



38 CFR Part 9

RIN 2900-AQ37

Servicemembers' Group Life Insurance – Family Servicemembers' Group Life

Insurance: Member Married to Member

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing Servicemembers' Group Life Insurance (SGLI) and Family Servicemembers' Group Life Insurance (FSGLI) to allow a SGLI-covered member (member) who marries another SGLI-eligible member (member spouse) after January 1, 2013, or a member whose spouse becomes a member spouse after January 1, 2013, to receive FSGLI coverage on a member spouse at the maximum statutory amount or a lesser amount, or to increase existing FSGLI coverage on a member spouse. A member married to a member may elect or increase FSGLI coverage for a member spouse, without a requirement to show good health, within 240 days of: The member's marriage to another member, the member's spouse entering service, or the member's spouse separating from service. If a member does not elect or increase FSGLI coverage within this 240-day "no health" period, then the member can still receive or increase FSGLI coverage by applying for such coverage and submitting proof of the member spouse's good health. The final rulemaking also states that FSGLI coverage that is in force at the time a spouse or child enters service will continue and the member is not required to elect or reapply for such coverage. Additionally, VA is making a technical amendment to the amendatory language.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

On February 11, 2020, VA published in the Federal Register (85 FR 7683) a proposed rule to amend its regulations governing the application process for FSGLI coverage for member spouses of SGLI-covered members. Interested persons were invited to submit written comments on or before April 13, 2020. VA received one comment concerning the submission of proof of good health for former member spouses. The commenter recommended that VA revise the rulemaking to allow a member to elect FSGLI coverage on a member spouse without submitting proof of good health for 120 days following a marriage or a former member spouse's separation from service. The commenter suggested that this grace period would minimize adverse selection and bring parity to FSGLI eligibility requirements for civilian and member spouses and is consistent with Congressional intent to avoid creating FSGLI debts for members who do not want FSGLI coverage on member spouses. Based on internal agency reconsideration of the proposed regulation and the comment received, VA is making the following revisions.

I. FSGLI Coverage for Member Spouses

Section 1969(g)(2)(B) of title 38, U.S.C., requires VA to manage FSGLI according to sound actuarial principles, and VA explained in the proposed rulemaking that this requires limiting the risk of adverse selection of FSGLI applicants. VA has

determined that removing the proposed requirement for members to submit proof of their member spouse's good health for 240 days following a member's marriage to another member or a member's spouse entering service is consistent with sound actuarial principles. If a member does not elect or increase coverage on a member spouse within the 240-day period, then the member will have the opportunity to receive FSGLI coverage by applying for such coverage and submitting proof of their member spouse's good health. Although the commenter recommended a 120-day "no health" period for a member to elect FSGLI without submitting proof of their member spouse's good health, VA has determined that a 240-day "no health" period is more appropriate since it would allow for greater participation in FSGLI and would remain consistent with sound actuarial principles. This change is reflected in new § 9.24(a).

II. FSGLI Coverage for Former Member Spouses

VA is also amending our proposed rulemaking to allow a member, upon election, to initiate FSGLI coverage at the maximum statutory amount or a lesser amount, or to increase existing FSGLI coverage, on a former member spouse. A member will only be required to submit proof of good health when more than 240 days have passed following the former member spouse's separation from service. If a member does not elect FSGLI at the maximum statutory amount or a lesser amount, or increase existing FSGLI coverage, within 240 days following their former member spouse's separation from service, then the member will have the opportunity to apply for FSGLI or to increase existing FSGLI coverage by submitting proof of their former member spouse's good health. Although the commenter recommended a 120-day "no health" period for a member to elect or increase FSGLI without submitting proof of their former member spouse's good health, VA has determined that a 240-day "no health" period is more appropriate because it would allow for greater participation in FSGLI and would remain consistent with sound actuarial principles. We also note that the 240-day period is

consistent with 38 CFR 9.2(c), which allows a former member to apply for Veterans' Group Life Insurance within 240 days after separating from service without submitting proof of good health. This change is reflected in new § 9.24(c).

III. Technical Amendments to 38 CFR Part 9

VA is making two technical amendments to the amendatory language in this final rule. In the proposed rulemaking, we proposed to create a new paragraph (f) in current 38 CFR 9.2 and to create a new 38 CFR 9.3. In this final rule, we are creating a new paragraph (g) because paragraph (f) was recently added by 85 FR 35562, Extension of Veterans' Group Life Insurance (VGLI) Application Period in Response to the COVID-19 Public Health Emergency (June 11, 2020) (interim final rule). We are clarifying that paragraph (g) applies to member spouses eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) as well as (C)(ii). We are also clarifying that § 9.2(g)(2) refers to a member-spouse covered under 38 U.S.C. 1967(a)(1)(A)(i) and who was also eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) or (C)(ii) but who was not so insured or was insured at a reduced amount by reason of the member's election pursuant to 38 U.S.C. 1967(a)(2)(B) or (a)(3)(B). We are also moving proposed § 9.3 to new 38 CFR 9.24 for purposes of minimizing disruption to the other regulations in part 9. We are clarifying that this section applies to member spouses eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) as well as (C)(ii). New § 9.2(g) and new § 9.24 reflect the changes discussed above.

For the reasons discussed above, VA is adopting the proposed rule as a final rule with the above-noted changes.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. There are no small entities involved with processing and/or determining eligibility for SGLI and FSGLI. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on November 16, 2020, for publication.

Luvenia Potts,
Regulation Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

**PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS'
GROUP LIFE INSURANCE**

1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

2. Section 9.2 is amended by adding paragraph (g) to read as follows:

§ 9.2 Effective date; applications.

* * * * *

(g) Except as provided in § 9.24, the effective date of enrollment, re-enrollment, or an increase in coverage under 38 U.S.C. 1967(a)(1) shall be the date the uniformed service receives an application and proof of the insurable spouse's good health:

(1) For an insurable spouse who was eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) or (C)(ii) but was not so insured or was insured at a reduced rate and who became a member; and

(2) For a member-spouse covered under 38 U.S.C. 1967(a)(1)(A)(i) and who was also eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) or (C)(ii) but who was not so insured or was insured at a reduced amount by reason of an election made by a member.

3. Add § 9.24 to read as follows:

§ 9.24 Insurable dependents who become eligible members, and eligible members who marry eligible members.

(a) A Servicemembers' Group Life Insurance-covered member (member) who marries another Servicemembers' Group Life Insurance eligible member (member spouse) after January 1, 2013, or is married to a person who becomes a Servicemembers' Group Life Insurance eligible member after January 1, 2013, shall receive Family Servicemembers' Group Life Insurance spousal coverage at the statutory maximum amount or a lesser amount, or receive increased existing spousal coverage on their member spouse, upon an election of such coverage if made within 240 days following the member's marriage to another member, or the member's spouse entering service, without having to provide proof of the member spouse's good health. If a member does not elect coverage for a member spouse within 240 days following the member's marriage to another member, or the member's spouse entering service, then

the member may still receive spousal coverage at the statutory maximum amount or a lesser amount, or increase existing spousal coverage, by applying and submitting proof of the member spouse's good health.

(b) A spouse shall remain eligible to be covered by any existing Family Servicemembers' Group Life Insurance spousal coverage without the member electing such coverage or applying for such coverage with proof of the member spouse's good health in a case where the spouse is enrolled in coverage under 38 U.S.C. 1967(a)(1)(A)(ii) or (C)(ii) prior to becoming a member married to another member.

(c) A member's spouse who was insured under the member's Family Servicemembers' Group Life Insurance at the time the spouse separates from service will continue to be covered under the spousal Family Servicemembers' Group Life Insurance carried while in service, and the member will not need to elect such coverage. If a member seeks to enroll a former member spouse who did not have such spousal insurance coverage when the former member spouse separates from service, or seeks to increase existing spousal coverage on their former member spouse, the member shall receive such spousal coverage on their former member spouse, upon an election of such coverage if made within 240 days following the former member spouse's separation from service, without having to provide proof of the former member spouse's good health. If a member does not elect coverage for a former member spouse within 240 days following the former member spouse's separation from service, then the member may still receive spousal coverage at the statutory maximum amount or a lesser amount, or increase existing spousal coverage, by applying and submitting proof of the former member spouse's good health.

(d) After January 1, 2013, an insurable child who is a member at the time a parent's Servicemembers' Group Life Insurance coverage commences is not eligible for automatic dependent coverage under 38 U.S.C. 1967(a)(1)(A)(ii) or (C)(ii). Dependent

coverage in effect for an insurable child prior to becoming a member shall remain in effect so long as the child remains an insurable dependent. If an insurable child was not covered prior to becoming a member, the child cannot be covered under 38 U.S.C. 1967(a)(1)(A)(ii) or (C)(ii) after the child becomes a member.

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