and compliance with federal law regarding headstones and markers and other benefits. One reason we have requested information on a State's decision to inter (i)(2) individuals is so that we can work with that State to ensure personnel are trained properly so that the systems do not unintentionally "trigger" automated delivery of a benefit an individual or entity is not entitled to.