

Federal Laws on Representation for Veterans Benefit Claims

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Issue

Describe the federal laws on representing veterans (or other related claimants) for their U.S. Department of Veterans Affairs (VA) benefit claims.

Summary

Federal law requires that a person be recognized by the VA in order to prepare, present, or prosecute claims under the laws the VA secretary administers ([38 U.S.C. §§ 5901 et seq.](#) and [38 CFR §§ 14.626 et seq.](#)).

[According to the VA](#), preparing a claim includes consulting with or giving advice to a claimant or potential claimant in contemplation of filing a benefits claim, gathering evidence in support of a benefits claim on behalf of a claimant or potential claimant, or filling out VA forms. Presenting and prosecuting a benefits claim generally includes filing, or pursuing in any way, an initial claim for VA benefits, a request for further review of a decision by the agency of original jurisdiction, or an appeal to the Board of Veterans' Appeals. In other words, services that strongly suggest the "practice before VA" are those that would have no value or purpose, or very little value or purpose, outside of VA's adjudication process for benefits claims.

Generally, there are three types of VA-recognition: (1) accreditation for agents and attorneys, (2) organizational accreditation, and (3) one-time authorizations. Further, in order to be recognized, these agents or attorneys may generally not receive compensation or fees and must file a power of attorney with the VA to work on a person's VA claim.

However, fees and compensation may be authorized for work agents and attorneys conduct after the VA's initial determination (e.g., appeals) if a written fee agreement is signed by the parties and submitted to the VA. Certain expenses may also be reimbursable if outlined in a fee agreement. Federal regulation further outlines the requirements for these agreements and factors for considering whether a fee is reasonable.

Authorized Representatives

Federal law allows three categories of individuals to prepare, present, or prosecute claims under the laws the VA secretary administers (which includes VA benefits): (1) a member in good standing with the bar of a state's highest court, provided the member files a declaration with the VA that they meet this qualification and are authorized to represent the claimant ([5 U.S.C. § 500\(b\)](#)); (2) an agent or attorney accredited by the secretary ([38 U.S.C § 5904](#)); and (3) an agent or attorney recognized to prepare, present, and prosecute one claim ([38 CFR § 14.630](#)). The VA must provide an [online tool for searching](#) for authorized agents and attorneys ([38 U.S.C. § 5901\(b\)](#)). Agents and attorneys must also meet the [standards of conduct](#) established by federal regulation ([38 CFR § 14.632](#)).

Accredited Agents and Attorneys

Under federal law, a person seeking "accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s)" before the VA ([38 U.S.C. § 5904](#) & [38 CFR § 14.629\(b\)\(2\)](#)). A person may not be accredited if they have been suspended or disbarred ([38 U.S.C. § 5904\(a\)\(4\)](#)).

An agent must apply for accreditation by (1) filing an application with the VA's Office of General Counsel (OGC) and supplying the required information; (2) annually providing information concerning practice before any other court, bar, or state or federal agency; (3) supplying an affirmative determination by the VA of the applicant's character and fitness; and (4) passing a written exam. An attorney is subject to the same requirements other than the written examination. Additionally, agents and attorneys must complete and certify to OGC they have attended a state bar-approved continuing education course of at least three hours every two years, starting within the 12-months of becoming accredited ([38 CFR § 14.629\(b\)](#)).

After an attorney is accredited, if a claimant consents in writing, an attorney affiliated or associated with the accredited attorney, or an attorney employed by the same legal services offices as the accredited attorney, may assist in representing the claimant. The law also establishes procedures for law students, legal interns, and paralegals to assist on VA benefits claims ([38 CFR § 14.629\(c\)](#)).

Additionally, to receive accreditation, the agent, attorney, or representative must (1) certify that they will not charge any fee or receive compensation from the claimant and (2) file a power of attorney with the VA (see below) ([38 U.S.C. § 5902\(b\)](#)).

Organizational Recognition

The VA secretary may also recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and other organizations as the Secretary approves ([38 U.S.C. § 5902](#)). To be [recognized as an organization](#) to assist in veteran benefit claims, an organization generally must submit certain evidence that it:

1. has the primary purpose of serving veterans and supplies the VA with the reasons accreditation would benefit veterans;
2. demonstrates substantial service commitment to veterans by showing (1) a sizable organizational membership or (2) service to a sizable number of veterans;
3. commits a significant portion of its assets to veterans' services and has adequate funding to perform those services;
4. maintains a policy and capability of providing complete claims service or gives a written notice of its limitations and alternatives for those limitations;
5. takes affirmative action to ensure the proper handling of claims, including maintaining qualified staff, listing those responsible for appointing organizational representatives, and developing and implementing a training plan;
6. will not charge or accept a fee or gratuity for serving a claimant; and
7. will not use the recognition for any purpose other than claimant representation.

The VA secretary may request additional information from any recognized organization, including progress reports, updates, or verifications ([38 CFR § 14.628](#)).

A recognized organization must register each person it desires to accredit as an organizational representative and must reregister the person at least every five years. In recommending the person, the organization must certify the person (1) is of good character and reputation, (2) can represent claimants before the VA, and (3) is not employed in any U.S. civil or military department or agency.

Additionally, the person must be (1) a member in good standing or a paid employee of the organization working at least 1,000 hours annually; (2) is an accredited representative of another organization; or (3) qualifies as a county or tribal veterans' service officer ([38 CFR § 14.629\(a\)](#)).

One-Time Authorization

Any person may be authorized to prepare, present, and prosecute one claim only by executing a power of attorney that includes a signed statement that the person will not charge or be paid for their services. Anyone receiving this authorization is subject to the same standards of conduct as other agents and attorneys. OGC may authorize a person to assist in more than one claim in unusual circumstances considering (1) the number of accredited individuals nearby, (2) the claimant's successfulness of seeking representation, (3) the claim's nature and status, and (4) whether unique circumstances render alternative representation inadequate ([38 CFR § 14.630](#)).

Termination of Accreditation

Under federal regulation, the VA General Counsel (GC) may suspend a person's accreditation if the GC determines the person no longer meets the accreditation requirements. The regulation outlines various reasons that accreditation or authority must be canceled if proven by clear and convincing evidence, including (1) violating VA-administered laws or regulations; (2) knowingly presenting or prosecuting fraudulent claims or providing false information; (3) presenting frivolous claims, issues, or arguments; (4) demanding or accepting unlawful compensation or charging excessive or unreasonable fees; (5) suspension or disbarment by an entity an agent, attorney, or representative is admitted to practice by; (6) lacking the competence necessary to meet his or her duties, as determined by the GC; and (7) any other unlawful or unethical practice adversely affecting an individual's fitness for practice before the VA.

Further, accreditation or one-time authority may be suspended or canceled if requested by an organization, representative, agent, or attorney.

If the GC receives notice of a person's possible improper conduct or incompetence, the person must be notified and given an opportunity to respond and correct the offending behavior. If the person refuses to comply or the matter is unresolved, a formal inquiry must be initiated regarding cancellation of the person's accreditation or authority. The inquiry must be conducted as outlined in federal regulations, with the GC making the final determination on cancellation. The GC may also temporarily suspend a person's accreditation or authority for a certain period or until certain conditions are met. If a person's accreditation is suspended or canceled, the GC must notify all agencies, courts, and bars where the person is admitted to practice ([38 U.S.C § 5904\(b\)](#) & [38 CFR § 14.633](#)).

Power of Attorney

An agent or attorney must file a power of attorney with the VA for each claim they help prepare, present, or prosecute ([38 U.S.C. § 5902](#)). Powers of attorney must be filed in accordance with federal regulations. Further, a person or organization may generally not withdraw from representation before the VA's initial claim decision unless the withdrawal would not adversely impact the claimant ([38 CFR § 14.631](#)).

Fees and Compensation

Authorized Fees or Compensation

Only accredited agents and attorneys may receive fees from claimants or appellants for services provided in connection with representation. Recognized organizations (including their accredited representatives when acting as such) and individuals with one-time authority are not permitted to receive fees ([38 CFR § 14.636\(b\)](#)).

Additionally, agents and attorneys cannot charge, allow, or be paid for services the agent or attorney provides in connection with proceedings before the VA that occurred prior to when the claimant receives notice of the VA's initial claim decision. This prohibition does not apply to (1) court proceedings; (2) loans made, guaranteed, or insured by the [VA for housing and small business loans](#); and (3) payments of fees or compensation by a disinterested third-party ([38 U.S.C. § 5904\(c\)\(1\) & \(4\)](#) & [38 CFR 14.636\(d\)](#)).

However, an agent or attorney generally may charge a fee for services provided after receiving the notice of the VA's initial decision. If the agent or attorney does so, they must provide a copy of the fee agreement to the VA secretary ([38 U.S.C. § 5904\(c\)](#) & [38 CFR § 14.636\(c\)](#)). The secretary, if requested by the claimant or at his own determination, may review any fee agreement and may order a fee reduction if he determines it is excessive or unreasonable ([38 U.S.C. § 5904\(c\)\(3\)](#)).

A fee agreement may allow the agent or attorney to recover their fee from past-due benefits that the claimant's receives based on the appeal. However, federal law limits the total fee payable to 20% of the total amount of past-due benefits. Under the agreement, the fee must be (1) paid directly to the agent or attorney from the secretary and (2) contingent on a favorable outcome for the claimant ([38 U.S.C. § 5904\(d\)](#)).

Reasonability

Under federal law, fees for agents and attorneys may be based on a fixed fee, an hourly rate, a percentage of benefits recovered, or a combination of these. When determining whether a fee is reasonable, federal law outlines the following factors:

1. the extent and type of services the representative performed;
2. the case's complexity;
3. the level of skill and competence required to provide the services;
4. the amount of time spent on the case;
5. the results achieved, including the amount of any benefits recovered;
6. the level of review to which the claim was taken (e.g., an appeal) and the level of the review at which the representative was retained;
7. comparable rates charged by others;
8. whether, and to what extent, the payment is contingent on the results achieved;
9. if applicable, the reasons why an agent or attorney was discharged or withdrew from representation before the date of the decision awarding benefits;
10. if applicable, the fee entitled to another agent or attorney on the case ([38 CFR § 14.636\(e\)](#)).

Further, federal law generally presumes that fees that do not exceed 20% of past-due benefits are reasonable and that fees that exceed 33.33% of past-due benefits are unreasonable. These presumptions may be challenged through an examination of the factors above ([38 CFR § 14.636\(f\)](#)).

Fee Agreement Requirements

To be valid under federal law, a fee agreement (including agreements involving fees or salary paid by a disinterested third-party) must be in writing and signed by the claimant and the agent or attorney. The agreement must also include the following information:

1. the veteran's, claimant's, or appellant's name, as applicable;
2. the name of any disinterested third-party payer and the relationship between the third-party payer and the veteran, claimant, or appellant;
3. the applicable VA file number;

4. the specific terms under which the amount to be paid for the services of the attorney or agent will be determined; and
5. if applicable, whether the VA is to pay the agent or attorney directly out of past-due benefits (i.e. a direct-pay agreement, see [38 CFR § 14.636\(h\)](#) for more information).

The agreement must generally be filed with the VA within 30 days of its execution, unless sufficient cause is shown otherwise, usually with the agency with original jurisdiction. All documents relating to a claim's adjudication for VA benefits must be filed with the agency of original jurisdiction, the Board of Veterans' Appeals, or other VA office as appropriate. The VA may accept agreements filed past the deadline if sufficient cause is shown ([38 CFR § 14.636\(g\)](#)).

Expenses

If included in the filed fee agreement, agents and attorneys may be reimbursed for reasonable expenses when prosecuting VA benefits claims, including prior to the VA's initial decision. Unlike fees and compensation, expenses may not be paid out of past-due benefits.

"Expenses" include nonrecurring expenses incurred directly in prosecuting a benefits claim. These can include travel expenses for attending a hearing, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining experts. Expenses may not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries, and the cost of office supplies.

The OGC may (1) review any expenses charged at its discretion or if requested by a claimant and (2) order a reduction in expenses if they are excessive or unreasonable. They must consider the case's complexity, the potential extent of benefits recoverable, and whether travel expenses are in line with expenses normally incurred by other representatives. Federal regulations outline the procedures for reviewing and adjudicating expenses ([38 CFR § 14.637](#)).

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