

Senate Agriculture and Veterans Affairs Committee
69th Legislative Session
Senator Luick-Chair

Chairman Luick and Senate Agriculture and Veterans Affairs Committee,

Please accept this testimony in OPPOSITION of HB 1169 version 25.0410.02000 as written and propose amending back to pre-session version 25.0410.01000.

Intent of original bill 25.0410.01000: (see attached: Bill 25.0410.01000 & Amendment)

1. Ensure North Dakota's veterans receive qualified, competent, and accredited representation on their benefit claims.
2. Require claim agents & attorneys to comply with Federal Laws.
3. Provide a penalty.

Initial Bill version **25.0410.01000** as *approved by the ND Veterans Legislative Council and ACOVA* would...

- Define "Compensation" and "Veterans benefits matter"
- Establish restrictions per Federal Laws.
 - Compensation or fees only as allowed by federal law Title 38, Code of Federal Regulation (CFR) part 14 section 636. (See attached: NDCC USC & CFR)
 - Require agents and attorneys to be accredited with VA Office of General Council (OGC) in preparing, presenting or prosecuting any benefit claim or appeal for veterans and dependents.
 - Prohibit referral fees.
 - Prohibit guarantee of results.
- Require written agreements which comply with Title 38 CFR part 14 section 636
- Establish penalty.
 - Up to \$5,000 civil penalty under NDCC 51-15-11
 - Other remedies in NDCC 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18

Background:

- Federal VA has 3 categories of accreditations 38 USC Ch. 59 section 5902 (See attached: NDCC USC & CFR)
- Representative (ND has over 70 accredited reps)
 - Veteran Service organizations (Federally recognized)
 - ND has American Legion, DAV, VFW
 - State agencies
 - NDDVA
 - County & Tribal Veteran Service Officers
 - NDCC 37-14-18 currently requires all county veteran service officers (government employees) to be accredited as representatives through the federal VA OGC.
 - Wait time for appointment with CVSO's: 0-15 days.
 - VA representatives are not allowed to charge fees for any services.

- Agents (ND has 3)
 - Independent persons or organizations-not part of a federally recognized Veteran Service Organization
 - Collect fees as allowed by Federal Law
 - Not to exceed 20% of retroactive payments.
- Attorneys (ND has 1)
 - Collect Fees as allowed by Federal law
 - Up to 33% of retroactive payments.

Need for bill version 25.0410.01000:

- Claims agents are breaking federal law.
- **38 CFR 14.626 and 38 USC 5904** were created to ensure veterans received responsible, qualified representation and assistance when applying for benefits. These laws require anyone who assists them in preparing, presenting, or prosecuting these claims are properly accredited through the VA Office of General Counsel (OGC).
- **38 USC Chapter 59 P §5901. Prohibition against acting as claims agent or attorney**
 - (a) In General.—Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.
 - **Note:** Feb 13, 2025, at 11:19AM ND Assistant Attorney General testified to the House GVA on HB 1169 that accreditation is required to assist in preparation of claims to VA.
 - **§5904. Recognition of agents and attorneys generally**
 - (a) **Recognition.**—
 - (1) Except as provided in paragraph (4), the Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary.
 - (2) The Secretary shall prescribe in regulations (consistent with the Model Rules of Professional Conduct of the American Bar Association) qualifications and standards of conduct for individuals recognized under this section, including a requirement that, as a condition of being so recognized, an individual must—
 - (A) show that such individual is of good moral character and in good repute, is qualified to render claimants valuable service, and is otherwise competent to assist claimants in presenting claims;
 - (B) have such level of experience or specialized training as the Secretary shall specify; and
 - (C) certify to the Secretary that the individual has satisfied any qualifications and standards prescribed by the Secretary under this section.
- Accreditation requires 3 simple steps. (See attached: “How to apply for Va accreditation)
- Only Accredited claims agents and attorneys may charge fees under 38 CFR Ch. I Subsection 14.636. (See attached)

- In 2006 Public Law. 109-461 amended Section 5905 penalties for violating those laws impeding VA OGC ability to regulate unscrupulous representation of veterans' claims.
 - G.A.U.R.D. Act: Federal bills of 118th Congress: HR 1139 and SB 740 which were attempting to address the issue of "claim sharks". Bills would have reinserted into section 5905: *"(b) CHARGING OF UNAUTHORIZED FEES.—Except as provided in sections 5904 or 1984 of this title, whoever solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation with respect to the preparation, presentation, or prosecution of any claim for benefits under the laws administered by the Secretary shall be fined as provided in title 18."* (see attached: Congress bills)
 - National Association of Attorneys Generals of the US states and territories supported, 44 states signed including ND. (see attached: Congress bills)
 - Bills are being reintroduced in 2025 (119th Congress)
- Vulnerable Veterans and dependents are targets for financial exploitation of these VA Benefits.
 - Unqualified and unaccredited representatives charge fees for services and can capture portions of VA benefits from veterans and dependents which exceed amounts allowed by Federal law.
 - Increasing reports of fraudulent actions
 - Gaining access to bank accounts of vulnerable veterans and dependents.
 - Access to veterans VA username and password.
 - Claim agents referring veteran's medical records to Dr's out of state for opinions.
 - With other states passing and currently implementing laws claim agents will concentrate on states that do not have these protective laws.
 - Ads in just 15 minutes on Facebook after viewing (not clicking) one ad...

The collage displays several Facebook advertisements:

- Dynamic Legal Advocates:** "PFAS lawsuit settlements could have a value of around \$150,000 to \$375,000... See more".
- Veteran Debt Relief:** "Veterans: Struggling with \$20,000+ in Debt? This Could Help! We help Veterans owing \$20,000 or more in Credit Card, Non-VA Med... See more".
- Victory Disability:** "Those who served could receive extr... See more".
- REE Medical:** "If you're a service-connected Veteran looking to increase your current VA Rating, our... See more".
- Veterans Guardian VA Claim Consulting:** "Stuck with a low VA rating?... See more".
- SSDI For Vets:** "VA BENEFITS NOT ENOUGH? Veterans over 55 are doubling their VA benefits with this pr...".
- VA Benefits Solutions:** "Behind every service member is a story of sacrifice. Your sacrifice deserves recognition."
- Veterans Benefits Evaluations:** "Just took another Veteran from 90% to 100% in 30 days! That's approx. \$4,098.87 per month or \$49,186 per year. They owe nothing of their award or backpay. They would have owed over \$14,000 to the claim shark companies."
- Veteran Debt Order:** "NEW ORDER TO AFFECT VETERANS IN HEAVY DEBT - EFFECTIVE FEB 20 2025. Qualifying Veterans can now get Relief if they owe more than \$20,000 in total on their Credit Card, Medical or Personal Loans!"
- Veteran Nexus:** "VA Claims Insider... Frustrated and uncertain? You're not alone. We help Veterans INCREASE Their Tax-Free Monthly Compensation FASTER! At VA Claims Insider, we're on a mission to help you secure the VA benefits you legally, morally, and medically deserve by law. It's time to stop feeling undervalued and start celebrating the change. Our reviews show that not only do we find every dollar possible in your claim but we also perform at a very high level. Why? How? We're a team of former Raters, doctors, VSOs, and Veterans who have served. We have been through all the crazy red-tape and over the past 10 years, have developed a proven process to get you the most out of your VA disability claim. We are passionate about helping veterans get more tax-free money & for life! Our SEM Method: Discover our proven SEM Method - Strategy + Evidence + Medical Evidence - the key to getting the VA disability rating you deserve, faster. Start Your Journey: Join thousands of vets and unlock your VA benefits today. Click Now! https://lean.veteranx.com/ Schedule Your No-Cost, No-Obligation Recovery Call Today. +40% Average Increase".
- Benefits.com:** "Veterans: Find out if you meet the standards for a 100% VA Disability rating! (TDIU)... See more".
- Veterans: Don't let the VA tell you your disability isn't service connected. Here's how to prove it is.**
- Just took another Army Veteran from 0% to 100% in 30 days! That's approx. \$4,098.87 per month or \$49,186 per year. They owe nothing of their award or backpay. They would have owed over \$14,000 to the claim shark companies.**
- start.benefits.com:** "Free TDIU Medical Screening".

- Claim Predators are creating financial burdens
 - Lawsuits involving Claim agents appearing across the US
 - 2/10/2025 search showed Veterans Guardian VA Claim Consulting alone was involved in 11 active lawsuits across the US-from Maine to Montana.
 - VA spending millions to warn veterans with letters, brochures, website information, online reporting center, social media flyers, and letter dated 1/14/2025. (See attached: VA and VSO Efforts)
 - Veteran Service Organizations are conducting national campaigns warning veterans of claim predators. See attached. (See attached: VA and VSO Efforts)
 - Veterans Benefit Guide (VBG) is currently in many states, including ND, fighting legislative efforts to require compliance with federal laws.
 - VBG is not a registered business with ND Secretary of State.
 - ND DVA is receiving reports and requests for help from ND Veterans.
 - Receiving large bills for services beyond what was understood.
 - Lack of response from claim predators once agreements signed or fees paid.
 - Veterans seeking representation from POA's to appeal and correct claims that were denied or improperly developed by claim agents.
 - Difficult to determine if outside claim agent has POA, we should not advise veterans who are represented by others.
 - Paying for medical opinions from out of state providers they have never visited with.

Outcome of bill version 25.0410.01000:

- Ensure North Dakota's veterans receive qualified, competent, and accredited representation on their benefit claims.
- Require claim agents & attorneys to comply with Federal Laws.
- Provide a penalty.

Outcome of bill version 25.0410.02000 (current bill)

- This version removed from first version the key verbiage from lines 18-19 of page 1.
 - 2. A person may not:
 - a. Receive compensation for advising or assisting an individual regarding any federal or state veterans' benefits matter, except as allowed under federal law.
- Provides Claim Agents and Attorneys authority to violate federal law through the NDCC.
- Does not reference federal laws or requirements.
- Allows unaccredited agents and attorneys to charge fees for services not allowed by federal law.
- Section 1 (2) (C) Prohibits excessive or unreasonable fees but does not define excessive or unreasonable.
- Does not provide any government oversight of the claim agents.
- Does not provide legal ramifications for failing to comply with federal laws.
- Encourages unscrupulous claim sharks to target and exploit ND Veterans and dependents.

Fiscal note:

No state general funds. Cost to veterans and dependents is unattainable.

Conclusion:

Allowing unaccredited representation will hurt ND veterans and will only benefit out of state unaccredited claim predators who do not register in ND or answer to any agency in ND.

The ACOVA respectfully requests that the Senate Agriculture and Veterans Affairs Committee amend the current version of HB 1169 to the 25.0410.01000 version and recommend a do pass.

If the Senate Agriculture and Veterans Affairs Committee does not amend, we respectfully request that HB 1169 gets a “DO NOT PASS” recommendation.

Thank you for your consideration.

Lonnie Wangen
Commissioner-NDDVA



Party Search Results

Search Criteria: Party Search; Last Name: [Veterans Guardian VA]
Result Count: 11 (1 page)
Current Page: 1

Party Name	Case Number	Case Title	Court	Date Filed	Date Closed
VETERANS GUARDIAN VA CLAIM CONSULTING, LLC (dft)	1:2023cv00756	FORD v. VETERANS GUARDIAN VA CLAIM CONSULTING, LLC	North Carolina Middle District Court	09/01/2023	
VETERANS GUARDIAN VA CLAIM CONSULTING, LLC (dft)	1:2023cv00762	PATTERSON et al v. VETERANS GUARDIAN VA CLAIM CONSULTING, LLC et al	North Carolina Middle District Court	09/08/2023	10/31/2024
VETERANS GUARDIAN VA CLAIM CONSULTING, LLC (dft)	1:2023cv01080	BEARD v. VETERANS GUARDIAN VA CLAIM CONSULTING, LLC	North Carolina Middle District Court	12/08/2023	10/31/2024
Veterans Guardian VA Claim Consulting LLC	0:2024cv01097	Veterans Guardian VA Claim Consulting LLC, et al v. Matthew J. Platkin	U.S. Court Of Appeals, Third Circuit	01/19/2024	
VETERANS GUARDIAN VA CLAIM CONSULTING LLC (pla)	1:2024cv00290	VETERANS GUARDIAN VA CLAIM CONSULTING LLC et al v. FREY	Maine District Court	08/09/2024	
VETERANS GUARDIAN VA CLAIM CONSULTING PAC (dft)	1:2023cv00762	PATTERSON et al v. VETERANS GUARDIAN VA CLAIM CONSULTING, LLC et al	North Carolina Middle District Court	09/08/2023	10/31/2024
Veterans Guardian VA Claim Consulting, LLC (dft)	1:2024cv00014	Young et al v. Veterans Guardian VA Claim Consulting, LLC	Montana District Court	02/02/2024	10/29/2024
VETERANS GUARDIAN VA CLAIM CONSULTING, LLC (dft)	1:2024cv01021	YOUNG et al v. VETERANS GUARDIAN VA CLAIM CONSULTING, LLC	North Carolina Middle District Court	12/05/2024	
VETERANS GUARDIAN VA CLAIM CONSULTING, LLC (dft)	1:2020cv00784	THE UNITED STATES OF AMERICA v. VETERANS GUARDIAN VA CLAIM CONSULTING, LLC et al	North Carolina Middle District Court	08/27/2020	
VETERANS GUARDIAN VA CLAIM CONSULTING, LLC (pla)	3:2023cv20660	VETERANS GUARDIAN VA CLAIM CONSULTING, LLC et al v. PLATKIN	New Jersey District Court	09/25/2023	09/19/2024
Veterans Guardian VA Claims Consulting, LLC (am)	3:2024cv00446	Military-Veterans Advocacy, Inc. et al v. Landry et al	Louisiana Middle District Court	06/05/2024	

PACER Service Center		02/10/2025 14:01:11
User	mejham01	
Client Code	MEO_VA	
Description	All Court Types Party Search All Courts; Name Veterans Guardian VA; All Courts; Page: 1	
Billable Pages	1 (\$0.10)	

PACER FAQ

This site is maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary.

Privacy & Security

Contact Us

PACER Service Center
(800) 676-6856
pacer@psc.uscourts.gov



ACCREDITATION, DISCIPLINE, & FEES PROGRAM OFFICE OF GENERAL COUNSEL HOW TO APPLY FOR VA ACCREDITATION

WHAT AN APPLICANT SHOULD KNOW ABOUT APPLYING FOR DEPARTMENT OF VETERANS AFFAIRS (VA) ACCREDITATION AS AN ATTORNEY OR CLAIMS AGENT

What is the VA accreditation program?

- The VA accreditation program exists to ensure that Veterans and their family members receive appropriate representation on their VA benefits claims. VA accreditation is for the sole and limited purpose of preparing, presenting, and prosecuting claims before VA.

When is VA accreditation required?

- An individual generally must first be accredited by VA to assist a claimant in the preparation, presentation, and prosecution of a claim for VA benefits—even without charge.¹ VA accredits three types of individuals for this purpose:
 - Representatives of VA-recognized veterans service organizations (VSO)²
 - Attorneys (accredited in their individual capacity, not through a law firm)
 - Claims agents (accredited in their individual capacity, not through an organization)

How do I apply to become a VA-accredited attorney or claims agent?

Step 1: > Complete VA Form 21a

- Be sure to fill out all portions of the form.

Step 2: > It is recommended that you attach any necessary documents to VA Form 21a

- We recommend that you attach a recently dated certificate of good standing from all state bars, courts, or Federal or state agencies to which you are admitted. (This applies to both attorneys and claims agents).
- On VA Form 21a, if you answer “yes” to question 13A, 14A, 15A, 16, 17, 18, 20, 22, 23A or 24A, please attach a detailed explanation of the surrounding circumstances.

Step 3: > Submit your VA Form 21a and any attachments to OGC (Please only choose 1 method of submission):

- Mail: Office of the General Counsel (O22D), 810 Vermont Avenue, NW, Washington, DC20420.
- Fax: (202) 495-5457.

¹ VA regulations allow a one-time exception to this general rule, which allows VA to authorize a person to prepare, present, and prosecute one claim without accreditation. The assistance must be without cost to the claimant, is subject to the laws governing presentation, and may not be used to evade the accreditation requirements.

² To apply for accreditation as a VSO representative, please contact the organization's certifying official.

FAQs

Q1: How long will it take to process my application?

A1: Attorney applications generally take between 60 to 120 days from submission. Because there are more steps involved with claim agent applications, those applications take, on average, 1 year to process.

Q2: If I am accredited as an attorney or claims agent, what must I do to maintain my VA accreditation?

A2: You must: (1) Complete 3 hours of qualifying continuing legal education (CLE) requirements during the first 12-month period following the date of initial accreditation by VA, and an additional 3 hours no later than 3 years from the date of your accreditation, and every 2 years thereafter; (2) Provide a copy of your training certificate or certify in writing to VA's Office of the General Counsel your completion of the qualifying CLE, including the CLE title, date, time, and provider; (3) Submit an annual certification of good standing for any court, bar, or Federal or State agency to which you are admitted to practice.

Q3: Can I be accredited to help veterans with their claims if I am a federal employee?

A3: No. An employee of the Federal government generally cannot provide representational services before VA. However, if you are currently serving in a Reserve component of the Armed Forces, you are not considered a Federal employee as long as you are not on active duty or active duty for training.

Q4: May an accredited attorney or claims agent charge fees for preparing an initial VA claim?

A4: No. An accredited attorney or claims agent may generally charge claimants a fee only **after** an agency of original jurisdiction (e.g., a VA regional office) has issued a decision on a claim, a notice of disagreement has been filed, and the attorney or agent has filed a power of attorney and a fee agreement with VA.

Q5: If I advise veterans and their family members on VA benefit claims but do not file their applications for them, do I need to be accredited?

A5: Yes. You must be accredited to aid in the preparation, presentation, or prosecution of a VA benefit claim. Advising a claimant on a specific benefit claim or directing the claimant on how to fill out the application, even if you never put pen to paper, is considered claims preparation.

Q6: Can I use my VA accreditation to as a method to advertise or promote my other business interests?

A6: No. VA accredits individuals solely for purposes of ensuring VA claimants receive responsible, qualified representation when preparing presenting and prosecuting claims before the Department. You may not use your VA accreditation for promoting any other businesses, including financial services, referral businesses, or homecare businesses. If VA determines that an accredited agent or attorney is using VA accreditation for an improper purpose, VA may suspend or cancel the individual's accreditation. VA may also collaborate with state law enforcement authorities in the event that it is suspected that the individual's actions may have implications under State laws.

Q7: Are there standards of conduct that I must follow as an accredited individual?

A7: Yes. You must abide by the standards of conduct listed in 38 C.F.R. § 14.632 and summarized on the fact sheet labeled "How to File a Complaint Regarding Representation."

Q8: If I violate the standard of conduct or engage in any other unlawful or unethical conduct, what will happen?

A8: If VA determines that an accredited individual has violated the standard of conduct, VA may suspend or cancel his or her accreditation. VA is authorized to report the suspension or cancellation of VA accreditation to other bar associations, courts, or agencies to which you are admitted as well as employing entities. In addition, VA may collaborate with state law enforcement authorities in the event that it is suspected that the individual's actions may have implications under State laws.

Q9: What if I have questions regarding my VA accreditation?

A9: You may submit inquiries regarding VA accreditation to ogcaccreditationmailbox@va.gov.

Introduced by

Representative J. Olson

1 A BILL for an Act to create and enact a new section to chapter 37-14 of the North Dakota
2 Century Code, relating to compensation for veterans' benefits, and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 37-14 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Compensation for advising on veterans' benefits prohibited - Limitations - Penalty.**

7 1. As used in this section:

8 a. "Compensation" means payment of any money, thing of value, or financial
9 benefit.

10 b. "Veterans' benefits matter" means the preparation, presentation, or prosecution
11 of any claim or appeal affecting an individual who has filed or expressed an intent
12 to file a claim for a benefit, program, service, commodity, function, status, or an
13 entitlement which is determined under the laws and regulations administered by
14 the United States department of veterans affairs or the United States department
15 of defense pertaining to a veteran, a veteran's dependent or survivor, or any
16 other individual eligible for such benefit.

17 2. A person may not:

18 a. Receive compensation for advising or assisting an individual regarding any
19 federal or state veterans' benefits matter, except as allowed under federal law.

20 b. Receive compensation for referring an individual to another person to advise or
21 assist the individual with any veterans' benefits matter.

22 c. Guarantee to an individual a specific veterans' benefit, including any level,
23 percentage, or amount of veterans' benefit, either directly or by implication.

- 1 d. Receive excessive or unreasonable fees as provided under title 38, Code of
- 2 Federal Regulations, part 14, section 636, as compensation for advising or
- 3 assisting an individual with a veterans' benefits matter.
- 4 3. A person seeking to receive compensation for advising or assisting an individual with a
- 5 veterans' benefits matter shall memorialize all terms regarding the individual's
- 6 payment of fees for services rendered in a written agreement in accordance with
- 7 title 38, Code of Federal Regulations, part 14, section 636, before rendering services.
- 8 4. A violation of this section is an unlawful practice in violation of section 51-15-02 and
- 9 subject to a civil penalty under section 51-15-11.

Sixty-ninth
Legislative Assembly
of North Dakota**PROPOSED AMENDMENTS TO****HOUSE BILL NO. 1169**

Introduced by

Representatives J. Olson, Grindberg, Klemin, Lefor, Marschall, Pyle, M. Ruby, Schauer

Senators Axtman, Bekkedahl, Cory, Roers

- 1 A BILL for an Act to create and enact a new section to chapter 37-14 of the North Dakota
2 Century Code, relating to compensation for veterans' benefits; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

- 4 **SECTION 1.** A new section to chapter 37-14 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Compensation for advising on veterans' benefits prohibited - Limitations - Penalty.**

7 1. As used in this section:

8 a. "Compensation" means payment of any money, thing of value, or financial
9 benefit.

10 b. "Veterans' benefits matter" means the preparation, presentation, or prosecution
11 of any claim or appeal affecting an individual who has filed or expressed an intent
12 to file a claim for a benefit, program, service, commodity, function, status, or an
13 entitlement which is determined under the laws and regulations administered by
14 the United States department of veterans affairs or the United States department
15 of defense pertaining to a veteran, a veteran's dependent or survivor, or any
16 other individual eligible for such benefit.

17 2. A person may not:

18 a. Receive compensation for advising or assisting an individual regarding any
19 federal or state veterans' benefits matter, except as allowed under federal law.

- 1 b. Receive compensation for referring an individual to another person to advise or
2 assist the individual with any veterans' benefits matter.
- 3 b.c. Guarantee to an individual a specific veterans' benefit, including any level,
4 percentage, or amount of veterans' benefit, either directly or by implication.
- 5 e.d. Receive excessive or unreasonable fees, as provided under title 38, Code of
6 Federal Regulations, part 14, section 636, as compensation for advising or
7 assisting an individual with a veterans' benefits matter.
- 8 3. A person seeking to receive compensation for advising or assisting an individual with a
9 veterans' benefits matter shall memorialize all terms regarding the individual's
10 payment of fees for services rendered in a written agreement in accordance with
11 title 38, Code of Federal Regulations, part 14, section 636, before rendering services.
- 12 4. A person seeking to receive compensation for advising or assisting an individual with a
13 veterans' benefits matter shall provide the following disclosure at the outset of the
14 business relationship:
- 15 ———— This business is not sponsored by, or affiliated with, the United States department
16 of veterans' affairs or the state department of veterans' affairs, or any other
17 federally chartered veterans' service organization. Other organizations including
18 the state department of veterans' affairs, a local veterans' service organization,
19 and other federally chartered veterans' service organizations may be able to
20 provide you with this service free of charge. Products or services offered by this
21 business are not necessarily endorsed by any of these organizations. You may
22 qualify for other veterans' benefits beyond the benefits for which you are
23 receiving services here.
- 24 ———— 5. The written disclosure under subsection 4 must appear in at least twelve point font in
25 an easily identifiable location in the person's agreement with the individual seeking
26 services. The individual shall sign the document in which the written disclosure
27 appears to represent an understanding of these provisions. The person offering
28 services shall retain a copy of the written disclosure while providing veterans' benefits
29 services for compensation to the individual and for at least one year after the date on
30 which the service relationship terminates.

- 1 ~~6. A person seeking to receive compensation for advising or assisting a veteran in~~
2 ~~connection with an initial claim for benefits may not:~~
- 3 ~~a. Receive any compensation for any services rendered in connection with any~~
4 ~~claim filed within a one-year presumptive period of active-duty release, unless the~~
5 ~~veteran acknowledges by signing a waiver that the veteran is within this period~~
6 ~~and chooses to deny free services available to the veteran.~~
- 7 ~~b. Receive compensation that is not purely contingent on an increase in benefits~~
8 ~~awarded or which exceeds five times the amount of the monthly benefits~~
9 ~~awarded.~~
- 10 ~~c. Receive initial or nonrefundable fees.~~
- 11 ~~d. Use international call centers or data centers for processing veterans' personal~~
12 ~~information.~~
- 13 ~~e. Use a veteran's personal login, username, or password information to access a~~
14 ~~veteran's medical, financial, or government benefits information.~~
- 15 ~~f. Allow an individual access to a veteran's medical or financial information until the~~
16 ~~individual successfully completes a background check. The background check~~
17 ~~must be conducted by a reputable source and include identity verification and a~~
18 ~~criminal records check.~~
- 19 ~~7. A violation of this section is an unlawful practice in violation of section 51-15-02 and~~
20 ~~subject to a civil penalty under section 51-15-11.~~

NORTH DAKOTA CENTURY CODE

37-14-18. County veterans' service officer - Appointment - Duties.

The board of county commissioners of each county of the state of North Dakota shall appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. The veterans' affairs commissioner may work directly with county veterans' service officers. An individual may serve as a county veterans' service officer in more than one county. The appointment must be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in section 37-19.1-02. All county veterans' service officers must be accredited by the national association of county veterans' service officers or the department of veterans' affairs within twelve months of appointment or employment. It is the duty of the county veterans' service officer to become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist the returning members of the armed forces in the presentation, proof, and establishment of the claims, privileges, and rights members have. The county veterans' service officer shall cooperate with and coordinate the activities of the state and federal agencies within the county the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the re-establishment of returning servicemen and servicewomen in civilian pursuits. A county veterans' service officer may not serve as a conservator for an individual receiving benefits or services from the department of veterans' affairs or the United States department of veterans' affairs, except if the individual is the spouse or an immediate family member of the officer.

CHAPTER 51-15 UNLAWFUL SALES OR ADVERTISING PRACTICE

51-15-02. Unlawful practices - Fraud - Misrepresentation - Unconscionable.

The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition, is declared to be an unlawful practice.

51-15-11. Civil penalties.

The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter or for each violation of chapter 51-12, 51-13, 51-14, or 51-18. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18.

38 USC Ch. 59: AGENTS AND ATTORNEYS

From Title 38—VETERANS' BENEFITS

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 59—AGENTS AND ATTORNEYS

Sec.	
5901.	Prohibition against acting as claims agent or attorney.
5902.	Recognition of representatives of organizations.
5903.	Recognition with respect to particular claims.
5904.	Recognition of agents and attorneys generally.
5905.	Penalty for certain acts.
5906.	Availability of legal assistance at Department facilities.

EDITORIAL NOTES

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, §548(a)(2), Jan. 1, 2021, 134 Stat. 3618, added item 5906.

1991—Pub. L. 102–40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3401 to 3405 as 5901 to 5905, respectively.

§5901. Prohibition against acting as claims agent or attorney

(a) **IN GENERAL.**—Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.

(b) **WARNINGS ABOUT POTENTIAL PREDATORY PRACTICES.**—(1) The Secretary shall ensure that, each time a claimant under a law administered by the Secretary logs in to a website or online tool of the Department, such website or online tool issues to the claimant, in plain language—

(A) a warning about individuals who seek to act in violation of this chapter;

(B) a link to an online tool of the Department through which the claimant may report such an individual;

(C) a link to an online tool of the Department through which the claimant may search for a recognized agent, attorney, or other entity recognized by the Secretary for the preparation, presentation, or prosecution of any claim under laws administered by the Secretary; and

(D) a link to a website or an online tool of the Department providing final decisions on discipline of agents, attorneys, and entities, described in subparagraph (C), by the Secretary for violations of this chapter.

(2) The Secretary shall provide all information under paragraph (1) in the following languages:

(A) English.

(B) Spanish.

(C) Tagalog.

(D) The seven other languages most commonly spoken in the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1238, §3401; Pub. L. 91–24, §12(a), June 11, 1969, 83 Stat. 34; Pub. L. 99–576, title VII, §701(79), Oct. 28, 1986, 100 Stat. 3298; renumbered §5901, Pub. L. 102–40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 118–21, §3(a), Nov. 13, 2023, 137 Stat. 110.)

EDITORIAL NOTES

AMENDMENTS

2023—Pub. L. 118–21 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1991—Pub. L. 102–40 renumbered section 3401 of this title as this section.

Pub. L. 102–83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102–83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1986—Pub. L. 99-576 substituted "such individual" for "he".

1969—Pub. L. 91-24 substituted "Except as provided by section 500 of title 5, no individual may act" for "No individual may act".

STATUTORY NOTES AND RELATED SUBSIDIARIES

IMPLEMENTATION

Pub. L. 118-21, §3(b), Nov. 13, 2023, 137 Stat. 110, provided that: "The Secretary of Veterans Affairs shall carry out subsection (b) of such section, as added by subsection (a) of this section—

"(1) after consulting with stakeholders (including veterans service organizations recognized under section 5902 of such title) regarding the wording of the warning under such subsection; and

"(2) not later than one year after the date of the enactment of this Act [Nov. 13, 2023]."

§5902. Recognition of representatives of organizations

(a)(1) The Secretary may 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 such other organizations as the Secretary may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary may, in the discretion of the Secretary, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

(b)(1) No individual shall be recognized under this section—

(A) unless the individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

(B) unless, with respect to each claim, such individual has filed with the Secretary a power of attorney, executed in such manner and form as the Secretary may prescribe.

(2) An individual recognized under this section shall be subject to the provisions of section 5904(b) of this title on the same basis as an individual recognized under section 5904(a) of this title.

(c)(1) Unless a claimant specifically indicates in a power of attorney filed with the Department a desire to appoint only a recognized representative of an organization listed in or approved under subsection (a), the Secretary may, for any purpose, treat the power of attorney naming such an organization, a specific office of such an organization, or a recognized representative of such an organization as the claimant's representative as an appointment of the entire organization as the claimant's representative.

(2) Whenever the Secretary is required or permitted to notify a claimant's representative, and the claimant has named in a power of attorney an organization listed in or approved under subsection (a), a specific office of such an organization, or a recognized representative of such an organization without specifically indicating a desire to appoint only a recognized representative of the organization, the Secretary shall notify the organization at the address designated by the organization for the purpose of receiving the notification concerned.

(d) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted member of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3402; Pub. L. 91-24, §12(b), June 11, 1969, 83 Stat. 34; Pub. L. 98-160, title VII, §703(5), Nov. 21, 1983, 97 Stat. 1010; renumbered §5902, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 104-275, title V, §508(a), Oct. 9, 1996, 110 Stat. 3343; Pub. L. 109-461, title I, §101(a)(2), Dec. 22, 2006, 120 Stat. 3406.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-461 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

1996—Subsecs. (c), (d). Pub. L. 104-275 added subsec. (c) and redesignated former subsec. (c) as (d).

1991—Pub. L. 102-40 renumbered section 3402 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsecs. (a)(2), (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

1983—Subsec. (a)(1). Pub. L. 98-160, §703(5)(A), substituted "the Administrator" for "he".

Subsec. (a)(2). Pub. L. 98-160, §703(5)(B), substituted "the discretion of the Administrator" for "his discretion".

Subsec. (b)(1). Pub. L. 98-160, §703(5)(C), substituted "the individual" for "he".

Subsec. (c). Pub. L. 98-160, §703(5)(D), substituted "member" for "man".

1969—Subsec. (c). Pub. L. 91-24 substituted "sections 203, 205, 206 or 207 of title 18" for "section 281 or 283 of title 18, or a violation of section 99 of title 5".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-275, title V, §508(b), Oct. 9, 1996, 110 Stat. 3344, provided that: "The amendments made by this section [amending this section] apply to any power of attorney filed with the Department of Veterans Affairs, regardless of the date of its execution."

§5903. Recognition with respect to particular claims

(a) IN GENERAL.—The Secretary may recognize any individual for the preparation, presentation, and prosecution of any particular claim for benefits under any of the laws administered by the Secretary if—

(1) such individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with such claim; and

(2) such individual has filed with the Secretary a power of attorney, executed in such manner and in such form as the Secretary may prescribe.

(b) SUSPENSION.—An individual recognized under this section shall be subject to the provisions of section 5904(b) of this title on the same basis as an individual recognized under section 5904(a) of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3403; renumbered §5903, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 109-461, title I, §101(a)(3), Dec. 22, 2006, 120 Stat. 3407.)

EDITORIAL NOTES

AMENDMENTS

2006—Pub. L. 109-461 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1991—Pub. L. 102-40 renumbered section 3403 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and wherever appearing in pars. (1) and (2).

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in introductory provisions.

§5904. Recognition of agents and attorneys generally

(a) RECOGNITION.—(1) Except as provided in paragraph (4), the Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary shall prescribe in regulations (consistent with the Model Rules of Professional Conduct of the American Bar Association) qualifications and standards of conduct for individuals recognized under this section, including a requirement that, as a condition of being so recognized, an individual must—

(A) show that such individual is of good moral character and in good repute, is qualified to render claimants valuable service, and is otherwise competent to assist claimants in presenting claims;

(B) have such level of experience or specialized training as the Secretary shall specify; and

(C) certify to the Secretary that the individual has satisfied any qualifications and standards prescribed by the Secretary under this section.

(3) The Secretary shall prescribe in regulations requirements that each agent or attorney recognized under this section provide annually to the Secretary information about any court, bar, or Federal or State agency to which such agent or attorney is admitted to practice or otherwise authorized to appear, any relevant identification number or numbers, and a certification by such agent or attorney that such agent or attorney is in good standing in every jurisdiction where the agent or attorney is admitted to practice or otherwise authorized to appear.

(4) The Secretary may not recognize an individual as an agent or attorney under paragraph (1) if such individual has been suspended or disbarred by any court, bar, or Federal or State agency to which the individual was previously admitted to practice and has not been subsequently reinstated.

(5) The Secretary may prescribe in regulations reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim before the Department. A fee that does not exceed 20 percent of the past due amount of benefits awarded on a claim shall be presumed to be reasonable.

(6)(A) The Secretary may charge and collect an assessment from an individual recognized as an agent or attorney under this section in any case in which the Secretary pays to the agent or attorney, from past-due benefits owed to a claimant represented by the agent or attorney, an amount as a fee in accordance with a fee arrangement between the claimant and the agent or attorney.

(B) The amount of an assessment under subparagraph (A) shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, except that the amount of such an assessment may not exceed \$100.

(C) The Secretary may collect an assessment under subparagraph (A) by offsetting the amount of the fee otherwise required to be paid to the agent or attorney from the past-due benefits owed to the claimant represented by the agent or attorney.

(D) An agent or attorney who is charged an assessment under subparagraph (A) may not, directly or indirectly, request, receive, or obtain reimbursement for such assessment from the claimant represented by the agent or attorney.

(E) Amounts collected under this paragraph shall be deposited in the account available for administrative expenses for veterans' benefits programs. Amounts so deposited shall be merged with amounts in such account and shall be available for the same purpose, and subject to the same conditions and limitations, as amounts otherwise in such account.

(b) **SUSPENSION OF AGENTS AND ATTORNEYS.**—The Secretary, after notice and opportunity for a hearing, may suspend or exclude from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney—

(1) has engaged in any unlawful, unprofessional, or dishonest practice;

(2) has been guilty of disreputable conduct;

(3) is incompetent;

(4) has violated or refused to comply with any of the laws administered by the Secretary, or with any of the regulations or instructions governing practice before the Department;

(5) has in any manner deceived, misled, or threatened any actual or prospective claimant;

(6) has presented to the Secretary a frivolous claim, issue, or argument, involving conduct inconsistent with ethical standards for the practice of law;

(7) has been suspended or disbarred by any court or bar to which such agent or attorney was previously admitted to practice, or has been disqualified from participating in or appearing before any Federal agency, and has not been subsequently reinstated;

(8) has charged excessive or unreasonable fees, as determined by the Secretary in accordance with subsection (c)(3)(A); or

(9) has failed to comply with any other condition specified in regulations prescribed by the Secretary for purposes of this subsection.

(c)(1) Except as provided in paragraph (4), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which a claimant is provided notice of the agency of original jurisdiction's initial decision under section 5104 of this title with respect to the case. The limitation in the preceding sentence does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court.

(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of this subsection, represents a person before the Department or the Board of Veterans' Appeals after a claimant is provided notice of the agency of original jurisdiction's initial decision under section 5104 of this title with respect to the case shall file a copy of any fee agreement between them with the Secretary pursuant to regulations prescribed by the Secretary.

(3)(A) The Secretary may, upon the Secretary's own motion or at the request of the claimant, review a fee agreement filed pursuant to paragraph (2) and may order a reduction in the fee called for in the agreement if the Secretary finds that the fee is excessive or unreasonable.

(B) A finding or order of the Secretary under subparagraph (A) may be reviewed by the Board of Veterans' Appeals under section 7104 of this title.

(C) If the Secretary under subsection (b) suspends or excludes from further practice before the Department any agent or attorney who collects or receives a fee in excess of the amount authorized under this section, the suspension shall continue until the agent or attorney makes full restitution to each claimant from whom the agent or attorney collected or received an excessive fee. If the agent or attorney makes such restitution, the Secretary may reinstate such agent or attorney under such rules as the Secretary may prescribe.

(4) A reasonable fee may be charged or paid in connection with any proceeding before the Department in a case arising out of a loan made, guaranteed, or insured under chapter 37 of this title. A person who charges a fee under this paragraph shall enter into a written agreement with the person represented and shall file a copy of the fee agreement with the Secretary at such time, and in such manner, as may be specified by the Secretary.

(d) **PAYMENT OF FEES OUT OF PAST-DUE BENEFITS.**—(1) When a claimant and an agent or attorney have entered into a fee agreement described in paragraph (2), the total fee payable to the agent or attorney may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim.

(2)(A) A fee agreement referred to in paragraph (1) is one under which the total amount of the fee payable to the agent or attorney—

(i) is to be paid to the agent or attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim; and

(ii) is contingent on whether or not the matter is resolved in a manner favorable to the claimant.

(B) For purposes of subparagraph (A), a claim shall be considered to have been resolved in a manner favorable to the claimant if all or any part of the relief sought is granted.

(3) To the extent that past-due benefits are awarded in any proceeding before the Secretary, the Board of Veterans' Appeals, or the United States Court of Appeals for Veterans Claims, the Secretary may direct that payment of any fee to an agent or attorney under a fee arrangement described in paragraph (1) be made out of such past-due benefits. In no event may the Secretary withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Secretary, the Board of Veterans' Appeals, or Court of Appeals for Veterans Claims making (or ordering the making of) the award.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1238, §3404; Pub. L. 99–576, title VII, §701(80), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100–687, div. A, title I, §104(a), Nov. 18, 1988, 102 Stat. 4108; renumbered §5904 and amended Pub. L. 102–40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 102–405, title III, §303(a), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–446, title V, §504(a), Nov. 2, 1994, 108 Stat. 4663; Pub. L. 105–368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 109–461, title I, §101(a)(1), (b), (c)(1), (d)–(f), Dec. 22, 2006, 120 Stat. 3405, 3407, 3408; Pub. L. 115–55, §2(n), Aug. 23, 2017, 131 Stat. 1110.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsec. (c)(1), (2). Pub. L. 115–55 substituted "claimant is provided notice of the agency of original jurisdiction's initial decision under section 5104 of this title" for "notice of disagreement is filed".

2006—Subsec. (a). Pub. L. 109–461, §101(a)(1)(A), inserted heading.

Subsec. (a)(1). Pub. L. 109–461, §101(a)(1)(A)–(C), designated existing provisions as par. (1), substituted "Except as provided in paragraph (4), the Secretary may recognize" for "The Secretary may recognize", and struck out last sentence which read as follows: "The Secretary may require that individuals, before being recognized under this section, show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims."

Subsec. (a)(2) to (6). Pub. L. 109–461, §101(a)(1)(D), added pars. (2) to (6).

Subsec. (b). Pub. L. 109–461, §101(b)(1), inserted heading.

Subsec. (b)(6) to (9). Pub. L. 109–461, §101(b)(2)–(4), added pars. (6) to (9).

Subsec. (c)(1). Pub. L. 109–461, §101(e)(1), substituted "paragraph (4)" for "paragraph (3)".

Pub. L. 109–461, §101(c)(1), substituted "a notice of disagreement is filed with respect to" for "the Board of Veterans' Appeals first makes a final decision in", struck out "Such a fee may be charged, allowed, or paid in the case of services provided after such date only if an agent or attorney is retained with respect to such case before the end of the one-year period beginning on that date." before "The limitation", and inserted "fees charged, allowed, or paid for" after "does not apply to".

Subsec. (c)(2). Pub. L. 109–461, §101(d), substituted "after a notice of disagreement is filed with respect to the case" for "after the Board first makes a final decision in the case" and "with the Secretary pursuant to regulations prescribed by the Secretary" for "with the Board at such time as may be specified by the Board" and struck out at end: "The Board, upon its own motion or the request of either party, may review such a fee agreement and may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. A finding or order of the Board under the preceding sentence may be reviewed by the United States Court of Appeals for Veterans Claims under section 7263(d) of this title."

Subsec. (c)(3), (4). Pub. L. 109–461, §101(e)(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 109–461, §101(f)(1), inserted heading.

Subsec. (d)(1). Pub. L. 109–461, §101(f)(2), (3), inserted "agent or" before "attorney" in two places and struck out "of this subsection" after "paragraph (2)".

Subsec. (d)(2)(A). Pub. L. 109–461, §101(f)(2), inserted "agent or" before "attorney" in introductory provisions and in cl. (i).

Subsec. (d)(2)(B). Pub. L. 109-461, §101(f)(4), struck out "of this paragraph" after "subparagraph (A)".

Subsec. (d)(3). Pub. L. 109-461, §101(f)(5), substituted "fee to an agent or attorney" for "attorneys' fee" and struck out "of this subsection" after "paragraph (1)".

1998—Subsecs. (c)(2), (d)(3). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals" wherever appearing.

1994—Subsec. (d)(2)(A). Pub. L. 103-446 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "A fee agreement referred to in paragraph (1) of this subsection is one under which (i) the amount of the fee payable to the attorney is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim, and (ii) the amount of the fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant."

1992—Subsec. (c)(1). Pub. L. 102-405, §303(a)(1), substituted "Except as provided in paragraph (3), in" for "In".

Subsec. (c)(3). Pub. L. 102-405, §303(a)(2), added par. (3).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3404 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in introductory provisions.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in introductory provisions and in par. (4).

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in par. (4).

Subsec. (c)(1). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (c)(2). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "7263(d)" for "4063(d)".

Subsec. (d)(2)(A), (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

1988—Subsecs. (c), (d). Pub. L. 100-687 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees—

"(1) shall be determined and paid as prescribed by the Administrator;

"(2) shall not exceed \$10 with respect to any one claim; and

"(3) shall be deducted from monetary benefits claimed and allowed."

1986—Subsec. (b). Pub. L. 99-576 substituted "the Administrator" for "he" in introductory text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title, and bracketed note thereunder.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-461, title I, §101(h), Dec. 22, 2006, 120 Stat. 3408, provided that: "The amendments made by subsections (c)(1) and (d) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006] and shall apply with respect to services of agents and attorneys that are provided with respect to cases in which notices of disagreement are filed on or after that date."

Pub. L. 109-461, title I, §101(i), Dec. 22, 2006, 120 Stat. 3408, provided that: "No assessments on fees may be collected under paragraph (6) of section 5904(a) of title 38, United States Code (as added by subsection (a)(1)(D) of this section), until the date on which the Secretary of Veterans Affairs prescribes

the regulations [regulations prescribed effective June 23, 2008, see 73 F.R. 29851] required by the amendments made by this section [amending this section and sections 5902, 5903, and 5905 of this title]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-446, title V, §504(b), Nov. 2, 1994, 108 Stat. 4664, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fee agreements entered into on or after the date of the enactment of this Act [Nov. 2, 1994]."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-405, title III, §303(b), Oct. 9, 1992, 106 Stat. 1985, provided that: "Paragraph (3) [now (4)] of section 5904(c) of title 38, United States Code, as added by subsection (a), shall apply with respect to services of agents and attorneys provided after the date of the enactment of this Act [Oct. 9, 1992]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

FEE AGREEMENTS

Subsec. (d) of this section not to prevent award of fees and expenses under section 2412(d) of Title 28, Judiciary and Judicial Procedure, but subsec. (d) of this section inapplicable to such award where fees for the same work are received under both sections and claimant's attorney refunds to claimant amount of smaller fee, see section 506(c) of Pub. L. 102-572, set out as a note under section 2412 of Title 28.

APPLICABILITY TO ATTORNEYS' FEES

Pub. L. 100-687, title IV, §403, Nov. 18, 1988, 102 Stat. 4122, which provided that the amendment to subsec. (c) of this section by section 104(a) of Pub. L. 100-687 applied only to services of agents and attorneys in cases in which a notice of disagreement was filed with the Department of Veterans Affairs on or after Nov. 18, 1988, was repealed by Pub. L. 107-103, title VI, §603(b), Dec. 27, 2001, 115 Stat. 999.

[Repeal of section 403 of Pub. L. 100-687, formerly set out above, applicable to any appeal filed with the United States Court of Appeals for Veterans Claims on or after Dec. 27, 2001, or before that date but in which a final decision has not been made under section 7291 of this title as of that date, see section 603(d) of Pub. L. 107-103, set out as a note under section 7251 of this title.]

§5905. Penalty for certain acts

Whoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3405; Pub. L. 99-576, title VII, §701(81), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title I, §104(b), Nov. 18, 1988, 102 Stat. 4109; renumbered §5905 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109-461, title I, §101(g), Dec. 22, 2006, 120 Stat. 3408.)

EDITORIAL NOTES

AMENDMENTS

2006—Pub. L. 109-461 struck out "(1) directly or indirectly solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation except as provided in sections 5904 or 1984 of this title, or (2)" after "Whoever".

1991—Pub. L. 102-40 renumbered section 3405 of this title as this section and substituted "5904" for "3404".

Pub. L. 102-83 substituted "1984" for "784".

1988—Pub. L. 100-687 substituted "shall be fined as provided in title 18, or imprisoned not more than one year, or both" for "shall be fined not more than \$500 or imprisoned at hard labor for not more than two years, or both".

1986—Pub. L. 99-576 substituted "to the claimant or beneficiary" for "him".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

§5906. Availability of legal assistance at Department facilities

(a) IN GENERAL.—Not less frequently than three times each year, the Secretary shall facilitate the provision by a qualified legal assistance clinic of pro bono legal assistance described in subsection (c) to eligible individuals at not fewer than one medical center of the Department of Veterans Affairs, or such other facility of the Department as the Secretary considers appropriate, in each State.

(b) ELIGIBLE INDIVIDUALS.—For purposes of this section, an eligible individual is—

- (1) any veteran;
- (2) any surviving spouse; or
- (3) any child of a veteran who has died.

(c) PRO BONO LEGAL ASSISTANCE DESCRIBED.—The pro bono legal assistance described in this subsection is the following:

- (1) Legal assistance with any program administered by the Secretary.
- (2) Legal assistance associated with—
 - (A) improving the status of a military discharge or characterization of service in the Armed Forces, including through a discharge review board; or
 - (B) seeking a review of a military record before a board of correction for military or naval records.

- (3) Such other legal assistance as the Secretary—
 - (A) considers appropriate; and
 - (B) determines may be needed by eligible individuals.

(d) LIMITATION ON USE OF FACILITIES.—Space in a medical center or facility designated under subsection (a) shall be reserved for and may only be used by the following, subject to review and removal from participation by the Secretary:

- (1) A veterans service organization or other nonprofit organization.
- (2) A legal assistance clinic associated with an accredited law school.
- (3) A legal services organization.
- (4) A bar association.
- (5) Such other attorneys and entities as the Secretary considers appropriate.

(e) LEGAL ASSISTANCE IN RURAL AREAS.—In carrying out this section, the Secretary shall ensure that pro bono legal assistance is provided under subsection (a) in rural areas.

(f) DEFINITION OF VETERANS SERVICE ORGANIZATION.—In this section, the term "veterans service organization" means any organization recognized by the Secretary for the representation of veterans under section 5902 of this title.

(Added Pub. L. 116-283, div. A, title V, §548(a)(1), Jan. 1, 2021, 134 Stat. 3617.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

PILOT PROGRAM TO ESTABLISH AND SUPPORT LEGAL ASSISTANCE CLINICS

Pub. L. 116-283, div. A, title V, §548(b)–(e), Jan. 1, 2021, 134 Stat. 3618, provided that:

"(b)(1) PILOT PROGRAM REQUIRED.—

"(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Veterans Affairs shall establish a pilot program to assess the feasibility and advisability of awarding grants to eligible entities to establish new legal assistance clinics, or enhance existing legal assistance clinics or other pro bono efforts, for the provision of pro bono legal assistance described in subsection (c) of section 5906 of title 38, United States Code, as added by subsection (a), on a year-round basis to individuals who served in the Armed Forces, including individuals who served in a reserve component of the Armed Forces, and who were discharged or released therefrom, regardless of the conditions of such discharge or release, at locations other than medical centers and facilities described in subsection (a) of such section.

"(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to limit or affect—

"(i) the provision of pro bono legal assistance to eligible individuals at medical centers and facilities of the Department of Veterans Affairs under section 5906(a) of title 38, United States Code, as added by subsection (a); or

"(ii) any other legal assistance provided pro bono at medical centers or facilities of the Department as of the date of the enactment of this Act.

"(2) ELIGIBLE ENTITIES.—For purposes of the pilot program, an eligible entity is—

"(A) a veterans service organization or other nonprofit organization specifically focused on assisting veterans;

"(B) an entity specifically focused on assisting veterans and associated with an accredited law school;

"(C) a legal services organization or bar association; or

"(D) such other type of entity as the Secretary considers appropriate for purposes of the pilot program.

"(3) LOCATIONS.—The Secretary shall ensure that at least one grant is awarded under paragraph (1) (A) to at least one eligible entity in each State, if the Secretary determines that there is such an entity in a State that has applied for, and meets requirements for the award of, such a grant.

"(4) DURATION.—The Secretary shall carry out the pilot program during the five-year period beginning on the date on which the Secretary establishes the pilot program.

"(5) APPLICATION.—An eligible entity seeking a grant under the pilot program shall submit to the Secretary an application therefore at such time, in such manner, and containing such information as the Secretary may require.

"(6) SELECTION.—The Secretary shall select eligible entities who submit applications under paragraph (5) for the award of grants under the pilot program using a competitive process that takes into account the following:

"(A) Capacity of the applicant entity to serve veterans and ability of the entity to provide sound legal advice.

"(B) Demonstrated need of the veteran population the applicant entity would serve.

"(C) Demonstrated need of the applicant entity for assistance from the grants.

"(D) Geographic diversity of applicant entities.

"(E) Such other criteria as the Secretary considers appropriate.

"(7) GRANTEE REPORTS.—Each recipient of a grant under the pilot program shall, in accordance with such criteria as the Secretary may establish, submit to the Secretary a report on the activities of the recipient and how the grant amounts were used.

"(c) REVIEW OF PRO BONO ELIGIBILITY OF FEDERAL WORKERS.—

"(1) IN GENERAL.—The Secretary of Veterans Affairs shall, in consultation with the Attorney General and the Director of the Office of Government Ethics, conduct a review of the rules and regulations governing the circumstances under which attorneys employed by the Federal Government can provide pro bono legal assistance.

"(2) RECOMMENDATIONS.—In conducting the review required by paragraph (1), the Secretary shall develop recommendations for such legislative or administrative action as the Secretary considers appropriate to facilitate greater participation by Federal employees in pro bono legal and other volunteer services for veterans.

"(3) SUBMITTAL TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary shall submit to the appropriate committees of Congress—

"(A) the findings of the Secretary with respect to the review conducted under paragraph (1); and

"(B) the recommendations developed by the Secretary under paragraph (2).

"(d) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report on the status of the implementation of this section.

"(e) DEFINITIONS.—In this section:

"(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means

— "(A) the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate;

and

"(B) the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives.

"(2) VETERANS SERVICE ORGANIZATION.—The term 'veterans service organization' means any organization recognized by the Secretary for the representation of veterans under section 5902 of title 38, United States Code."

5 U.S. Code § 500 - Administrative practice; general provisions

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 551 of this title; and

(2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(d) This section does not—

(1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;

(2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;

(3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or

(4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

(e) Subsections (b)–(d) of this section do not apply to practice before the United States Patent and Trademark Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

(Added Pub. L. 90-83, § 1(1)(A), Sept. 11, 1967, 81 Stat. 195; amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

§ 14.636

Under Secretary for Health, respectively.

(Authority: 38 U.S.C. 501(a), 5902)

[53 FR 52423, Dec. 28, 1988, Redesignated and amended at 57 FR 4104, Feb. 3, 1992; 68 FR 8547, Feb. 24, 2003; 82 FR 6272, Jan. 19, 2017]

§ 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized under § 14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with § 14.631 of this part in his or her individual capacity as an accredited agent or attorney.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, agents and attorneys may only charge fees as follows:

(1)(i) Agents and attorneys may charge claimants or appellants for representation provided after an agency of original jurisdiction has issued notice of an initial decision on the claim or claims if the notice of the initial decision was issued on or after the effective date of the modernized review system as provided in § 19.2(a) of this chapter, and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section. For purposes of this paragraph (c)(1)(i), an initial decision on a claim

38 CFR Ch. I (7-1-19 Edition)

would include an initial decision on an initial claim for an increase in rate of benefit, an initial decision on a request to revise a prior decision based on clear and unmistakable error (unless fees are permitted at an earlier point pursuant to paragraph (c)(1)(ii) or paragraph (c)(2)(ii) of this section), and an initial decision on a supplemental claim that was presented after the final adjudication of an earlier claim. However, a supplemental claim will be considered part of the earlier claim if the claimant has continuously pursued the earlier claim by filing any of the following, either alone or in succession: A request for higher-level review, on or before one year after the date on which the agency of original jurisdiction issued a decision; a supplemental claim, on or before one year after the date on which the agency of original jurisdiction issued a decision; a Notice of Disagreement, on or before one year after the date on which the agency of original jurisdiction issued a decision; a supplemental claim, on or before one year after the date on which the Board of Veterans' Appeals issued a decision; or a supplemental claim, on or before one year after the date on which the Court of Appeals for Veterans Claims issued a decision.

(ii) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans' Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if notice of the challenged decision on a claim or claims was issued on or after the effective date of the modernized review system as provided in § 19.2(a), and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(2)(i) Agents and attorneys may charge claimants or appellants for representation provided: After an agency of original jurisdiction has issued a decision on a claim or claims, including any claim to reopen under 38 CFR 3.156(a) or for an increase in rate of a

Department of Veterans Affairs

§ 14.636

benefit; the agency of original jurisdiction issued notice of that decision before the effective date of the modernized review system as provided in § 19.2(a) of this chapter; a Notice of Disagreement has been filed with respect to that decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(ii) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans' Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if notice of the challenged decision was issued before the effective date of the modernized review system as provided in § 19.2(a); a Notice of Disagreement was filed with respect to the challenged decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(3) In cases in which a Notice of Disagreement was filed on or before June 19, 2007, agents and attorneys may charge fees only for services provided after both of the following conditions have been met:

(i) A final decision was promulgated by the Board with respect to the issue, or issues, involved in the appeal; and

(ii) The agent or attorney was retained not later than 1 year following the date that the decision by the Board was promulgated. (This condition will be considered to have been met with respect to all successor agents or attorneys acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(4) Except as noted in paragraph (i) of this section and § 14.637(d), the agency of original jurisdiction that issued the decision referenced in paragraph (c)(1) or (2) of this section shall determine whether an agent or attorney is eligible for fees under this section. The agency of original jurisdiction's eligibility determination is a final adju-

dicative action that may only be appealed to the Board.

(d) *Exceptions*—(1) *Chapter 37 loans*. With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) *Payment of fee by disinterested third party*. (i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: "I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid."

(e) *Fees permitted.* Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

- (1) The extent and type of services the representative performed;
- (2) The complexity of the case;
- (3) The level of skill and competence required of the representative in giving the services;
- (4) The amount of time the representative spent on the case;
- (5) The results the representative achieved, including the amount of any benefits recovered;
- (6) The level of review to which the claim was taken and the level of the review at which the representative was retained;
- (7) Rates charged by other representatives for similar services;
- (8) Whether, and to what extent, the payment of fees is contingent upon the results achieved; and
- (9) If applicable, the reasons why an agent or attorney was discharged or withdrew from representation before the date of the decision awarding benefits.

(f) *Presumptions and discharge.* (1) Fees which do not exceed 20 percent of any past-due benefits awarded as defined in paragraph (h)(3) of this section shall be presumed to be reasonable if the agent or attorney provided representation that continued through the date of the decision awarding benefits. Fees which exceed 33 $\frac{1}{3}$ percent of any past-due benefits awarded shall be presumed to be unreasonable. These presumptions may be rebutted through an examination of the factors in paragraph (e) of this section establishing that there is clear and convincing evidence that a fee which does not exceed 20 percent of any past-due benefits awarded is not reasonable or that a fee which exceeds 33 $\frac{1}{3}$ percent is reasonable in a specific circumstance.

(2) With regard to a fee agreement in which the amount of the fee is contingent on the claimant receiving an award of benefits, a reasonable fee for an agent or attorney who is discharged

by the claimant or withdraws from representation before the date of the decision awarding benefits is one that fairly and accurately reflects his or her contribution to and responsibility for the benefits awarded. The amount of the fee is informed by an examination of the factors in paragraph (e) of this section.

(g) *Fee agreements.* All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

- (i) The name of the veteran.
- (ii) The name of the claimant or appellant if other than the veteran.
- (iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant.
- (iv) The applicable VA file number, and
- (v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement that does not clearly specify that VA is to pay the agent or attorney out of past-due benefits or that specifies a fee greater than 20 percent of past-due benefits awarded by VA shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of a direct-pay fee agreement, as defined in paragraph (g)(2) of this section, must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the

Department of Veterans Affairs

§ 14.636

Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Only fee agreements that do not provide for the direct payment of fees, documents related to review of fees under paragraph (i) of this section, and documents related to review of expenses under §14.637, may be filed with the Office of the General Counsel. All documents relating to the adjudication of a claim for VA benefits, including any correspondence, evidence, or argument, must be filed with the agency of original jurisdiction, Board of Veterans' Appeals, or other VA office as appropriate.

(h) *Payment of fees by Department of Veterans Affairs directly to an agent or attorney from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an agent or attorney may enter into a fee agreement providing that payment for the services of the agent or attorney will be made directly to the agent or attorney by VA out of any past-due benefits awarded in any proceeding before VA or the United States Court of Appeals for Veterans Claims. VA will charge and collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits awarded. The amount of such assessment shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, but in no event shall the assessment exceed \$100. Such an agreement will be honored by VA only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded.

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an ap-

pellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and 38 CFR 3.750)

(2) For purposes of this paragraph (h), a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph (h), "past-due benefits" means a non-recurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim readjudicated after a denial by a VA agency of original jurisdiction or the Board of Veterans' Appeals or the lump sum payment that represents the total amount of recurring cash payments that accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the readjudicated claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the agent or attorney represents the claimant or appellant in that phase of the claim, the agent or attorney will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the agent or attorney, the agent's or attorney's fees will be

determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) As required by paragraph (g)(3) of this section, the agent or attorney must file with the agency of original jurisdiction within 30 days of the date of execution a copy of the agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due.

(i) *Motion for review of fee agreement.* Before the expiration of 120 days from the date of the final VA action, the Office of the General Counsel may review a fee agreement between a claimant or appellant and an agent or attorney upon its own motion or upon the motion of the claimant or appellant. The Office of the General Counsel may order a reduction in the fee called for in the agreement if it finds by a preponderance of the evidence, or by clear and convincing evidence in the case of a fee presumed reasonable under paragraph (f) of this section, that the fee is unreasonable. The Office of the General Counsel may approve a fee presumed unreasonable under paragraph (f) of this section if it finds by clear and convincing evidence that the fee is reasonable. The Office of the General Counsel's review of the agreement under this paragraph will address the issues of eligibility under paragraph (c) of this section and reasonableness under paragraph (e) of this section. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the agreement and made an eligibility determination under paragraph (c) of this section. Motions for review of fee agreements must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number.

Such motions must set forth the reason, or reasons, why the fee called for in the agreement is unreasonable and must be accompanied by all evidence the moving party desires to submit.

(1) A claimant's or appellant's motion for review of a fee agreement must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Deputy Chief Counsel with subject-matter jurisdiction shall initiate the Office of the General Counsel's review of a fee agreement on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record before the Office of the General Counsel in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Deputy Chief Counsel with subject-matter jurisdiction may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Deputy Chief Counsel shall

Department of Veterans Affairs

§ 14.637

forward the record and a recommendation to the General Counsel or his or her designee for a final decision. Unless either party files a Notice of Disagreement, the agent or attorney must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under §14.633 of this chapter to terminate the agent's or attorney's accreditation to practice before VA.

(k)(1) *Decisions issued before the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals of decisions issued before the effective date of the modernized review system as provided in §19.2(a) of this chapter, shall be initiated and processed using the procedures in 38 CFR parts 19 and 20 applicable to legacy appeals. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 20.904 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(2) *Decisions issued on or after the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals of decisions issued on or after the effective date of the modernized review system as provided in §19.2(a) of this chapter, shall be initiated and processed using the procedures

in 38 CFR part 20 applicable to appeals under the modernized system.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0605.)

[73 FR 29875, May 22, 2008, as amended at 80 FR 81193, Dec. 29, 2015; 82 FR 26754, June 9, 2017; 84 FR 175, Jan. 18, 2019]

§ 14.637 Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before VA. Whether such an agent or attorney will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the agent or attorney and the claimant or appellant in the fee agreement filed with the Office of the General Counsel or the agency of original jurisdiction under §14.636 of this part. Expenses are not payable directly to the agent or attorney by VA out of benefits determined to be due to a claimant or appellant.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include non-recurring expenses incurred directly in the prosecution of a claim for benefits on behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining the services of an expert witness or an expert opinion. "Expenses" do not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or



NATIONAL
ASSOCIATION OF
ATTORNEYS GENERAL

PRESIDENT

Dave Yost

Ohio
Attorney General

PRESIDENT-ELECT

Ellen F. Rosenblum

Oregon
Attorney General

VICE PRESIDENT

John Formella

New Hampshire
Attorney General

IMMEDIATE PAST
PRESIDENT

Josh Stein

North Carolina
Attorney General

August 8, 2023

Via E-mail

The Honorable Kevin McCarthy
Speaker

House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader

House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Majority Leader

United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader

United States Senate
Washington, DC 20510

Re: Support for Passing the G.U.A.R.D. VA Benefits Act

Dear Congressional Leaders:

The undersigned Attorneys General write to express our strong support for the passage of bipartisan legislative proposals included in, *H.R. 1139* and *S. 740*, both cited as the *Governing Unaccredited Representatives Defrauding VA Benefits Act* and otherwise referred to as the *G.U.A.R.D. VA Benefits Act*.

The history of the service and sacrifice of our nation's veterans is long and storied. This country and the freedoms we enjoy were built on those sacrifices. Our nation has long recognized its obligation to provide support and care for those veterans and their families as compensation for their many sacrifices. This nation has long provided that support and care through various VA benefits. However, some of those benefits make the veterans who have earned them targets for financial exploitation.

1850 M Street NW
12th Floor
Washington, DC 20036
(202) 326-6000
www.naag.org

To ensure veterans received "responsible, qualified representation"¹ and assistance when applying for those benefits, federal laws were created requiring anyone who assists them in preparing, presenting, or prosecuting those claims to be properly accredited through the VA Office of General Counsel (OGC).² Those same laws govern whether, when, and how much veterans can be charged for that assistance.

In 2006, the criminal penalties for violating those laws were removed³, leaving the OGC virtually powerless to enforce the law against anyone except those who *voluntarily* followed those laws and became accredited. That left the door open for unaccredited, often unscrupulous, actors to swoop in and turn what had been created as a benefit for veterans into profitable businesses that targeted those veterans and their benefits. Over the years, those unaccredited actors have proliferated throughout the VA benefits claims system at all levels.

Unaccredited actors advertise their services as superior to the free services offered by accredited actors, like veteran service officers, claims agents, and attorneys, who are trained, tested, supervised, regulated, or otherwise held accountable. They boast quicker response times and better or even guaranteed results, neither of which is based in fact or even remotely quantifiable.

Assisting or representing veterans and their families in preparing, presenting, and prosecuting claims for VA benefits is governed by federal statute and requires VA accreditation. So unaccredited actors advertise their services as "coaching" or "consultation" instead of assistance or representation to avoid oversight or accountability. Many use language in their advertising and their contracts indicating that the veteran will be doing all the work that requires accreditation and that the unaccredited actors are only there to answer questions or advise. In fact, they typically do everything except sign the claim. Conversely, other unaccredited actors do absolutely nothing except point the veteran to DIY websites and online videos that the veteran could have found themselves.

Regardless of how much or how little assistance unaccredited actors actually provide a veteran in preparing and presenting their claim, they all abandon those veterans when it comes to representation. At that point, often a critical one, those veterans are entirely on their own. Accredited actors stay with the veteran throughout the process and are accountable for their work.

Since they do not have access to the veteran's VA claim files, unaccredited actors sometimes require the veteran to share their VA system logins and passwords so they can

¹ 38 CFR 14.626.

² 38 USC 5904.

³ P.L. 109-461.

monitor the claims process, know when benefits decisions are made, and know the amounts of those benefits so that they can calculate their cut. Additionally, they might have the veteran give them access to the checking or savings account where the benefits will be direct deposited, so that the company can immediately withdraw their fees from the account, sometimes before the veteran even learns that the money had been deposited.

With the recent passage and signing into law of the PACT Act, there is an expectation of a significant increase in filing applications or claims for benefits. In the first six months after the PACT Act became law, the VA received 124,127 completed PACT Act related claims for VA benefits, 122,130 from veterans and 1,999 from survivors. In just the first five months, there were 161,659 new enrollees in the Veterans Health Administration (VHA) system, representing an almost fifteen percent increase in the number of new enrollees over the same five-month period from the year before.⁴ Unaccredited actors see this potential influx of claims, especially those associated with the long list of new presumptive conditions, as a target-rich environment and an opportunity to further exploit veterans and their families without fear of punishment or reprisal, as evidenced by a recent and continuing barrage of internet, social media and even television advertisements referencing the recently enacted PACT Act and the Camp Lejeune Justice Act.

Any argument that the GUARD VA Benefits Act will take away a veteran's right to choose who they want to represent them or somehow limit their choices of representation is without merit.

While its opponents argue that the Act impinges upon veteran's right to choose who they wish to consult with or to represent them in the preparation, presentation, or prosecution of their attempts to obtain VA benefits, whether that be initial claims, claims for increases, or appeals of adverse decisions, on the contrary, it merely removes the ability of unaccredited, unregulated, and often unscrupulous actors to target and prey upon those veterans with impunity. It holds them accountable not just to the law but also to the veterans and their families by giving them options for redress when they find themselves victims of those same actors.

We urge the members of Congress, therefore, to reinstate those criminal penalties and to protect our veterans, and their families, from unaccredited predatory actors who seek to profit from veterans' service and sacrifice with total disregard for the laws designed to protect those veterans and their benefits. Our veterans deserve to be honored, not disproportionately targeted for financial victimization.

⁴ [VA PACT Act Performance Dashboard](#)

The four co-sponsors of this letter, the attorneys general of California, Illinois, Ohio, and Tennessee, are joined by the undersigned attorneys general across the U.S. states and its territories.

Respectfully,



Rob Bonta
California Attorney General



Kwame Raoul
Illinois Attorney General



Dave Yost
Ohio Attorney General



Jonathan Skrmetti
Tennessee Attorney General



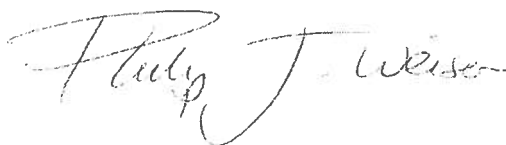
Treg R. Taylor
Alaska Attorney General



Fainu'u'ulelei Falefatu Ala'ilima-Utu
American Samoa Attorney General



Kris Mayes
Arizona Attorney General



Phil Weiser
Colorado Attorney General



William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



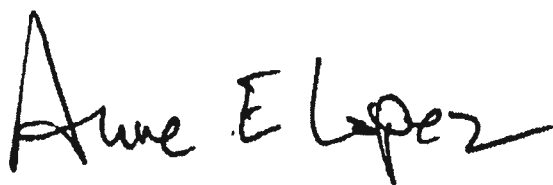
Brian Schwalb
District of Columbia Attorney General



Ashley Moody
Florida Attorney General



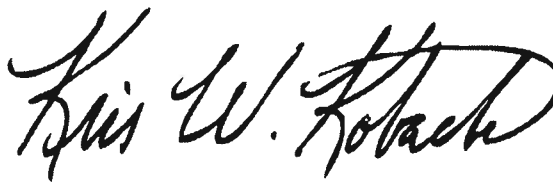
Christopher M. Carr
Georgia Attorney General



Anne E. Lopez
Hawaii Attorney General



Raúl Labrador
Idaho Attorney General



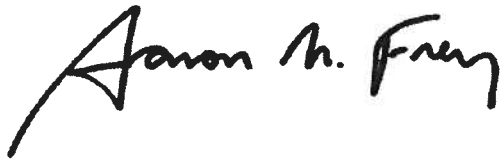
Kris Kobach
Kansas Attorney General



Daniel Cameron
Kentucky Attorney General



Jeff Landry
Louisiana Attorney General



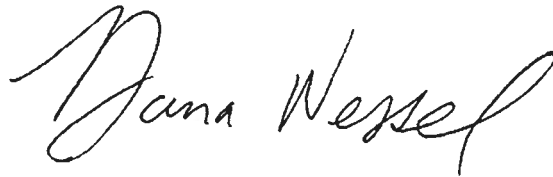
Aaron M. Frey
Maine Attorney General



Anthony G. Brown
Maryland Attorney General



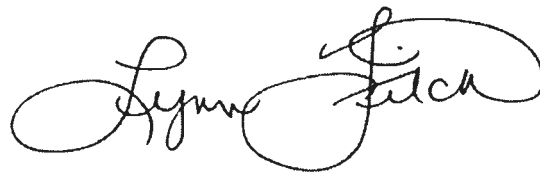
Andrea Joy Campbell
Massachusetts Attorney General



Dana Nessel
Michigan Attorney General



Keith Ellison
Minnesota Attorney General

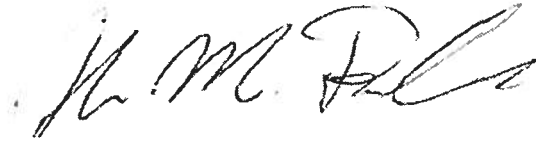


Lynn Fitch
Mississippi Attorney General



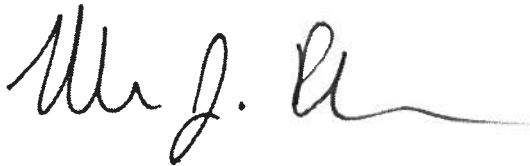
Aaron D. Ford

Nevada Attorney General



John M. Formella

New Hampshire Attorney General



Matthew J. Platkin

New Jersey Attorney General



Letitia James

New York Attorney General



Josh Stein

North Carolina Attorney General



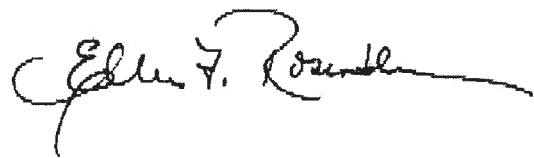
Drew H. Wrigley

North Dakota Attorney General



Gentner Drummond

Oklahoma Attorney General



Ellen F. Rosenblum

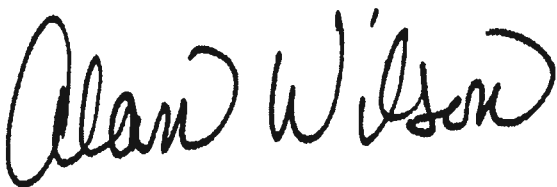
Oregon Attorney General



Michelle Henry
Pennsylvania Attorney General



Peter F. Neronha
Rhode Island Attorney General



Alan Wilson
South Carolina Attorney General



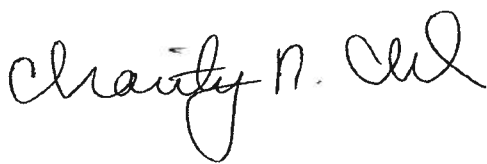
Marty Jackley
South Dakota Attorney General



Angela Colmenero
Provisional Texas Attorney General



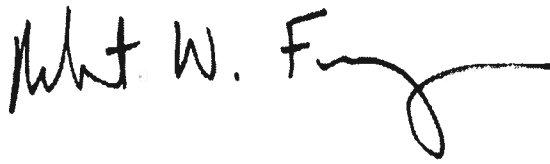
Sean D. Reyes
Utah Attorney General



Charity Clark
Vermont Attorney General



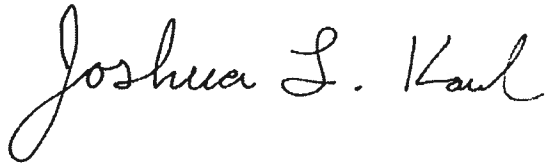
Jason S. Miyares
Virginia Attorney General



Robert W. Ferguson
Washington Attorney General



Patrick Morrissey
West Virginia Attorney General



Joshua L. Kaul
Wisconsin Attorney General



Bridget Hill
Wyoming Attorney General



118TH CONGRESS
1ST SESSION

H. R. 1139

To amend title 38, United States Code, to reinstate penalties for persons charging veterans unauthorized fees relating to claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 2023

Mr. PAPPAS (for himself, Mrs. RADEWAGEN, Mr. FITZPATRICK, Mr. VAN DREW, Mr. ALLRED, Ms. BROWNLEY, Mr. CICILLINE, Ms. DEAN of Pennsylvania, Mrs. DINGELL, Mr. FINSTAD, Mr. KEATING, Mr. KIM of New Jersey, Mr. PETERS, Ms. STRICKLAND, Ms. HOULAHAN, Mr. SABLAN, Mr. FOSTER, Ms. DELBENE, Ms. NORTON, Mr. COSTA, Ms. BARRAGÁN, Mr. VALADAO, Ms. STEFANIK, Mr. CARSON, Mr. COHEN, Mr. WITTMAN, Mr. LYNCH, Ms. BONAMICI, Mrs. McBATH, Ms. PORTER, Ms. TOKUDA, Ms. WILD, Ms. TITUS, Ms. KELLY of Illinois, Ms. SCANLON, Ms. UNDERWOOD, Mr. GROTHMAN, Mr. LIEU, Mr. NEGUSE, Mr. VICENTE GONZALEZ of Texas, Ms. LEE of California, Mr. HERN, Mr. LAMALFA, Mr. KRISHNAMOORTHY, Mr. VEASEY, Mr. BOYLE of Pennsylvania, Mr. JOHNSON of Ohio, Mr. STANTON, Mr. GOTTHEIMER, Mr. McGOVERN, Ms. SIERRILL, Mr. BACON, Mr. CASE, Mr. MOULTON, Ms. DAVIDS of Kansas, Mr. CASTEN, Mr. COURTNEY, Mr. GARBARINO, Mrs. FLETCHER, Mr. KELLY of Mississippi, Mr. CONNOLLY, Mr. PHILLIPS, Mr. CUELLAR, Ms. JACOBS, Ms. ROSS, Ms. PINGREE, Ms. LOFGREN, Mr. OBERNOLTE, Mr. WEBSTER of Florida, and Ms. BUDZINSKI) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 38, United States Code, to reinstate penalties

for persons charging veterans unauthorized fees relating to claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Governing
5 Unaccredited Representatives Defrauding VA Benefits
6 Act" or the "GUARD VA Benefits Act".

7 **SEC. 2. REINSTATEMENT OF PENALTIES FOR CHARGING**
8 **VETERANS UNAUTHORIZED FEES RELATING**
9 **TO CLAIMS FOR BENEFITS UNDER LAWS AD-**
10 **MINISTERED BY THE SECRETARY OF VET-**
11 **ERANS AFFAIRS.**

12 Section 5905 of title 38, United States Code, is
13 amended—

14 (1) in the section heading, by striking "**Pen-**
15 **alty**" and inserting "**Penalties**" (and conforming
16 the table of sections at the beginning of chapter 59
17 of such title accordingly);

18 (2) by inserting "(a) WITHHOLDING OF BENE-
19 FITS.—" before "Whoever"; and

20 (3) by adding at the end the following new sub-
21 section:

1 “(b) CHARGING OF UNAUTHORIZED FEES.—Except
2 as provided in sections 5904 or 1984 of this title, whoever
3 solicits, contracts for, charges, or receives, or attempts to
4 solicit, contract for, charge, or receive, any fee or com-
5 pensation with respect to the preparation, presentation, or
6 prosecution of any claim for benefits under the laws ad-
7 ministered by the Secretary shall be fined as provided in
8 title 18.”.

118TH CONGRESS
1ST SESSION

S. 740

To amend title 38, United States Code, to reinstate criminal penalties for persons charging veterans unauthorized fees relating to claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2023

Mr. BOOZMAN (for himself, Mr. BLUMENTHAL, Mr. TESTER, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to reinstate criminal penalties for persons charging veterans unauthorized fees relating to claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Governing
5 Unaccredited Representatives Defrauding VA Benefits
6 Act of 2023” or the “GUARD VA Benefits Act of 2023”.

1 SEC. 2. REINSTATEMENT OF PENALTIES FOR CHARGING
2 VETERANS UNAUTHORIZED FEES RELATING
3 TO CLAIMS FOR BENEFITS UNDER LAWS AD-
4 MINISTERED BY THE SECRETARY OF VET-
5 ERANS AFFAIRS.

6 Section 5905 of title 38, United States Code, is
7 amended—

8 (1) in the section heading, by striking “**Pen-**
9 **alty**” and inserting “**Penalties**” (and conforming
10 the table of sections at the beginning of chapter 59
11 of such title accordingly);

12 (2) by striking “Whoever” and inserting the fol-
13 lowing:

14 “(a) WITHHOLDING OF BENEFITS.—Whoever”; and

15 (3) by adding at the end the following new sub-
16 section:

17 “(b) CHARGING OF UNAUTHORIZED FEES.—Except
18 as provided in sections 5904 or 1984 of this title, whoever
19 directly or indirectly solicits, contracts for, charges, or re-
20 ceives, or attempts to solicit, contract for, charge, or re-
21 ceive, any fee or compensation with respect to the prepara-
22 tion, presentation, or prosecution of any claim for benefits
23 under the laws administered by the Secretary shall be
24 fined as provided in title 18, or imprisoned not more than
25 one year, or both.”.



Department of Veterans Affairs

EVIDENCE INTAKE CENTER
PO BOX 4444
JANESVILLE WI 53547-4444

January 14, 2025

In reply, refer to file number:
[REDACTED]

[REDACTED]

[REDACTED]

The Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxins Act of 2022, known as the PACT Act, expands and extends eligibility for health care and benefits to Veterans exposed to burn pits and other toxic substances. The law enables the Department of Veterans Affairs (VA) to provide generations of Veterans and their survivors with the care and benefits they have earned and deserve. Unfortunately, since the PACT Act was passed, claims predators have increasingly targeted Veterans – via emails, phone calls, or text messages – and tried to take some portion of their PACT Act-related and VA benefits. VA defines claims predators as "bad actors" who try to unlawfully charge Veterans to "help" process their claims with VA. These claims predators are not accredited by VA and are charging Veterans improper and exorbitant fees to help prepare, consult on, or file their initial benefits claims. VA claimants should **never** pay a fee to file or receive help in filing an initial claim for benefits. It is **unlawful** for these bad actors to charge fees for preparing, or helping to prepare, an initial claim. VA employees, as well as Veterans Service Organizations (VSOs) and VA accredited representatives, are available to help Veterans file their initial claims.

What Are Some Signs an Entity May Be a Claims Predator?

- **They Are Not Accredited by VA:** Beware of claims predators asserting they don't need to be accredited by VA or they are qualified to help in some other way. Don't believe them!
- **They Downplay VA Accreditation:** Beware of claims predators downplaying the quality of help Veterans and their family members can receive from VA accredited VSOs for free.
- **They Charge High Fees:** Beware of claims predators charging absurd fees or requesting a portion of your VA benefits payments. Never pay anyone a fee to file an initial claim for benefits.
- **They Make Dishonest Promises:** Do not trust anyone who claims they can help accelerate the claims process and obtain a 100% disability benefits evaluation. Only VA has the authority to determine disability evaluations.
- **They Require Contracts:** Never sign a contract agreeing to pay an unaccredited individual or company a fee in exchange for assistance in filing a VA initial claim, to include a percentage of or flat fee from future benefit payments.



What Is VA Doing?

Fraud poses a real threat to benefits and services, as fraudsters' schemes are constantly evolving. VA is committed to safeguarding your benefit payments by employing industry-leading fraud prevention techniques and partnering with federal agencies and other stakeholders to create a united front in protecting Veterans. There is a devoted team within VA that works diligently to proactively stop fraud before it occurs, create robust educational communication tools, and remediate financial losses if fraud does occur.

Where Can You Find More Fraud Prevention Information?

You can protect your benefits against claims predators by either applying for benefits in person at any VA regional office or securely online at: www.benefits.va.gov/BENEFITS/Applying.asp. VA will help gather the evidence needed to support your claims. If you choose to seek assistance outside of VA, you can find a VA accredited representative by visiting www.va.gov/get-help-from-accredited-representative/find-rep/. If your claim is denied and you want a further review without submitting additional evidence, you can request a higher-level review. If your claim is denied and you want to submit new evidence, you can either file a supplemental claim or appeal the decision to the Board of Veterans' Appeals.

For more information about claims predators fraud prevention resources, scan the below QR code or go to www.digital.va.gov/outreach-toolkits/claims-predators.



How To Report Fraud?

If you suspect a representative has acted unlawfully or unethically while helping file a VA benefits claim, you can report these claims predators at www.vsafe.gov or by calling 833-38V-SAFE.

Our goal is to empower you with tools to recognize claims predators and avoid their deceptive tactics. Every day at VA, we are working to fulfill our mission and our duty to honor the sacrifices you and your families have made.

VBA Launches Predatory Practices Prevention Campaign to protect Veterans' Claims

The Department of Veterans Affairs (VA) and VA accredited representatives, like our VSO partners, are combining forces to ensure Veterans benefits are protected. Veterans and their beneficiaries are often targets of companies and individuals known as claims predators. Claims predators often try to unlawfully charge Veterans and their families a fee to "help" them prepare and consult on their claims with VA. Aggressive communication via emails, phone calls, and/or text messages is used in an effort to get Veterans to sign legally binding contracts that are not to the Veteran's advantage. They advertise expedited claim processing times and/or guarantee higher disability ratings in exchange for their paid services. These [fraudulent schemes](#) target Veterans hard-earned benefits and may subject them to excessive fees.

Veterans need to be aware that **ONLY VA accredited attorneys, claims agents, and VSO representatives** can lawfully assist them with their initial benefits claims. Only VA accredited attorneys and claims agents may charge a fee to:

- Consult or advise VA claimants seeking review of or to appeal their claims.
- Collect evidence for a supplemental claim or an appeal.
- Prepare and file a supplemental claim.
- Submit requests for higher level review.
- Submit an appeal to the Board of Veterans Appeals

What is VA Doing to Help?

We are working to raise awareness of unlawful predatory practices used to exploit Veterans and their loved ones while providing resources to [safely claim VA benefits](#). These actions include working to make connecting with VA accredited representatives easier for Veterans and their families, collaborating with our federal partners such as [Federal Trade Commission](#), [Consumer Financial Protection Bureau](#), [U.S. Securities and Exchange Commission](#) and [Social Security Administration](#), and [developing communications](#) to spread awareness of the rising threat of claims predators. We launched a communications campaign to educate Veterans about claims predators and encourage the use of [VA accredited representatives](#) who offer free services to support their initial benefits claims.

What Can You Do to Help VA?

We request assistance from Veteran-centric organizations, such as your own, to share information from our Claims Predators Communications Campaign with the Veterans you serve and their beneficiaries. With your help, we can ensure Veterans have the knowledge to understand the threat of predatory practices, identify claims predators, find VA accredited attorneys, claims agents, and VSO representatives to support their benefits claims, and report claims predators. Attached is a visual tool with an overview of claims predators, warning signs, protective measures, best practices and reporting resources.

What Can a Veteran Do If They Suspect Fraud?

If a Veteran suspects a representative acted unlawfully or unethically while assisting them in filing a VA benefits claim, they should file a report at www.vsafe.gov or by calling 833-38V-SAFE, a new government-wide website and call center designed to protect Veterans, service members, and their families from fraud and scams. To learn more about fraud, predatory practices targeting the Veteran community and how to protect their benefits from fraud, visit [Protecting Veterans From Fraud | Veterans Affairs \(va.gov\)](#). These tools will inform Veterans and their families about common fraud schemes, and help protect themselves, and provide an outlet for reporting and further assistance.



Tips on Fee Agreements for Veterans Claims

1. Don't charge a fee too early. An attorney or a claims agent may never charge a claimant or receive a fee or a gift from a claimant for assistance with preparing and filing an initial VA benefits claim. 38 U.S.C. 5904(c)(1) ("[A] fee may not be charged, allowed, or paid for services of agents and attorneys . . . provided before the date on which a claimant is provided notice of [VA]'s initial decision . . . with respect to the case."). Charging a fee or accepting a gift on an initial claim—including charging for assistance with gathering necessary documents and filling out forms—is a violation of the VA Standards of Conduct, 38 C.F.R. § 14.632(c)(5) and (6), and grounds for cancellation of VA accreditation. But, once a claimant receives an initial decision on a claim or claims, an attorney or a claims agent may charge a fee for assisting a claimant in seeking review of those claims. 38 C.F.R. § 14.636(c).

2. Ensure your fee is reasonable. A fee for representation on a veteran's benefits claims must be reasonable at all times. 38 C.F.R. § 14.636(e) ("[f]ees permitted for services of an agent or attorney admitted to practice before VA must be reasonable"). Pursuant to VA's standards of conduct for accredited individuals, it is a VA-accredited attorney or agent's responsibility to ensure that he or she does not "enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation." 38 C.F.R. § 14.632(c)(5). It is important to remember that in most instances the onus is on the attorney or the claims agent to assess whether the fee is reasonable.

When an attorney or claims agent has a contingency fee agreement that does not exceed 20-percent and provides continuous representation from the date of the agreement through the date of the decision awarding benefits, the fee called for in the fee agreement is presumed to be reasonable in the absence of clear and convincing evidence to the contrary. 38 U.S.C. § 5904(a)(5); 38 C.F.R. § 14.636(f); *see also Scates v. Principi*, 282 F.3d 1362, 1365 (Fed. Cir. 2002) (explaining that even if a fee agreement provides for a fee of 20 percent of past-due benefits awarded, implicit in that arrangement is the understanding that the attorney or agent's right to receive the full 20-percent fee only arises if the attorney or agent continues as the veteran's representative until the case is successfully completed). In contrast, an attorney or agent with a 20-percent contingency fee agreement whose representation of the claimant ends before the case is completed, may still be eligible for a fee, but the full amount of the fee stated in the agreement generally would not represent a reasonable fee for that attorney or agent. Rather a reasonable fee for a discharged agent or attorney would be limited to the amount of the "fee that fairly and accurately reflects [the attorney or agent's] contribution to and responsibility for the benefits awarded." *Scates*, 282 F.3d at 1366.

3. Choose your fee payment arrangement wisely. Two different types of fee payment arrangements are permitted on VA benefits claims. The parties may choose either, but not both. Most fee agreements filed with VA are direct-payment fee agreements, under which the claimant and the attorney or claims agent agree that the fee is to be paid to the agent or attorney by VA directly from any past-due benefits awarded to the claimant. In these types of arrangements, the total fee may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim and the fee must be entirely contingent on the claimant receiving a favorable result on the claim. 38 C.F.R. § 14.636(h).

With the other type of fee arrangement, commonly referred to as a non-direct payment fee arrangement, the attorney or claims agent is responsible for collecting any fees for representation from the claimant without assistance from VA. Under this type of arrangement an attorney may charge reasonable fees based on a fixed fee, an hourly rate, a percentage of benefits recovered, or a combination of such bases. While there is not an absolute cap on the amount of fees that may be charged under these arrangements, if the fee charged

exceeds 33 1/3 percent of past-due benefits awarded, the attorney or agent must provide VA with clear and convincing evidence that such a fee is reasonable before receiving payment.

4. Mixed-type fee agreements and the direct payment of fees, don't mix. Fees may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. 38 C.F.R. § 14.636(e). But, in order to receive direct payment of a fee by VA, the fee must be wholly contingent on favorable resolution of the claim. 38 C.F.R. § 14.636(h)(1)(ii). VA will not provide direct payment for any fee agreements that mixes a contingent fee with a fixed or hourly rate. Moreover, if an attorney or claims agent were to receive a direct payment fee of 20 percent in addition to another fee, that individual would be in violation of 38 C.F.R. § 14.632(c)(5) and could potentially risk losing his or her VA-accreditation.

5. Make sure that your fee agreement is clear. Any ambiguity in a written fee agreement will be resolved against the lawyer. Beatty v. NP Corp., 581 N.E.2d 1311, 1315 (Mass. App. Ct. 1991).

6. Know what to include and not to include in your fee agreement. It is not proper for a fee agreement to purport to restrict VA from contacting a veteran. A fee agreement is between a client and attorney or claims agent; it does not bind VA and cannot restrict VA from contacting a veteran. *Equal Employment Opportunity Comm'n v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty."). Please make sure that you are using the fee agreement for its intended purpose. In addition, a fee agreement should never purport to eliminate a claimant's right to terminate the attorney-client relationship or dispute a fee. Veterans have a *legal right* to terminate an attorney at any time and to dispute an attorney's eligibility to a fee or question the reasonableness of a fee. See 38 C.F.R. §§ 14.631(f)(1) ("A power of attorney may be revoked at any time, and an agent or attorney may be discharged at any time); 14.636(i) ("[T]he Office of the General Counsel may review a fee agreement . . . upon its own motion or the claimant or appellant."). Finally, with regard to termination clauses in contingent fee agreements specifically, a contingent fee agreement that penalizes the client for discharging the lawyer is impermissible. See, e.g., *Guy Bennett Rubin PA v. Guettler*, 73 So. 3d 809 (Fla. Dist. Ct. App. 2011) (finding a termination clause in contingent-fee contract requiring client to pay hourly rate for work done before discharge chills client's right to switch lawyers or to abandon case); *In re Lansky*, 678 N.E.2d 1114 (Ind. 1997) (finding an agreement guaranteeing a lawyer 40 percent of the client's gross recovery if the lawyer is discharged before the resolution of case to be unreasonable); *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557 (Tex. 2006) (finding a retainer provision that entitles an attorney to the full value of a contingent fee if the attorney is discharged before the contingency occurs violates public policy and is unenforceable); Va. Ethics Op. 1812 (2005) (determining it to be impermissible to include a provision stating that if client terminates agreement, "reasonable value of Attorney's services shall be valued at \$200 per hour," or alternative provision that lawyer may, "where permitted by law, elect compensation based on the agreed contingent fee for any settlement offer made to Client prior to termination").

7. Explain the scope of your representation and any limitations. Sometimes an attorney's or claim agent's representation of a claimant is limited in the scope of representation to a specific claim on appeal, or to a particular stage of the adjudicatory process (e.g., an attorney may limit representation of the claimant only before the Court of Appeals for Veterans Claims). An attorney or agent may limit the scope of engagement, but the limitation must be reasonable under the circumstances and the claimant should consent to the limited scope. See 38 C.F.R. § 14.632(c)(9) (an attorney or agent shall not engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA); MRPR, 1.2(c). For the attorney and agent's protection, it is best to memorialize the limitations and consent in writing. See Wong v.

Michael Kennedy, P.C., 853 F. Supp. 73, 80 (E.D.N.Y. 1994) (explaining that an attorney who drafts a fee agreement stands in a fiduciary relationship to the client and has the burden of showing that the agreement is fair, reasonable, and fully understood by the client). Remember that on the VA Form 21-22a, Appointment of Individual as Claimant's Representative, Item 23 allows an attorney or agent to list any limitations on representation.

8. Beware of making mid-representation changes to the fee agreement. Attorneys face additional scrutiny when they change fee arrangements mid-representation. Having assumed representation of the client, the lawyer now owes fiduciary duties to his or her client. Courts and regulators are often concerned that a lawyer may take advantage of a vulnerable client. Therefore, particularly if the lawyer receives a larger fee under the new arrangement, the lawyer may face disciplinary charges or invalidation of the new fee arrangement.

The American Bar Association, Model Rule 1.8(a) as well as the rules of most States provide that a lawyer shall not enter into a business transaction with a client unless: (1) the transaction is objectively fair and reasonable; (2) fully disclosed in writing and in terms that are understandable to the client; and (3) the client is provided an opportunity to have the transaction reviewed by outside counsel and agrees to the transaction in writing. MODEL RULES OF PROF'L CONDUCT (MPRC) r. 1.8(a) (AM. BAR ASS'N 1983). See also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 126 (2000) (showing the protections in MRPC Rule 1.8 are consistent with the common law governing the attorney-client relationship); RESTATEMENT (THIRD) OF AGENCY § 8.03 (2006) (showing that the protections are also consistent with the law of agency). Although this particular rule would not generally apply to an ordinary fee agreement between an attorney and a client, States have applied it to situations in which the attorney modifies an existing fee agreement during the course of representation to tip the scale in the attorney's favor. See e.g., *In re Corcella*, 994 N.E.2d 1127 (Ind. 2013) (lawyer switched fee type from an hourly rate to a contingency fee without complying with Indiana Professional Conduct Rule 1.8(a)); *In re Curry*, 16 So. 3d 1139 (La. 2009) (revising a fee agreement to more favorable terms for the attorney violated Louisiana Rules of Professional Conduct 1.8(a)). To avoid such problems, if an attorney or agent must change their fee arrangement mid-representation, he or she ensure that the new arrangement is fair to the client, inform the client of the new agreement in writing, and recommend that the client seek independent counsel on the fee agreement and provide the client an opportunity to do so.

9. Know where to file your fee agreement. Fee agreements should be filed with VA in only one location—that location is determined by whether the fee agreement calls for VA to directly pay the attorney fees from the claimant's award of past-due benefits. A direct-payment fee agreement must be filed with the Veteran Benefits Administration at the Evidence Intake Center within 30 days of its execution. In contrast, a non-direct payment fee agreement must be filed with OGC within 30 days of its execution.

10. Provide competent, diligent representation. A contract providing for the direct payment of fees from the claimant's past-due benefits could be perceived as creating a perverse incentive for attorneys and claims agents to provide subpar representation—effectively encouraging attorney and agents to try to provide the least amount of representation as they can and still collect fees, if past-due benefits are awarded to the claimant. However, under 38 C.F.R. § 14.632(b)(1), attorneys and claims agents are required to provide competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. Competent representation also requires the attorney and claims agent to know and understand the issues of fact as well as the law. Section 14.632(b)(2) requires an attorney and a claims agent to act with reasonable diligence and promptness in representing claimants. This means promptly responding to VA's requests for information as well as returning your client's phone calls and emails. Accordingly, it is wise to make sure that you do not spread yourself too thin when handling veterans

claims so you can ensure that each of your clients is receiving the competent and diligent representation that is required by VA's standards of conduct.

11. Communication is key. We recommend that at the onset of representation that you discuss with the claimant how you will communicate about the claim and how often. One of the biggest complaints that claimants have in challenging the reasonableness of a fee is that they were unable to reach their attorney or agent and were not provided regular updates on their claim.

12. Document your work and record your time, it may be helpful later. The best time to document your work is when you are doing it. Even if you typically work for a contingency fee, having a record of the work you completed and the time you spent on a case may come in handy if there is a dispute over your fee.

13. Do not rely on OGC to review your fee for reasonableness. VA's Office of General Counsel does not review every fee for reasonableness, and simply because you were determined eligible for a fee does not mean you should accept or keep the funds dispersed to you. Pursuant to VA's standards of conduct for accredited individuals, it is a VA-accredited attorney or agent's responsibility to ensure that he or she does not "receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation." 38 C.F.R. § 14.632(c)(5). It is important to remember that in the majority of VA claims, just like in many other areas of the law, the onus is primarily on the attorney or the claims agent to assess whether the fee is reasonable.

The only time that OGC always reviews a fee for reasonableness is when more than one attorney or agent is involved in a case, and the fee agreements call for the direct-payment of fees to be made by VA from the claimant's past-due benefits. When a claimant retains more than one attorney or agent through a direct payment fee agreement during the course of the case, the total amount of the funds that VA can direct to the attorneys and agents collectively under 38 U.S.C. § 5904(d) is capped at 20 percent of the claimant's past-due benefits awarded. *Scates*, 282 F.3d at 1365-66. Thus, VA is unable to disperse the withheld funds based on an attorney or agent's eligibility for the direct-payment of fees alone. See 38 C.F.R. § 14.636(c), (g)-(h). In order to effectuate payment, OGC, on its own motion, exercises its authority to review the fees to determine the reasonable share to be issued to each attorney and/or agent.

14. Waiving fees may be the right thing to do. Generally, it is your responsibility to waive your right to fees if you did no work, or an insignificant amount of work, that contributed to the Claimant's award. See 38 C.F.R. § 14.632(c)(5); *see also, e.g., In re Cleaver-Bascombe*, 892 A.2d 396 (D.C. 2006) (explaining that it is by definition "unreasonable" to charge for work that was not done); *In re Powell*, 953 N.E.2d 1060 (Ind. 2011) (explaining that terms of a contingent fee agreement may have been reasonable at outset, but because the matter quickly resolved, the lawyer should have realized that his fee had become unreasonable); *In re Sinnott*, 845 A.2d 373 (Vt. 2004) (holding that it was unreasonable for a lawyer to charge a client for negotiations that the client ended up doing herself). To waive entitlement to the fee called for in your fee agreement with the claimant, please submit a written response indicating that you have elected to do so to the regional office and the Office of General Counsel.

15. If a matter is with OGC for the review of the reasonableness of a fee, settlement may be an option. VA encourages the informal resolution of fee matters. In our experience, attorneys, agents, and claimants, have been able to settle these matters in a fair and timely manner. Accordingly, we encourage attorney and

agents to consider the applicable law and communicate with the other parties—whether it be with the claimant, another agent or attorney, or both—regarding the possibility of proposing a settlement agreement.

If you were the only attorney or agent of record, you should advise the claimant, in writing, to seek independent advice and counsel prior to reaching an agreement. Under ABA Model Rule 1.8(h)(2), “[a] lawyer shall not . . . settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.” In Comment 15 to Model Rule 1.8(h)(2), the ABA states that “[a]greements settling a claim or a potential claim for malpractice are not prohibited by this Rule” but, “in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement.” Additionally, the attorney must “give the client or former client a reasonable opportunity to find and consult independent counsel.” *Id.* The failure of an attorney to properly advise a client to seek independent advice in such matters may subject the attorney to bar discipline. See, e.g., *Kentucky Bar Ass’n v. Keating*, 405 S.W.3d 462, 464 (Ky. 2013) (accepting board of governors 18-month suspension recommendation for attorney who settled a potential malpractice claim “without advising [the client] in writing of the desirability of seeking, and giving her a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith”); *Attorney Grievance Comm’n of Maryland v. Butler*, 44 A.3d 1022, 1030 (Md. 2012) (affirming 60-day suspension of attorney who “plainly limited his liability for his mismanagement” of a case without presenting evidence that he “advised the clients to seek independent counsel”).

If there is more than one attorney or agent of record, you and the other eligible attorney or agent should submit a written response to our office, indicating that you are proposing that this matter be resolved through agreement by the representatives, and attach the signed agreement. The consent of the claimant may be necessary depending on your state rules of professional conduct and the situation at hand. Your response should include all pertinent details concerning the terms of the proposed settlement agreement, such as an explanation as to the portion of the fees that should be paid to each representative and, if appropriate, the Claimant. Upon receipt of the settlement agreement, OGC may opt to withdraw this motion to review the fee matter and instruct that fees be paid in accordance with the terms of the settlement agreement. A settlement agreement that does not secure the consent of the claimant would not preclude the claimant from filing, or OGC from acting upon, a motion from the claimant requesting a review of the reasonableness of the fees pursuant to section 14.636(i)(1) within the regulatory time period.

16. Think, before accepting a big fee. Before you celebrate over a windfall of fees coming your way, you should first pause and consider whether the fee is reasonable, from both your perspective and the claimant's perspective. It is important to be aware of the consequences an attorney or agent may face for accepting an unreasonable fee. The reasonableness review process under 38 C.F.R. § 14.636(i) can lead to the suspension or cancellation of accreditation under 38 C.F.R. § 14.633(c)(6), which specifically refers to “[c]harging excessive or unreasonable fees for representation as determined by VA.” However, equally important, outside of the reasonableness review process, violation of the standard of conduct at 38 C.F.R. § 14.632(c)(5)—providing that an attorney shall not “enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation”—could lead to the suspension or cancellation of accreditation under 38 C.F.R. § 14.633(c)(1), which specifically refers to “[v]iolation of or refusal to comply with the laws administered by VA or with the regulations governing practice before VA including the standards of conduct in § 14.632.” The bottom line is that you should never accept a fee that is not reasonable.



KEEPING OUR PROMISE TO
AMERICA'S VETERANS

No veteran should have to pay to file a claim under any circumstance. Period.

THE SITUATION

- The VA Office of General Counsel requires representatives to be **accredited**, like DAV, to provide veterans and their families with claims assistance.
- Predatory claims practitioners are **unaccredited** individuals or companies, not recognized by VA, that charge excessive fees for filing VA benefits claims, or consulting with veterans.
- Predatory claims practices aren't just wrong—they are **illegal!** Under 38 U.S.C. § 5904, **accredited** representatives are the only entities authorized to charge fees, but only **after** the VA has issued an initial decision on the claim.
- Predatory claims companies are using Social Media, email, pop-up ads, and other means to reach veterans.
- Predatory claims companies are attempting to get legislation passed at the state and federal levels that will allow them to charge exorbitant fees for initial claims.
- While a pathway for these for-profit companies to become accredited exists, they have continually refused, which shows they are driven by greed rather than simply looking to improve veteran's lives.

WHAT YOU CAN DO

- Don't sign a contract. They are often unfair and can charge large fees or a percentage of benefits.
- Don't pay upfront fees for claim help. DAV claims work is always free.
- Don't give out your VA.gov passwords.
- Check to see if an individual/organization is accredited at va.gov/ogc/accreditation.asp.
- Contact your local NSO office. You can find the nearest at benefitsquestions.org.
- Call your elected officials to support the GUARD VA Benefits Act, federal legislation that would reinstate criminal penalties, ensuring predatory claims companies can no longer continue their illegal practices. DAV supports this bill through DAV Resolution No. 324 to protect claimants from unnecessary fees.

If a veteran feels he or she has fallen victim to Predatory Claims Practices, they should

- Report the issue to the VA Office of General Counsel at 202-461-7699;
- Report to the VA Office of Inspector General hotline at 1-800-488-8244;
- File a complaint with their State Attorney, and
- File a complaint with the Federal Trade Commission.



DON'T FEED THE SHARKS



What is a "Claim Shark"?

- A Claim Shark is an individual or company that charges hefty fees to "assist" or "consult" veterans with filing their VA benefit claims – this practice is illegal!
- Claim Sharks are not VA accredited, meaning they aren't required to adhere to the well-established professional and ethical standards of VA accreditation, so their advice can often be misleading or even fraudulent.
- Like a "Loan Shark," once you're in, you can't get out, and may be subject to new and hidden fees whenever you get a new rating, no matter who does the work.

Some of their predatory practices are:

- Promising or guaranteeing an increased disability rating or percentage increase.
- Advertising expedited VA claims decisions.
- Requesting login credentials to access a veteran's personal information through secure VA websites like eBenefits or VA.gov.
- Using confusing tactics or ambiguous language to mislead claimants or coerce them into signing a contract.
- Telling veterans to forego VA exams and offering health consultations within their own network of doctors.

Who are the Claim Sharks?

- | | |
|----------------------|-------------------------|
| ✦ Trajector Medical | ✦ Patriot Angels |
| ✦ Vet Benefits Guide | ✦ Veteran Care Services |
| ✦ Veterans Guardian | ✦ VetComm |
| ✦ VA Claims Insider | ✦ VA Claims Academy |
| ✦ Telemedica | ✦ Vet Assist |

Veterans can protect themselves by:

- Always working with VA accredited representatives.
- Attending all exams ordered by VA.
- Not signing contracts.
- Not agreeing to fees or payments from future benefits.
- Not agreeing to pay for medical consultations or opinions.
- Not providing access to Protected Health Information or Personal Identifiable Information.

Who is NOT a Claim Shark?

- VA accredited veterans service organization representatives, like the VFW
- VA accredited claims agents
- VA accredited attorneys
- Attorneys assisting with Camp LeJeune lawsuits who do not charge excessive fees

VFW
VETERANS OF FOREIGN WARS