

SUBJ: Overview of Changes Made By Public Law 110-389, the Veterans' Benefits Improvement Act of 2008.

## **Purpose**

On October 10, 2008, the President signed the Veterans' Benefits Improvement Act of 2008. This letter provides guidance regarding those statutory changes that impact delivery of VA disability benefits.

### **Section 212. SUBSTITUTION UPON DEATH OF CLAIMANT.**

This section creates a new statute: 38 U.S.C. § 5121A, Substitution in case of death of claimant. It provides that if a claimant dies while a claim or appeal for any benefit under a law administered by the Secretary is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title may, not later than one year after the date of the death of the claimant, request to be substituted as the claimant for the purposes of processing the claim to completion.

The new statute allows a person who could be considered an accrued benefits claimant to substitute for a deceased claimant to continue adjudication of the deceased claimant's claim.

Effective Date- The provisions of the new statute apply with respect to the claim of any claimant who dies on or after October 10, 2008.

VBA Action: Regulations will be revised to include the new provision. Pending regulatory change, for requests to be substituted for a deceased claimant:

- A written claim for substitution must be filed within one year of the date of death of the claimant whose claim is at issue.
- The claimant who requests to be substituted must be someone who would be eligible under 38 CFR 3.1000, Entitlement under 38 U.S.C. § 5121 to benefits due and unpaid upon death of a beneficiary.
- Continue adjudication of the claim as if the original claimant was not deceased.
- If evidence required to substantiate the claim cannot be obtained due to the original claimant's death, the claim shall be rated based on the evidence of record. If an examination is required, consider 38 CFR § 3.655, Failure to report for Department of Veterans Affairs examination.
- The date of claim for the request for substitution will be the date the written request for substitution is received in VA.
- Any representation by a service organization, attorney or agent prior to death does not transfer to the substituted representative. If the individual desires representation he/she must execute a new power of attorney. When a request for substitution is received the new claimant should be advised of this fact.